

**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 NEVADA COPPER, INC.,
NEVADA COPPER CORP., 0607792 B.C. LTD., LION IRON CORP.,
NC FARMS LLC AND NC DITCH COMPANY LLC

APPLICATION OF NEVADA COPPER, INC.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

FACTUM OF THE FOREIGN REPRESENTATIVE
(Motion for Recognition of Sale Order,
returnable October 2, 2024)

September 30, 2024

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PART I – NATURE OF THE MOTION

1. Nevada Copper, Inc. is the foreign representative with respect to the Chapter 11 proceedings of itself and its affiliates: Nevada Copper Corp., 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC. On June 21, 2024, this Court recognized the Chapter 11 proceedings of these Debtors as a foreign main proceeding under Part IV of the CCAA. This is the Foreign Representative's third motion before this Court since that time.

2. In this motion, the Foreign Representative seeks this Court's assistance with implementing the outcome of the Debtors' court-supervised sale process—an Asset Purchase Agreement for substantially all of the Debtors' assets. The Foreign Representative's draft recognition order contains two forms of relief: (i) recognition of the Bankruptcy Court's Sale Order, which approved the Asset Purchase Agreement under U.S. law; and (ii) certain ancillary relief designed to implement the Asset Purchase Agreement in Canada, including vesting the Canadian purchased assets, if any, free and clear of all claims and encumbrances, and authorizing the Canadian Debtors to change their names.

3. The Asset Purchase Agreement represents a going-concern solution to the Debtors' challenges and provides the maximum value for the Debtors' assets for the benefit of creditors, employees and the Debtors' other stakeholders. Following a hearing on the merits, the Bankruptcy Court found that the Debtors' sale process, which this Court previously recognized, was robust and extensive, and that the Asset Purchase Agreement represents the highest or otherwise best offer for the Debtors' assets.

4. It is appropriate in these circumstances for this Court to recognize the Sale Order and assist with implementing the Asset Purchase Agreement in Canada.

PART II – THE FACTS

A. Chapter 11 Cases

5. The Debtors’ businesses are mining copper and other minerals as well as operating a processing plant that refines copper ore into copper concentrate. The mining operations focus on the development of the Pumpkin Hollow project, a mining development located about 90 km southeast of Reno, Nevada. Pumpkin Hollow is an advanced-stage copper property that contains substantial reserves and resources, including not only copper, but gold, silver and iron magnetite.¹

6. In April 2022, one of the mine ramps failed, delaying critical ore delivery and impacting operations at the Debtors’ mine. This, in turn, eliminated the Debtors’ only source of operating income at that time. While the Debtors worked diligently to restart their mining operations and pursue a sale of their business, they were ultimately unable to maintain continuous processing operations necessary to declare commercial production.²

7. As a result of their strained liquidity and an unsuccessful out-of-court marketing process, on June 10, 2024, the Debtors filed voluntary petitions for relief commencing cases before the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”) under Chapter 11 of the *Bankruptcy Code*³ (the “**Chapter 11 Cases**”).⁴

¹ Affidavit of Gregory J. Martin sworn September 25, 2024 (“**Martin Affidavit**”), para 29, Exhibit “A” to the Affidavit of Melissa Losco sworn September 25, 2024 (“**Losco Affidavit**”), Tab 2 of the Foreign Representative’s Motion Record (“**MR**”), p 26.

² Martin Affidavit, paras 77-79, Exhibit “A” to the Losco Affidavit, MR, Tab 2, pp 41-42.

³ 11 U.S.C. §§ 101–1532.

⁴ Losco Affidavit, para 5, MR, Tab 2, p 12.

8. One of the Debtors' overarching goals in their Chapter 11 Cases was to commence a sale process with the aim of achieving a going-concern sale of their business that maximizes value for their stakeholders. In furtherance of this objective, the Debtors sought, and, on July 22, 2024, the Bankruptcy Court granted, an order (the "**Bidding Procedures Order**") that authorized the Debtors to commence a sale process and set out the procedures for that process.⁵

9. On August 9, in accordance with the terms of the Bidding Procedures Order, which contemplated the Debtors designating a potential stalking horse bid, Nevada Copper, Inc. and Nevada Copper Corp. (the "**Sellers**") entered into an asset purchase agreement (the "**Asset Purchase Agreement**") with Southwest Critical Materials LLC (the "**Buyer**") for the purchase and sale of substantially all of the Sellers' assets.⁶

10. On August 21, the Bankruptcy Court entered an order (the "**Stalking Horse Order**") that approved the Asset Purchase Agreement for purposes of acting as the stalking horse bid in the Debtors' sale process, along with certain bid protections contained therein.⁷

B. Canadian Recognition Proceedings

11. Under Part IV of the CCAA, this Court has recognized the Chapter 11 Cases as foreign main proceedings and granted relief with respect to the recognition.

⁵ Losco Affidavit, para 9, MR, Tab 2, p 12; Bidding Procedures Order, Exhibit "B" to the Losco Affidavit, MR, Tab 2, p 59.

⁶ Losco Affidavit, para 10, MR, Tab 2, p 13; Asset Purchase Agreement, Exhibit "F" to the Losco Affidavit, MR, Tab 2, 144.

⁷ Losco Affidavit, para 10, MR, Tab 2, p 13; Stalking Horse Order, Exhibit "D" to the Losco Affidavit, MR, Tab 2, p 110.

12. On June 21, 2024, Justice Penny heard the Foreign Representative's recognition application. He granted an initial recognition order and a supplemental order that together, among other things: (i) recognized the Foreign Representative as the foreign representative of the Debtors in respect of the Chapter 11 Cases; (ii) recognized the United States as the Debtors' centre of main interest; and (iii) recognized the Chapter 11 Cases as "foreign main proceedings" (as defined in section 45 of Part IV of the CCAA); and (iv) appointed Alvarez & Marsal Canada Inc. as information officer in these proceedings.⁸

13. Since that initial recognition hearing, the Foreign Representative has brought two motions before this Court, both of which related to the Debtors' sale process. Justice Cavanagh heard those motions and, on July 24 and August 30, granted orders recognizing, respectively, the Bidding Procedures Order and the Stalking Horse Order, among other things.⁹

C. The Sale Process

14. The Debtors' sale process has now concluded, the Asset Purchase Agreement was declared the successful bid, and the Bankruptcy Court entered the Sale Order (defined below) approving the Asset Purchase Agreement. The next three sections describe the sale process, the Asset Purchase Agreement and the Sale Order, respectively.

15. The Debtors' sale process was extensive. Moelis & Company LLC, an investment bank retained for purposes of running the sale process, reached out to over 75 strategic and financial

⁸ Losco Affidavit, para 7, MR, Tab 2, p 12.

⁹ Losco Affidavit, paras 9-10, MR, Tab 2, pp 12-13.

potential bidders to solicit interest in the Debtors' assets and business.¹⁰ Throughout the sale process, the Debtors and Moelis made efforts to generate interest for potential bidders, including by providing them with access to information necessary or helpful to formulate a competing qualified bid.¹¹ The Debtors ultimately received seven written indications of interest from potential bidders.¹²

16. After the Bankruptcy Court entered the Stalking Horse Order, the Debtors remained in active discussions with three other potential bidders. The Debtors, along with Moelis and the Debtors' other advisors, worked extensively with those parties over several months, responding to information requests and discussing the business and potential sale transactions. The Debtors arranged and hosted site visits for potential bidders to facilitate their operational and technical diligence.¹³

17. Despite active engagement from potential bidders, including in the days leading up to the bid deadline of September 6, 2024, as set out in the Bidding Procedures Order, none of the potential bidders ultimately elected to submit a qualified bid.¹⁴ Accordingly, the planned auction was cancelled, and the Asset Purchase Agreement was declared the successful bid. On

¹⁰ Declaration of Zul Jamal dated September 24, 2024 ("**Jamal Declaration**"), para 8, Exhibit "J" to the Losco Affidavit, MR, Tab 2, p 449.

¹¹ Jamal Declaration, paras 10-11, Exhibit "J" to the Losco Affidavit, MR, Tab 2, p 450.

¹² Jamal Declaration, para 8, Exhibit "J" to the Losco Affidavit, MR, Tab 2, p 449.

¹³ Jamal Declaration, paras 10-11, Exhibit "J" to the Losco Affidavit, MR, Tab 2, p 450.

¹⁴ Jamal Declaration, para 12, Exhibit "J" to the Losco Affidavit, MR, Tab 2, p 450.

September 9, the Debtors filed a public notice announcing that cancellation and declaration to their stakeholders.¹⁵

D. The Asset Purchase Agreement

18. As noted, the Asset Purchase Agreement served as the stalking horse bid in the sale process under the Bankruptcy Court’s Stalking Horse Order, which this Court previously recognized on August 30. The Asset Purchase Agreement provides for the going-concern sale of substantially all of the Debtors’ assets that relate to their mining business in Nevada.

19. Importantly, the scope of Canadian stakeholders whose interests are affected by the Asset Purchase Agreement is small. Among other things:

- (a) Employees. Nevada Copper Corp., a Canadian Debtor, employs three individuals who reside in Canada (out of the Debtors’ approximately 76 total employees).¹⁶ The Asset Purchase Agreement permits, but does not compel, the Buyer to make offers of employment to those employees, provided that any such offers must, among other things, be on terms and conditions consistent with applicable law (including Canadian employment law).¹⁷

¹⁵ Notice of Cancellation and Designation filed September 9, 2024, Exhibit “G” to the Losco Affidavit, MR, Tab 2, p 314.

¹⁶ Martin Affidavit, para 23(d), Exhibit “A” to the Losco Affidavit, MR, Tab 2, p 25.

¹⁷ Asset Purchase Agreement, s 1.1 (“Laws” definition) and s 6.1, Exhibit “F” to the Losco Affidavit, MR, Tab 2, pp 164 and 211.

- (b) Purchased Assets. The Debtors are not aware of any tangible Purchased Assets that are located in Canada.¹⁸ The Debtors' only known material Canadian assets are bank accounts with Bank of Montreal that are used primarily to satisfy Nevada Copper Corp.'s payroll obligations to its three Canadian employees and are funded through the Debtors' operations in Nevada.¹⁹ In any event, cash and cash equivalents are "Excluded Assets" under the Asset Purchase Agreement.²⁰
- (c) Conditions Precedent. Importantly for this motion, the Asset Purchase Agreement provides as a condition precedent to closing in favour of the Buyer that this Court recognize the Sale Order by granting the proposed recognition order in the form attached as Tab 3 to the Foreign Representative's motion record.²¹

20. For ease of reference, certain key terms of the Asset Purchase Agreement are summarized in the following table:

¹⁸ Asset Purchase Agreement, s 3.4, Exhibit "F" to the Losco Affidavit, MR, Tab 2, p 178.

¹⁹ Martin Affidavit, para 100(e), Exhibit "A" to the Losco Affidavit, MR, Tab 2, p 48.

²⁰ Asset Purchase Agreement, s 1.1 ("Excluded Assets" definition, para (a)), Exhibit "F" to the Losco Affidavit, MR, Tab 2, p 157.

²¹ Asset Purchase Agreement, s 7.4, Exhibit "F" to the Losco Affidavit, MR, Tab 2, p 213.

Term	Description ²²
Buyer	Southwest Critical Materials LLC, an indirect, wholly owned subsidiary of Kinterra Battery Metals Mining Fund, L.P. and an affiliate of Kinterra Capital Corp. ²³
Sellers	Nevada Copper, Inc. and Nevada Copper Corp. ²⁴
Purchase Price	US\$128,000,000, subject to certain adjustments in accordance with the Asset Purchase Agreement, plus the Buyer's assumption of certain Assumed Liabilities as set forth in the Asset Purchase Agreement. ²⁵
Purchased Assets	Substantially all of the Sellers' assets relating to the Business, excluding the Excluded Assets. ²⁶ <u>The Debtors are not aware of any tangible Purchased Assets that are located in Canada.</u> ²⁷
Excluded Assets	Among other things: ²⁸ (a) all cash and cash equivalents; (b) all Excluded Contracts;

²² Capitalized terms used in this table that are not otherwise defined have the meanings given to them in the Asset Purchase Agreement. In the event of any conflict between the descriptions provided in this table and the terms of the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall govern.

²³ Asset Purchase Agreement, preamble, Exhibit "F" to the Losco Affidavit, MR, Tab 2, p 149.

²⁴ Asset Purchase Agreement, preamble, Exhibit "F" to the Losco Affidavit, MR, Tab 2, p 149.

²⁵ Asset Purchase Agreement, s 2.1-2.6, Exhibit "F" to the Losco Affidavit, MR, Tab 2, p 162.

²⁶ Asset Purchase Agreement, s 1.1 ("Purchased Assets" definition, "Excluded Assets" definition), Exhibit "F" to the Losco Affidavit, MR, Tab 2, pp 157 and 168.

²⁷ Asset Purchase Agreement, s 3.4, Exhibit "F" to the Losco Affidavit, MR, Tab 2, p 178.

²⁸ Asset Purchase Agreement, s 1.1 ("Excluded Assets" definition), Exhibit "F" to the Losco Affidavit, MR, Tab 2, p 157.

Term	Description ²²
	<p>(c) all Accounts Receivable (whether billed or unbilled), rebates, notes, chattel paper, and negotiable instruments of the Sellers;</p> <p>(d) all intercompany accounts or notes receivable that are owing from any Seller or any of its Affiliates;</p> <p>(e) all cash collateral, cash proceeds from letters of credit, bonds, and other collateral posted by or on behalf of the Sellers;</p> <p>(f) except as otherwise provided, rights under insurance policies, indemnities, letters of credit or guarantees;</p> <p>(g) any shares of capital stock or other equity interest of any Seller or any of its subsidiaries; and</p> <p>(h) the Purchase Price and all proceeds of Excluded Assets.</p>
Assumed Liabilities	<p>Among other things:²⁹</p> <p>(a) Liabilities relating to the Purchased Assets and the Business from and after the Closing Date;</p> <p>(b) Cure Costs;</p> <p>(c) Liabilities relating to Transferred Permits and mine operation or safety compliance matters;</p> <p>(d) Environmental Liabilities and Reclamation Liabilities;</p> <p>(e) Liabilities flowing from Assigned Contracts from and after the Closing Date;</p>

²⁹ Asset Purchase Agreement, s 1.1 (“Assumed Liabilities” definition), Exhibit “F” to the Losco Affidavit, MR, Tab 2, p 150.

Term	Description ²²
	<p>(f) Liabilities that arise from and after the Closing Date with respect to the Transferred Employees (excluding certain U.S. statutory liabilities);</p> <p>(g) Liabilities relating to certain Employee Plans arising from and after the Closing Date;</p> <p>(h) all KERP/KEIP Obligations;</p> <p>(i) Liabilities in connection with any costs of litigation in respect of certain Purchased Assets arising on or after Closing;</p> <p>(j) all other Liabilities related to the Project Site arising from and after Closing;</p> <p>(k) all royalties and other obligations that run with the Purchased Real Property and arise after the Closing Date under certain contracts; and</p> <p>(l) all Liabilities specifically listed in a schedule to the Asset Purchase Agreement.</p>
Excluded Liabilities	<p>Among other things:³⁰</p> <p>(a) all Liabilities arising from the Transactions;</p> <p>(b) all Liabilities related to any Excluded Contract;</p> <p>(c) all Liabilities related to any Excluded Asset;</p> <p>(d) all Liabilities relating to Taxes except as otherwise set out in the Asset Purchase Agreement;</p>

³⁰ Asset Purchase Agreement, s 1.1 (“Excluded Liabilities” definition), Exhibit “F” to the Losco Affidavit, MR, Tab 2, p 159.

Term	Description ²²
	<p>(e) all Trade Payables relating to any Excluded Contract;</p> <p>(f) all Liabilities, other than KERP/KEIP Obligations, that are:</p> <p style="padding-left: 40px;">(i) related to employees of the Sellers who are not Transferred Employees; (ii) related to Transferred Employees arising on or before the Closing Date; or (iii) related to any Employee Plan that is not an Assumed Plan;</p> <p>(g) all Liabilities in respect of indebtedness of the Sellers or any of their Affiliates;</p> <p>(h) any Liabilities under any Contract that is not an Assigned Contract or any Assigned Contract to the extent arising or in existence on or prior to the Closing Date;</p> <p>(i) Liabilities related to Environmental Laws and certain U.S. health and safety laws related to pre-Closing operations; and</p> <p>(j) certain identified mechanics liens.</p>
Employees	<p>The Buyer may make offers of employment to any employees of the Business to commence on the Closing Date on an “at will” basis.³¹ Any such offers of employment shall, among other things: (i) be on terms and conditions consistent with applicable Laws³² for a position having a title and duties that the Offered Employee had with the Sellers as of the Petition Date; (ii) be at the same salary that the Offered Employee had on the Petition Date; (iii) provide similar benefits for the Offered Employee as provided to similarly situated</p>

³¹ Asset Purchase Agreement, s 6.1, Exhibit “F” to the Losco Affidavit, MR, Tab 2, p 211.

³² The Asset Purchase Agreement defines “Laws” inclusively of Canadian law: Asset Purchase Agreement, s 1.1 (“Laws” definition), Exhibit “F” to the Losco Affidavit, MR, Tab 2, p 164.

Term	Description ²²
	employees of the Buyer; and (iv) be made not later than 10 Business Days prior to the Closing Date. ³³ As noted, Nevada Copper Corp.'s three employees are located in Canada. ³⁴

E. The Sale Order

21. The Bankruptcy Court considered the Asset Purchase Agreement during a hearing on the merits held September 25. On September 27, the Bankruptcy Court entered an order approving the Asset Purchase Agreement (the “**Sale Order**”).³⁵ That order is referred to by its full name as the *Order (I) Approving the Sale of Assets Free and Clear of all Encumbrances, and Interests, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief*.

22. The Debtors worked diligently with their stakeholders prior to that hearing to resolve the comments, objections and concerns that parties raised about the Asset Purchase Agreement and the Sale Order. While thirteen parties filed objections to the Debtors’ motion for the Sale Order, only three remained outstanding by the start of the hearing (one of which the Debtors resolved

³³ Asset Purchase Agreement, s 6.1, Exhibit “F” to the Losco Affidavit, MR, Tab 2, p 211.

³⁴ Martin Affidavit, para 23(d), Exhibit “A” to the Losco Affidavit, MR, Tab 2, p 25.

³⁵ Sale Order, Exhibit “A” to the Supplemental Affidavit of Melissa Losco sworn September 27, 2024 (“**Supplemental Losco Affidavit**”), Supplemental Motion Record dated September 27, 2024 (“**Supp MR**”), Tab 1, p 4.

during the hearing itself).³⁶ The Bankruptcy Court expressly overruled all remaining objections.³⁷

23. In granting the Sale Order, the Bankruptcy Court held that the Debtors' sale process was open, fair and afforded a full, fair and reasonable opportunity for interested parties to make a better offer than the Asset Purchase Agreement.³⁸ It held further that the consideration provided under the Asset Purchase Agreement was fair, reasonable and constitutes the highest or otherwise best offer for the Purchased Assets.³⁹

PART III – THE ISSUES

24. The only issue to be determined in this motion is whether the Court should grant an order under section 49 of the CCAA: (i) recognizing the Sale Order in Canada; and (ii) providing certain ancillary relief designed to implement the Asset Purchase Agreement in Canada, including vesting the Sellers' Canadian Purchased Assets (if any) free and clear of all claims and encumbrances and authorizing the Canadian Debtors to change their names post-closing.

PART IV – THE LAW

A. Part IV of the CCAA

25. The 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. Orders under

³⁶ Third Report of the Information Officer dated September 30, 2024 (“**Third Report**”), s 5.1.

³⁷ Sale Order, para 3, Exhibit “A” to the Supplemental Losco Affidavit, Supp MR, Tab 1, p 21.

³⁸ Sale Order, para N, Exhibit “A” to the Supplemental Losco Affidavit, Supp MR, Tab 1, p 11.

³⁹ Sale Order, paras I and 6, Exhibit “A” to the Supplemental Losco Affidavit, Supp MR, Tab 1, pp 10 and 21.

this part are intended, among other things, to promote cooperation between the courts with those of foreign jurisdictions. Such orders are also intended to promote fair and efficient administration of cross-border insolvencies, which protects the interests of debtors, creditors, and other interested persons.⁴⁰

26. In the context of Part IV, the Court has the authority to apply any legal or equitable rules necessary, provided they are not inconsistent with the provisions of the CCAA.⁴¹ Furthermore, section 52(1) of the CCAA requires that if an order recognizing a foreign proceeding is made—as it has been here—the Court “shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.”⁴²

B. This Court should grant the Sale Recognition Order

27. The Foreign Representative seeks an order recognizing the Bankruptcy Court’s Sale Order in Canada and providing ancillary relief that is tailored to assist in implementing the terms of the Asset Purchase Agreement and the Sale Order in Canada. That ancillary relief includes: (i) vesting the Sellers’ Purchased Assets that are located in Canada, if any, to the Buyer free and clear of all claims and encumbrances; and (ii) authorizing Nevada Copper Corp. (the Canadian Seller) and the Sellers’ Canadian affiliates to change their names following closing, notwithstanding any contrary provision in applicable federal or provincial legislation.⁴³

⁴⁰ *Zochem Inc. (Re)*, [2016 ONSC 958, para 15](#); *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“CCAA”), [s 44](#).

⁴¹ CCAA, [s 61](#).

⁴² CCAA, [s 52\(1\)](#).

⁴³ Draft Recognition Order, paras 6-12 and 13, MR, Tab 3, pp 457-459.

28. Section 49 of the CCAA provides that this Court may make any order that it considers appropriate if it is satisfied that it is necessary for the protection of a debtor company's property or that the order is in the interests of creditors.⁴⁴ Section 50 of the CCAA further provides that an order made under Part IV of the CCAA, including pursuant to section 49, may be made on any terms and conditions that the court considers appropriate.⁴⁵

29. When a Canadian court considers whether it should recognize a foreign order, it should consider, among other things, (i) the principles of comity and the need to encourage cooperation between courts of various jurisdictions; (ii) the need to accord respect to foreign bankruptcy and insolvency legislation unless it diverges radically from the processes in Canada; (iii) whether stakeholders will be treated equitably regardless of the jurisdiction to which they reside; and (iv) the importance of allowing enterprise to reorganize globally, including allowing one jurisdiction to lead the principal administration of the enterprise's reorganization.⁴⁶

30. In cross-border insolvencies, Canadian and U.S. bankruptcy courts routinely seek to complement, coordinate and, where appropriate, accommodate the proceedings of the other court in order to enable cross-border enterprises to successfully restructure. Comity and cooperation are cornerstones of this process. Without coordination between the Canadian and U.S. courts,

⁴⁴ CCAA, [s 49](#).

⁴⁵ CCAA, [s 50](#).

⁴⁶ *Babcock & Wilcox Canada Ltd., Re*, [18 CBR \(4th\) 157](#) (Ont. Sup. Ct. J. (Commercial List)), [para 21](#); *Re Xerium Technologies Inc.*, [2010 ONSC 3974](#), [paras 26-27](#).

Debtors and their stakeholders face the risks of inconsistent decisions and general uncertainty as to the direction and effect of competing restructuring proceedings.⁴⁷

31. The Sale Order and the Asset Purchase Agreement represent the going-concern path forward that the Debtors and many of their stakeholders have diligently pursued since the start of the Chapter 11 Cases. After a hearing on the merits, the Bankruptcy Court determined that the Debtors' sale process was robust, diligent and extensive, and that the consideration provided under the Asset Purchase Agreement—the outcome of that sale process—is fair, reasonable and constitutes the highest or otherwise best offer for the Purchased Assets.⁴⁸ The Asset Purchase Agreement is supported by the DIP lenders, each of the Debtors' major secured creditors, the Official Committee of Unsecured Creditors and the Information Officer.⁴⁹ It provides significant benefits for the majority of the Debtors' creditors, employees and other stakeholders.

32. Nothing in the Sale Order or the underlying Asset Purchase Agreement is inconsistent with any order that may be granted under the CCAA or is otherwise inconsistent with Canadian public policy.⁵⁰ Canadian courts regularly exercise their jurisdiction under sections 49 and 50 of the CCAA to recognize Chapter 11 bankruptcy orders that approve sale transactions of a

⁴⁷ *Babcock & Wilcox Canada Ltd., Re*, [18 CBR \(4th\) 157](#) (Ont. Sup. Ct. J. (Commercial List)), [paras 9-10](#).

⁴⁸ Sale Order, paras I, N and 6, Exhibit "A" to the Supplemental Losco Affidavit, Supp MR, Tab 1, pp 10, 11 and 21.

⁴⁹ Jamal Declaration, para 15, Exhibit "J" to the Losco Affidavit, MR, Tab 2, p 451; Third Report, ss 6.3, 9.1 and 9.2.

⁵⁰ CCAA, [s 61\(2\)](#); *Hartford Computer Hardware, Inc.*, [2012 ONSC 964](#), paras 16-17.

substantially similar nature as the Sale Order.⁵¹ This Court has also included language vesting the debtor's Canadian assets free and clear of all claims and encumbrances when granting such recognition orders.⁵²

33. Additionally, it is a common feature of plenary proceedings under the CCAA for Canadian courts to approve purchase agreements that result from court-supervised sale processes.⁵³ The Foreign Representative accepts that it is not necessary to establish that approval of the Asset Purchase Agreement would be available in a plenary CCAA proceeding for the Bankruptcy Court's Sale Order to be recognized. But to provide additional comfort to the Court as to the comparability of the Bankruptcy Court's Sale Order to orders approved under the CCAA, the Foreign Representative outline briefly below how the Sale Order would easily meet approval standards in a CCAA plenary proceeding.

34. The prevailing test for the approval of a purchase agreement in a plenary context is the *Soundair* test, which has been codified through the six factors set out in section 36(3) of the

⁵¹ See, e.g., Order of Justice Cavanagh dated June 28, 2024, [*In the Matter of KidKraft, Inc. et al.*, Court File No. CV-24-00720035 \(Ont. Sup. Ct. J. \[Commercial List\]\)](#); Order of Justice Conway dated September 15, 2022, [*In the Matter of Sungard Availability Services \(Canada\) Ltd./Sungard, Services de Continuite des Affaires \(Canada\) Ltee*, Court File No. CV-22-00679628-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#).

⁵² Order of Justice Cavanagh dated June 28, 2024, paras 10-15, [*In the Matter of KidKraft, Inc. et al.*, Court File No. CV-24-00720035 \(Ont. Sup. Ct. J. \[Commercial List\]\)](#).

⁵³ See, e.g., Endorsement of Justice Conway dated May 12, 2023 re: Approval and Vesting Order, [*In the Matter of a Plan or Compromise of LoyaltyOne, Co.*, Court File No. CV-23-00696017-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#); Endorsement of Justice Osborne dated January 4, 2024, [*In the Matter of a Plan of Compromise or Arrangement of Validus Power Corporation et al.*, Court File No. CV-23-00705215-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#).

CCAA.⁵⁴ Each of those section 36(3) factors, with appropriate modifications to refer to the Part IV context, has been met in the circumstances:

- (a) Whether the process leading to the proposed sale or disposition was reasonable in the circumstances. Following a hearing on the merits for the Sale Order, the Bankruptcy Court found that the Debtors' sale process was fair, reasonable and appropriate, and resulted in a robust, diligent and extensive process that was open, fair and afforded a full, fair and reasonable opportunity for interested parties to make a better offer than the Asset Purchase Agreement.⁵⁵
- (b) Whether the Information Officer supported the process leading to the proposed sale or disposition. The Information Officer notes in its Third Report that the Debtors conducted a thorough marketing process for their assets as approved by both the Bankruptcy Court and this Court, and which included consultation with the Debtors' major stakeholders.⁵⁶ The Information Officer further concluded that the order the Foreign Representative seeks on this motion is fair and reasonable in the circumstances, and it recommends that this Court grant such order.⁵⁷
- (c) Whether a report was filed by an appropriate professional stating that in their opinion the sale or disposition would be more beneficial to the creditors than a

⁵⁴ *Royal Bank of Canada v Soundair Corp.*, [1991] 4 OR (3d) 1, 83 DLR (4th) 76 (Ont. C.A.), para 16; CCAA, s 36(3).

⁵⁵ Sale Order, para N, Exhibit "A" to the Supplemental Losco Affidavit, Supp MR, Tab 1, p 11.

⁵⁶ Third Report, para 6.2(a).

⁵⁷ Third Report, para 6.3.

sale or disposition under a liquidating bankruptcy. In the declaration of Zul Jamal, a Managing Director of Moelis & Company LLC, the Debtors' investment bank in the sale process, which was filed in support of the Debtors' motion for the Sale Order, Mr. Jamal stated his belief that the Asset Purchase Agreement will provide a greater recovery for the Debtors' estates than would any available alternative. Mr. Jamal further notes his belief that the Asset Purchase Agreement represents the best, and only currently actionable, opportunity to realize the value of the Debtors' assets on a going concern basis and will allow the Debtors' business to continue as a going concern, minimize disruption to the Debtors' stakeholders and counterparties to assigned contracts and preserve the jobs of a significant number of the Debtors' remaining employees.⁵⁸

- (d) The extent to which creditors were consulted. Consultation with major creditors was a central feature of the Debtors' sale process. The Bidding Procedures Order established a list of "Consultation Parties," including the DIP lenders, each of the Debtors' major secured creditors, the Official Committee of Unsecured Creditors and the Information Officer.⁵⁹ The Debtors and their investment bank, Moelis, kept those Consultation Parties apprised of the status of the sale process and

⁵⁸ Jamal Declaration, para 16, Exhibit "J" to the Losco Affidavit, MR, Tab 2, p 451.

⁵⁹ Bidding Procedures Order, Exhibit A, p 3, "Noticing", Exhibit "B" to the Losco Affidavit, MR, Tab 2, p 72.

consulted with the Consultation Parties prior to entering into the Asset Purchase Agreement.⁶⁰

- (e) The effects of the proposed sale or disposition on the creditors and other interested parties. Importantly, the scope of known Canadian stakeholders who are affected by the Asset Purchase Agreement and the Sale Order is small. The Debtors are not aware of any tangible assets located in Canada that would be “Purchased Assets” under the Asset Purchase Agreement.⁶¹ Additionally, only three of the Debtors’ approximately 76 employees are located in Canada, all three of whom provide management and accounting functions jointly for all of the Debtors.⁶²
- (f) Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value. In granting the Sale Order, the Bankruptcy Court found that the consideration provided under the Asset Purchase Agreement is fair, reasonable and constitutes the highest or otherwise best offer for the Purchased Assets.⁶³

35. In sum, recognition of the Sale Order—and the ancillary relief designed to implement the Asset Purchase Agreement in Canada—is necessary to ensure that the CCAA’s purposes are

⁶⁰ Jamal Declaration, para 13, Exhibit “J” to the Losco Affidavit, MR, Tab 2, p 450.

⁶¹ Asset Purchase Agreement, s 3.4, Exhibit “F” to the Losco Affidavit, MR, Tab 2, p 178.

⁶² Martin Affidavit, para 23(d), Exhibit “A” to the Losco Affidavit, MR, Tab 2, p 25.

⁶³ Sale Order, paras I and 6, Exhibit “A” to the Supplemental Losco Affidavit, Supp MR, Tab 1, pp 10 and 21.

achieved and that the Debtors' ultimate going-concern solution for their business can be fully implemented. It is appropriate in these circumstances for this Court to recognize the Sale Order and grant the implementing ancillary relief.

PART V – RELIEF REQUESTED

36. The Foreign Representative respectfully requests that this Court grant the order in the form substantially at Tab 3 of the Foreign Representative's motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Tony DeMarinis / Jeremy Opolsky / Mike Noel

Lawyers for Nevada Copper, Inc., Nevada Copper Corp., 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC

SCHEDULE A – LIST OF AUTHORITIES

1. *Zochem Inc. (Re)*, [2016 ONSC 958](#)
2. *Babcock & Wilcox Canada Ltd., Re*, [18 CBR \(4th\) 157](#) (Ont. Sup. Ct. J. (Commercial List))
3. *Re Xerium Technologies Inc.*, [2010 ONSC 3974](#)
4. *Hartford Computer Hardware, Inc.*, [2012 ONSC 964](#)
5. Order of Justice Cavanagh dated June 28, 2024, [In the Matter of KidKraft, Inc. et al., Court File No. CV-24-00720035 \(Ont. Sup. Ct. J. \[Commercial List\]\)](#)
6. Order of Justice Conway dated September 15, 2022, [In the Matter of Sungard Availability Services \(Canada\) Ltd./Sungard, Services de Continuite des Affaires \(Canada\) Ltee, Court File No. CV-22-00679628-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#)
7. Endorsement of Justice Conway dated May 12, 2023 re: Approval and Vesting Order, [In the Matter of a Plan or Compromise of LoyaltyOne, Co., Court File No. CV-23-00696017-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#)
8. Endorsement of Justice Osborne dated January 4, 2024, [In the Matter of a Plan of Compromise or Arrangement of Validus Power Corporation et al., Court File No. CV-23-00705215-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#)
9. *Royal Bank of Canada v Soundair Corp.*, [\[1991\] 4 OR \(3d\) 1, 83 DLR \(4th\) 76](#) (Ont. C.A.)

SCHEDULE B – TEXT OF STATUTES, REGULATIONS & BY-LAWS

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

PART IV – CROSS-BORDER INSOLVENCIES

PURPOSE

Purpose

44 The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
- (d) the protection and the maximization of the value of debtor company's property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

INTERPRETATION

Definitions

45 (1) The following definitions apply in this Part.

[...]

foreign main proceeding means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests. (*principale*)

Centre of Debtor Company's Main Interests

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests.

RECOGNITION OF FOREIGN PROCEEDING

Application for recognition of a foreign proceeding

46 (1) A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

Documents that must accompany application

(2) Subject to subsection (3), the application must be accompanied by

- (a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;

(b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and

(c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

Documents may be considered as proof

(3) The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

Other evidence

(4) In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.

Translation

(5) The court may require a translation of any document accompanying the application.

[...]

Other Orders

49 (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

(a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and Other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

Terms and Conditions of Orders

50 An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

[...]

OBLIGATIONS

Cooperation — Court

52 (1) 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.

Cooperation — Other Authorities in Canada

(2) If any proceedings under this Act have been commenced in respect of a debtor company and an order recognizing a foreign proceeding is made in respect of the debtor company, every person who exercises powers or performs duties and functions under the proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Forms of Cooperation

(3) For the purpose of this section, cooperation may be provided by any appropriate means, including

- (a) the appointment of a person to act at the direction of the court;
- (b) the communication of information by any means considered appropriate by the court;
- (c) the coordination of the administration and supervision of the debtor company's assets and affairs;
- (d) the approval or implementation by courts of agreements concerning the coordination of proceedings; and
- (e) the coordination of concurrent proceedings regarding the same debtor company.

MISCELLANEOUS PROVISIONS

[...]

Court not prevented from applying certain rules

61 (1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

Public policy exception

(2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

AND IN THE MATTER OF NEVADA COPPER CORP., NEVADA COPPER, INC., 0607792 B.C. LTD., LION
IRON CORP., NC FARMS LLC AND NC DITCH COMPANY LLC
APPLICATION OF NEVADA COPPER CORP. UNDER SECTION 46 OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

<div>ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST Proceeding commenced at TORONTO</div>
<div>FACTUM OF THE FOREIGN REPRESENTATIVE (Motion for Recognition of Sale Order, returnable October 2, 2024)</div>
<div>Torys LLP 79 Wellington St. W., 30th Floor Box 270, TD South Tower Toronto, ON M5K 1N2 Tony DeMarinis (LSO#: 29451Q) 416.865.8162 tdemarinis@torys.com Jeremy Opolsky (LSO#: 60813N) 416.865.8117 jopolsky@torys.com Mike Noel (LSO#: 80130F) 416.865.7378 mnoel@torys.com Lawyers for Nevada Copper, Inc., Nevada Copper Corp., 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC</div>