



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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Fax No.: 403-260-9700  
File Ref.: 99580/8

### 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	March 20, 2023
Time	2:00 p.m.
Where	Edmonton, Alberta (via Webex)
Before Whom	The Honourable Justice Douglas R. Mah

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 fifth report of the Proposal Trustee to the Court dated March 10, 2023 (the "**Fifth Report**"); and
  - (d) approving the fees and disbursements of the Proposal Trustee and its counsel, as set out in the Fifth Report, the fee affidavit of David Sieradzki sworn March 10, 2023, the fee affidavit of Danielle Maréchal sworn March 10, 2023, and the fee affidavit of Brent Cohen to be sworn March 13, 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.

**Grounds for making this application:**

*Background*

2. 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.

3. 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.
4. 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.
5. On November 28, 2022, the Honourable Justice M.H. Hollins of the Court granted orders, among other things:
  - (a) approving (the "**Approval Order**") the purchase and sale transaction (the "**Transaction**") contemplated in the APA;
  - (b) authorizing the Companies to enter into the transition services agreement (the "**TSA**");
  - (c) 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;
  - (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**").

6. 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.
7. 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.
8. On December 13, 2022, the Honourable Justice J.T. Neilson of the Court granted an order, among other things, authorizing the Proposal Trustee to make an interim distribution or distributions to PEF 2010 Nilex Investment Limited Partnership from the proceeds of sale resulting from the Transaction.
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.
12. On February 7, 2023, the Honourable Justice J.T. Nielson of the Court granted an order, among other things, 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 March 24, 2023.

***Extension of Time to File a Proposal***

13. 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.

14. 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.
15. The Companies have acted in good faith and with due diligence in pursuing the Transaction to maximize value for their creditors and other stakeholders.
16. 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 March 24, 2023, at which time the Companies will be deemed to have made an assignment in bankruptcy.
17. The Companies are seeking an extension of time to file a proposal or proposals to and including 11:59 pm (local Edmonton time) on April 26, 2023.
18. 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.
19. No creditors will be materially prejudiced by the requested extension.

***Approval of Fees***

20. As set out in the Fifth Report and the Fee Affidavits: the fees and disbursements of the Proposal Trustee for the period from January 1, 2023 to February 28, 2023 total \$63,526.06, inclusive of all applicable taxes; the fees and disbursements of the Proposal Trustee's Canadian counsel for the period from December 17, 2022 to February 28, 2023, total \$35,122.11, inclusive of all applicable taxes; and the fees and disbursements of the Proposal Trustee's US counsel for the period from December 14, 2022 to February 28, 2023, total \$7,624.78 USD, inclusive of all applicable taxes.

21. 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:**

22. The Companies intend to rely upon the following materials:

- (a) the affidavit of Trevor Derksen sworn March 10, 2023, filed;
- (b) the Fifth Report, to be filed; and
- (c) such further and other materials as counsel may advise and this Honourable Court may permit.

**Applicable Rules:**

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

**Applicable Acts and Regulations:**

24. 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.

25. *The Bankruptcy and Insolvency General Rules*, CRC, c 368.

26. 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:**

27. None.

**How the Application is proposed to be heard or considered:**

28. Virtually, an application via WebEx before the Honourable Justice Douglas R. Mah.

**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)



COURT FILE NUMBER 24-2878531

Clerk's Stamp

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

APPLICANTS NILEX INC. and NILEX USA INC.

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

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**Blake, Cassels & Graydon LLP**

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Fax No.: 403-260-9700  
File Ref: 99580/8

**DATE ON WHICH ORDER WAS PRONOUNCED:** March 20, 2023

**LOCATION OF HEARING:** Edmonton, Alberta (via Webex)

**NAME OF JUDGE WHO MADE THIS ORDER:** The Honourable Justice Douglas R. Mah

**UPON THE APPLICATION** by Nilex Inc. ("**Nilex**") and Nilex USA Inc. (the "**Companies**") for an order extending the time for each of the Companies to file a proposal pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 (the "**BIA**"), approving and ratifying the actions, conduct and activities of the Proposal Trustee as described in the fifth report of the Proposal Trustee dated March 10, 2023 (the "**Fifth Report**"), and approving the fees and disbursements of the Proposal Trustee and its counsel as described in the Fifth Report;

**AND UPON HAVING READ** the Application, the Affidavit of Trevor Derksen sworn on March 10, 2023, the Fifth Report, the fee affidavit of David Sieradzki sworn March 10, 2023, the fee affidavit of Danielle Maréchal sworn March 10, 2023, and the fee affidavit of Brent Cohen

sworn March 13, 2023 (collectively, the "**Fee Affidavits**"), the Affidavit of Service of [●] sworn March [●], 2023, and such other material in the pleadings and proceedings as deemed necessary;

**AND UPON HEARING** the submissions of counsel for the Companies, the Proposal Trustee and such other counsel in attendance;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**EXTENSION OF TIME TO FILE A PROPOSAL**

1. Pursuant to Section 50.4(9) of the BIA, the time for each of the Companies to file their respective proposals is hereby extended to April 26, 2023.

**PROPOSAL TRUSTEE'S ACTIVITIES AND FEES**

2. The actions, conduct and activities of the Proposal Trustee as set out in the Fifth Report are hereby ratified and approved, provided that only the Proposal Trustee shall be entitled to rely on or utilize such approval.
3. The professional fees and disbursements of the Proposal Trustee and its counsel, as detailed in the Fifth Report and the Fee Affidavits, are hereby approved without the necessity of a formal assessment of their accounts.

**MISCELLANEOUS MATTERS**

4. The Companies, the Proposal Trustee, and any other interested party shall be at liberty to apply for further advice, assistance, and directions as may be necessary in order to give full force and effect to the terms of this Order.
5. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order, and to assist the Proposal Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Proposal Trustee, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

## SERVICE OF ORDER

6. Service of this Order shall be deemed good and sufficient:
  - (i) by serving same on the persons who were served with notice of this Application and any other parties attending or represented at the hearing of the Application; and
  - (ii) by posting a copy of this Order on the Proposal Trustee's website at:  
<https://www.ksvadvisory.com/experience/case/nilex-inc.>
7. Service of this Order on any other person is hereby dispensed with.
8. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

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Justice of the Court of King's Bench of Alberta