Clerk's Stamp:

COURT FILE NUMBER:	2401 09688
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* RSC 1985, c C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF DELTA 9 CANNABIS INC., DELTA 9 LOGISTICS INC., DELTA 9 BIO-TECH INC., DELTA 9 LIFESTYLE CANNABIS CLINIC INC. and DELTA 9 CANNABIS STORE INC.
APPLICANT	DELTA 9 CANNABIS INC., DELTA 9 LOGISTICS INC., DELTA 9 BIO-TECH INC., DELTA 9 LIFESTYLE CANNABIS CLINIC INC., and DELTA 9 CANNABIS STORE INC.
DOCUMENT:	**BOOK OF AUTHORITIES OF THE APPLICANT TO THE BRIEF IN SUPPORT OF SANCTION ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MLT AIKINS LLP 2100, 222 - 3rd Ave SW Calgary, AB T2P 0B4 Telephone: 403.693.5420/780-969-3501 Attention: Ryan Zahara/Molly McIntosh Email: rzahara@mtlaikins.com mmcintosh@mltaikins.com File: 136555-34

APPLICATION BEFORE THE HONOURABLE JUSTICE M.A. MARION

TO BE HELD ON JANUARY 10, 2024 AT 10:00 A.M. ON THE COMMERCIAL LIST

LIST OF AUTHORITIES

A. Legislation

1. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36

B. Case Law

2. *Laurentian University of Sudbury*, 2022 ONSC 5645
3. *Bul River Mineral Corp*, *Re*, 2015 BCSC 113
4. *Canwest Global Communication Corp, Re*, 2010 ONSC 4209
5. *Canadian Airlines Corp., Re*, 2000 ABQB 442
6. *Metcalfe & Mansfield Alternative Investments II Corp, Re*, 2008 ONCA 587
7. *Lydian International Limited (Re)*, 2020 ONSC 4006
8. *Green Relief Inc, Re*, 2020 ONSC 6837
9. *Tacora Resources Inc, Re*, 2024 ONSC 4436

C. Court Orders

10. *Target Canada Co et al*, CV-15-10832-00CL, Sanction and Vesting Order, granted on June 2, 2016 (ONSC)
11. *Rubicon Minerals Corporation et al*, CV-16-115666-00CL, Sanction Order, granted on December 8, 2016 (ONSC);
12. *Lydian International Limited et al*, CV-19-00633392-00CL, Order re: Plan Sanction and Implementation, granted on June 29, 2020 (ONSC);
13. *Green Relief Inc, Re*, CV-20-00639217-00CL (ONSC), Approval and Vesting Order, granted on November 9, 2020 (ONSC);
14. *Tacora Resources Inc, Re*, CV-23-00707394-00CL, Approval and Reverse Vesting Order, granted on July 26, 2024

TAB 1

R.S.C. 1985, c. C-36, s. 6

s 6.

Currency

6.

6(1)Compromises to be sanctioned by court

If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act* or is in the course of being wound up under the *Winding-up and Restructuring Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

6(2)Court may order amendment

If a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

6(3)Restriction — certain Crown claims

Unless Her Majesty agrees otherwise, the court may sanction a compromise or arrangement only if the compromise or arrangement provides for the payment in full to Her Majesty in right of Canada or a province, within six months after court sanction of the compromise or arrangement, of all amounts that were outstanding at the time of the application for an order under section 11 or 11.02 and that are of a kind that could be subject to a demand under

(a) subsection 224(1.2) of the *Income Tax Act*;

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

6(4)Restriction — default of remittance to Crown

If an order contains a provision authorized by section 11.09, no compromise or arrangement is to be sanctioned by the court if, at the time the court hears the application for sanction, Her Majesty in right of Canada or a province satisfies the court that the company is in default on any remittance of an amount referred to in subsection (3) that became due after the time of the application for an order under section 11.02.

6(5)Restriction — employees, etc.

The court may sanction a compromise or an arrangement only if

(a) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

(i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the *Bankruptcy and Insolvency Act* if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company's business during the same period; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

6(6)Restriction — pension plan

If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(A.1) an amount equal to the sum of all special payments, determined in accordance with section 9 of the *Pension Benefits Standards Regulations, 1985*, that were required to be paid by the employer to the fund referred to in sections 81.5 and 81.6 of the *Bankruptcy and Insolvency Act* to liquidate an unfunded liability or a solvency deficiency,

(A.2) any amount required to liquidate any other unfunded liability or solvency deficiency of the fund as determined on the day on which proceedings commence under this Act,

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(A.1) an amount equal to the sum of all special payments, determined in accordance with section 9 of the *Pension Benefits Standards Regulations, 1985*, that would have been required to be paid by the employer to the fund referred to in sections 81.5 and 81.6 of the *Bankruptcy and Insolvency Act* to liquidate an unfunded liability or a solvency deficiency if the prescribed plan were regulated by an Act of Parliament,

(A.2) any amount required to liquidate any other unfunded liability or solvency deficiency of the fund as determined on the day on which proceedings commence under this Act,

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament;

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

6(7)Non-application of subsection (6)
Despite subsection (6), the court may sanction a compromise or arrangement that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

6(8)Payment — equity claims
No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

Amendment History
1992, c. 27, s. 90(1)(f); 1996, c. 6, s. 167(1)(d); 1997, c. 12, s. 123; 2004, c. 25, s. 194; 2005, c. 47, s. 126 [Amended 2007, c. 36, s. 106.]; 2009, c. 33, s. 27; 2012, c. 16, s. 82; 2023, c. 6, s. 5

Currency
Federal English Statutes reflect amendments current to September 25, 2024
Federal English Regulations Current to Gazette Vol. 158:20 (September 25, 2024)

End of Document

Canada Federal Statutes
Companies' Creditors Arrangement Act
Part II — Jurisdiction of Courts (ss. 9-18.5)

R.S.C. 1985, c. C-36, s. 11.02

s 11.02

Currency

11.02

11.02(1)Stays, etc. — initial application

A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

11.02(2)Stays, etc. — other than initial application

A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

11.02(3)Burden of proof on application

The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

11.02(4)Restriction

Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Amendment History

2005, c. 47, s. 128; 2019, c. 29, s. 137

Currency

Federal English Statutes reflect amendments current to September 25, 2024
Federal English Regulations Current to Gazette Vol. 158:20 (September 25, 2024)

End of Document

TAB 2

2022 ONSC 5645
Ontario Superior Court of Justice

Laurentian University of Sudbury

2022 CarswellOnt 15730, 2022 ONSC 5645, 2022 A.C.W.S. 4051, 4 C.B.R. (7th) 84

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURY

G.B. Morawetz C.J. Ont. S.C.J.

Heard: October 5, 2022
Judgment: October 11, 2022
Docket: CV-21-00656040

Counsel: D.J. Miller, Mitch Grossell, Derek Harland, for Applicant
Ashley Taylor, Elizabeth Pillon, for Court-appointed Monitor, Ernst & Young Inc.
Bradley Wiffen, for His Majesty the King in Right of Ontario as represented by the Minister of Colleges and Universities
Scott Rollwagen, for Board of Governors
Natasha MacParland, for Applicant
Charles Sinclair, for Laurentian University Faculty Association
Brendan Scott, for Laurentian University Staff Union
Stuart Brotman, Dylan Chochla, for Toronto-Dominion Bank
Laura Culleton, for Bank of Montreal
Joseph Bellissimo, for Huntington University
Andrew Hatnay, for Thorneloe University
André Claude, for University of Sudbury
Alex MacFarlane, Charlotte Chen, for NOSM
Stephen Gaudreau, for Art Gallery of Sudbury
Roderic McLauchlan, Barry Stork, Colby Linthwaite, for Canadian Universities Reciprocal Insurance Exchange
Mark G. Baker, Andre Luzhetskyy, for Laurentian University Students' General Association
Heather Fisher, for Auditor General of Ontario
Dawne Jubb, for Laurentian University

Subject: Civil Practice and Procedure; Insolvency

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Approval by court — "Fair and reasonable"

Debtor company commenced comprehensive operational, financial and academic restructuring to ensure that it could emerge from Companies' Creditors Arrangement Act (CCAA) proceeding as going concern and as financially sustainable university — Plan was approved by 87.4 percent in number representing 68.9 percent in value of affected claims of affected creditors who voted in person or by proxy at meeting — Debtor company brought motion for sanction order, unsealing order, and stay execution order — Motion granted — Debtor company had complied with all requirements to sanction plan — Debtor company had acted in good faith and with due diligence throughout course of proceeding, complying with requirements of Act and all orders of court — Double majority test was satisfied and this level of support allowed conclusion that assenting creditors

believed that their interests were treated fairly and equitably under plan — Sanctioning of plan was in public interest — Plan releases were fair, reasonable and rationally connected to overall purpose of plan, such that they should have been approved.

MOTION by debtor company for sanction order, unsealing order, and stay execution order.

***G.B. Morawetz C.J. Ont. S.C.J.*:**

1 At the conclusion of the hearing, I granted the motion with reasons to follow. These are the reasons.

2 Laurentian University of Sudbury ("LU") brings this motion for the following orders:

(a) the Sanction Order that sanctions the Plan pursuant to the Companies' Creditors Arrangement Act ("CCAA");

(b) the Unsealing Order that, at the Effective Time on the Plan Implementation Date, unseals the Sealed Exhibits to the Affidavit of Dr. Robert Haché sworn January 30, 2021; and

(c) the Stay Extension Order that extends the Stay Period up to and including November 30, 2022.

3 The evidentiary support for the requested relief is set out in the affidavit of Dr. Robert Haché, sworn on September 28, 2022 and in the 16th Report of Ernst & Young Inc., in its capacity as Monitor of LU (the "Monitor") (the "Report").

4 The motion was not opposed.

BACKGROUND

5 LU commenced this CCAA proceeding on February 1, 2021. In granting the Initial Order I made a number of findings of fact, including:

(a) LU was a "debtor company" to which the CCAA applies;

(b) LU was "plainly insolvent and faces a severe liquidity crisis";

(c) absent additional financing, LU would be unable to meet payroll at the end of February, 2021;

(d) the financial crisis was "real and immediate"; and

(e) with the approval of the interim financing, LU would have liquidity for the duration of the Stay Period.

6 Subsequent to the granting of the Initial Order, LU commenced a comprehensive operational, financial and academic restructuring to ensure that it could emerge from the CCAA Proceeding as a going concern and as a financially sustainable university.

7 LU engaged in negotiations with the assistance of Justice Sean Dunphy, the Court-Appointed Mediator with respect to the various restructuring initiatives which LU felt were necessary in order to achieve financial sustainability, including, among other things: (a) a full review and restructuring of its academic programs; (b) reducing its faculty complement based upon the academic restructuring; and (c) negotiating an end to, or terminating, LU's historic relationship with the former federated universities. LU achieved agreement with several of the key parties who participated in the Mediation, including Laurentian University Faculty Association ("LUFA"), Laurentian University Staff Union ("LUSA") and Huntington University.

8 In addition to entering into restructuring agreements with critical stakeholders, LU states that it achieved the following key milestones during the CCAA proceeding:

(a) academic Restructuring;

(b) LUFA Term Sheet;

(c) LUSA Term Sheet;

(d) disclaimer of Federation Agreements with Former Federated Universities;

(e) cost savings;

(f) pension plan amendments;

(g) completion of operational and governance reports;

(h) completion of the real estate review;

(i) resolution of grievances; and

(j) resolution of claims.

The Meeting

9 On July 28, 2022, the Plan was accepted for filing and the Meeting Order was issued authorizing LU to call, hold and conduct the Meeting. No party objected to the granting of the Meeting Order authorizing the Plan to be presented to creditors.

10 The meeting was held on September 14, 2022 and was attended in person or by proxy by 606 Affected Creditors and/or Unresolved Claimants holding an aggregate value of $178,893,641 in Proven Claims. A total of 597 Affected Creditors voted by proxy or in person at the Meeting, holding an aggregate value of $62,937,935.

11 The Plan was approved by 87.4% in number representing 68.9% in value of Affected Claims of the Affected Creditors who voted in person or by proxy at the Meeting. The Monitor determined that the votes of Unresolved Claimants would not have impacted the outcome of the vote.

12 The resolution to approve the Plan was carried by the Requisite Majority of Affected Creditors and the Plan was approved.

13 The aim of the Plan is to: (a) complete LU's restructuring and provide the opportunity for LU to operate as a going concern bilingual and tri-cultural post-secondary university in the City of Sudbury; (b) provide for a compromise of, and consideration for Affected Claims that are Proven Claims; and (c) effect a release and discharge of all Affected Claims, Released Claims and the Huntington Released Claims.

14 The salient terms of the Plan include:

(a) certain post-implementation steps that will be undertaken which are intended to better position LU from an operational and governance perspective;

(b) Unaffected Claims will remain unaffected by the Plan, subject to the treatment of the Unaffected Claims in the Plan;

(c) a Guaranteed Minimum Plan Consideration Amount of $45.5 million from the sale of the Designated Real Estate Assets will be received by LU within three years of the Plan Implementation Date;

(d) payment in full of all amounts owing to holders of CCAA Priority Claims, Secured Claims and Vacation Pay Compensation Pay Claims;

(e) a *pro rata* distribution of the Distribution Pool remaining after the payments referred to above and any reimbursement to LU for amounts pre-funded into the Distribution Pool;

(f) a full and final release of any Released Claims that may be made against the Released Parties, which is subject to a carve out for Non-Released Claims;

(g) an injunction against claims that may be asserted against any of the Released Parties, save and except as it relates to the Non-Released Claims; and

(h) a limited third-party release in favour of Huntington University regarding any claims that may be made against Huntington in respect of the discontinuance of the RHBP or the discontinuance of any academic programs or courses by Huntington.

15 The Plan is also subject to certain conditions to implementation, including (a) the resolution of all grievances that are subject to the Grievance Resolution process, and (b) the renewal of two senior management positions at LU (the President and the Provost) prior to the Plan Implementation Date.

Plan Releases

16 The Plan provides the Plan Releases in respect of the Released Claims in favour of LU, the Chief Redevelopment Officer, the Monitor, and each of their respective representatives.

17 Released Claims include all claims, obligations or liabilities in respect of the Released Parties existing or taking place at or prior to the Effective Date.

18 The Plan does not affect (a) Crown claims as described in s. 6(3) of the CCAA, (b) employee-related payments as described in s. 6(5) of the CCAA, or (c) pension claims as described in s. 6(6) of the CCAA.

Implementation of the Plan

19 It is LU's expectation that the plan will be implemented by November 30, 2022. LU is currently negotiating with the Ministry of Colleges and Universities ("MCU") regarding the terms of the Exit Financing Documentation. Subject to receipt of the requisite government approvals, LU intends to seek an order on November 1, 2022 authorizing it to enter into the Exit Financing Documentation.

20 The issues for consideration on this motion are:

1. should the Court sanction the Plan?

2. should the Court grant the Unsealing Order? and

3. should the Court grant the Stay Extension Order?

Issue One: Should the Court Sanction the Plan?

21 Pursuant to s. 6(1) of the CCAA, the court has the discretion to sanction a plan if it has achieved the requisite "double majority" vote at any meeting of creditors held pursuant to s. 4 of the CCAA. Once a court sanctions a plan, it becomes binding on the debtor company and all of its creditors.

22 The Plan was approved by the requisite double majority of Affected Creditors who voted. The Plan was approved by 87.4% in number and 68.9% in value of the Affected Claims.

23 Having satisfied the voting criteria, the issue is whether the Court should exercise its discretion to approve and sanction the Plan. The test for court approval of a plan is well-established:

(a) there must be strict compliance with all statutory requirements;

(b) all material filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the CCAA; and

(c) the plan must be fair and reasonable.

(see: CanTrust Holdings Inc., et al. (Re), 2021 ONSC 4408 at para 13)

24 When considering if the applicant has complied with all statutory requirements under the CCAA, the court will typically consider the following:

(a) if the applicant comes within the definition of a "debtor company" under section 2(1) of the CCAA:

(b) if the applicant has total claims in excess of $5 million;

(c) if the creditors were properly classified;

(d) if the notice of meeting was sent in accordance with the Meeting Order;

(e) if the meeting was properly constituted;

(f) if the voting was properly carried out; and

(g) if the plan was approved by the requisite majorities.

(see: Canwest Global Communications Corp., 2010 ONSC 4209 at para. 15)

25 Each of the foregoing factors are factual issues which have been established on the record.

26 The Monitor has also stated in its Report that LU has strictly complied with all statutory requirements. I accept this statement.

27 In addition, I am satisfied that the Plan complies with the statutory requirements set out in sections 6(3), 6(5) and 6(6) of the CCAA, which provides that the court may not sanction a plan unless it contains certain provisions concerning certain Crown claims, employee claims and pension claims.

28 I conclude that LU has complied with all statutory requirements under the CCAA and this part of the test has been met.

Issue Two — Were Any Unauthorized Steps Taken?

29 The Monitor has filed 16 Reports. These Reports have detailed the activities of LU and I am satisfied that LU has acted in good faith and with due diligence throughout the course of this proceeding, complying with the requirements of the CCAA and all orders of the court.

30 I am satisfied that there is no basis for any assertion that LU has proceeded in a manner that is not authorized by the CCAA. In my view, the second part of the test has been met.

Issue Three: The Plan is Fair and Reasonable

31 Courts have emphasized that "perfection is not required" when assessing whether a plan is fair and reasonable (See: *AbitibiBowater Inc.*, (Re), 2010 QCCS 4450 para. 33). Instead, a court should consider the relative degrees of prejudice that would flow from granting or refusing to grant the relief sought and whether the plan represents a reasonable and fair balancing of interests, in light of the other commercial alternatives available (See: *(*Re) Canadian Airlines Corp., 2000 ABQB 442 at para. 3). Counsel to LU submits that the discretion of the court should be guided by the objectives of the CCAA — namely to "enable compromises to be made for the common benefit of the creditors and of the company, particular to keep a company in financial difficulties alive and out of the hands of liquidators" (See: Northlands Properties Ltd. v. Excelsior Life Ins. Co. of Canada1989 CanLii 2672(BCCA) at para. 17).

32 In assessing whether a plan is fair and reasonable the court will consider:

(a) whether the claims were properly classified and whether the requisite majorities of creditors approved the plan;

(b) what creditors would receive on bankruptcy or liquidation as compared to the plan;

(c) alternatives available to the plan and bankruptcy;

(d) oppression of the rights of creditors;

(e) unfairness to shareholders (inapplicable to LU); and

(f) the public interest.

(See: Canwest Global, *supra* at para. 21)

33 With respect to classification, the Affected Creditors were classified in a single class. The classification of Affected Creditors was supported by the Monitor and approved in the Meeting Order without objection.

34 As previously noted, the double majority test was satisfied and this level of support allows me to conclude that the assenting creditors believe that their interests are treated fairly and equitably under the Plan.

35 With respect to alternatives, as set out in the 14th Report of the Monitor, the Monitor believes that if the Plan is not implemented, the most likely outcome is some form of liquidation of LU's assets which would produce an inferior result for the Affected Creditors than that provided for under the Plan. Under the Plan, the Monitor estimates the unsecured creditors will recover approximately 14.1% to 24.2%. In liquidation, the Monitor estimates a recovery of approximately 8.5% to 16.7%. I note that if the Plan is not sanctioned, LU will not be able to successfully complete its restructuring and likely would be required to cease operations and liquidate. A liquidation would give rise to additional claims and increase the likelihood of an inferior result.

36 With respect to oppression of creditors, LU submits that creditor treatment must be equitable, however, "equitable treatment is not necessarily equal treatment". In this case, I am satisfied that the Plan treats all Affected Creditors equally in terms of treatment under the Plan and distributions under the Plan. The only persons that receive different treatment are the Unaffected Creditors. I am satisfied, due to the factual or legal nature of their claims, they must be treated differently than the Affected Creditors.

37 The issue of unfairness to shareholders is not applicable in this case as LU is a not for profit corporation without share capital.

38 Finally, with respect to whether the Plan is in the public interest, if the Plan is sanctioned, LU will continue as a going concern, as a bilingual and tri-cultural post-secondary university in Sudbury. As counsel to LU submits, the continuation of LU will provide the opportunity for thousands of students that attend LU each year to continue to attend LU and complete their degrees. Further, implementation of the Plan will preserve the employment of hundreds of faculty and staff members at LU. I am satisfied that sanctioning of the Plan is in the public interest.

Plan Releases

39 Turning now to the Plan Releases and the Huntington Third-Party Release, counsel to LU submits that it is well established that courts have the jurisdiction to sanction plans of compromise and arrangement under the CCAA containing third–party releases. (See: Pacific Exploration & Production Corporation (Re), 2016 ONSC 5429 at para. 30; and *Lydian International Limited (Re)*, 2020 ONSC 4006).

40 The following list of factors has been considered in respect of the approval of releases in CCAA proceedings, including third-party releases:

(a) whether the released claims are rationally connected to the purpose of the plan;

(b) whether the plan can succeed without the releases;

(c) whether the parties being released contributed to the plan;

(d) whether the releases benefit the debtors as well as the creditors generally;

(e) whether the creditors voting on the plan have knowledge of the nature and the effect of the releases; and

(f) whether the releases are fair, reasonable and not overly-broad.

(See: Lydian International Limited (Re), 2020 ONSC 4006 at para. 54)

41 As submitted by counsel to LU it is not necessary for each of these factors to be satisfied in order for the release to be granted.

42 Having reviewed the record and the submissions as set out in LU's factum at para. 46, I am satisfied that the Plan Releases are necessary and appropriate in these circumstances. The Plan Releases are rationally connected to the purpose of the plan. The object of the Plan Releases is to provide LU with a fresh start so that it may continue to provide university education to thousands of students and employment to hundreds of people in the Greater Sudbury region and northern Ontario. Further, I am satisfied that the Plan cannot succeed without the Plan Releases. For LU to continue operating and fulfilling the purpose of the Plan, it must have finality in respect of its obligations and liabilities moving forward. In addition, the Released Parties are, in my view, necessary and essential to the restructuring and they contributed to the Plan. Each of LU, the Monitor and the CRO played a part in advancing the restructuring and achieving approximately $40 million in annual savings. The Directors and Officers of LU were active and engaged in overseeing and making key strategic decisions leading to the Plan.

43 I am also satisfied that the creditors were, at all relevant times, aware of the nature and effect of the Plan Releases. Full disclosure of the Plan Releases was made to Affected Creditors at the time that LU applied for the Meeting Order. Further, the Monitor provided the meeting materials to over 1,100 Affected Creditors and these materials included the Information Circular, which described the Plan Releases in detail. I have also taken into account that at no point did any creditor or other stakeholders make any submissions on the scope of the Plan Releases or express any objection to the Plan Releases, nor were any submissions made in opposition to the Plan Releases on this motion.

44 On this issue, I am satisfied that the Plan Releases are fair, reasonable and rationally connected to the overall purpose of the Plan, such that they should be approved.

45 I am also satisfied that the Huntington Third-Party Release is appropriate in the circumstances. The Huntington Transition Agreement was a significant step in the restructuring of LU and LU derived certain benefits from the Huntington Transition Agreement. I am also satisfied that Huntington contributed in a tangible way to LU's restructuring and the Plan and the release of the Huntington Released claims is consistent with the terms reached in the Huntington Transition Agreement, previously approved.

CONCLUSION

46 In conclusion, I am satisfied that LU has complied with all requirements for the Court to sanction the Plan.

Issue 2: Unsealing Order

47 LU has also requested that the Exhibits which were sealed on the Initial Order be unsealed. LUFA and LUSU requested that the Sealed Exhibits no longer be sealed at the appropriate time. LU has advised that all Affected Parties agreed that the appropriate time is at the Effective Time on the Plan Implementation Date, because the sensitivity associated with the

correspondence that gave rise to the Sealing Order will no longer apply. Further, MCU has no objection to an unsealing of the Sealed Exhibits. In my view it is appropriate to grant the unsealing order.

Issue 3: Stay Extension Order

48 Finally, LU seeks an extension of the Stay Period up to and including November 30, 2022.

49 After the Plan has been sanctioned, the final step to conclude the restructuring is to satisfy the conditions precedent to implementation of the Plan. This will occur over the next few weeks. I am satisfied that LU continues to act in good faith and with due diligence as it moves towards Plan implementation. The required Cash Flow Forecast has been filed and LU will have sufficient liquidity to operate its business and meet its obligations to November 30, 2022. Further, the Monitor supports extending the Stay Period until November 30, 2022. In my view it is both reasonable and appropriate to extend the Stay Period to November 30, 2022.

DISPOSITION

50 In the result, the motion is granted. Three orders - the Sanction Order, the Unsealing Order and the Stay Extension Order have been signed.

Motion granted.

End of Document

TAB 3

2015 BCSC 113
British Columbia Supreme Court

Bul River Mineral Corp., Re

2015 CarswellBC 156, 2015 BCSC 113, [2015] B.C.W.L.D. 1609, 22 C.B.R. (6th) 301, 250 A.C.W.S. (3d) 378

In the Matter of the Companies Creditors Arrangement Act, R.S.C. 1985, c. C-36 as amended

In the Matter of the Business Corporations Act, S.B.C. 2002, c. 57 and the Business Corporations Act, R.S.A. 2000, c. B-9

In the Matter of Bul River Mineral Corporation, Big Bear Metal Mining Corporation, Earth's Vital Extractors Limited, Fort Steele Mineral Corporation, Fort Steele Metals Corporation, Fused Heat Ltd., Gallowai Metal Mining Corporation, Giant Steeples Mineral Corporation, Grand Mineral Corporation, International Feldspar Ltd., Jao Mine Developers Ltd., Kutteni Diamonds Ltd., Stanfield Mining Group of Canada Ltd., Sullibin Mineral Corporation, Sullibin Multi Metal Corporation, Super Feldspars Corporation, White Cat Metal Mining Corporation, Zeus Metal Mining Corporation, Zeus Metals Corporation and Zeus Mineral Corporation and Purcell Basin Minerals Inc., Petitioners

Fitzpatrick J.

Heard: November 18, 2014
Judgment: January 27, 2015
Docket: Vancouver S113459

Counsel: Jonathan B. Ross for Petitioners, except Purcell Basin Minerals Inc.
Tevia R.M. Jeffries for Monitor, Deloitte Restructuring Inc.
William C. Kaplan, Q.C., Helen M.E. Sevenoaks, Peter Bychawski for Purcell Basin Minerals Inc. and CuVeras LLC

Subject: Corporate and Commercial; Insolvency

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Approval by court — Miscellaneous

Group of debtor companies involved in development of mine applied for Companies' Creditors Arrangement Act protection — Restructuring of debtors was to occur via corporate vehicle P Inc. — Proposed plan of arrangement involved distribution of P Inc. shares in satisfaction of claims of trade creditors, holding debt claims, and preferred share claimants — Debtors and P Inc. (petitioners) applied for orders approving plan — Application granted — Plan complied with statutory requirements — Plan was overwhelmingly approved by trade creditors and preferred share claimants — Section s. 6(8) of Act states that court should not approve arrangement that provides for payment of equity claim unless it provides for all non-equity claims to be paid "in full" before equity claim is paid — While projected share values were uncertain, there was reasonable basis to conclude P Inc. shares would have sufficient value in future with which to satisfy debt owing to trade creditors "in full" — Plan was fair and reasonable — Releases contained in plan were rationally connected to plan, and were approved.

APPLICATION by petitioners for orders approving plan of compromise and arrangement under *Companies' Creditors Arrangements Act*.

***Fitzpatrick J.*:**

Introduction

1 The application is brought pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "*CCAA*"). This long-standing restructuring has been ongoing for over three and a half years now and, after much effort, the petitioners prepared a plan of compromise and arrangement, dated September 25, 2014, which was subsequently amended by the amendment

36 After the meeting, Purcell became aware that the claim of one creditor, Sun Life Assurance Company, had been incorrectly calculated as $175,235, instead of approximately $605,950. To address this issue, Highlands has agreed to allocate 2% of its original allocation (7%) to the Trade Creditors, such that the Trade Creditors will now receive 11% of the Purcell Shares.

37 At the time of the hearing, all indications were that the petitioners would have sufficient cash on closing (anticipated to be December 9, 2014) to fund requirements under the Plan. The funds available on closing were intended to be used to satisfy the professional charges under the Administration Charge (as defined in the Initial Order), what are described as "Unaffected Claims", and also post-closing debts. In addition, the evidence established that funds were available to support operations into early 2015 when the corporate transactions were to be completed.

38 By the time of the hearing, Purcell had made progress in terms of raising the exit financing. As of November 15, 2014, Purcell had raised approximately $700,000 in equity financing with additional subscriptions in progress of approximately $500,000. These amounts were being raised by Purcell toward meeting the requirement of confirming $1.7 million in exit financing. The amounts raised are being held pending closing and Purcell expects to satisfy that condition. If this target is not met, the agreements in place provide that the monies raised to date will be returned to investors but, more likely, the monies needed will be raised through the subscription of shares.

Discussion

39 The statutory authority upon which the Plan may be sanctioned is s. 6(1) of the *CCAA*:

> **6.** (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding
>
> (*a*) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company[.]

40 Even if the requisite double majority vote is obtained, as it has been here, the court has discretion as to whether the plan of arrangement will be sanctioned. In *Canwest Global Communications Corp., Re*, 2010 ONSC 4209 (Ont. S.C.J. [Commercial List]) at para. 14, Pepall J. (as she then was) stated that the criteria to be satisfied are:

> (a) there must be strict compliance with all statutory requirements;
>
> (b) all material filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the CCAA; and
>
> (c) the Plan must be fair and reasonable.

Has there been Compliance with Statutory Requirements?

41 In previous court orders granted in these proceedings, this Court declared that the petitioners (other than Purcell) qualified as debtor companies under s. 2 of the *CCAA* and that the total claims against them exceeded $5 million.

42 In addition, paragraph (d) of the definition of "Unaffected Claim" in the Plan is such that any claim arising under ss. 6(3), 6(5) and 6(6) of the *CCAA* is not affected by the Plan. All Unaffected Claims are intended to be paid on closing.

43 The only substantial issue that arises from the Plan is whether it has been shown that the Trade Creditors' claims are being "paid in full" such that the equity claims of the Preferred Share Claimants can be paid also. This requirement arises from the *CCAA*, s. 6(8):

TAB 4

2010 ONSC 4209
Ontario Superior Court of Justice [Commercial List]

Canwest Global Communications Corp., Re

2010 CarswellOnt 5510, 2010 ONSC 4209, 191 A.C.W.S. (3d) 378, 70 C.B.R. (5th) 1

IN THE MATTER OF SECTION 11 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF CANWEST GLOBAL COMMUNICATIONS AND THE OTHER APPLICANTS

Pepall J.

Judgment: July 28, 2010
Docket: CV-09-8396-00CL

Counsel: Lyndon Barnes, Jeremy Dacks, Shawn Irving for CMI Entities
David Byers, Marie Konyukhova for Monitor
Robin B. Schwill, Vince Mercier for Shaw Communications Inc.
Derek Bell for Canwest Shareholders Group (the "Existing Shareholders")
Mario Forte for Special Committee of the Board of Directors
Robert Chadwick, Logan Willis for Ad Hoc Committee of Noteholders
Amanda Darrach for Canwest Retirees
Peter Osborne for Management Directors
Steven Weisz for CIBC Asset-Based Lending Inc.

Subject: Insolvency; Corporate and Commercial

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Approval by court — "Fair and reasonable"

Debtors were group of related companies that successfully applied for protection under Companies' Creditors Arrangement Act — Competitor agreed to acquire all of debtors' television broadcasting interests — Acquisition price was to be used to satisfy claims of certain senior subordinated noteholders and certain other creditors — All of television company's equity-based compensation plans would be terminated and existing shareholders would not receive any compensation — Remaining debtors would likely be liquidated, wound-up, dissolved, placed into bankruptcy, or otherwise abandoned — Noteholders and other creditors whose claims were to be satisfied voted overwhelmingly in favour of plan of compromise, arrangement, and reorganization — Debtors brought application for order sanctioning plan and for related relief — Application granted — All statutory requirements had been satisfied and no unauthorized steps had been taken — Plan was fair and reasonable — Unequal distribution amongst creditors was fair and reasonable in this case — Size of noteholder debt was substantial and had been guaranteed by several debtors — Noteholders held blocking position in any restructuring and they had been cooperative in exploring alternative outcomes — No other alternative transaction would have provided greater recovery than recoveries contemplated in plan — Additionally, there had not been any oppression of creditor rights or unfairness to shareholders — Plan was in public interest since it would achieve going concern outcome for television business and resolve various disputes.

APPLICATION by debtors for order sanctioning plan of compromise, arrangement, and reorganization and for related relief.

***Pepall J.*:**

9 Following the implementation of the Plan, CTLP and CW Investments will be indirect, wholly-owned subsidiaries of Shaw, and the multiple voting shares, subordinate voting shares and non-voting shares of Canwest Global will be delisted from the TSX Venture Exchange. It is anticipated that the remaining CMI Entities and certain other subsidiaries of Canwest Global will be liquidated, wound-up, dissolved, placed into bankruptcy or otherwise abandoned.

10 In furtherance of the Minutes of Settlement that were entered into with the Existing Shareholders, the articles of Canwest Global will be amended under section 191 of the CBCA to facilitate the settlement. In particular, Canwest Global will reorganize the authorized capital of Canwest Global into (a) an unlimited number of new multiple voting shares, new subordinated voting shares and new non-voting shares; and (b) an unlimited number of new non-voting preferred shares. The terms of the new non-voting preferred shares will provide for the mandatory transfer of the new preferred shares held by the Existing Shareholders to a designated entity affiliated with Shaw for an aggregate amount of $11 million to be paid upon delivery by Canwest Global of the transfer notice to the transfer agent. Following delivery of the transfer notice, the Shaw designated entity will donate and surrender the new preferred shares acquired by it to Canwest Global for cancellation.

11 Canwest Global, CMI, CTLP, New Canwest, Shaw, 7316712 and the Monitor entered into the Plan Emergence Agreement dated June 25, 2010 detailing certain steps that will be taken before, upon and after the implementation of the plan. These steps primarily relate to the funding of various costs that are payable by the CMI Entities on emergence from the CCAA proceeding. This includes payments that will be made or may be made by the Monitor to satisfy post-filing amounts owing by the CMI Entities. The schedule of costs has not yet been finalized.

Creditor Meetings

12 Creditor meetings were held on July 19, 2010 in Toronto, Ontario. Support for the Plan was overwhelming. 100% in number representing 100% in value of the beneficial owners of the 8% senior subordinated notes who provided instructions for voting at the Noteholder meeting approved the resolution. Beneficial Noteholders holding approximately 95% of the principal amount of the outstanding notes validly voted at the Noteholder meeting.

13 The Ordinary Creditors with proven voting claims who submitted voting instructions in person or by proxy represented approximately 83% of their number and 92% of the value of such claims. In excess of 99% in number representing in excess of 99% in value of the Ordinary Creditors holding proven voting claims that were present in person or by proxy at the meeting voted or were deemed to vote in favour of the resolution.

Sanction Test

14 Section 6(1) of the CCAA provides that the court has discretion to sanction a plan of compromise or arrangement if it has achieved the requisite double majority vote. The criteria that a debtor company must satisfy in seeking the court's approval are:

> (a) there must be strict compliance with all statutory requirements;
>
> (b) all material filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the CCAA; and
>
> (c) the Plan must be fair and reasonable.
>
> See *Canadian Airlines Corp., Re* [2]

(a) Statutory Requirements

15 I am satisfied that all statutory requirements have been met. I already determined that the Applicants qualified as debtor companies under section 2 of the CCAA and that they had total claims against them exceeding $5 million. The notice of meeting was sent in accordance with the Meeting Order. Similarly, the classification of Affected Creditors for voting purposes was

TAB 5

2000 ABQB 442
Alberta Court of Queen's Bench

Canadian Airlines Corp., Re

2000 CarswellAlta 662, 2000 ABQB 442, [2000] 10 W.W.R. 269, [2000] A.W.L.D. 654, [2000] A.J. No. 771, 20 C.B.R. (4th) 1, 265 A.R. 201, 84 Alta. L.R. (3d) 9, 98 A.C.W.S. (3d) 334, 9 B.L.R. (3d) 41

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended

In the Matter of the Business Corporations Act (Alberta) S.A. 1981, c. B-15, as Amended, Section 185

In the Matter of Canadian Airlines Corporation and Canadian Airlines International Ltd.

Paperny J.

Heard: June 5-19, 2000
Judgment: June 27, 2000 *
Docket: Calgary 0001-05071

Counsel: *A.L. Friend, Q.C.*, *H.M. Kay, Q.C.*, *R.B. Low, Q.C.*, and *L. Goldbach*, for Petitioners.
S.F. Dunphy, *P. O'Kelly*, and *E. Kolers*, for Air Canada and 853350 Alberta Ltd.
D.R. Haigh, Q.C., *D.N. Nishimura*, *A.Z.A. Campbell* and *D. Tay*, for Resurgence Asset Management LLC.
L.R. Duncan, Q.C., and *G. McCue*, for Neil Baker, Michael Salter, Hal Metheral, and Roger Midiaty.
F.R. Foran, Q.C., and *P.T. McCarthy, Q.C.*, for Monitor, PwC.
G.B. Morawetz, *R.J. Chadwick* and *A. McConnell*, for Senior Secured Noteholders and the Bank of Nova Scotia Trust Co.
C.J. Shaw, Q.C., for Unionized Employees.
T. Mallett and *C. Feasby*, for Amex Bank of Canada.
E.W. Halt, for J. Stephens Allan, Claims Officer.
M. Hollins, for Pacific Costal Airlines.
P. Pastewka, for JHHD Aircraft Leasing No. 1 and No. 2.
J. Thom, for Royal Bank of Canada.
J. Medhurst-Tivadar, for Canada Customs and Revenue Agency.
R. Wilkins, Q.C., for Calgary and Edmonton Airport Authority.

Subject: Corporate and Commercial; Insolvency

Headnote

Corporations --- Arrangements and compromises — Under Companies' Creditors Arrangement Act — Arrangements — Approval by court — "Fair and reasonable"

Airline brought application for approval of plan of arrangement under Companies' Creditors Arrangement Act — Investment corporation brought counter-application for declaration that plan constituted merger or transfer of airline's assets to AC Corp., that plan would not affect investment corporation, and directing repurchase of notes pursuant to trust indenture, and that actions of airline and AC Corp. in formulating plan were oppressive and unfairly prejudicial to them — Application granted; counter-application dismissed — All statutory conditions were fulfilled and plan was fair and reasonable — Fairness did not require equal treatment of all creditors — Aim of plan was to allow airline to sustain operations and permanently adjust debt structure to reflect current market for asset values and carrying costs, in return for AC Corp. providing guarantee of restructured obligations — Plan was not oppressive to minority shareholders who, in alternative bankruptcy scenario, would receive less than under plan — Reorganization of share capital did not cancel minority shareholders' shares, and did not violate s. 167 of Business Corporations Act of Alberta — Act contemplated reorganizations in which insolvent corporation would eliminate interests of common shareholders, without requiring shareholder approval — Proposed transaction was not "sale, lease or exchange" of airline's

property which required shareholder approval — Requirements for "related party transaction" under Policy 9.1 of Ontario Securities Commission were waived, since plan was fair and reasonable — Plan resulted in no substantial injustice to minority creditors, and represented reasonable balancing of all interests — Evidence did not support investment corporation's position that alternative existed which would render better return for minority shareholders — In insolvency situation, oppression of minority shareholder interests must be assessed against altered financial and legal landscape, which may result in shareholders' no longer having true interest to be protected — Financial support and corporate integration provided by other airline was not assumption of benefit by other airline to detriment of airline, but benefited airline and its stakeholders — Investment corporation was not oppressed — Corporate reorganization provisions in plan could not be severed from debt restructuring — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 5.1(2) — Business Corporations Act, S.A. 1981, c. B-15, s. 167.

APPLICATION by airline for approval of plan of arrangement; COUNTER-APPLICATION by investment corporation for declaration that plan constituted merger or transfer of airline's assets to AC Corp., that plan would not affect investment corporation, and directing repurchase of notes pursuant to trust indenture, and that actions of airline and AC Corp. in formulating plan were oppressive and unfairly prejudicial; COUNTER-APPLICATION by minority shareholders.

***Paperny J.*:**

I. Introduction

1 After a decade of searching for a permanent solution to its ongoing, significant financial problems, Canadian Airlines Corporation ("CAC") and Canadian Airlines International Ltd. ("CAIL") seek the court's sanction to a plan of arrangement filed under the *Companies' Creditors Arrangement Act* ("CCAA") and sponsored by its historic rival, Air Canada Corporation ("Air Canada"). To Canadian, this represents its last choice and its only chance for survival. To Air Canada, it is an opportunity to lead the restructuring of the Canadian airline industry, an exercise many suggest is long overdue. To over 16,000 employees of Canadian, it means continued employment. Canadian Airlines will operate as a separate entity and continue to provide domestic and international air service to Canadians. Tickets of the flying public will be honoured and their frequent flyer points maintained. Long term business relationships with trade creditors and suppliers will continue.

2 The proposed restructuring comes at a cost. Secured and unsecured creditors are being asked to accept significant compromises and shareholders of CAC are being asked to accept that their shares have no value. Certain unsecured creditors oppose the plan, alleging it is oppressive and unfair. They assert that Air Canada has appropriated the key assets of Canadian to itself. Minority shareholders of CAC, on the other hand, argue that Air Canada's financial support to Canadian, before and during this restructuring process, has increased the value of Canadian and in turn their shares. These two positions are irreconcilable, but do reflect the perception by some that this plan asks them to sacrifice too much.

3 Canadian has asked this court to sanction its plan under s. 6 of the CCAA. The court's role on a sanction hearing is to consider whether the plan fairly balances the interests of all the stakeholders. Faced with an insolvent organization, its role is to look forward and ask: does this plan represent a fair and reasonable compromise that will permit a viable commercial entity to emerge? It is also an exercise in assessing current reality by comparing available commercial alternatives to what is offered in the proposed plan.

II. Background

Canadian Airlines and its Subsidiaries

4 CAC and CAIL are corporations incorporated or continued under the *Business Corporations Act* of Alberta, S.A. 1981, c. B-15 ("ABCA"). 82% of CAC's shares are held by 853350 Alberta Ltd.("853350") and the remaining 18% are held publicly. CAC, directly or indirectly, owns the majority of voting shares in and controls the other Petitioner, CAIL and these shares represent CAC's principal asset. CAIL owns or has an interest in a number of other corporations directly engaged in the airline industry or other businesses related to the airline industry, including Canadian Regional Airlines Limited ("CRAL"). Where the context requires, I will refer to CAC and CAIL jointly as "Canadian" in these reasons.

in the amendment, the terms of the release have been accepted by the requisite majority of creditors and I am loathe to further disturb the terms of the Plan, with one exception.

93 Amex Bank of Canada submitted that the form of release appeared overly broad and might compromise unaffected claims of affected creditors. For further clarification, Amex Bank of Canada's potential claim for defamation is unaffected by the Plan and I am prepared to order Section 6.2(2)(ii) be amended to reflect this specific exception.

3. Fair and Reasonable

94 In determining whether to sanction a plan of arrangement under the CCAA, the court is guided by two fundamental concepts: "fairness" and "reasonableness". While these concepts are always at the heart of the court's exercise of its discretion, their meanings are necessarily shaped by the unique circumstances of each case, within the context of the Act and accordingly can be difficult to distill and challenging to apply. Blair J. described these concepts in *Olympia & York Developments Ltd. v. Royal Trust Co.*, *supra*, at page 9:

> "Fairness" and "reasonableness" are, in my opinion, the two keynote concepts underscoring the philosophy and workings of the Companies' Creditors Arrangement Act. Fairness is the quintessential expression of the court's equitable jurisdiction — although the jurisdiction is statutory, the broad discretionary powers given to the judiciary by the legislation which make its exercise an exercise in equity — and "reasonableness" is what lends objectivity to the process.

95 The legislation, while conferring broad discretion on the court, offers little guidance. However, the court is assisted in the exercise of its discretion by the purpose of the CCAA: to facilitate the reorganization of a debtor company for the benefit of the company, its creditors, shareholders, employees and, in many instances, a much broader constituency of affected persons. Parliament has recognized that reorganization, if commercially feasible, is in most cases preferable, economically and socially, to liquidation: *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* (1988), [1989] 2 W.W.R. 566 (Alta. Q.B.) at 574; *Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada*, [1989] 3 W.W.R. 363 (B.C. C.A.) at 368.

96 The sanction of the court of a creditor-approved plan is not to be considered as a rubber stamp process. Although the majority vote that brings the plan to a sanction hearing plays a significant role in the court's assessment, the court will consider other matters as are appropriate in light of its discretion. In the unique circumstances of this case, it is appropriate to consider a number of additional matters:

> a. The composition of the unsecured vote;
>
> b. What creditors would receive on liquidation or bankruptcy as compared to the Plan;
>
> c. Alternatives available to the Plan and bankruptcy;
>
> d. Oppression;
>
> e. Unfairness to Shareholders of CAC; and
>
> f. The public interest.

a. Composition of the unsecured vote

97 As noted above, an important measure of whether a plan is fair and reasonable is the parties' approval and the degree to which it has been given. Creditor support creates an inference that the plan is fair and reasonable because the assenting creditors believe that their interests are treated equitably under the plan. Moreover, it creates an inference that the arrangement is economically feasible and therefore reasonable because the creditors are in a better position then the courts to gauge business risk. As stated by Blair J. at page 11 of *Olympia & York Developments Ltd.*, *supra*:

TAB 6

2008 ONCA 587
Ontario Court of Appeal

ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.

2008 CarswellOnt 4811, 2008 ONCA 587, [2008] O.J. No. 3164, 168 A.C.W.S. (3d) 698, 240 O.A.C. 245, 296 D.L.R. (4th) 135, 45 C.B.R. (5th) 163, 47 B.L.R. (4th) 123, 92 O.R. (3d) 513

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT INVOLVING METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS II CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS III CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS V CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XI CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XII CORP., 4446372 CANADA INC. AND 6932819 CANADA INC., TRUSTEES OF THE CONDUITS LISTED IN SCHEDULE "A" HERETO

THE INVESTORS REPRESENTED ON THE PAN-CANADIAN INVESTORS COMMITTEE FOR THIRD-PARTY STRUCTURED ASSET-BACKED COMMERCIAL PAPER LISTED IN SCHEDULE "B" HERETO (Applicants / Respondents in Appeal) and METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS II CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS III CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS V CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XI CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XII CORP., 4446372 CANADA INC. AND 6932819 CANADA INC., TRUSTEES OF THE CONDUITS LISTED IN SCHEDULE "A" HERETO (Respondents / Respondents in Appeal) and AIR TRANSAT A.T. INC., TRANSAT TOURS CANADA INC., THE JEAN COUTU GROUP (PJC) INC., AÉROPORTS DE MONTRÉAL INC., AÉROPORTS DE MONTRÉAL CAPITAL INC., POMERLEAU ONTARIO INC., POMERLEAU INC., LABOPHARM INC., DOMTAR INC., DOMTAR PULP AND PAPER PRODUCTS INC., GIRO INC., VÊTEMENTS DE SPORTS R.G.R. INC., 131519 CANADA INC., AIR JAZZ LP, PETRIFOND FOUNDATION COMPANY LIMITED, PETRIFOND FOUNDATION MIDWEST LIMITED, SERVICES HYPOTHÉCAIRES LA PATRIMONIALE INC., TECSYS INC. SOCIÉTÉ GÉNÉRALE DE FINANCEMENT DU QUÉBEC, VIBROSYSTM INC., INTERQUISA CANADA L.P., REDCORP VENTURES LTD., JURA ENERGY CORPORATION, IVANHOE MINES LTD., WEBTECH WIRELESS INC., WYNN CAPITAL CORPORATION INC., HY BLOOM INC., CARDACIAN MORTGAGE SERVICES, INC., WEST ENERGY LTD., SABRE ENERTY LTD., PETROLIFERA PETROLEUM LTD., VAQUERO RESOURCES LTD. and STANDARD ENERGY INC. (Respondents / Appellants)

J.I. Laskin, E.A. Cronk, R.A. Blair JJ.A.

Heard: June 25-26, 2008
Judgment: August 18, 2008 *
Docket: CA C48969

Proceedings: affirming *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 2008 CarswellOnt 3523, 43 C.B.R. (5th) 269 (Ont. S.C.J. [Commercial List])

Counsel: Benjamin Zarnett, Frederick L. Myers for Pan-Canadian Investors Committee
Aubrey E. Kauffman, Stuart Brotman for 4446372 Canada Inc., 6932819 Canada Inc.
Peter F.C. Howard, Samaneh Hosseini for Bank of America N.A., Citibank N.A., Citibank Canada, in its capacity as Credit Derivative Swap Counterparty and not in any other capacity, Deutsche Bank AG, HSBC Bank Canada, HSBC Bank

USA, National Association, Merrill Lynch International, Merill Lynch Capital Services, Inc., Swiss Re Financial Products Corporation, UBS AG
Kenneth T. Rosenberg, Lily Harmer, Max Starnino for Jura Energy Corporation, Redcorp Ventures Ltd.
Craig J. Hill, Sam P. Rappos for Monitors (ABCP Appeals)
Jeffrey C. Carhart, Joseph Marin for Ad Hoc Committee, Pricewaterhouse Coopers Inc., in its capacity as Financial Advisor
Mario J. Forte for Caisse de Dépôt et Placement du Québec
John B. Laskin for National Bank Financial Inc., National Bank of Canada
Thomas McRae, Arthur O. Jacques for Ad Hoc Retail Creditors Committee (Brian Hunter, et al)
Howard Shapray, Q.C., Stephen Fitterman for Ivanhoe Mines Ltd.
Kevin P. McElcheran, Heather L. Meredith for Canadian Banks, BMO, CIBC RBC, Bank of Nova Scotia, T.D. Bank
Jeffrey S. Leon for CIBC Mellon Trust Company, Computershare Trust Company of Canada, BNY Trust Company of Canada, as Indenture Trustees
Usman Sheikh for Coventree Capital Inc.
Allan Sternberg, Sam R. Sasso for Brookfield Asset Management and Partners Ltd., Hy Bloom Inc., Cardacian Mortgage Services Inc.
Neil C. Saxe for Dominion Bond Rating Service
James A. Woods, Sebastien Richemont, Marie-Anne Paquette for Air Transat A.T. Inc., Transat Tours Canada Inc., Jean Coutu Group (PJC) Inc., Aéroports de Montréal, Aéroports de Montréal Capital Inc., Pomerleau Ontario Inc., Pomerleau Inc., Labopharm Inc., Agence Métropolitaine de Transport (AMT), Giro Inc., Vêtements de sports RGR Inc., 131519 Canada Inc., Tecsys Inc., New Gold Inc., Jazz Air LP
Scott A. Turner for Webtech Wireless Inc., Wynn Capital Corporation Inc., West Energy Ltd., Sabre Energy Ltd., Petrolifera Petroleum Ltd., Vaquero Resources Ltd., and Standard Energy Ltd.
R. Graham Phoenix for Metcalfe & Mansfield Alternative Investments II Corp., Metcalfe & Mansfield Alternative Investments III Corp., Metcalfe & Mansfield Alternative Investments V Corp., Metcalfe & Mansfield Alternative Investments XI Corp., Metcalfe & Mansfield Alternative Investments XII Corp., Quanto Financial Corporation and Metcalfe & Mansfield Capital Corp.

Subject: Insolvency; Civil Practice and Procedure
Headnote
Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Arrangements — Approval by court — Miscellaneous issues
Releases — Parties were financial institutions, dealers and noteholders in market for Asset Backed Commercial Paper ("ABCP") — Canadian ABCP market experienced liquidity crisis — Plan of Compromise and Arrangement ("Plan") was put forward under Companies' Creditors Arrangement Act ("CCAA") — Plan included releases for claims against banks and dealers in negligence, misrepresentation and fraud, with "carve out" allowing fraudulent misrepresentations claims — Noteholders voted in favour of Plan — Minority noteholders ("opponents") opposed Plan based on releases — Applicants' application for approval of Plan was granted — Opponents brought application for leave to appeal and appeal from that decision — Application granted; appeal dismissed — CCAA permits inclusion of third party releases in plan of compromise or arrangement to be sanctioned by court where those releases were reasonably connected to proposed restructuring — It is implicit in language of CCAA that court has authority to sanction plans incorporating third-party releases that are reasonably related to proposed restructuring — CCAA is supporting framework for resolution of corporate insolvencies in public interest — Parties are entitled to put anything in Plan that could lawfully be incorporated into any contract — Plan of compromise or arrangement may propose that creditors agree to compromise claims against debtor and to release third parties, just as any debtor and creditor might agree to such terms in contract between them — Once statutory mechanism regarding voter approval and court sanctioning has been complied with, plan becomes binding on all creditors.
Bankruptcy and insolvency --- Practice and procedure in courts — Appeals — To Court of Appeal — Availability — Miscellaneous cases
Leave to appeal — Parties were financial institutions, dealers and noteholders in market for Asset Backed Commercial Paper ("ABCP") — Canadian ABCP market experienced liquidity crisis — Plan of Compromise and Arrangement ("Plan") was put forward under Companies' Creditors Arrangement Act ("CCAA") — Plan included releases for claims against banks and dealers

in negligence, misrepresentation and fraud, with "carve out" allowing fraudulent misrepresentations claims — Noteholders voted in favour of Plan — Minority noteholders ("opponents") opposed Plan based on releases — Applicants' application for approval of Plan was granted — Opponents brought application for leave to appeal and appeal from that decision — Application granted; appeal dismissed — Criteria for granting leave to appeal in CCAA proceedings was met — Proposed appeal raised issues of considerable importance to restructuring proceedings under CCAA Canada-wide — These were serious and arguable grounds of appeal and appeal would not unduly delay progress of proceedings.

APPEAL by opponents of creditor-initiated plan from judgment reported at *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 2008 CarswellOnt 3523, 43 C.B.R. (5th) 269, 47 B.L.R. (4th) 74 (Ont. S.C.J. [Commercial List]), granting application for approval of plan.

***R.A. Blair J.A.*:**

A. Introduction

1 In August 2007 a liquidity crisis suddenly threatened the Canadian market in Asset Backed Commercial Paper ("ABCP"). The crisis was triggered by a loss of confidence amongst investors stemming from the news of widespread defaults on U.S. sub-prime mortgages. The loss of confidence placed the Canadian financial market at risk generally and was reflective of an economic volatility worldwide.

2 By agreement amongst the major Canadian participants, the $32 billion Canadian market in third-party ABCP was frozen on August 13, 2007 pending an attempt to resolve the crisis through a restructuring of that market. The Pan-Canadian Investors Committee, chaired by Purdy Crawford, C.C., Q.C., was formed and ultimately put forward the creditor-initiated Plan of Compromise and Arrangement that forms the subject-matter of these proceedings. The Plan was sanctioned by Colin L. Campbell J. on June 5, 2008.

3 Certain creditors who opposed the Plan seek leave to appeal and, if leave is granted, appeal from that decision. They raise an important point regarding the permissible scope of a restructuring under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended ("CCAA"): can the court sanction a Plan that calls for creditors to provide releases to third parties who are themselves solvent and not creditors of the debtor company? They also argue that, if the answer to this question is yes, the application judge erred in holding that this Plan, with its particular releases (which bar some claims even in fraud), was fair and reasonable and therefore in sanctioning it under the CCAA.

Leave to Appeal

4 Because of the particular circumstances and urgency of these proceedings, the court agreed to collapse an oral hearing for leave to appeal with the hearing of the appeal itself. At the outset of argument we encouraged counsel to combine their submissions on both matters.

5 The proposed appeal raises issues of considerable importance to restructuring proceedings under the CCAA Canada-wide. There are serious and arguable grounds of appeal and — given the expedited time-table — the appeal will not unduly delay the progress of the proceedings. I am satisfied that the criteria for granting leave to appeal in CCAA proceedings, set out in such cases as *Cineplex Odeon Corp., Re* (2001), 24 C.B.R. (4th) 201 (Ont. C.A.), and *Country Style Food Services Inc., Re* (2002), 158 O.A.C. 30 (Ont. C.A. [In Chambers]), are met. I would grant leave to appeal.

Appeal

6 For the reasons that follow, however, I would dismiss the appeal.

B. Facts

The Parties

bind *all* creditors by class to the terms of the plan, but to do so only where the proposal can gain the support of the requisite "double majority" of votes [6] *and* obtain the sanction of the court on the basis that it is fair and reasonable. In this way, the scheme of the CCAA supports the intention of Parliament to encourage a wide variety of solutions to corporate insolvencies without unjustifiably overriding the rights of dissenting creditors.

The Required Nexus

69 In keeping with this scheme and purpose, I do not suggest that any and all releases between creditors of the debtor company seeking to restructure and third parties may be made the subject of a compromise or arrangement between the debtor and its creditors. Nor do I think the fact that the releases may be "necessary" in the sense that the third parties or the debtor may refuse to proceed without them, of itself, advances the argument in favour of finding jurisdiction (although it may well be relevant in terms of the fairness and reasonableness analysis).

70 The release of the claim in question must be justified as part of the compromise or arrangement between the debtor and its creditors. In short, there must be a reasonable connection between the third party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third party release in the plan. This nexus exists here, in my view.

71 In the course of his reasons, the application judge made the following findings, all of which are amply supported on the record:

> a) The parties to be released are necessary and essential to the restructuring of the debtor;
>
> b) *The claims to be released are rationally related to the purpose of the Plan and necessary for it*;
>
> c) The Plan cannot succeed without the releases;
>
> d) *The parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan*; and
>
> e) The Plan will benefit not only the debtor companies but creditor Noteholders generally.

72 Here, then — as was the case in *T&N* — there is a close connection between the claims being released and the restructuring proposal. The tort claims arise out of the sale and distribution of the ABCP Notes and their collapse in value, just as do the contractual claims of the creditors against the debtor companies. The purpose of the restructuring is to stabilize and shore up the value of those notes in the long run. The third parties being released are making separate contributions to enable those results to materialize. Those contributions are identified earlier, at para. 31 of these reasons. The application judge found that the claims being released are not independent of or unrelated to the claims that the Noteholders have against the debtor companies; they are closely connected to the value of the ABCP Notes and are required for the Plan to succeed. At paras. 76-77 he said:

> [76] I do not consider that the Plan in this case involves a change in relationship among creditors "that does not directly involve the Company." Those who support the Plan and are to be released are "directly involved in the Company" in the sense that many are foregoing immediate rights to assets and are providing real and tangible input for the preservation and enhancement of the Notes. It would be unduly restrictive to suggest that the moving parties' claims against released parties do not involve the Company, since the claims are directly related to the value of the Notes. The value of the Notes is in this case the value of the Company.
>
> [77] This Plan, as it deals with releases, doesn't change the relationship of the creditors apart from involving the Company and its Notes.

73 I am satisfied that the wording of the CCAA — construed in light of the purpose, objects and scheme of the Act and in accordance with the modern principles of statutory interpretation — supports the court's jurisdiction and authority to sanction the Plan proposed here, including the contested third-party releases contained in it.

The Jurisprudence

74 Third party releases have become a frequent feature in Canadian restructurings since the decision of the Alberta Court of Queen's Bench in *Canadian Airlines Corp., Re* (2000), 265 A.R. 201 (Alta. Q.B.), leave to appeal refused by (2000), 266 A.R. 131 (Alta. C.A. [In Chambers]), and (2001), 293 A.R. 351 (note) (S.C.C.). In *Muscletech Research & Development Inc., Re* (2006), 25 C.B.R. (5th) 231 (Ont. S.C.J.) Justice Ground remarked (para. 8):

> [It] is not uncommon in CCAA proceedings, in the context of a plan of compromise and arrangement, to compromise claims against the Applicants and other parties against whom such claims or related claims are made.

75 We were referred to at least a dozen court-approved CCAA plans from across the country that included broad third-party releases. With the exception of *Canadian Airlines Corp., Re*, however, the releases in those restructurings — including *Muscletech Research & Development Inc., Re* — were not opposed. The appellants argue that those cases are wrongly decided, because the court simply does not have the authority to approve such releases.

76 In *Canadian Airlines Corp., Re* the releases in question were opposed, however. Paperny J. (as she then was) concluded the court had jurisdiction to approve them and her decision is said to be the well-spring of the trend towards third-party releases referred to above. Based on the foregoing analysis, I agree with her conclusion although for reasons that differ from those cited by her.

77 Justice Paperny began her analysis of the release issue with the observation at para. 87 that "[p]rior to 1997, the CCAA did not provide for compromises of claims against anyone other than the petitioning company." It will be apparent from the analysis in these reasons that I do not accept that premise, notwithstanding the decision of the Quebec Court of Appeal in *Steinberg Inc. c. Michaud*, [7] of which her comment may have been reflective. Paperny J.'s reference to 1997 was a reference to the amendments of that year adding s. 5.1 to the CCAA, which provides for limited releases in favour of directors. Given the limited scope of s. 5.1, Justice Paperny was thus faced with the argument — dealt with later in these reasons — that Parliament must not have intended to extend the authority to approve third-party releases beyond the scope of this section. She chose to address this contention by concluding that, although the amendments "[did] not authorize a release of claims against third parties other than directors, [they did] not prohibit such releases either" (para. 92).

78 Respectfully, I would not adopt the interpretive principle that the CCAA permits releases because it does not expressly prohibit them. Rather, as I explain in these reasons, I believe the open-ended CCAA permits third-party releases that are reasonably related to the restructuring at issue because they are encompassed in the comprehensive terms "compromise" and "arrangement" and because of the double-voting majority and court sanctioning statutory mechanism that makes them binding on unwilling creditors.

79 The appellants rely on a number of authorities, which they submit support the proposition that the CCAA may not be used to compromise claims as between anyone other than the debtor company and its creditors. Principal amongst these are *Steinberg Inc. c. Michaud*, *supra*; *NBD Bank, Canada v. Dofasco Inc.* (1999), 46 O.R. (3d) 514 (Ont. C.A.); *Pacific Coastal Airlines Ltd. v. Air Canada* (2001), 19 B.L.R. (3d) 286 (B.C. S.C.); and *Stelco Inc., Re* (2005), 78 O.R. (3d) 241 (Ont. C.A.) ("*Stelco I*"). I do not think these cases assist the appellants, however. With the exception of *Steinberg Inc.*, they do not involve third party claims that were reasonably connected to the restructuring. As I shall explain, it is my opinion that *Steinberg Inc.* does not express a correct view of the law, and I decline to follow it.

80 In *Pacific Coastal Airlines Ltd.*, Tysoe J. made the following comment at para. 24:

> [The purpose of the CCAA proceeding] is not to deal with disputes between a creditor of a company and a third party, even if the company was also involved in the subject matter of the dispute. While issues between the debtor company and non-creditors are sometimes dealt with in CCAA proceedings, it is not a proper use of a CCAA proceeding to determine disputes between parties other than the debtor company.

TAB 7

2020 ONSC 4006
Ontario Superior Court of Justice [Commercial List]

Lydian International Limited (Re)

2020 CarswellOnt 9768, 2020 ONSC 4006, 321 A.C.W.S. (3d) 618, 81 C.B.R. (6th) 218

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION AND LYDIAN U.K. CORPORATION LIMITED

Geoffrey B. Morawetz C.J. Ont. S.C.J.

Heard: June 29, 2020
Judgment: July 10, 2020
Docket: CV-19-00633392-00CL

Counsel: Elizabeth Pillon, Maria Konyukhova, Sanja Sopic, Nicholas Avis, for Applicants
D.J. Miller, Rachel Bergino, for Alvarez & Marsal Inc.
Robert Mason, Virginie Gauthier, for Osisko Bermuda Limited
Pamela Huff, Chris Burr, for Resource Capital Fund VI L.P.
David Bish, Michael Pickersgill, for Orion Capital Management
Alexander Steele, for Caterpillar Financial Services (UK) Limited
Bruce Darlington, for ING Bank N.V./Abs Svensk Exportkredit (publ)
John LeRoux, Hasan Ciftehan, Mehmet Ali Ekingen, Atilla Bozkay, for themselves

Subject: Corporate and Commercial; Insolvency

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Approval by court — "Fair and reasonable"

Applicants L Intl., L Canada, and L UK were three entities at top of group that owned development-stage gold mine in south-central Armenia — Applicants contended that they were unable to access their main operating asset due to blockades, which prevented them from completing construction of mine and generating revenue in ordinary course — Since blockades began, senior lenders had been funding applicants' efforts to find solution to situation caused by blockades — Applicants sought protection under Companies' Creditors Arrangement Act (Act proceedings), were granted initial order, and monitor was appointed — Applicants created plan of arrangement that they submitted represented culmination of their restructuring efforts and allowed for resolution of Act proceedings and would recognize and continue priority position of senior lenders in restructuring — Applicants brought motion for relief, including order sanctioning and approving plan of arrangement — Motion granted — Plan was fair and reasonable in circumstances — Senior lenders were in favour of plan, and there were no viable alternatives — It was appropriate for plan to include releases in favour of released parties.

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Miscellaneous

Applicants L Intl., L Canada, and L UK were three entities at top of group that owned development-stage gold mine in south-central Armenia — Applicants contended that they were unable to access their main operating asset due to blockades, which prevented them from completing construction of mine and generating revenue in ordinary course — Since blockades began, senior lenders had been funding applicants' efforts to find solution to situation caused by blockades — Applicants sought protection under Companies' Creditors Arrangement Act (Act proceedings), were granted initial order, and mnitor was appointed — Applicants created plan of arrangement that they submitted represented culmination of their restructuring efforts and allowed for resolution of Act proceedings and would recognize and continue priority position of senior lenders in restructuring —

Majority of senior lenders agreed to fund costs associated with implementing plan and termination of Act proceedings through debtor-in-possession (DIP) exit facility amendment — DIP exit facility amendment provided for exit financing to assist in implementing plan and taking necessary ancillary steps to terminate Act proceedings — Applicants brought motion for relief, including order approving applicants' debtor-in-possession amendment — Motion granted — Requested relief was reasonably necessary and appropriate in circumstances — DIP exit credit facility was necessary to enable applicants to implement plan, and monitor was supporting of DIP exit facility amendment — DIP exit facility amendment was not anticipated to give rise to any material finance prejudice, and DIP lenders were majority of senior lenders.

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Initial application — Grant of stay — Length of stay

Applicants L Intl., L Canada, and L UK were three entities at top of group that owned development-stage gold mine in south-central Armenia — Applicants contended that they were unable to access their main operating asset due to blockades, which prevented them from completing construction of mine and generating revenue in ordinary course — Since blockades began, senior lenders had been funding applicants' efforts to find solution to situation caused by blockades — Applicants sought protection under Companies' Creditors Arrangement Act (Act proceedings), were granted initial order, and monitor was appointed — Applicants created plan of arrangement that they submitted represented culmination of their restructuring efforts and allowed for resolution of Act proceedings and would recognize and continue priority position of senior lenders in restructuring — On plan implementation date, Act proceedings with respect to L UK and L Canada would be terminated such that L Intl. would be only remaining applicant — Applicants brought motion for relief, including order to extend stay period for L Intl. to enable remaining applicant and monitor to take necessary steps to implement plan and terminate Act proceedings — Motion granted — Applicants demonstrated that circumstances existed that made order appropriate — Applicants acted in good faith and with due diligence such that request was appropriate.

MOTION by applicants for relief, including order and sanctioning and approving applicants' plan of arrangement.

***Geoffrey B. Morawetz C.J. Ont. S.C.J.*:**

1 Lydian International Limited, Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited (the "Applicants") bring this motion for an order (the "Sanction and Implementation Order"), among other things:

> a) declaring that the Meeting of Affected Creditors held on June 19, 2020 was duly convened and held, all in accordance with the Meeting Order;
>
> b) sanctioning and approving the Applicants' Plan of Arrangement (the "Plan") as approved by a requisite majority of Affected Creditors at the Meeting, in accordance with the Plan Meeting Order (each as defined below), a copy of which is attached as Schedule "A" to the draft Sanction and Implementation Order; and
>
> c) granting various other related relief (as more particularly outlined below).

2 The Applicants submit that the Plan represents the culmination of the Applicants' restructuring efforts and allows for the resolution of these CCAA Proceedings. The Monitor and the majority of the Affected Creditors are supportive of the Plan and if sanctioned and implemented, the Plan will provide a path forward for Lydian Canada and Lydian UK as part of a privatized Restructured Lydian Group (as defined in the Plan) and ultimately lead to the termination of these CCAA Proceedings.

3 Shortly after the conclusion of the hearing on June 29, 2020, which was conducted by Zoom, I granted the motion with reasons to follow.

4 The facts with respect to this motion are more fully set out in the Affidavit of Edward A. Sellers sworn June 24, 2020 (the "Sellers Sanction Affidavit"), the Affidavit of Edward A. Sellers sworn June 15, 2020 (the "Sellers Meeting Affidavit") and the Affidavit of Mark Caiger sworn June 11, 2020 (the "BMO Affidavit"). Mr. Sellers and Mr. Caiger were not cross-examined. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Sellers Sanction Affidavit, the Sellers Meeting Affidavit, and the Plan. All references to currency in this factum are references to United States dollars, unless otherwise indicated.

filing for bankruptcy, administration, or liquidation proceedings across multiple jurisdictions. In each scenario (as with the Plan), the Applicants' assets are transitioned to the Senior Lenders.

40 The foregoing submissions were not challenged.

41 The Monitor supports the Plan. As noted in the Monitor's Seventh Report, "it is the Monitor's view that the Plan represents a better path forward than any other alternative that is available to the Applicants and is fair and reasonable."

42 I am aware that concerns with respect to the fairness of the Plan have been raised by numerous shareholders of Lydian International and oral submissions were made by John LeRoux, Hasan Ciftehan, Mehmet Ali Ekingen and Atilla Bozkay.

43 In addition, a number of emails were sent directly to the court, which were forwarded to counsel to the Monitor. In addition, certain emails were sent to the Monitor. None of the emails were in a proper evidentiary form.

44 The concerns of the shareholders included criminal complaints of activities in Armenia, the content of certain press releases and the impact of the COVID-19 pandemic. Some shareholders requested a delay of three months in these proceedings.

45 As previously noted, equity claims and unsecured claims against Lydian International will not be assumed by Restructured Lydian as part of the Plan. Simply put, the shareholders of Lydian International will not receive any compensation for their shareholdings. This is a reflection of the insolvency of the Applicants and the priority position afforded to shareholders by the CCAA.

46 I recognize that the shareholders' monetary loss will be crystalized if the Plan is sanctioned. However, a monetary loss resulting from the ownership, purchase or sale of their equity interest is an "equity claim" as defined in s. 2(1) of the CCAA. This definition is significant as s. 6(8) of the CCAA provides:

> 6(8) Payment - equity claims - No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

47 The Plan does not provide for payment in full of claims that are not equity claims. Consequently, equity claimants are not in the position to receive any compensation.

48 The economic reality facing the shareholders existed prior to the COVID-19 pandemic. The Applicants were insolvent when they filed these proceedings on December 23, 2019. The financial situation facing the Applicants has not improved since the filing. In fact, it has declined. The mine is not operating with the obvious result that it is not generating revenues and interest continues to accrue on the secured debt. The fact that shareholders will receive no compensation is unfortunate but is a reflection of reality which does not preclude a finding that the Plan is fair and reasonable for the purposes of this motion.

49 The Senior Lenders have voted in sufficient numbers in favour of the Plan. I am satisfied that there are no viable alternatives, and, in my view, it is not feasible to further delay these proceedings.

50 Section 6.6 of the Plan provides for full and final releases in favour of the Released Parties, who consist of (a) the Applicants, their employees, agents and advisors (including counsel) and each of the members of the Existing Lydian Group's current and former directors and officers; (b) the Monitor and its counsel; and (c) the Senior Lenders and each of their respective affiliates, affiliated funds, their directors, officers, employees, agents and advisors (including counsel) (collectively, the "Ancillary Releases"). A chart setting out the impact of the releases is attached as Schedule "A" to these reasons.

51 The Applicants submit that the releases apply to the extent permitted by law and expressly do not apply to, among other things:

> a) Lydian Canada's, Lydian UK's or the Senior Lenders' obligations under the Plan or incorporated into the Plan;

b) obligations of any Existing Lydian Group member other than Lydian International under the Credit Agreement and Stream Agreement, and any agreements entered into relating to the foregoing, from and after the Plan Implementation Date;

c) any claims arising from the willful misconduct or gross negligence of any applicable Released Party; and

d) any Director from any Director Claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

52 Unsecured creditors' claims, other than the Ancillary Releases in favour of the Directors, are not compromised or released and remain in the Restructured Lydian Group.

53 The Applicants submit that it is accepted that there is jurisdiction to sanction plans containing releases if the release was negotiated in favour of a third party as part of the "compromise" or "arrangement" where the release reasonably relates to the proposed restructuring and is not overly broad. There must be a reasonable connection between the third-party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third-party release in the plan (see: *Canadian Airlines Corp., Re*, 2000 ABQB 442 (Alta. Q.B.) at para 92 (*CanLII*) CCAA at s. 5(1); *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 (Ont. C.A.) at paras 61 and 70 (*CanLII*); *Canwest Global Communications Corp., Re*, 2010 ONSC 4209 (Ont. S.C.J. [Commercial List]) at para 28-30 (*CanLII*); and *Kitchener Frame Ltd., Re*, 2012 ONSC 234 (Ont. S.C.J. [Commercial List]) at paras 85-88 (*CanLII*).

54 The Applicants submit that in considering whether to approve releases in favour of third parties, courts will consider the particular circumstances of the case and the objectives of the CCAA. While no single factor will be determinative, the courts have considered the following factors:

a) Whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;

b) Whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;

c) Whether the plan could succeed without the releases;

d) Whether the parties being released were contributing to the plan; and

e) Whether the release benefitted the debtors as well as the creditors generally.

55 The Applicants submit that the releases were critical components of the decision-making process for the Applicants' directors and officers and Senior Lenders' participation in these CCAA Proceedings in proposing the Plan and the Applicants submit that they would not have brought forward the Plan absent the inclusion of the releases.

56 The Applicants also submit that the support of the Senior Lenders is essential to the Plan's viability. Without such support, which is conditional on the releases, the Plan would not succeed.

57 The Applicants submit that the Released Parties made significant contributions to the Applicants' restructuring, both prior to and throughout these CCAA Proceedings. The extensive efforts of the Applicants' directors and officers and the Senior Lenders and Monitor resulted in the negotiation of the Plan, which forms the foundation for the completion of these CCAA Proceedings. The Senior Lenders financial contributions through forbearances, additional advances and DIP and Exit Financing were instrumental.

58 The Applicants also submit that the releases are an integral part of the CCAA Plan which provides an orderly and effective alternative to uncoordinated and disruptive secured lender enforcement proceedings. The Plan permits unsecured creditors future potential recovery in the Restructured Lydian Group, which may not exist in bankruptcy (*ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 (Ont. C.A.) at paras 71 (*CanLII*); and *Kitchener Frame Ltd., Re*, 2012 ONSC 234 (Ont. S.C.J. [Commercial List]) at paras 80-82 (*CanLII*).

59 The Applicants submit that this Court has exercised its authority to grant similar releases, including in circumstances where the released claims included claims of parties who did not vote on the plan and were not eligible to receive distributions (*Target Canada Co. et al*. (2 June 2016), Toronto CV-15-10832-00CL (Ont. Sup. Ct. [Comm. List]) Sanction and Vesting Order at Schedule "B" art. 7 (*Monitor's website*); *Rubicon Minerals Corporation et al*. (8 December 2016), Toronto CV-16-11566-00CL (Ont. Sup. Ct. [Comm. List]) Sanction Order at Schedule "A" art. 7 (*Monitor's website*); and *Nortel Networks Corporation et al*. (30 November 2016), Toronto 09-CL-7950 (Ont. Sup. Ct. [Comm. List]) Plan of Compromise and Arrangement at art. 7 (*Monitor's website*)).

60 Full disclosure of the releases was made in (a) the draft Plan that was circulated to the Service List and filed with this Court as part of the Applicants' Motion Record (returnable June 18, 2020); and (b) the Plan attached to the Meeting Order. The Applicants also issued the Press Releases. This notification process ensured that the Applicants' stakeholders had notice of the nature and effect of the Plan and releases.

61 The foregoing submissions with respect to the releases were not challenged.

62 In my view, each of the Released Parties has made a contribution to the development of the Plan. In arriving at this determination, I have taken into account the activities of the Released Parties as described in the Reports of the court-appointed Monitor. I am satisfied that it is appropriate for the Plan to include the releases in favour of the Released Parties.

63 The development of this Plan has been challenging and as the Monitor has stated, "the Plan represents a better path forward than any other alternative that is available to the Applicants and is fair and reasonable".

64 I accept this assessment and find that the Plan is fair and reasonable in the circumstances.

DIP Charge

65 The terms of the DIP Exit Facility Amendment are described in the Sellers Sanction Affidavit. The DIP Exit Facility Amendment provides for exit financing totalling $1.866 million to assist in implementing the Plan and taking the necessary ancillary steps to terminate the CCAA Proceedings and support the J&E Process.

66 This Court has the jurisdiction to authorize funding in the context of a CCAA restructuring pursuant to s. 11.2(1) and 11.2(2) of the CCAA. In considering whether to approve DIP financing, the Court is to consider the non-exhaustive list of factors set out in s. 11.2(4) of the CCAA. These same provisions of the CCAA provide this Court with the authority to approve amendments to a DIP agreement and secure all obligations arising from the amended DIP loans with an increased DIP charge.

67 The Applicants submit that, based on the following, the DIP Amendment should be approved and the increase to the DIP Facility should be secured by the DIP Charge:

a) the DIP Exit Credit Facility is necessary to enable the Applicants to implement the Plan;

b) the Monitor is supportive of the DIP Exit Facility Amendment;

c) the DIP Exit Facility Amendment is not anticipated to give rise to any material financial prejudice; and

d) the DIP Lenders are the majority of Senior Lenders.

68 I am satisfied that the requested relief in respect to the DIP Amendment is reasonably necessary and appropriate in the circumstances.

Sealing Request

69 The Applicants seek to seal the unredacted Sellers Sanction Affidavit on the basis that the redacted portions of the Sellers Sanction Affidavit contain commercially sensitive information, the disclosure of which could be harmful to stakeholders.

TAB 8

2020 ONSC 6837
Ontario Superior Court of Justice [Commercial List]

Re Green Relief Inc.

2020 CarswellOnt 19933, 2020 ONSC 6837, 331 A.C.W.S. (3d) 419, 88 C.B.R. (6th) 305

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GREEN RELIEF INC. (the "Applicant")

Koehnen J.

Heard: November 2-3, 2020
Judgment: November 9, 2020
Docket: CV-20-00639217-00CL

Counsel: C. Robert I. Thornton, Rebecca L. Kennedy, Mitchell Grossell, for Applicant
Peter Osborne, Christopher Yung, for Directors, Neilank Jha, Tony Battaglia, Brian Ranson, Christopher McNamara and Stephen Massel
Mark Abradjian, for Tony Battaglia in his capacity as shareholder and creditor
David Ward, for 2650064 Ontario Inc.
Alex Henderson, for Susan Basmaji
Gavin Finlayson, for Auxley Cannabis Group Inc. and Kolab Project Inc.
Anton Granic, for himself
Rory McGovern, for Steve LeBlanc
Alan Dick, Adrienne Boudreau, for Thomas Saunders
Steven Weisz, Amanda McInnis, for Lyn Mary Bravo
Brian Duxbury, for Warren Bravo
Robert Kennaley, Joshua W. Winter, for Henry Schilthuis and Mark Lloyd
Danny Nunes, for Monitor

Subject: Insolvency

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Approval by court — "Fair and reasonable"

Applicant was company, that had filed for bankruptcy — Company sought order approving transaction for sale of its assets, under Companies' Creditors Arrangement Act (CCAA) — Stakeholders challenged release that approval was to grant in favour of releasees, as condition precedent for sale — Company applied for above-noted relief — Application granted — Whether release was condition precedent or not, was not barrier to court approval of release — Absence of relevant plan was similarly not barrier to release — Claim being released had little to no chance of success, so that deprivation of cause of action was not major issue — Released parties were necessary to restructuring — Claims released were rationally connected to purpose of plan — Releasees had contributed to efforts, so that company could apply for relief — Release benefitted debtor as well as creditors — Creditors had proper notice of release — All of these factors were in favour of approval of release and transaction — Application judge remained seized of all issues Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s 36 (3).

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Miscellaneous

Applicant was company, that had filed for bankruptcy — Company sought order approving transaction for sale of its assets, under Companies' Creditors Arrangement Act (CCAA) — Stakeholders challenged release that approval was to grant in favour

of releasees, as condition precedent for sale — Company applied for above-noted relief — Application granted — Relief was not extended to shareholder, who was not part of negotiation — It was not clear on evidence whether shareholder helped bring about transaction.

APPLICATION by company for order approving transaction and release in bankruptcy proceedings.

***Koehnen J.*:**

1 The Applicant, Green Relief Inc., seeks an order approving a transaction for the sale of its assets in the course of a proceeding under the*Companies'* Creditors Arrangement Act, R.S.C. 1985, c. C-36 , as amended (the "CCAA"). The sale transaction is generally not contested. Certain stakeholders do however, take issue with the release that the approval and vesting order purports to grant in favour of certain releasees as a condition precedent to the sale. For ease of reference, I refer to Green Relief alternatively by its name, as the Applicant or as the Company in these reasons.

2 For the reasons set out below, I:

a. Approve the sales transaction as Green Relief seeks, including the release. There is substantial difference of opinion on the proper interpretation of the release. It is not appropriate to interpret the release in a vacuum. It is preferable to do so on the basis of concrete circumstances which might present themselves if and when any claim is brought that implicates the release. I will however remain seized of the interpretation of the release. If any claim arises that calls for interpretation of the release, including an interpretation of any available insurance coverage, that issue must be brought before me for determination.

b. Temporarily lift the stay of proceedings until 12:01 a.m. November 27, 2020 to permit the filing of claims that might attract insurance coverage the that the release refers to.

c. Decline to extend the benefit of the release to Susan Basmaji.

I. The Sale Transaction

3 Green Relief seeks approval of the sale of certain assets to 2650064 Ontario Inc. (265 Co.) (the "Transaction"). As a result of the proposed transaction, 265 Co. will acquire new common shares of Green Relief in a sufficient quantity to reduce the holdings of existing shareholders to fractional shares which would be cancelled on the close of the transaction. On closing, Residual Co. will be established and added as an applicant to the CCAA proceeding. In effect, all obligations and liabilities of Green Relief will be transferred to Residual Co.

4 265 Co. will pay $5,000,000 for the common shares. Approximately $1,500,000 of that is an operating loan with the balance being available for creditors. In addition, 265 Co. will pay Residual Co. up to $7,000,000 as an earn out during the first two fiscal years following closing. The earn out is based on a payment of 25% of annual EBITDA above $5,000,000.

5 Section 36(3) of the CCAA provides that, when deciding whether to authorize a sale of assets, the court should consider, among other things:

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the Monitor approved the process leading to the proposed sale;

(c) whether the Monitor filed with the court a report stating that in its opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which creditors were consulted;

(e) the effects of the proposed sale or distribution on the creditors and other interested parties; and

of Intention was filed in March 2020 but that the company purchased tail coverage that extended coverage for past conduct of directors. The tail coverage expires on November 26, 2020. That still provides plaintiffs with a period of time to commence an action for which there might be insurance coverage and to which the release might therefore not apply. The tail coverage may for example, cover current and former directors for conduct that arose before the Notice of Intention was filed.

71 To permit such claims to be filed, I am temporarily lifting the stay of proceedings against officers and directors of Green Relief solely for the purpose of initiating claims that would potentially obtain the benefit of the carveouts under the release.

72 Given my preference for interpreting the release in light of actual circumstances rather than in a vacuum and given my temporary lift of the stay of proceedings against officers and directors, there is considerable benefit to the parties and considerable judicial efficiency in having the release interpreted by the same judicial officer who approved it and who had oversight of the CCAA proceedings. I will therefore remain seized of this issue and order that any issue about whether the release applies (including the issue of insurance coverage) will be determined by me.

73 To be clear, if any actions are commenced because of the temporary lift stay, the parties will still have to agree that such actions are carved out of the release by virtue of insurance coverage or I will have to determine that issue. The actions will not proceed and need not be defended until such agreement is reached or until I have determined whether the release applies.

Relief requested by Susan Basmaji

74 Susan Basmaji is a shareholder who asks that I extend the coverage of the release to her. Ms. Basmaji says she motivated a large number of other shareholders to cooperate with the Monitor and the Company to support the Transaction. She says that as a result of those efforts, Mr. Leblanc has commenced a defamation action against her.

75 I am not inclined to extend the release to Ms. Basmaji. The release was the product of negotiations between various stakeholders. It is not for the court to rewrite the release and bring other parties into the negotiation. I have extremely limited knowledge of the dispute between Mr. Leblanc and Ms. Basmaji and have no basis for concluding whether Ms. Basmaji was essential to the success of the Transaction as Lydian suggests nor do I have enough information about the defamation action to determine whether Ms. Basmaji should benefit from a release. That that said, it strikes me that the litigation between Mr. Leblanc and Ms. Basmaji a dispute to which the exhortation in paragraph 69 above is particularly relevant.

Disposition

76 For the reasons set out above, I

a. approve the Transaction;

b. approve the release;

c. will remain seized of all issues concerning the interpretation of the release and the insurance coverage referred to in it;

d. lift the stay of proceedings solely to permit actions to be brought up to and including November 26, 2020 in order to capture the benefit of insurance coverage referred to in the release;

e. reimpose the stay of proceedings effective at 12:01 AM on November 27, 2020; and

f. decline to extend the benefit of the release to Susan Basmaji.

Application granted.

End of Document

TAB 9

2024 ONSC 4436
Ontario Superior Court of Justice [Commercial List]

Tacora Resources Inc. (Re)

2024 CarswellOnt 12364, 2024 ONSC 4436, 2024 A.C.W.S. 4348

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA RESOURCES INC.

Kimmel J.

Heard: July 26, 2024
Judgment: August 12, 2024
Docket: CV-23-00707394-00CL

Counsel: Ashley Taylor, Lee Nicholson, Philip Yang, Natasha Rambaran, for Applicant, Tacora Resources Inc.
Robert Chadwick, Caroline Descours, Peter Kolla, Sarah Stothart, Brittni Tee, for Cargill, Incorporated and Cargill International Trading Pte Ltd.
Marc Wasserman, Michael De Lellis, for Consortium Noteholders Group
Alan Merskey, Jane Dietrich, Ryan Jacobs, for Monitor, FTI Consulting Canada Inc.
Shaan Tolani, for Computershare Trust Company
Natasha MacParland, Derek Ricci, for Crossing Bridge Advisors
Joe Thorne, for 1128349 BC Ltd.
Gerry Apostolatos, for Quebec North Shore and Labrador Railway Inc.

Subject: Insolvency

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Miscellaneous

Mining company was involved in proceedings under Companies' Creditors Arrangement Act — Company brought application for approval of reverse vesting order — Application granted — Significant majority of secured creditors achieved common ground through extensive negotiation to arrive at transactions that were considered best possible outcome in circumstances — Transactions supported by potentially largest unsecured creditor, and secured creditors who would hold deficiency unsecured claims — Maintaining existing legal entity would preserve $650 million in tax attributes that would otherwise lost in traditional asset sale — Transaction was best and only available plan — No stakeholder would be worse off — Sale process was fair and approved by monitor — Broad third party releases were granted, which were necessary part of transaction and were not opposed at time of hearing.

APPLICATION by debtor for approval of reverse vesting order in insolvency proceedings.

***Kimmel J.*:**

ENDORSEMENT (RVO AND INCLUDED THIRD PARTY RELEASES)

1 Tacora Resources Inc. ("Tacora") brought a motion for an Approval and Reverse Vesting Order ("RVO") in respect of a July 21, 2024 Subscription Agreement and the transactions contemplated by it (the "Transactions"). The Subscription Agreement was entered into between Tacora and a group of investors comprised of certain noteholders represented by Millstreet Capital Management LLC, as investment manager ("Millstreet"), OSP, LLC, on behalf of certain managed funds ("OSP"), and Cargill, Incorporated ("Cargill") (collectively, the "Investors"). The RVO includes third party releases.

15 This is a situation equally as compelling as in *Harte Gold* (at para. 57) where the court remarked that "it is hard to see how anything would change under a creditor class vote scenario." In that case, all creditors, both secured and unsecured, were expected to be paid in full and none opposed the RVO structure that was approved. Here, under the Subscription Agreement and Transactions not all secured or unsecured creditors will be paid in full, yet none oppose the RVO structure. There is no suggestion that the RVO structure is being used to do an end-run around the creditor class voting that is provided for under a CCAA plan of arrangement. There is no creditor whose vote under a CCAA plan might have impacted its approval that has lost its right to have its vote count by the proposed RVO structure. The interesting legal questions surrounding the limits on the use of RVOs in the face of opposition need not be decided at this time.

16 It is for these more detailed reasons that the RVO was approved and signed on July 26, 2024.

Approval of Third Party Releases — Supplementary Reasons

17 Third party releases are carefully scrutinized by the court. As I stated in paragraph 10 of my July 26, 2024 endorsement:

> They must satisfy the requirements set out in *Lydian International Limited (Re)*, 2020 ONSC 4006 at para. 54. See also *Harte Gold*, at paras. 78-86. Those requirements have been satisfied in this case. Importantly, the record demonstrates that there is a reasonable connection between the claims being compromised and the restructuring achieved by the RVO. The release language has been tailored to the particular circumstances of this case, including one further change that was made to the form of order after the appearance today.

18 The test for third-party releases in CCAA proceedings is well established. The Court must ask: (i) whether the parties being released were necessary and essential to the restructuring of the debtor; (ii) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it; (iii) whether the restructuring could succeed without the releases; (iv) whether the parties being released contributed to the restructuring; and (v) whether the releases benefit the debtors as well as the creditors generally: *Lydian*, at para. 54.

19 The releases granted in this case are not unprecedented in their breadth, but they are broad.

> a. They include Released Parties that extend beyond the Company, ResidualCo, and the Monitor (including their respective present and former officers, directors, employees, legal counsel and advisors) to the Notes Trustee, the Investors, and Other New Equity Investors (and their respective present and former officers, directors, employees, legal counsel and advisors).
>
> b. The Released Claims include any and all present and future claims of any nature or kind whatsoever based in whole or in part on any act or omission, transaction or dealing or other occurrence existing or taking place on or prior to delivery of the Monitor's Certificate or undertaken or completed in connection with or pursuant to the terms of the Approval and Reverse Vesting Order or these CCAA Proceedings, or arising in connection with or relating to the Subscription Agreement, the closing documents, the Applicant's assets, business or affairs, prior dealings with the Applicant, or any agreement, document, instrument, matter or transaction involving the Applicant arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions, with certain standard exclusions (for claims that are not permitted to be released under s. 5.1(2) of the CCAA or any claim resulting from fraud or wilful misconduct) and certain exceptions tailored to this RVO and the Transactions, including the liabilities that are intended to remain in ResidualCo (and are not being released).
>
> c. They effectively include releases between certain of the Released Parties, including (with one express exception for Crossing Bridge) as between the noteholders and the Note Trustee.

20 To satisfy the court that this breadth of release language was not unprecedented, the Company provided examples of the release language from the *Just Energy* and *Harte Gold* cases which contained comparably broad release language. I will begin by stating that just because release language has been approved in the past by this court does not mean that it necessarily will be approved in every case that follows.

21 While it is helpful to consider whether any given release language falls on the spectrum of what has been approved in earlier cases, the third party releases in each case must be individually scrutinized and the circumstances and context in which the approval was provided must be understood. That is in part why I consider it to be important to explain the reason for my approval of the third party releases contained in the Approval and Reverse Vesting Order that was signed on July 26, 2024 in this case. Releases of this breadth would not necessarily be appropriate in every case.

22 The releases in this case are described by the Company to be "an integral component of the Transactions contemplated by the Subscription Agreement and an important feature allowing Tacora to emerge from these proceedings as a "cleaned company" and a going-concern business". This is a function, in part, of the long history of these proceedings and dealings between the parties, that have been described by some as "exhaustive and exhausting". The first of the three sales processes began months before the CCAA filing. The parties have been negotiating over an extended period of time during which their alliances have shifted. Once litigation commenced, there was no shortage of finger pointing and blame laying. Ultimately, significant compromises were made by the secured creditors (whose pre-filing debt and annual debt service was eliminated in exchange for equity and future funding commitments by some), and by some unsecured creditors (Cargill in particular, whose offtake agreement is being replaced).

23 When cases are hard fought and the parties emerge with an agreement and compromise that includes releases so that all can move forward with a clean slate, that is a circumstance in which broader releases of the nature provided for in this case may be appropriate.

24 There is precedent for the application of the *Lydian* factors to the approval of third party releases in favour of the parties to a restructuring, their professional advisors, and their directors and officers in the context of an RVO or other transaction outside of a plan of arrangement: see *Harte Gold*, at para. 79, and *Green Relief Inc. (Re)*, 2020 ONSC 6837, at para. 76.

25 In this case, the *Lydian* factors can be readily established for the release in favour of not only the traditional categories of third parties but also the Investors, the New Investors (some of whom are also unsecured creditors) and the Note Trustee, all of whom have come to the table during this lengthy and difficult reorganization process and were integrally involved in the restructuring process. Some of the relevant factors to consider in approving the releases in this case include that:

a. the Released Parties played a role in some or all of the Pre-Filing Strategic Process, the Solicitation Process, the Sale Process, the CCAA Proceedings, and negotiation of the Subscription Agreement and the contemplated Transactions, which provide for a going concern solution for Tacora's business and represents the best outcome available to Tacora;

b. many of the Released Parties will also be involved in the implementation of the Transactions;

c. the Monitor is of the view that each of the Released Parties contributed meaningfully and was necessary to Tacora's efforts to address its financial difficulties;

d. the Released Parties are a necessary part in the successful restructuring of the Company and, in the case of Tacora's directors and officers, continued in their roles or joined Tacora notwithstanding the increase in risk and scrutiny due to these proceedings;

e. some of the released parties, if sued, would have indemnification claims by the Released Parties against the Administration Charge and the Directors' Charge, the elimination of which would help achieve the purpose of maximizing creditor recovery;

f. the releases are a condition of the Subscription Agreement; while that alone would not be a sufficient reason to approve them, they have been demonstrated for reasons outlined earlier to be fair, reasonable and not unreasonably broad (having regard to the exclusions and exceptions noted); and

g. no one opposed the requested releases; a specific carve out was negotiated for one aspect of the release for Crossing Bridge in respect of certain claims it wishes to preserve under the inter-creditor agreement.

26 It is for these more detailed reasons that the court was prepared to approve and sign the Approval and Reverse Vesting Order on July 26, 2024, which contains the proposed release language that was determined to be reasonably connected to the restructuring to be achieved through the RVO and approved Transactions therein.

Application granted.

Footnotes

1 Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the applicant's factum filed in support of this motion.

2 The court's approval of a reverse vesting structure is not to be construed as an endorsement of the use or efficacy of that structure for tax purposes. That is a matter for CRA and the parties. However, the prospect of preserving those attributes can nonetheless be ascribed value in a transaction, as it was in this case.

End of Document

TAB 10

Court File No. CV-15-10832-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY, THE 2ND
REGIONAL SENIOR JUSTICE	)	DAY OF JUNE, 2016
MORAWETZ	)	

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA PHARMACY (SK) CORP., and TARGET CANADA PROPERTY LLC (collectively the "**Applicants**")

SANCTION AND VESTING ORDER

THIS MOTION, made by the Applicants and the partnerships listed on Schedule "A" hereto (together with the Applicants, the "**Target Canada Entities**") for an order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*: (a) sanctioning the Second Amended and Restated Joint Plan of Compromise and Arrangement dated May 19, 2016 (as amended, varied or supplemented from time to time in accordance with the terms thereof, and together with all schedules thereto, the "**Plan**"), which Plan is attached as Schedule "B" hereto; and (b) vesting all of the Target Canada Entities' right, title and interest in and to the IP Assets (as defined in the Plan) was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of Mark J. Wong sworn May 26, 2016 (the "**Wong Affidavit**"), the Twenty-Seventh Report of Alvarez & Marsal Canada Inc. in its capacity as monitor of the Target Canada Entities (the "**Monitor**") dated May 11, 2016, the

RELEASES

29. **THIS COURT ORDERS AND DECLARES** that the compromises and releases set out in Article 7 of the Plan are approved and shall be binding and effective as at the Plan Implementation Date, provided that the releases in favour of an Employee Trust Released Party shall be effective immediately upon delivery of the Employee Trust Termination Certificate to the Monitor in accordance with the Plan.

30. **THIS COURT ORDERS** that from and after the Plan Implementation Date (and in respect of an Employee Trust Released Party, from and after the delivery of the Employee Trust Termination Certificate to the Monitor) any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any Released Party in respect of all Claims, Propco Unaffected Claims, Property LP Unaffected Claims and matters which are released pursuant to paragraph 29 of this Order and Article 7 of the Plan or discharged, compromised or terminated pursuant to the Plan.

DIRECTORS AND OFFICERS

31. **THIS COURT ORDERS** that the remaining Directors and Officers of the Target Canada Entities (other than the current Directors of TCC or Target Canada Pharmacy (Ontario) Corp.) shall be deemed to have resigned without replacement at the Effective Time on the Plan Implementation Date, unless such Persons affirmatively elect to remain as a Director or Officer in order to facilitate any Plan Transaction Steps in connection with the wind-down of any of the Target Canada Entities.

32. **THIS COURT ORDERS** that the Directors of Target Canada Pharmacy (Ontario) Corp. shall be deemed to have resigned in accordance with Section 6.3(r) of the Plan.

PLAN CHARGES

33. **THIS COURT ORDERS** that each of the Financial Advisor Subordinated Charge, the DIP Lender's Charge, the Liquidation Agent's Charge and Security Interest and the KERP

SCHEDULE "B"
SECOND AMENDED AND RESTATED PLAN

Court File No. CV-15-10832-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA PHARMACY (SK) CORP., and TARGET CANADA PROPERTY LLC (collectively the "**Applicants**")

SECOND AMENDED AND RESTATED JOINT PLAN OF COMPROMISE AND ARRANGEMENT

pursuant to the *Companies' Creditors Arrangement Act*

May 19, 2016

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(v) the Employee Trust Trustee and the Employee Trust Administrator shall be and shall be deemed to be fully and finally released and discharged from all of their respective obligations under the Employee Trust Agreement.

ARTICLE 7
RELEASES

7.1 Plan Releases

(a) On the Plan Implementation Date, each of the Target Canada Entities, NE1 and their respective Directors, Officers, current and former employees, advisors, legal counsel and agents, including the Liquidation Agent, Lazard and Northwest (being referred to individually as a "**Target Canada Released Party**") shall be released and discharged from any and all demands, claims, actions, applications, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Affected Creditor, Propco Unaffected Creditor, Property LP Unaffected Creditor or other Person may be entitled to assert, including any and all Claims in respect of the payment and receipt of proceeds, statutory liabilities of the Directors, Officers and employees of the Target Canada Released Parties and any alleged fiduciary or other duty (whether such employees are acting as a Director, Officer or employee), whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan that are in any way relating to, arising out of or in connection with the Claims, the Business whenever or however conducted, the Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished by the Claims Procedure Order and all claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Target Canada Entities' obligations under the Plan or any related document), all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge (i) any Target Canada Released Party if such Target Canada Released Party is judged by the expressed terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct or (ii) the Directors with respect to matters set out in section 5.1(2) of the CCAA.

(b) On the Plan Implementation Date, the Monitor, A&M, and their respective current and former directors, officers and employees, counsel to the Directors, Pharmacists' Representative Counsel, the Consultative Committee Members and all of their respective advisors, legal counsel and agents (being referred to individually as a "**Third Party Released Party**") shall be released and discharged from any and all demands, claims, actions, applications, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on

account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Affected Creditor, Propco Unaffected Creditor, Property LP Unaffected Creditor or other Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan that are in any way relating to, arising out of or in connection with the Claims, the Business whenever or however conducted, the Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished by the Claims Procedure Order and all claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Monitor's obligations under the Plan or any related document), all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge any Third Party Released Party if such Third Party Released Party is judged by the expressed terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct.

(c) On the Plan Implementation Date, the Plan Sponsor, the Plan Sponsor Subsidiaries, the HBC Entities and their current and former directors, officers and employees and their respective advisors, legal counsel and agents (being referred to individually as a "**Plan Sponsor Released Party**"):

(i) shall not be released hereunder from Landlord Guarantee Claims; and

(ii) shall be released and discharged from any and all demands, claims, actions, applications, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Affected Creditor, Propco Unaffected Creditor, Property LP Unaffected Creditor or other Person (excluding a Landlord Guarantee Creditor in respect of its Landlord Guarantee Claim) may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan that are in any way relating to, arising out of or in connection with the Claims, the Business whenever or however conducted, the Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished by the Claims Procedure Order and all claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Plan Sponsor's obligations under the Plan or any related document), all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge any Plan Sponsor Released Party if such Plan Sponsor Released Party is judged by the expressed terms of a

judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct.

For greater certainty, the Plan Sponsor shall not be released from any indemnity or guarantee provided by the Plan Sponsor in favour of any Director, Officer or employee.

(d) Immediately upon the delivery of the Employee Trust Termination Certificate, the Employee Trust Administrator and its current and former directors, officers and employees, the Employee Trust Trustee, Employee Representative Counsel, the Employee Representatives and all of their respective advisors, legal counsel and agents (being referred to individually as an "**Employee Trust Released Party**", and collectively together with each of the Target Canada Released Parties, the Third Party Released Parties and the Plan Sponsor Released Parties, the "**Released Parties**") shall be released and discharged from any and all demands, claims, actions, applications, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Affected Creditor, Propco Unaffected Creditor, Property LP Unaffected Creditor or other Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan that are in any way relating to, arising out of or in connection with the Claims, the Business whenever or however conducted, the Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished by the Claims Procedure Order or the Employee Trust Claims Resolution Order and all Claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Employee Trust Trustee's and the Employee Trust Administrator's obligations under the Plan or any related document), all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge any Employee Trust Released Party if such Employee Trust Released Party is judged by the expressed terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct.

(e) The Sanction and Vesting Order will enjoin the prosecution, whether directly, derivatively or otherwise, of any Claim, Propco Unaffected Claim, Property LP Unaffected Claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, liability or interest released, discharged, compromised or terminated pursuant to the Plan.

(f) Nothing in the Plan shall be interpreted as restricting the application of Section 21 of the CCAA.

TAB 11

Court File No. CV-16-11566-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	**THURSDAY, THE 8TH**
	)	
JUSTICE HAINEY	)	**DAY OF DECEMBER, 2016**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF RUBICON MINERALS CORPORATION, 0691403 B.C. LTD., 1304850 ONTARIO INC., RUBICON MINERALS NEVADA INC., RUBICON NEVADA CORP., RUBICON ALASKA CORP. AND RUBICON ALASKA HOLDINGS INC.

SANCTION ORDER

THIS MOTION made by Rubicon Minerals Corporation, 0691403 B.C. Ltd., 1304850 Ontario Inc., Rubicon Minerals Nevada Inc., Rubicon Nevada Corp., Rubicon Alaska Holdings Inc. and Rubicon Alaska Corp. (collectively, the "**Applicants**") for an Order (the "**Sanction Order**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), sanctioning the Plan of Compromise and Arrangement dated December 2, 2016, which is attached as Schedule "A" hereto (and as it may be amended, varied, restated and/or supplemented from time to time in accordance with its terms, the "**Plan**"), was heard on December 8, 2016 at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of Julian Kemp sworn November 28, 2016 (the "**Kemp Affidavit**"), the second report (the "**Second Report**") and third report (the "**Third Report**") of Ernst & Young Inc. ("**E&Y**"), in its capacity as monitor of the Applicants (the "**Monitor**"), the Motion Record of ACE INA Insurance Company ("**ACE**") dated November 18, 2016 and the Motion Record of Export Development Canada ("**EDC**") dated November 18, 2016, and on hearing the submissions of counsel for each of the Applicants, the

compromises, settlements, restructurings, recapitalizations or reorganizations effected pursuant to the Plan, and no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any non-competition agreement or obligation, provided that such agreement shall terminate or expire in accordance with the terms thereof or as otherwise agreed by the Applicants and the applicable Persons.

19. **THIS COURT ORDERS** that, from and after the Plan Implementation Date, upon the delivery of the Monitor's Plan Implementation Certificate pursuant to this Sanction Order, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system listed on Schedule "C" hereto shall be expunged and discharged as against all of the Property (as defined in the Initial Order) of the Applicants.

20. **THIS COURT ORDERS AND DECLARES** that the compromises, releases, limitations and injunctions set out in Article 7 of the Plan are hereby approved and shall be binding and effective as at the Plan Implementation Date.

BOARD OF DIRECTORS OF RUBICON

21. **THIS COURT ORDERS AND DECLARES** that those persons listed on Schedule "D" hereto shall be deemed to be appointed as the board of directors of Rubicon on the Plan Implementation Date. Concurrently with the appointment of such directors, all directors serving immediately prior to the Plan Implementation Date shall be deemed to resign (unless they are re-appointed in accordance with this paragraph).

TERMINATION OF THE CCAA PROCEEDINGS

22. **THIS COURT ORDERS AND DECLARES** that, on the Plan Implementation Date, upon the delivery of the Monitor's Plan Implementation Certificate pursuant to this Sanction Order, this CCAA Proceeding shall be terminated.

23. **THIS COURT ORDERS AND DECLARES** that all Orders of the Court made in this CCAA Proceeding shall continue in full force and effect in accordance with their

Schedule "A"

(Plan of Compromise and Arrangement)

Court File No. CV-16-11566-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF RUBICON MINERALS CORPORATION, 0691403 B.C. LTD., 1304850 ONTARIO INC., RUBICON MINERALS NEVADA INC., RUBICON NEVADA CORP., RUBICON ALASKA CORP. AND RUBICON ALASKA HOLDINGS INC.

APPLICANTS

PLAN OF COMPROMISE AND ARRANGEMENT

pursuant to the *Companies' Creditors Arrangement Act*
concerning, affecting and involving

RUBICON MINERALS CORPORATION, 0691403 B.C. LTD., 1304850 ONTARIO INC., RUBICON MINERALS NEVADA INC., RUBICON NEVADA CORP., RUBICON ALASKA CORP. AND RUBICON ALASKA HOLDINGS INC.

December 2, 2016

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ARTICLE 7
RELEASES

7.1 Plan Releases

On the Plan Implementation Date, in accordance with the terms and in the sequence set forth in Section 5.2 hereof, (i) the Applicants, the Applicants' employees and contractors, the Directors and the Officers and (ii) the Monitor, the Monitor's counsel, the Company Advisors, CPPIB and Royal Gold, and each and every present and former affiliate, subsidiary, director, officer, member, partner, employee, auditor, financial advisor, legal counsel and agent of any of the foregoing Persons (each of the Persons named in (i) or (ii) of this Section 7.1, in their capacity as such, being herein referred to individually as a "**Released Party**" and all referred to collectively as "**Released Parties**") shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature, including claims for contribution or indemnity, or rights of subrogation, which any Creditor or other Person may be entitled to assert, whether or not reduced to judgment, liquidated or unliquidated, fixed, contingent, known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter arising, by guarantee, surety or otherwise, and whether or not executory or anticipatory in nature, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the Plan Implementation Date, or that relate to matters relating to implementing the Plan, including distributions pursuant to the Plan on or following the Plan Implementation Date, that constitute or are in any way relating to, arising out of or in connection with any Claims, any Director/Officer Claims and any indemnification obligations with respect thereto, the Surety Bonds, the TD Letter of Credit, any indemnification obligations or subrogation rights or assignment rights relating to or arising out of payments made in respect of the Surety Bonds and/or the TD Letter of Credit, any Equity Claim, the Equity Interests, the Stock Option Plans, the Rubicon Common Shares, any payments in respect of Allowed Affected Claims, the business and affairs of the Applicants whenever or however conducted, the administration and/or management of the Applicants, the Transaction, the Plan, the CCAA Proceeding, or any document, instrument, matter or transaction involving any of the Applicants taking place in connection with the Transaction or the Plan (referred to collectively as the "**Released Claims**"), and all Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, all to the fullest extent permitted by Applicable Law; provided that nothing herein will waive, discharge, release, cancel or bar: (v) the right to enforce the Applicants' obligations under the Plan, including, without limitation, obligations under the CPPIB Amended Loan Agreement, the Royal Gold Royalty Agreements, and any agreements entered into relating to the foregoing, from and after the Plan Implementation Date; (w) the Applicants from or in respect of any Unaffected Claim; (x) a Released Party if the Released Party is adjudged by the express terms of a judgment rendered on a final determination on the merits to have committed fraud or wilful misconduct; (y) an Applicant in connection with any misrepresentation in connection with the New Financing; or (z) any Director or Officer from any Director/Officer Claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

7.2 Limitation on Insured Claims

Notwithstanding anything to the contrary in Section 7.1 hereof, Insured Claims shall not be compromised, released, discharged, cancelled or barred by the Plan, provided that from and after the Plan Implementation Date, any Person having an Insured Claim shall be irrevocably limited to recovery in respect of such Insured Claim solely from the proceeds of the applicable Insurance Policies, and Persons with an Insured Claim shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries in respect thereof from the Applicants, any Director or Officer or any other Released Party (including, for certainty, in respect of any deductible amounts that may be payable in respect of such an Insured Claim), other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies.

7.3 Injunctions

All Persons are permanently and forever barred, estopped, stayed and enjoined, from and after the Effective Time, with respect to any and all Released Claims, from (i) commencing, conducting or continuing in any manner, directly or indirectly, any actions, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property; (iii) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or (iv) taking any actions to interfere with the implementation or consummation of the Plan; provided, however, that the foregoing shall not apply to the enforcement of any obligations under the Plan. For greater certainty, the provisions of this Section 7.3 shall apply to Insured Claims in the same manner as Released Claims, except to the extent that the rights of such Persons to enforce such Insured Claims against an insurer in respect of an Insurance Policy are expressly preserved pursuant to Section 3.5(c) and/or Section 7.2 hereof, and provided further that, notwithstanding the restrictions on making a claim that are set forth in Sections 3.5(c) and 7.2 hereof, any claimant in respect of an Insured Claim that has duly filed with the Monitor a Proof of Claim Form by the Claims Bar Date shall be permitted to file a statement of claim in respect thereof to the extent necessary solely for the purpose of preserving such claimant's ability to pursue such Insured Claim against an insurer in respect of an Insurance Policy in the manner authorized pursuant to Section 3.5(c) and/or Section 7.2 hereof.

ARTICLE 8
COURT SANCTION

8.1 Application for Sanction Order

If the Required Majorities of the Affected Creditors in each Voting Class approve the Plan, the Applicants shall apply for the Sanction Order on or before the date set for the hearing of the Sanction Order or such later date as the Court may set.

TAB 12

Court File No. CV-19-00633392-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	MONDAY, THE 29TH
	)	
CHIEF JUSTICE MORAWETZ	)	DAY OF JUNE, 2020

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION, AND LYDIAN U.K. CORPORATION LIMITED

Applicants

ORDER

(Re: Plan Sanction and Implementation)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order (the "**Sanction and Implementation Order**"), among other things, approving and sanctioning the Applicants' Plan of Arrangement dated June 30, 2020 (the "**Plan**"), a copy of which is attached as Schedule "A" hereto, proceeded by way of videoconference due to the COVID-19 crisis on this day.

ON READING the affidavit of Edward A. Sellers sworn June 24, 2020 (the "**Sellers Sanction Affidavit**"), the affidavit of Edward A. Sellers sworn June 28, 2020 (the "**Sellers Supplementary Sanction Affidavit**") and the exhibits thereto, the Fifth Report of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as Monitor of the Applicants (the "**Monitor**") dated June 16, 2020 (the "**Fifth Report**"), the Sixth Report of the Monitor dated June 22, 2020 (the "**Sixth Report**"), the Seventh Report of the Monitor dated June 25, 2020 (the "**Seventh Report**") and on hearing the submissions of counsel for the Applicants, the Monitor, Orion Capital Management, Resource Capital Fund VI LP (which voted against the Plan), Osisko Bermuda Limited and those other parties listed on the counsel slip;

23. **THIS COURT ORDERS** that any amounts remaining in the Monitor's accounts after payment of all Administrative Expense Costs in accordance with the Subscription Agreement and this Order shall be paid by the Monitor to the Applicant.

COST REIMBURSEMENT CHARGE

24. **THIS COURT ORDERS** that the Investors shall be entitled to the benefit of and are hereby granted a charge (the "**Cost Reimbursement Charge**") on the Property, which Cost Reimbursement Charge shall not exceed an aggregate amount of C$3,000,000, as security for the Company's obligation to reimburse the Investors in accordance with the terms of the Subscription Agreement. The Cost Reimbursement Charge shall have the priority set out in paragraphs 46 and 49 of the Initial Order.

25. **THIS COURT ORDERS** that paragraph 46 of the Initial Order shall be deleted and replaced with the following:

> "46. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge, the Transaction Fee Charge, the DIP Charge, and the Cost Reimbursement Charge (collectively, with the KERP Charge, the "**Charges**"), as among them, as against the Property other than the KERP Funds, shall be as follows:
>
> *First* – the Administration Charge (to the maximum amount of US$1,000,000);
>
> *Second* – the Directors' Charge (to the maximum amount of US$5,200,000);
>
> *Third* – the Transaction Fee Charge (to the maximum amount of US$5,600,000);
>
> *Fourth* – the DIP Charge; and
>
> *Fifth* – the Cost Reimbursement Charge (to the maximum amount of C$3,000,000)."

RELEASES

26. **THIS COURT ORDERS** that effective upon the delivery of the Monitor's Certificate to the Applicant and the Investors, (a) the Applicant and ResidualCo and their respective present and former directors, officers, employees, legal counsel and advisors, (b) the Monitor and its legal counsel, and their respective present and former directors, officers, partners, employees and advisors, (c) the Trustee and their respective present and former directors, officers, partners,

employees and advisors, and (d) the Investors and other parties to the Restructuring Support Agreement as set out in Schedule "A", their affiliates and their respective present and former directors, officers, employees, legal counsel and advisors, (the Persons listed in (a), (b), (c) and (d) being collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims whatsoever (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, offer, investment proposal, dealing, or other fact, matter, occurrence or thing existing or taking place prior to the delivery of the Monitor's Certificate, or undertaken or completed in connection with or pursuant to the terms of this Order or these CCAA Proceedings, or arising in connection with or relating to the Subscription Agreement, the closing documents, the Applicant's assets, business or affairs, prior dealings with the Applicant, or any agreement, document, instrument, matter or transaction involving the Applicant arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that nothing in this paragraph shall waive, discharge, release, cancel or bar (i) any claim for fraud or wilful misconduct, (ii) any claim against ResidualCo in respect of the Excluded Liabilities transferred pursuant to the Closing, (iii) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or (iv) any present or future claim of CrossingBridge Advisors, LLC, including any of its affiliates or agents, arising out of or relating to an intercreditor agreement dated January 9, 2023 (as amended or supplemented from time-to-time, the "**Initial Intercreditor Agreement**"), a collateral agency and intercreditor agreement dated as of May 11, 2023 (as amended or supplemented from time-to-time, the "**Second Intercreditor Agreement**" and, together with the Initial Intercreditor Agreement, the "**Intercreditor Agreement**"), (and any side letter, agreement, indenture or document existing prior to the CCAA filing date and relating directly to the Intercreditor Agreement), except for any such claim against the persons identified in part (a) or (b) of this paragraph 26.