

COURT/ESTATE FILE NUMBER 24-2878531
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

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 **FIFTH REPORT OF THE PROPOSAL TRUSTEE**
March 10, 2023

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT Proposal Trustee
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File Ref.: 50505-7



**Fifth Report to Court of
KSV Restructuring Inc.
as Proposal Trustee of
Nilex Inc. and Nilex USA Inc.**

March 10, 2023

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Court File No.: 24-2878531

COURT OF KING'S BENCH OF ALBERTA

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER SECTION 50.4(1) THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED
APPLICANTS: NILEX INC. AND NILEX USA INC.

FIFTH REPORT OF KSV RESTRUCTURING INC.
AS PROPOSAL TRUSTEE OF
NILEX INC. AND NILEX USA INC.

MARCH 10, 2023

1.0 Introduction

1. This report ("Report") is filed by KSV Restructuring Inc. ("KSV"), in its capacity as proposal trustee (the "Proposal Trustee") in connection with Notices of Intention to Make a Proposal ("NOI") filed on October 27, 2022 by Nilex Inc. ("Nilex Canada") and on November 24, 2022 by Nilex USA Inc. ("Nilex USA", and together with Nilex Canada, the "Nilex Debtors") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). Copies of the certificates of filing issued by the Office of the Superintendent of Bankruptcy are provided in Appendix "A".
2. Pursuant to an order of the Court of King's Bench of Alberta (the "Court") granted on November 28, 2022 (the "Ancillary Order"), among other things, (i) the Nilex Debtors' NOI proceedings were procedurally consolidated; and (ii) the Proposal Trustee was appointed as foreign representative (the "Foreign Representative") for the purpose of commencing recognition proceedings in the United States Court for the District of Colorado (the "US Court") pursuant to chapter 15 ("Chapter 15") of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "US Code"). On December 2, 2022, the Proposal Trustee, as Foreign Representative, filed a petition for US Court recognition of Nilex USA's NOI proceedings as a foreign main proceeding.
3. Pursuant to a sale approval and vesting order (the "SAVO") granted on November 28, 2022, the Court approved a sale (the "Transaction") of the Nilex Debtors' business and assets pursuant to an Asset Purchase Agreement (the "APA") dated November 18, 2022 between the Nilex Debtors and Terrafix Geosynthetics Inc. (the "Canadian Purchaser") and Hanes Companies, Inc. (the "US Purchaser") (jointly, the Canadian Purchaser and the US Purchaser are defined as the "Purchasers").
4. Pursuant to orders of the US Court entered on January 10, 2023, the US Court recognized Nilex USA's NOI proceeding as a foreign main proceeding and recognized the SAVO as it related to the sale of Nilex USA's business and assets to the US Purchaser.

5. The Transaction with the Canadian Purchaser and the US Purchaser closed on December 19, 2022 (with an effective date of December 16, 2022) and January 27, 2023, respectively.
6. The principal purposes of this proceeding at this time are to:
 - a) create a stabilized environment to allow the Nilex Debtors to complete their post-closing obligations under the APA; and
 - b) provide the Nilex Debtors the opportunity to file a proposal to creditors pursuant to the provisions of the BIA (“Proposal”).

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Nilex Debtors, the Transition Services Agreement (as defined below) and these proceedings;
 - b) discuss the Nilex Debtors’ request for an extension of the deadline to file a Proposal from March 24, 2023 to April 26, 2023;
 - c) report on the Nilex Debtors’ weekly cash flow projection for the period March 6, 2023 to April 26, 2023 (the “Cash Flow Forecast”);
 - d) provide an overview of the Proposal Trustee’s activities since the Proposal Trustee’s Fourth Report to Court dated January 30, 2023 (the “Fourth Report”), which activities to that date were approved pursuant to a Court order dated February 7, 2023 (the “February 7th Order”); and
 - e) recommend that the Court issue the order requested by the Nilex Debtors, among other things:
 - i. extending the date by which the Nilex Debtors are required to file a Proposal from March 24, 2023 to April 26, 2023;
 - ii. approving and ratifying the Proposal Trustee’s actions, conduct and activities as set out in this Report;
 - iii. approving the fees and disbursements of the Proposal Trustee for the period commencing on January 1, 2023 and ending on February 28, 2023;
 - iv. approving the fees and disbursements of the Proposal Trustee’s legal counsel, Cassels Brock & Blackwell LLP (“Cassels”), for the period commencing on December 17, 2022 and ending February 28, 2023; and
 - v. approving the fees and disbursements of the Proposal Trustee’s US legal counsel, Lewis Roca Rothgerber Christie LLP (“Lewis Roca”), for the period commencing on December 14, 2022 and ending February 28, 2023.

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Nilex Debtors' representatives, the books and records of the Nilex Debtors and discussions with the Nilex Debtors' advisors and representatives. The Proposal Trustee has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. The Proposal Trustee accepts no responsibility for any reliance placed by any third party on the Nilex Debtors' financial information presented herein. An examination of the Cash Flow Forecast as outlined in the *Chartered Professional Accountants Canada Handbook* has not been performed. Future oriented financial information relied upon in this Report is based upon the Nilex Debtors' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.

1.4 Court Materials

1. Court materials filed in these proceedings are available on the Proposal Trustee's website at: <https://www.ksvadvisory.com/experience/case/nilex-inc.>

2.0 Background

1. Nilex Canada formerly operated in the geosynthetics industry providing civil environmental products and technologies. Nilex Canada provided environmental solutions used in road building, erosion and sediment control, water management and containment. Nilex Canada also offered conversion and fabrication options, customization of standard products to site and project-specific requirements. Pursuant to the Transaction, the Canadian Purchaser acquired the business and certain assets of Nilex Canada.
2. Nilex Canada is the 100% shareholder of Nilex USA. Nilex USA operated from leased premises in Utah and Colorado. Pursuant to the Transaction, the US Purchaser acquired the business and certain assets of Nilex USA.
3. Fulcrum Capital Partners Inc. is Nilex Canada's controlling shareholder. Nilex Canada's registered office is in Calgary and it operated from leased premises in Edmonton, Calgary, Saskatoon, Surrey and Toronto.

4. At the commencement of these proceedings and at the closing date of the Transaction with the Canadian Purchaser, Canadian Imperial Bank of Commerce (“CIBC”) and PEF 2010 Nilex Investment Limited Partnership (“Fulcrum”) were the principal secured creditors of the Nilex Debtors. Pursuant to a Court order dated November 28, 2022, and subject to the assignment¹ of a portion of CIBC’s debt and security to Fulcrum (the “Assigned Debt”), CIBC was fully repaid (approximately \$11.5 million) from the proceeds of the Transaction with the Canadian Purchaser.
5. Pursuant to an order granted on December 13, 2022 (the “Canadian Distribution Order”), the Court authorized the Proposal Trustee to make distributions to Fulcrum. As at the date of this Report, the Proposal Trustee has made interim distributions to Fulcrum totalling approximately \$4 million. Fulcrum was owed approximately \$48 million plus interest and costs which continue to accrue (which includes the Assigned Debt of \$3 million).
6. On February 16, 2023, the Proposal Trustee, as Foreign Representative, filed a motion for US Court recognition of the Canadian Distribution Order. There were no objections filed in the US by the objection deadline of March 9, 2023.
7. Additional background information about the Nilex Debtors and these proceedings was included in the Proposal Trustee’s First Report dated October 31, 2022, the Second Report dated November 21, 2022, the Third Report dated December 7, 2022, the Fourth Report, the affidavits of Jeff Allen, the Nilex Debtors’ Vice President, Finance, sworn October 31, 2022, November 21, 2022, December 7, 2022, January 30, 2023 and the affidavit of Trevor Derksen, the Nilex Debtors’ President and Chief Executive Officer, sworn March 10, 2023, and accordingly, that information is not repeated in this Report.

3.0 The Transition Services Agreement

1. Since the date of the Fourth Report (being January 30, 2023), the Nilex Debtors have continued working with the Purchasers pursuant to the terms of a Transition Services Agreement (the “TSA”) between the Nilex Debtors and the Purchasers that was negotiated to facilitate the execution of the APA and approved pursuant to the SAVO. The purpose of the TSA is for the Nilex Debtors and certain of its remaining employees to assist the Purchasers on transitional operational functions (including purchasing, sales and accounting) and to maintain in good standing, during these proceedings, certain contracts and real property lease agreements until those locations can be vacated and leases disclaimed by the Nilex Debtors.

¹ On December 7, 2022, CIBC assigned to Fulcrum \$3 million of the amounts owed by the Nilex Debtors to CIBC.

2. Pursuant to the TSA, the Purchasers are required to fund any costs incurred by the Nilex Debtors in providing the transition services contemplated under the TSA for up to six months following closing of the Transaction. Accordingly, the TSA could terminate as late as June 16, 2023 and July 27, 2023 as it relates to the Transaction with the Canadian Purchaser and US Purchaser, respectively.
3. Based on the current progress of the transition services, the Proposal Trustee understands that it is unlikely that transition services will be required beyond the proposed extension date of April 26, 2023.

4.0 Cash Flow

1. As reflected in the Cash Flow Forecast, as at March 6, 2023, the Nilex Debtors' cash on deposit in their bank accounts, including the funds in the Proposal Trustee's bank accounts, totalled approximately \$2 million.
2. Pursuant to the BIA, the Nilex Debtors are required to prepare a cash flow forecast for the stay extension period. The Cash Flow Forecast for the period ending April 26, 2023, together with Management's Report on the Cash-Flow Statement, as required by subsection 50.4(2)(c) of the BIA, is provided in Appendix "B".
3. The Cash Flow Forecast was prepared with the assistance of the Proposal Trustee. Based on the Proposal Trustee's review of the Cash Flow Forecast, there are no material assumptions which seem unreasonable. The Proposal Trustee's Report on the Cash Flow Statement as required by subsection 50.4(2)(b) of the BIA is attached as Appendix "C".

5.0 The Nilex Debtors' Extension Request

1. Pursuant to section 50.4(9) of the BIA, the ultimate deadlines for Nilex Canada and Nilex USA to file a Proposal are April 26, 2023 and May 24, 2023, respectively. At this time, the Nilex Debtors are seeking an extension of the time required to file a Proposal from March 24, 2023 to April 26, 2023. The Proposal Trustee supports the extension request for the following reasons:
 - a) the Nilex Debtors are acting in good faith and with due diligence;
 - b) it will provide the Nilex Debtors with additional time to carry out their obligations under the APA, particularly as it relates to the TSA;
 - c) it will enhance the likelihood of the Nilex Debtors being able to file a Proposal; and
 - d) the extension will not adversely affect or prejudice any group of creditors as the Nilex Debtors are projected to have sufficient funding to pay post-filing services and supplies in the amounts contemplated by the Cash Flow Forecast.

6.0 Overview of Proposal Trustee's Activities

1. The Proposal Trustee's activities from the commencement of these proceedings to the date of the Fourth Report (being January 30, 2023) were approved pursuant to the February 7th Order. Since that time, the Proposal Trustee's activities have included the following:
 - a) working with the Proposal Trustee's US legal counsel to file a motion with the US Court for recognition of the Canadian Distribution Order;
 - b) assisting the Nilex Debtors with certain operational issues, including dealing with certain vendors and contract counterparties in respect of contract assignment issues;
 - c) assisting the Nilex Debtors to coordinate TSA matters, including dealing with landlord and employee issues;
 - d) administering the employee claims process in accordance with the *Wage Earner Protection Program Act* ("WEPPA"), as authorized under a Court order issued on December 13, 2022²;
 - e) assisting Nilex Canada to finalize the purchase price adjustment with the Canadian Purchaser, which was settled in mid-February, 2023 in accordance with the APA;
 - f) reviewing and commenting on Court materials filed in these proceedings and the US proceedings, and corresponding with legal counsel to the Nilex Debtors and the Proposal Trustee in respect thereof; and
 - g) drafting this Report.

7.0 Professional Fees

1. The fees of the Proposal Trustee (excluding disbursements and applicable taxes) from January 1, 2023 to February 28, 2023 total approximately \$56,200.
2. The fees of Cassels (excluding disbursements and applicable taxes) from December 17, 2022 to February 28, 2023 total approximately \$33,368.
3. The fees of Lewis Roca (excluding disbursements and applicable taxes) from December 14, 2022 to February 28, 2023 total approximately US\$7,155.
4. The average hourly rates for KSV, Cassels and Lewis Roca for the referenced billing periods were \$613.73, \$785.13 and US\$627.63, respectively.

² Section 5(5) of the WEPPA provides that, on application by any person in proceedings under Division I of Part III of the BIA, a court may determine that a former employee meets the criteria prescribed by WEPPA. The Order issued on December 13, 2022 granted this relief.

5. Detailed invoices in respect of the fees and disbursements of the Proposal Trustee, Cassels and Lewis Roca are provided as exhibits to the affidavits (the "Fee Affidavits") sworn by representatives of KSV, Cassels and Lewis Roca, copies of which Fee Affidavits will be provided to the Court.
6. The Proposal Trustee is of the view that the hourly rates charged by Cassels are consistent with the rates charged by law firms practicing in the area of corporate insolvency and restructuring, and that the overall fees charged by Cassels and the Proposal Trustee are reasonable and appropriate in the circumstances. The Proposal Trustee understands that the hourly rates of Lewis Roca are consistent with the hourly rates charged by law firms practicing in the area of corporate insolvency and restructuring in its market.

8.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court grant the relief being sought by the Nilex Debtors.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS TRUSTEE *IN RE* THE PROPOSAL OF
NILEX INC. AND NILEX USA INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Alberta
Division No. 01 - Edmonton
Court No. 24-2878531
Estate No. 24-2878531

In the Matter of the Notice of Intention to make a proposal of:

Nilex Inc.

Insolvent Person

KSV RESTRUCTURING INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

October 27, 2022

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: October 27, 2022, 10:45

E-File/Dépôt Electronique

Official Receiver

Canada Place Building, 9700 Jasper Avenue NW, Suite 725, Edmonton, Alberta, Canada, T5J4C3, (877)376-9902

Canada



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Alberta
Division No. 01 - Edmonton
Court No. 24-2887527
Estate No. 24-2887527

In the Matter of the Notice of Intention to make a proposal of:

Nilex USA Inc.

Insolvent Person

KSV RESTRUCTURING INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

November 24, 2022

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: November 24, 2022, 10:03

E-File/Dépôt Electronique

Official Receiver

Canada Place Building, 9700 Jasper Avenue NW, Suite 725, Edmonton, Alberta, Canada, T5J4C3, (877)376-9902

Canada

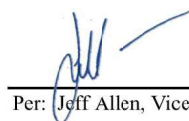
Appendix “B”

Nilex Inc. and Nilex USA Inc.
Projected Cash Flow Statement
For the period ending April 26, 2023
(Unaudited; \$CAD Thousands)

	Note	Week ending							Total	
		10-Mar-23	17-Mar-23	24-Mar-23	31-Mar-23	7-Apr-23	14-Apr-23	21-Apr-23		26-Apr-23
<i>Receipts</i>										
Collections under TSA	2	-	175	-	-	-	-	-	-	175
Total Receipts		-	175	-	-	-	-	-	-	175
<i>Disbursements</i>										
Vendor payments	4	-	(87)	-	-	-	(42)	-	-	(129)
Professional fees	5	-	(93)	-	-	-	(177)	-	-	(270)
Purchase price adjustment	6	-	-	-	57	-	-	-	-	57
Other	7	-	-	-	(40)	-	-	-	-	(40)
Total Disbursements		-	(180)	-	17	-	(219)	-	-	(382)
Net Cash Flow		-	(5)	-	17	-	(219)	-	-	(207)
Opening Cash Balance	8	2,008	2,008	2,003	2,003	2,020	2,020	1,801	1,801	2,008
Net Cash Flow		-	(5)	-	17	-	(219)	-	-	(207)
Closing Cash Balance		2,008	2,003	2,003	2,020	2,020	1,801	1,801	1,801	1,801

The above financial projections are based on management's assumptions detailed in Appendix "1-1".
The note references correspond to the assumption numbers shown in Appendix "1-1".

NILEX INC.




Per: Jeff Allen, Vice President, Finance

March 9 2023

Date

NILEX USA INC.



Per: Jeff Allen, Vice President, Finance

March 9 2023

Date

KSV RESTRUCTURING INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL AND NOT
IN ITS PERSONAL CAPACITY



Per: David Sieradzki

March 9, 2023

Date

Purpose and General Assumptions

1. The purpose of the projection is to present a forecast of the cash flow of Nilex Inc. and Nilex USA Inc. (jointly, the "Companies") for the period March 6, 2023 to April 26, 2023 in respect of their notice of intention to make a proposal ("NOI") proceedings under the *Bankruptcy and Insolvency Act*.

Pursuant to an order of the Court of King's Bench of Alberta dated November 28, 2022, the Companies' NOI proceedings were procedurally consolidated.

The projected cash flow statement has been prepared based on hypothetical and most probable assumptions developed and prepared by the Companies.

Hypothetical

2. Represents collection of an amount owing from Terrafix Geosynthetics Inc. (the "Canadian Purchaser") and Hanes Companies, Inc. (the "US Purchaser", and together with the Canadian Purchaser the "Purchasers") to the Companies relating to the Companies' invoice for February services under the Transition Service Agreement ("TSA").

Most Probable

3. Reflects post-filing costs that are not reimbursed by the Purchasers under the TSA.
4. Reflects payments to trade vendors in respect of the Companies' operations during the proceedings.
5. Represents estimated professional fees of the Companies' legal counsel, the Proposal Trustee and its legal counsel.
6. Represents the estimated purchase price adjustment related to the sale to the US Purchaser.
7. Represents the final portion of a court-approved key employee retention plan.
8. The opening cash balance reflects cash on deposit in the Companies' bank accounts and funds in the Proposal Trustee's bank accounts.

**Report on Cash Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the BIA)**

The management of Nilex Inc. and Nilex USA Inc. (jointly, the “Companies”) has developed the assumptions and prepared the attached statement of projected cash flow of the Companies for the period ending April 26, 2023.

The hypothetical and probable assumptions are suitably supported and consistent with the purpose of the projection and the plans of the Companies and provide a reasonable basis for the projection. All such assumptions are disclosed in Notes 2 to 8.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in Note 1, using a set of hypothetical and probable assumptions set out in Notes 2 to 8. Consequently, readers are cautioned that it may not be appropriate for other purposes.


Dated at Edmonton, this 9th day of March, 2023.

NILEX INC.



Per: Jeff Allen, Vice President, Finance

NILEX USA INC.



Per: Jeff Allen, Vice President, Finance

Appendix “C”

**Trustee's Report on Cash-flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)**

The attached statement of projected cash-flow of Nilex Inc. and Nilex USA Inc. (jointly, the "Companies"), as of the 9th day of March, 2023, consisting of a weekly cash flow statement for the period March 6, 2023 to April 26, 2023, has been prepared by the management of the insolvent person for the purpose described in Note 1, using the probable and hypothetical assumptions set out in Notes 2-8.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by the management and employees of the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

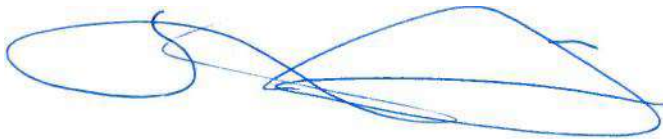
- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated this 9th day of March, 2023.

**KSV RESTRUCTURING INC.
TRUSTEE**

A handwritten signature in blue ink, consisting of several overlapping loops and lines, positioned below the printed name of the trustee.

Per: David Sieradzki