SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-24-00722252-00CL **DATE:** April 28, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: NEVADA COPPER, INC. et al v. KfW IPEX-Bank GmbH

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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Other:

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ENDORSEMENT OF JUSTICE STEELE:

[1] Nevada Copper, Inc. (the "Foreign Representative") brings a motion under Part IV of the *Companies' Creditors Arrangement Act* for:

a. Recognition of the Debtors' Plan and the U.S. Bankruptcy Court's Plan Confirmation Order;

b. A release in favour of the current and former directors and officers of Nevada Copper Corp., a Canadian-resident ultimate parent of each of the Debtors;

c. The authority to dissolve Nevada Copper Corp ("NCU") in accordance with B.C. corporate law;

d. Approval of the fees, disbursements and activities of the Information Officer and its counsel and a release in favour of those parties; and

e. Termination of this Part IV proceeding upon the occurrence of the Plan's Effective Date.

[2] No person opposes the relief sought.

[3] Any capitalized terms used in this endorsement that are not defined herein have the meaning set out in the Foreign Representative's factum.

Should the Court recognize the Debtors' Plan in the U.S. Bankruptcy Court's Plan Confirmation Order?

[4] Section 49(1) of the CCAA gives the Court broad powers to "make any order it considers appropriate" where a foreign main proceeding has been recognized under Part IV of the CCAA, if the court is satisfied that it is necessary to protect the debtor company's property or the interests of a creditor. Further section 50 of the CCAA provides that an order under Part IV "may be made on any terms and conditions that the Court considers appropriate in the circumstances."

[5] In *Zochem Inc. (Re)*, 2016 ONSC 958, 263 A.C.W.S. (3d) 21, at para. 15, this Court stated that "[t]he purpose of Part IV of the CCAA is to effect cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada."

[6] Section 52 of the CCAA provides that:

> If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

[7] A Canadian court would generally only refuse to recognize an order of another court where section 61(2) of the CCAA applies. Section 61(2) of the CCAA provides that "[n]othing in this Part prevents the court from refusing to do something that would be contrary to public policy."

[8] The requested order is not contrary to public policy.

[9] As noted by the Foreign Representative, in the context of cross-border restructurings, Canadian courts regularly exercise their jurisdiction under sections 49 and 50 of the CCAA to recognize U.S. court orders that confirm a plan under the Bankruptcy Code: e.g., *Re GNC Holdings, Inc. et al.*, Recognition Order of Conway J. dated October 16, 2020 (Ont Sup Ct J (Commercial List)), Court File No. CV-20-00642970-00CL; *Re BBGI US, Inc.*

et al, Recognition Order of Hainey J. dated March 26, 2021 (Ont Sup Ct J (Commercial List)), Court File No. CV-20-00647463-00CL.

[10] The court in *Xerium Technologies Inc. (Re)*, 2010 ONSC 3974, at para. 26 and 27 considered the factors set out in *Re Babcock & Wilcox Canada Ltd.*, 18 C.B.R.(4th) 157, at para. 21. At para. 28 the court in *Xerium* noted the following U.S. bankruptcy principles that applied when considering the plan, which also underlie the CCAA:

a. It is made in good faith;

b. It does not breach any applicable law;

c. It is in the interests of the Chapter 11 Debtors' creditors and equity holders; and

d. It will not likely be followed by the need for liquidation or further financial reorganization of the Chapter 11 Debtors.

[11] As noted at para. 41 of the Foreign Representative's factum, the U.S. Bankruptcy Court found that (a) the Debtors' good faith was evident from the facts and record; (b) the Debtors and the Plan itself complied with all applicable provisions of the Bankruptcy Code; and (c) the Debtors demonstrated that the Plan is in the best interests of their creditors and equity holders. In addition, the Foreign Representative noted, at para. 42 of its factum, that Canadian creditors are treated fairly and equitably under the Plan, and the Information Officer supports recognition.

[12] The Canadian recognition order is the last outstanding condition precedent to the Plan proceeding.

[13] I am satisfied that the Confirmation Order and Plan should be recognized.

Should the D&O Release be granted?

[14] The Foreign Representative seeks a release of each of the current and former directors and officers of NCU, which would apply to any and all claims arising from or relating to the Debtors or their businesses, other than claims for fraud or wilful misconduct and claims not permitted to be released under s. 5.1(2) of the CCAA.

[15] The Foreign Representative's claim for this release is made before this court, not the U.S. Bankruptcy Court because (i) NCU is a Canadian company whose directors and officers are subject to Canadian jurisdiction; and (ii) as set out further below, the requested D&O Release is not permitted under U.S. law but is permitted under Canadian law.

[16] The U.S. Bankruptcy Court was made aware of the Foreign Representative's intention to seek the D&O Release before this Court.

[17] The creditors have also been aware since the end of January 2025 of the Foreign Representative's intention of seeking third party releases for the directors and officers from this Court. No creditor objection has been received by the Debtors.

[18] The Debtors are not aware of any claim against the directors and officers. The release is being sought in the unlikely event of future claims.

[19] The Court has jurisdiction to grant the D&O Release under sections 49 and 50 of the CCAA, which give the Court broad jurisdiction to "make any order that it considers appropriate" in a Part IV proceeding.

[20] The seminal decision of the Court of Appeal in *Metcalfe & Mansfield Alternative Investments II Corp., (Re)*, 2008 ONCA 587, sets out the factors and policy objectives for the court to consider. I am satisfied for the reasons set out at para. 57 of the Foreign Representative's factum that the D&O Release meets the factors and policy objectives set out in *Metcalfe*.

[21] The D&O Release sought in Canada for the NCU directors and officers is broader than the D&O release obtained in the US proceedings. Releases similar to the one sought in respect of NCU's directors and officers were, until recently, common in U.S. plans. However, the Supreme Court of the United States' 2024 *Purdue Pharma* decision held that third party releases like the D&O Release are not permitted under the Bankruptcy Code. This is different from Canadian law, where such releases are often granted.

[22] I am satisfied that is appropriate in the circumstances to grant the D&O Release.

Should NCU's dissolution be authorized?

[23] The Foreign Representative seeks to dissolve NCU after the Effective Date. At such time NCU is not expected to have any further role.

[24] NCU is a company incorporated under the B.C. *Business Corporations Act*, S.B.C. 2002, C. 57 (the "BCBCA"). Section 324(1) of the BCBCA provides an efficient means of dissolving B.C.-incorporated companies in appropriate circumstances. It provides that on an application made in respect of company, the court may order that the company be liquidated or dissolved if "the court otherwise considers it just and equitable to do so."

[25] As noted by the Foreign Representative the reference in the BCBCA to the court is a reference to the Supreme Court of British Columbia. However, under section 42 of the CCAA, the Court has jurisdiction to exercise authority under corporate statutes of "any province," like the BCBCA.[1] In the past, section 42 of the CCAA has been relied upon in the context of oppression: *Lightstream Resources Ltd. (Re)*, 2016 ABQB 664, at paras. 52-54; *Stelco Inc. (Bankruptcy), Re.*, [2005] O.J. No. 1171, at paras. 52-54.

[26] In *Stelco* the Court of Appeal, interpreting section 20 of the CCAA (now, section 42 of the CCAA), adopted an expansive interpretation of that provision. The Court of Appeal interpreted section 42 of the CCAA to give the court in a CCAA proceeding authority to apply, together with the CCAA, provisions of any statute of a province that provides for the sanction of compromises or arrangements between a company and its shareholders. The Court of Appeal stated, at para. 53:

> The CBCA is legislation that "makes provision for the sanction of compromises or arrangements between a company and its shareholders or any class of them." Accordingly, the powers of a judge under s. 11 of the CCAA may be applied together with the provisions of the CBCA, including the oppression remedy provisions of that statute. I do not read s. 20 [now, s. 42] as limiting the application of outside legislation to the provisions of such legislation dealing specifically with the sanctioning of compromises and arrangements between the company and its shareholders. The grammatical structure of s. 20 mandates a broader interpretation and the oppression remedy is, therefore, available to a supervising judge in appropriate circumstances.

[1] Section 42 of the CCAA provides: The provisions of this Act may be applied together with the provisions of any Act of Parliament, or of the legislature of any province, that authorizes or makes provision for the sanction of compromises or arrangements between a company and its shareholders or any class of them.

[27] As noted, in *Stelco* the Court of Appeal used this interpretation of section 20 of the CCAA (now s. 42) in determining that the CCAA court could apply the oppression remedy provisions of the *Canada Business Corporations Act*. The Court of Appeal noted, at para. 52, that "[s]ection 20 [now s. 42] of the CCAA offers a gateway to the oppression remedy and other provisions of the CBCA and similar provincial statutes." *Stelco* is binding authority on this court. I agree with the Foreign Representative that the same principles apply to the court's powers of dissolution. The Foreign Representative notes that this interpretation is consistent with the importance of the single proceedings model in ensuring that all issues relating to a debtor's insolvency are decided before a single court to facilitate an "expeditious, efficient and economical" resolution of a debtor's challenges. I agree.

[28] The court has jurisdiction to grant this administrative relief under sections 49 and 50 of the CCAA.

[29] In the instant case, the dissolution order would facilitate the wind-down of NCU's estate. No creditors would be prejudiced.

[30] This court has exercised its CCAA jurisdiction in other cases to grant dissolution relief under provincial corporate legislation: *Just Energy Group Inc. et al*, 2021 ONSC 7630.

[31] I agree with the Foreign Representative that NCU's dissolution under this Court's order provides a cost-effective means of facilitating NCU's wind-down. The alternative would require the Plan Administrator applying to the B.C. Court for this relief in a standalone application, which would add costs without any corresponding benefit.

[32] I am satisfied that it is appropriate to grant this dissolution relief.

Should this Part IV proceeding be terminated, and the Information Officer's fees and activities approved?

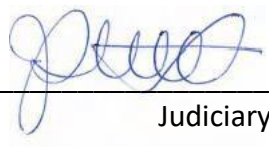
[33] Upon the Information Officer filing a Termination Certificate confirming that the Effective Date has occurred, the Foreign Representative seeks to terminate this Part IV recognition proceeding.

[34] In connection with the termination, the Foreign Representative also seeks a release in favour of the Information Officer and its counsel and approval of their fees and activities.

[35] I agree with the Foreign Representative that termination is appropriate once the Termination Certificate is filed. Once the Effective Date occurs there will be no further need for these proceedings. Granting the approval today avoids the cost of another motion.

[36] I am also satisfied that it is appropriate to approve the Information Officer's (and its counsel's) activities, fees and disbursements.

[37] Order attached.



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Judiciary