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Facsimile Transmittal Sheet

Friday, January 13, 2012

OUR MATTER: 111101

Total number of pages being transmitted, including this page: 3

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FROM: Fred Myers

MESSAGE: Please see the attached correspondence.

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January 13, 2012

By Facsimile

The Registrar
Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario
K1A 0J1

Attention: Michel Jobidon

Dear Sirs/Mesdames:

Re: Sun Indalex Finance, LLC v. United Steelworkers, et al. File No.: 34308
Motion to State Constitutional Questions

We write to object to the letter from the Retirees' counsel dated January 12, 2012 that purports to respond to the Reply of Sun Indalex Finance, LLC ("Sun Indalex") regarding its motion to state constitutional questions. The letter is not permitted by the *Rules of the Supreme Court of Canada*. Although written on the basis that it corrects "misleading" statements in the Reply, areas where the Reply "misstates the state of jurisprudence" or is "missing" information, it does no such thing. We submit that the letter should not be considered when the motion is heard.

If the Court requires any further information about this, we would ask that the following be considered.

Contrary to the letter's assertions, paragraphs 2 and 3 of our client's Reply were accurate. That the attorneys general did not participate after a Notice of Constitutional Question was served does not change the fact that service of the Notice allowed paramountcy to be in issue and it was in issue in the Court of Appeal. Further, Sun Indalex clearly does not admit that paramountcy was not argued below. That it was canvassed is apparent from the Court of Appeal's Reasons for Decision in paragraphs 171 to 182. We note that paragraphs 172 and 173 make explicit reference to arguments made by the USW concerning the preconditions for a finding of paramountcy; moreover, the Court of Appeal makes explicit reference in paragraph 174 to arguments made by the Respondents before that Court (i.e. the Appellants herein) that absent a finding of priority in favour of the DIP Lender the purpose of the CCAA would be frustrated (i.e. an argument on the applicability of paramountcy).

Paragraph 6 of Sun Indalex's Reply was a proper reply to the incorrect statement in the Joint Response of the Respondents that Sun Indalex "is not a lender to Indalex." In fact, as correctly

stated in the Reply, the Monitor has recognized that Sun Indalex has a valid secured claim against Indalex in this CCAA proceeding. The letter from the Retirees' counsel quoted a partial excerpt from the Monitor's 14th Report. What follows is the complete first sentence of paragraph 17 of the Monitor's 14th Report dated January 20, 2011:

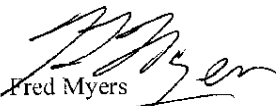
As reported in the Twelfth Report of the Monitor dated April 28, 2010, the Monitor reviewed the secured claim of Sun Indalex Finance, LLC ("Sun") and concluded that the Sun Claim represents a valid secured claim against the Applicants the quantum of which is yet to be determined.

The quantum of the claim is not relevant to the issues before this Court in the within motion. What is relevant is that there is a secured claim in Canada. There was nothing missing in the Reply submissions on this point.

In all, it is submitted that the Retirees' counsel's letter should be ignored both as being in breach of the procedural *Rules of the Supreme Court of Canada* in making submissions without leave, and due to its content.

Yours very truly,

Goodmans LLP


Fred Myers

Encl.

cc: Benjamin Zarnett, Brian Empey and Peter Kolla (Goodmans LLP)
Andrew J. Hatnay and Demetrios Yiokaris (Koskie Minsky LLP)
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