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Via Email

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Dear Sirs:

**Re: U.S. Steel Canada Inc. ("USSC")
Potential Bid from United States Steel Inc. ("USS") in sales process of U.S. Steel
Canada Inc. ("USSC")
Our File No. 14/1751**

As you are aware, we are Representative Counsel to the non-union active and retired employees of USSC. Our clients are members of all the non-union salaried pension plans of USSC (collectively, the "Salaried Plans") including The Hamilton Works Salaried Plan and Lake Erie Works Salaried Plan which are significantly underfunded.

We are writing further to the court attendances and case conferences before Mr. Justice Wilton-Siegel in respect of USSC's motion for approval of a sales process relating to the property of USSC in the CCAA proceedings. We understand from those discussions that USS is contemplating making a bid in the USSC sales process.

In the event that USS proceeds to make a bid, we draw your attention to sections 57(3) and (4) of the Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.-8 ("PBA") and section 30(7) of the Ontario *Personal Property Security Act*, R.S.O. 1990, c. P.10 ("PPSA"). Pursuant to those statutory provisions, our clients are entitled to first priority recovery for all amounts owing by USSC to the Salaried Plans ahead of the claims of all other creditors, including secured creditors, over "an account or inventory and its proceeds" of USSC.

In *Indalex*¹, the Supreme Court of Canada confirmed that the PBA deemed trust is valid in CCAA proceedings (subject only to paramountcy) and applies to amounts owing to a pension plan both while the plan is ongoing (under section 57(3) of the PBA) and when the plan is wound up (under section 57(4) of the PBA):

[46] ... Unlike s. 57(3), which provides that the deemed trust protecting employer contributions exists while a plan is ongoing, s. 57(4) provides that the wind-up deemed trust comes into existence only when the plan is wound up. This is a choice made by the Ontario legislature. I would not interfere with it. Thus, the deemed trust entitlement arises only once the condition precedent of the plan being wound up has been fulfilled. This is true even if it is certain that the plan will be wound up in the future. [emphasis added]²

The Supreme Court also confirmed that based on the clear language of section 30(7) of the PPSA, the members of a pension plan to which an employer owes contributions have priority for those amounts ahead of the claims of “all other secured creditors”:

[48] ...Section 30(7) [of the Ontario PPSA] reads as follows:

30. . . .

(7) A security interest in an account or inventory and its proceeds is subordinate to the interest of a person who is the beneficiary of a deemed trust arising under the *Employment Standards Act* or under the *Pension Benefits Act*.

The effect of s. 30(7) is to enable the Salaried Plan’s members to recover from the reserve fund, insofar *as it relates to an account or inventory and its proceeds in Ontario, ahead of all other secured creditors*. [emphasis added]³

Accordingly, in the event that USS intends to make a bid applying all or part of the amount that USS claims to be owed by USSC as secured (and unsecured) debt (which claims, as you know, are currently subject to determination by the court, and both the quantum and validity of USS’s claims are yet to be confirmed), such a “credit bid” needs take into account the priority position of the pension plan members who rank ahead of any secured claim of USS pursuant to sections 57(3) and (4) of the PBA and section 30(7) of the PPSA.

We understand that under the current Pension Agreement between USSC and the Ontario government, USSC obtained funding relief for its main pension plans and is required only to contribute a total of \$70 million per year to those plans. We further understand that the Pension

¹ *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271

² *Indalex* at para. 46

³ *Indalex* at para. 48

Agreement expires on December 31, 2015, at which time the normal PBA pension funding obligations become applicable to USSC. On that occurrence, we expect that the funding obligations of USSC to the Salaried Plans will increase. In addition to any amounts that may be currently owing to the Salaried Plans, the pension plan members assert the PBA deemed trust/PPSA priority described above over amounts that become owing to the Salaried Plans on the expiration of funding relief under the Pension Agreement.

Representative Counsel remains available to discuss restructuring solutions for USSC, and we look forward to hearing from you in that regard.

Should you wish to discuss the terms of a bid by USS in the USSC sales process, please do not hesitate to contact us.

Yours truly,

KOSKIE MINSKY LLP



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AJH/vdl

- c. USSC Client Committee
 - Alex Morrison, *Ernst & Young LLP*
 - Kevin Zych, *Bennett Jones LLP* (counsel to Monitor)
 - Ken Rosenberg, Lily Harmer, *Paliare Roland LLP*
 - Sharon White, *Inch Law*
 - James Gage, *McCarthy Tetraults LLP*
 - Gale Rubenstein, Alan Mark, Robert Chadwick, Logan Willis, *Goodmans LLP*
 - Barbara Walancik, *Koskie Minsky LLP*