

VANCOUVER
AUG 06 2015
COURT OF APPEAL
REGISTRY

Court of Appeal File Nos. CA42990 & 42991

COURT OF APPEAL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36 as amended
and
IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985,
c. C-44, as amended
and
IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

BETWEEN:

NORTH AMERICAN TUNGSTEN CORPORATION LTD.

**Respondent
(Petitioner)**

AND:

GLOBAL TUNGSTEN AND POWDERS CORP.

Appellant

AND:

**ALVAREZ & MARSAL CANADA INC., CALLIDUS CAPITAL CORPORATION,
WOLFRAM BERGBAU UND HUTTEN AG, and GOVERNMENT OF THE
NORTHWEST TERRITORIES**

Respondents

**MOTION BOOK FOR LEAVE TO APPEAL
AND
MOTION BOOK FOR STAY OF EXECUTION**

Global Tungsten and Powders Corp.

**North American Tungsten Corporation
Ltd.**

**Kieran E. Siddall
Scott Boucher**

**John R. Sandrelli
Jordan Schultz**

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Written reasons for judgment of Butler J. given July 30, 2015

[not yet available]

NO. S-154746
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985 c. C-44, as amended

AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

ORDER MADE AFTER APPLICATION

)	THE HONOURABLE)	
BEFORE))	27 / Jul / 2015
)	MR. JUSTICE BUTLER)	

ON THE APPLICATION of the Petitioner, North American Tungsten Corporation Ltd., coming on for hearing at Vancouver, British Columbia on this day and on hearing John Sandrelli and Jordan Schultz, counsel for North American Tungsten Corporation Ltd., and those counsel listed in **Schedule "A"** hereto; and upon reading the materials filed herein, including the Notice of Application of the Petitioner (the "**NATC Application**"), dated July 23, 2015, the Affidavit #10 of Dennis Lindahl, sworn July 24, 2015 and the Notice of Application of Global Tungsten & Powders Corp. ("**GTP**"), dated July 24, 2015 (the "**GTP Application**");

THIS COURT ORDERS AND DECLARES that:

1. By refusing to pay its post-filing obligations to the Petitioner on the basis of an alleged right of set-off, GTP is in violation of paragraphs 15 and 16 of the Amended and Restated Initial Order, made July 9, 2015;

2. GTP shall make immediate payment of all invoices issued in respect of shipments made by the Petitioner on or after June 9, 2015 and on or before July 22, 2015, as and when the same become due;
3. The balance of the relief sought by the Petitioner, as set forth in the NATC Application, be and is hereby adjourned to be heard before this Court on July 30, 2015;
4. The relief sought by GTP, as set forth in the GTP Application, be and is hereby adjourned to be heard before this Court on July 30, 2015;
5. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioner and GTP, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

By the Court.

Registrar

Signature of Jordan Schultz
Lawyer for North American Tungsten Corporation Ltd.

Signature of Kieran Siddall
Lawyer for Global Tungsten & Powders Corp.

Schedule "A"

(List of Counsel)

Name of Counsel	Appearing For
John Sandrelli and Jordan Schultz	North American Tungsten Corporation Ltd.
Kibben Jackson	Alvarez & Marsal Canada Inc., the Monitor
William E. J. Skelly	Callidus Capital Corporation
Lance Williams	Government of Northwest Territories
Angela Crimeni	Wolfram Bergbau und Hütten AG
Kieran Siddall and Scott Boucher	Global Tungsten & Powders Corp.

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

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R.S.C. 1985 c. C-44, as amended

AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

ORDER MADE AFTER APPLICATION

DENTONS CANADA LLP
BARRISTERS & SOLICITORS
250 Howe Street, 20th Floor
Vancouver, BC V6C 3R8
Tel.: (604) 687-4460
Attention: John Sandrelli

File No. 508753-89

NO. S-154746
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985 c. C-44, as amended

AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

ORDER MADE AFTER APPLICATION

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

)	THE HONOURABLE)	
BEFORE))	30 / Jul / 2015
)	MR. JUSTICE BUTLER)	

ON THE APPLICATIONS of the Petitioner, North American Tungsten Corporation Ltd. ("**NATC**"), and Global Tungsten & Powders Corp. ("**GTP**"), coming on for hearing at Vancouver, British Columbia on this day and on hearing John Sandrelli and Jordan Schultz, counsel for North American Tungsten Corporation Ltd., and those counsel listed in **Schedule "A"** hereto;

THIS COURT ORDERS AND DECLARES that:

1. GTP has a valid right of legal set-off (the "**GTP Set-off Right**") with respect to any amounts it owes to NATC under the supply agreement executed by GTP and NATC dated December 19, 2013 against amounts owed by NATC to GTP under the loan agreement executed by GTP and NATC dated December 19, 2013;
2. GTP is stayed from exercising the GTP Set-off Right during the Stay Period, as defined in the Amended and Restated Initial Order made July 9, 2015, as the

same may be amended and extended from time to time by further order of this Court;

3. GTP pay the costs of all parties appearing at these applications, to be assessed at Scale B; and
4. Endorsement of this Order by counsel appearing on this application, other than counsel for NATC and GTP, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of John Sandrelli
Lawyer for North American Tungsten Corporation Ltd.

Signature of Kieran Siddall
Lawyer for Global Tungsten & Powders Corp.

By the Court.

Registrar

Schedule "A"

(List of Counsel)

COUNSEL	APPEARING FOR:
John Sandrelli and Jordan Schultz	North American Tungsten Corporation Ltd.
Vicki Tickle	Alvarez & Marsal Canada Inc., the Monitor
William E. J. Skelly	Callidus Capital Corporation
Lance Williams	Government of Northwest Territories
Angela Crimeni and David Brown	Wolfram Bergbau and Hütten AG
Kieran Siddall and Scott Boucher	Global Tungsten and Powders Corp.

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AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

ORDER MADE AFTER APPLICATION

DENTONS CANADA LLP
BARRISTERS & SOLICITORS
250 Howe Street, 20th Floor
Vancouver, BC V6C 3R8
Tel.: (604) 687-4460
Attention: John Sandrelli

File No. 508753-89

This is the 4th affidavit
of Dennis M. Lindahl in this case
and was made on 02 / Jul / 2015

NO. S-154746
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985 c. C-44, as amended

AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

AFFIDAVIT

I, **DENNIS M. LINDAHL**, of 1640 – 1188 West Georgia Street, Vancouver, British Columbia, businessperson, SWEAR (OR AFFIRM) THAT:

1. I am the chief financial officer and a director of North American Tungsten Corporation Ltd., the petitioner in this proceeding ("**NATC**" or the "**Company**"), and as such have personal knowledge of the matters deposed to in this Affidavit except where I depose to a matter based on the information from an informant I identify, in which case, I believe that both the information from the informant and the resulting statement are true.
2. I am authorized to make this Affidavit on behalf of the Petitioner in support of the relief sought in the Notices of Application filed in the above-captioned proceedings seeking approval of an extension of the stay of proceedings to July 17, 2015, and interim financing (the "**Notices of Application**").
3. On June 9, 2015, this Court granted an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The Initial Order granted a stay of proceedings to July 8, 2015.
4. In the time since the Initial Order, NATC has, amongst other things:

- (a) Taken steps to stabilize the business after the CCAA filing;
- (b) Engaged in discussions with other key stakeholders to these proceedings, including the Government of the Northwest Territories with respect to NATC's reclamation obligations;
- (c) Subject to Court approval and authorization, entered into a term sheet with Comsup Commodities Inc. ("**Comsup**") for interim lending (the "**Comsup Term Sheet**") for a non-revolving demand credit facility to a maximum amount of \$3,000,000.00;
- (d) Developed an operating plan to manage the Company's cashflow through a process that will allow the Company to present a plan of arrangement to creditors;
- (e) Had discussions with Callidus with respect to potential interim financing; and
- (f) Had discussions with the Court-appointed Monitor regarding a potential sale and investment solicitation process (a "**SISP**").

Steps to Stabilize Business and Engage with Stakeholders

5. Since the Initial Order, the Company has engaged in discussions with various stakeholders, including:

- (a) trade creditors and secured creditors, to advise of the filing, and discuss the Company's plan for continued operation and a potential reorganization;
- (b) suppliers, to negotiate and secure ongoing supply to support post-filing operations;
- (c) NATC's two customers, to assure of ongoing operations, ability to deliver product in the normal course, and arrange for prompt payment of shipments to assist the Company in meeting its post filing obligations; and
- (d) employees, regarding the status of mining operations, the necessity for short term and permanent layoffs given NATC's financial difficulty, to preserve the overall business.

6. Through these discussions, the Company's stakeholders have, overall, been supportive. The Company has been able to retain employees necessary to continue

scaled back operations. Despite NATC's inability to pay pre-filing debt, the Petitioner has been able to negotiate arrangements with most of its suppliers to ensure the continued provision of goods and services with minimal disruption to the business. Lastly, NATC's customers continue to order product in the ordinary course. As a result, the Petitioner has been able to stabilize its business post filing, however give the circumstances described below, its cashflow has been impacted by a change in timing of accounts receivable as detailed below.

7. As set out in my previous affidavit, the Company experienced an urgent and unanticipated cashflow issue on or around June 25th, 2015. The particulars of this issue are set out in more detail in my third affidavit, but in short the issue was caused when the existing payment terms that NATC had in place with Global Tungsten & Powders Corp. ("**GTP**"), which facilitated payment of invoices within 5 days of shipment through a factoring agreement with Royal Bank of Scotland plc. ("**RBS**"), were unexpectedly terminated by RBS. GTP subsequently determined it could not accelerate its payment schedule to similar terms, and reverted to 30 day payment terms as provided for in the supply agreement.

8. This created an urgent US \$1.26 million gap in NATC's anticipated cashflow, resulting from the approximate three-week delay in receipt of payments from GTP shipments.

9. Around the same time, NATC received the signed Comsup Term Sheet to provide \$3 million in interim financing. Given the impact on working capital of the delay in receipt of payments from GTP, the Company intended to seek urgent approval of the Comsup Term Sheet and a super-priority charge on June 29, 2015, for an initial advance of \$500,000 to be made that week. The Company anticipated seeking approval for the balance of the loan during the following week of July 6, 2015.

10. However, approval of the Comsup Term Sheet was strongly opposed by Callidus Capital Corporation ("**Callidus**"), the first secured lender on the Cantung Mine assets. Given that opposition, between June 26th and June 29th the Company engaged in extensive good faith negotiations with Callidus to determine if there were any practical alternatives to the Comsup Term Sheet.

11. As a result of those initial negotiations, Callidus agreed to advance \$500,000 on a short term basis under its existing facility to address the Company's urgent cashflow needs that week. In return, the Company adjourned its application to seek approval of the Comsup Term Sheet to July 7, 2015.

12. Going forward, WBH (who has agreed to 5 business day payment terms) has agreed to purchase additional ore in place of GTP for a period of time. This will help

address some of the near-term cashflow issues resulting from the GTP issue. However, discussions with WBH and GTP are continuing, and the Company is pursuing additional alternative arrangements.

13. Nevertheless, NATC still urgently requires an additional \$1 million in order to address the balance of the cashflow gap noted above. As a result, the Company currently has no alternative but to proceed with its application to approve the Comsup Term Sheet on July 7. However, NATC continues to negotiate with Callidus in an effort to conclude an alternative solution with them prior to that date.

14. The Company has advised Comsup of the above situation, who remain supportive and prepared the fund under the Comsup Term Sheet if a solution cannot be reached with Callidus.

15. Notwithstanding the impact on working capital of the delay in receipt of payments from GTP, NATC has been meeting the majority of its post-filing obligations as they become due, with any delay in payables intended to be satisfied once interim financing is in place. If the Comsup Term Sheet is approved by the Court, or another financing arrangement with Callidus is approved or implemented to address the Company's urgent cashflow issues, I anticipate the Company will continue to meet its post filing obligations, as per the projected cashflow.

Discussions with GNWT Regarding Reclamation Security

16. As set out in my first affidavit, NATC's Water License (as defined in my first affidavit) includes a requirement that NATC provide GNWT with sufficient security to pay for any necessary reclamation of the lands and waters used in its mining operations.

17. Prior to the CCAA proceedings, the amount of security required under the Water License was fixed at \$11.7 million. As at the filing date, the Company had provided security for this amount by: (a) putting \$6.2 million in cash in trust with Computershare, and (b) providing the GNWT with \$5.5 million in promissory notes, secured by a first charge over the Mactung Property.

18. Also prior to the CCAA proceedings, the Company applied for an amendment to its water license to allow the Company to implement a dry stack tailings management system. As part of the amendment process, the governing water board (the MacKenzie Valley Land and Water Board, or "**MVLWB**") reevaluated the amount required to reclaim the Cantung Mine site.

19. As set out in my previous affidavit, on March 2, 2015, the MVLWB issued its recommendation to GNWT to approve the amendment to the Water License, but

determined that, within 90 days of GNWT approval, NATC must post reclamation security in the amount of \$27.95 million.

20. As set out in my earlier affidavit, NATC believes the amount of security recommended by the MVLWB is too high. In particular, a significant portion of the security amount relates to certain potential issues around reclamation of Tailings Pond 4, which NATC believes can be stabilized and reclaimed for a fraction of the amount estimated by MVLWB.

21. NATC plans to complete a study to establish that the current amount included for reclamation of Tailings Pond 4 is unnecessary in an effort to reduce the overall reclamation amount. If NATC is successful in reaching an arrangement with GNWT and MVLWB to reduce the amount of reclamation security, it will greatly enhance the long term viability of the Cantung Mine.

22. Nevertheless, given the timing restriction, GNWT approved the amended Water License on June 12, 2015. However, GNWT further confirmed that it is not bound by the 90 day deadline for NATC to post the security amount, and that it plans to take the necessary time to ensure any form of security is in an acceptable form and with appropriate conditions.

23. Now shown to me and attached hereto as **Exhibit "A"** is a copy of a letter from the GNWT Minister of Environment and Natural Resources confirming the foregoing.

Operating Plan and Plan of Arrangement

24. As noted in my initial affidavit, NATC's financial difficulties have been caused by a variety of factors outside of its control, the most significant of which is the recent fall in APT market prices. Since September, 2014, APT prices have fallen from US \$350 per MTU to US \$222 per MTU, which has significantly impaired the Company's cashflow.

25. If APT prices remain at their current level, it is not financially feasible to continue mining at the Cantung Mine beyond the end of October or early November. As a result, NATC's current plan is to continue Cantung operations to the end of October, 2015, and then implement a care and maintenance program to reduce overhead costs until market prices recover.

26. Nevertheless, despite the prevailing market, due to NATC's reduced cash operating expenses, including staff reductions, utilizing supplies on hand and not replenishing supplies where possible, NATC expects Cantung operations to generate positive cashflow during this timeframe.

27. Given this, and based on current projections, NATC believes an orderly transition to care and maintenance of Cantung will be more efficient, and preserve greater value for stakeholders, than an accelerated transition to care and maintenance.

28. In addition, an orderly wind down of underground mining activities will allow the Company to undertake a staged disposition of its underground mining equipment through October, 2015. It is anticipated the proceeds of sale of these dispositions will, subject to an appropriate hold-back on account of any interim financing and the Court-ordered priority charges, be paid to Callidus. It is anticipated that the dispositions will significantly reduce the amount owing to Callidus, without disturbing the underlying mill and power generation capabilities which are needed during care and maintenance and for any reclamation work.

29. Lastly, NATC intends to continue its efforts to reconfigure and utilize the existing mill facilities for tailings reprocessing and progressive reclamation. While further analysis is needed, I currently estimate that a viable plan to restart Cantung operations in the spring for tailings reprocessing could be developed if APT prices recover to at least the \$300 per MTU level.

30. Now shown to me and attached hereto as **Exhibit "B"** is a copy of the projected cashflow together with a summary schedule, based on an orderly transition to care and maintenance at the end of October, 2015.

31. Now shown to me and attached hereto as **Exhibit "C"** is a copy of the projected cashflow together with a summary schedule, based on an accelerated transition to a care and maintenance.

32. The cashflows attached as **Exhibits "B"** and **"C"** were prepared in anticipation of coming to a resolution with Callidus and pursuing a consensual path forward including the provision of interim financing by Callidus. If such a resolution is not reached, the cashflows will require adjustment to reflect the arrangements made with Comsup, assuming such arrangements are approved by the Court, which would likely include the removal of the principal and interest payments to Callidus and some adjustment for financing costs.

33. Now shown to me and attached hereto as **Exhibit "D"** is a comparison of the two cashflow summaries described above.

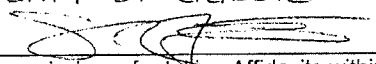
34. In addition to normal operating expenses, the anticipated cashflow includes two anticipated capital expenditures which the Company believes will enhance the value of these assets for the benefit of stakeholders. The details of these, and why NATC believes they are warranted at this time, are as follows:

- (a) NATC plans to spend approximately \$1 million to do certain drilling work and begin collection of environmental data for the permitting process at the Mactung Property. Given the seasonal nature of this work, if it is not commenced by early August, the work cannot be started until next year, which would set the project timeline back a full year and have a material impact on its value. As a result, NATC believes this expenditure is necessary and will enhance stakeholder value.
- (b) As noted above, the Company also anticipates undertaking a further study at a cost of approximately \$400,000 to assist in reducing the Cantung Mine reclamation security amount. If successful this will enhance the viability of the Cantung Mine.

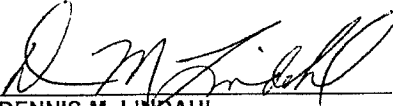
35. Going forward, during this period to the end of October, 2015, NATC intends to develop and carry out a SISP, in order to identify either long term investor(s), or purchaser(s) of some or all of its assets, or some combination thereof. NATC anticipates finalizing the terms of a SISP, in consultation with Callidus and other stakeholders, over the next two weeks, and anticipates seeking court approval of a process by July 17, 2015.

36. For the reasons set out above, NATC continues to work in good faith and with due diligence towards preparing a plan of arrangement for its creditors.

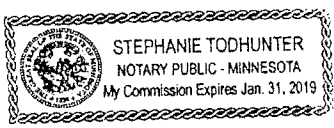
SWORN (OR AFFIRMED) BEFORE ME at
 Vancouver, BC, on 2/07/2015.
 State of minnesota
 County of dakota



 A Commissioner for taking Affidavits within

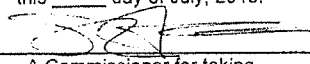


 DENNIS M. LINDAHL

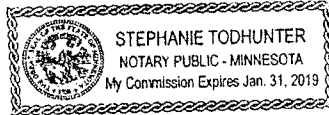


This is Exhibit "B" referred to in the Affidavit of
DENNIS M. LINDAHL sworn before me at

this 2 day of July, 2015.



A Commissioner for taking
Affidavits within _____



North American Tungsten Corporation
 Cash Flow Summary
 June 29, 2015
 All figures are in CAD

Base Case - Operations Continue to the end of October, then Care and Maintenance

	Period June-09-15 to October-23-15 Total	Cantung	Reclamation	Maclung	Corporate	Restructuring	Financing	Total	
Collection of accounts receivable	\$ 23,111,470	\$ 23,111,470	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 23,111,470	86.3%
Interim financing proceeds	3,000,000	-	-	-	-	-	3,000,000	3,000,000	11.2%
Other receipts	667,898	667,898	-	-	-	-	-	667,898	2.5%
Total Receipts	26,779,368	23,779,368	-	-	-	-	3,000,000	26,779,368	100.0%
Employee costs - mine site	(7,798,352)	(7,798,352)	-	-	-	-	-	(7,798,352)	28.9%
Employee costs - head office	(418,531)	-	-	-	(418,531)	-	-	(418,531)	1.6%
Key employee retention costs	(500,000)	(400,000)	-	-	(100,000)	-	-	(500,000)	1.9%
Equipment parts / supplies	(499,283)	(499,283)	-	-	-	-	-	(499,283)	1.9%
Mining direct materials (including pit program)	(678,923)	(678,923)	-	-	-	-	-	(678,923)	2.5%
Mill direct materials	(2,023,388)	(2,023,388)	-	-	-	-	-	(2,023,388)	7.5%
Other operating costs	(3,046,355)	(3,046,355)	-	-	-	-	-	(3,046,355)	11.3%
Diesel	(3,361,386)	(3,361,386)	-	-	-	-	-	(3,361,386)	12.5%
Operating leases and insurance	(275,275)	(189,715)	-	-	(85,560)	-	-	(275,275)	1.0%
Freight and Expediting	(1,449,707)	(1,449,707)	-	-	-	-	-	(1,449,707)	5.4%
Mine site catering and janitorial	(766,785)	(766,785)	-	-	-	-	-	(766,785)	2.8%
Tailings management and dredging	(56,464)	(56,464)	-	-	-	-	-	(56,464)	0.2%
Tailings pond 4 - Reclamation study	(400,000)	-	(400,000)	-	-	-	-	(400,000)	1.5%
Mill maintenance / improvements	(446,000)	(446,000)	-	-	-	-	-	(446,000)	1.7%
Mactung purchases	(1,000,000)	-	-	(1,000,000)	-	-	-	(1,000,000)	3.7%
Head office and corporate costs	(536,524)	-	-	-	(536,524)	-	-	(536,524)	2.0%
Restructuring professional fees	(1,024,000)	-	-	-	-	(1,024,000)	-	(1,024,000)	3.8%
Interim financing interest and fees	(130,379)	-	-	-	-	(130,379)	-	(130,379)	0.5%
Callidus principal and interest on regular loan	(1,547,061)	-	-	-	-	(1,547,061)	-	(1,547,061)	5.7%
Contingency	(1,000,000)	(1,000,000)	-	-	-	-	-	(1,000,000)	3.7%
Total Disbursements	(26,958,412)	(21,716,356)	(400,000)	(1,000,000)	(1,140,615)	(1,024,000)	(1,677,441)	(26,958,412)	100.0%
Net Cash Flows	(179,044)	2,063,011	(400,000)	(1,000,000)	(1,140,615)	(1,024,000)	1,322,559	(179,044)	

Note 1 - \$500,000 is provided under the existing lending arrangement

Draft for discussion

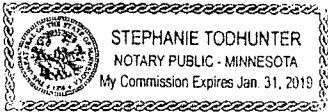
		North American Tungsten Corporation Ltd.																			
Cash Flow Statement		Operating Plan																			
For the 20 Week Period ending October 23, 2015		(5000 \$)																			
	Week 1 to Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16	Week 17	Week 18	Week 19	Week 20	Week 1 to Week 20	
	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Total	
	19-Jun-15	26-Jun-15	3-Jul-15	10-Jul-15	17-Jul-15	24-Jul-15	31-Jul-15	7-Aug-15	14-Aug-15	21-Aug-15	28-Aug-15	4-Sep-15	11-Sep-15	18-Sep-15	25-Sep-15	2-Oct-15	9-Oct-15	16-Oct-15	23-Oct-15		
Cash flow from operations	984	326	760	1,017	1,727	2,036	1,105	1,198	1,155	1,155	1,155	1,247	1,425	1,425	1,425	1,518	1,281	1,281	880	23,111	
Collection of accounts receivable	102	(523)	(190)	(809)	(855)	(312)	(225)	(510)	(312)	(540)	(228)	(408)	(349)	(393)	(409)	(309)	(489)	(454)	(552)	668	
Other receipts	(334)	(10)	(23)	(23)	(23)	(23)	(23)	(59)	(59)	(59)	(59)	(54)	(54)	(54)	(54)	(28)	(28)	(28)	(28)	(8,198)	
Employee costs - mine site	(29)	(41)	(40)	(170)	(120)	(120)	(120)	(120)	(120)	(120)	(120)	(120)	(120)	(120)	(120)	(120)	(120)	(120)	(120)	(679)	
Mining raw materials	(38)	(3)	(96)	(192)	(192)	(192)	(192)	(192)	(192)	(192)	(192)	(192)	(192)	(192)	(192)	(192)	(192)	(192)	(192)	(2,023)	
Mill raw materials	(335)	(3)	(11)	(76)	(26)	(26)	(26)	(26)	(26)	(26)	(26)	(26)	(26)	(26)	(26)	(26)	(26)	(26)	(26)	(48)	
Fuel	(37)	(11)	(62)	(62)	(62)	(62)	(62)	(62)	(62)	(62)	(62)	(62)	(62)	(62)	(62)	(62)	(62)	(62)	(62)	(3,361)	
Equipment parts and supplies	3	(66)	(111)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(13)	
Operating leases and insurance	(73)	(116)	(111)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(190)	
Freight and expediting	(73)	(116)	(111)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(1,450)	
Catering and janitorial	(73)	(116)	(111)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(75)	(767)	
Tailings management and dredging	(125)	(107)	(118)	(118)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(3,046)	
Other operating costs	(125)	(107)	(118)	(118)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(168)	(446)	
Mill maintenance	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(75)	
Contingency	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(1,000)	
Net cash flow from operations	129	(531)	(29)	(562)	133	971	107	(116)	4	(75)	164	263	337	273	236	679	78	144	(141)	2,063	
Head office disbursements	(79)	(33)	(14)	(39)	(39)	(9)	(39)	(9)	(39)	(9)	(39)	(9)	(39)	(9)	(39)	(9)	(49)	(9)	(49)	(519)	
Employee costs - head office	(79)	(33)	(14)	(39)	(39)	(9)	(39)	(9)	(39)	(9)	(39)	(9)	(39)	(9)	(39)	(9)	(49)	(9)	(49)	(86)	
Operating leases and insurance	(79)	(33)	(14)	(39)	(39)	(9)	(39)	(9)	(39)	(9)	(39)	(9)	(39)	(9)	(39)	(9)	(49)	(9)	(49)	(57)	
Head office and corporate costs	(12)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	
Total head office disbursements	(90)	(33)	(61)	(25)	(64)	(34)	(85)	(34)	(64)	(34)	(164)	(55)	(64)	(34)	(64)	(55)	(74)	(34)	(74)	(1,141)	
Non-operating disbursements	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(400)	
Reclamation costs	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(1,000)	
Development costs - Mactung	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(1,000)	
Restructuring professional fees	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(1,024)	
Total non-operating disbursements	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2,424)	
Net cash flow before interim financing	37	(565)	(90)	(1,033)	9	900	(165)	(337)	(379)	(328)	(219)	89	204	170	103	555	(65)	(27)	(362)	(1,502)	
Net cash flow from interim financing																					
Proceeds of interim financing																					
Interim financing fees and interest																					
Principal and interest on existing Callidus loans																					
Net cash flow from interim financing																					
Net Cash Flow	37	(565)	(90)	(58)	126	900	(578)	(337)	(121)	(328)	281	(344)	204	170	103	132	(65)	(27)	(362)	(179)	
Opening Cash Position	626	663	98	508	450	576	1,476	898	561	682	355	636	292	496	666	769	901	836	809	626	
Closing Cash Position	\$ 663	\$ 98	\$ 508	\$ 450	\$ 576	\$ 1,476	\$ 898	\$ 561	\$ 682	\$ 355	\$ 636	\$ 292	\$ 496	\$ 666	\$ 769	\$ 901	\$ 836	\$ 809	\$ 447	\$ 447	

This is Exhibit "C" referred to in the Affidavit of
DENNIS M. LINDAHL sworn before me at

this 2 day of July, 2015.



A Commissioner for taking
Affidavits within _____



North American Tungsten Corporation
 Cash Flow Summary
 June 29, 2015
 All figures are in CAD

Care and Maintenance by mid-July

	Period June-09-15 to October-23-15 Total	Cantung	Reclamation	Mactung	Corporate	Restructuring	Financing	Total	
Collection of accounts receivable	\$ 4,648,993	\$ 4,648,993	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,648,993	39.2%
Interim financing proceeds	7,000,000	-	-	-	-	-	7,000,000	7,000,000	59.0%
Other receipts	207,898	207,898	-	-	-	-	-	207,898	1.8%
Total Receipts	11,856,891	4,856,891	-	-	-	-	7,000,000	11,856,891	100.0%
Employee costs - mine site	(2,993,864)	(2,993,864)	-	-	-	-	-	(2,993,864)	24.9%
Employee costs - head office	(310,062)	-	-	-	(310,062)	-	-	(310,062)	2.6%
Key employee retention costs	(250,000)	(200,000)	-	-	(50,000)	-	-	(250,000)	2.1%
Equipment parts / supplies	(135,589)	(135,589)	-	-	-	-	-	(135,589)	1.1%
Mining direct materials (including pit program)	(75,806)	(75,806)	-	-	-	-	-	(75,806)	0.6%
Mill direct materials	(393,219)	(393,219)	-	-	-	-	-	(393,219)	3.3%
Other operating costs	(850,338)	(850,338)	-	-	-	-	-	(850,338)	7.1%
Diesel	(859,386)	(859,386)	-	-	-	-	-	(859,386)	7.2%
Operating leases and insurance	(275,275)	(189,715)	-	-	(85,560)	-	-	(275,275)	2.3%
Freight and Expediting	(478,096)	(478,096)	-	-	-	-	-	(478,096)	4.0%
Mine site catering and janitorial	(331,638)	(331,638)	-	-	-	-	-	(331,638)	2.8%
Tailings management and dredging	(15,110)	(15,110)	-	-	-	-	-	(15,110)	0.1%
Tailings pond 4 - Reclamation study	(400,000)	-	(400,000)	-	-	-	-	(400,000)	3.3%
Mill maintenance / improvements	-	-	-	-	-	-	-	-	0.0%
Mactung purchases	(1,000,000)	-	-	(1,000,000)	-	-	-	(1,000,000)	8.3%
Head office and corporate costs	(256,524)	-	-	-	(256,524)	-	-	(256,524)	2.1%
Restructuring professional fees	(1,024,000)	-	-	-	-	(1,024,000)	-	(1,024,000)	8.5%
Interim financing interest and fees	(207,331)	-	-	-	-	-	(207,331)	(207,331)	1.7%
Callidus principal and interest on regular loan	(1,547,061)	-	-	-	-	-	(1,547,061)	(1,547,061)	12.9%
Contingency	(600,000)	(600,000)	-	-	-	-	-	(600,000)	5.0%
Total Disbursements	(12,003,299)	(7,122,761)	(400,000)	(1,000,000)	(702,146)	(1,024,000)	(1,754,392)	(12,003,299)	100.0%
Net Cash Flows	(146,408)	(2,265,870)	(400,000)	(1,000,000)	(702,146)	(1,024,000)	5,245,608	(146,408)	

Note 1 - \$500,000 is provided under the existing lending arrangements

Interim financing 7,000,000
 Add back:
 Reclamation (400,000)
 Mactung (1,000,000)
Required after removing these categories 5,600,000

Draft for discussion

		Week 1 to Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16	Week 17	Week 18	Week 19	Week 20	Week 21 to Week 22
		Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
		19-Jun-15	26-Jun-15	3-Jul-15	10-Jul-15	17-Jul-15	24-Jul-15	31-Jul-15	7-Aug-15	14-Aug-15	21-Aug-15	28-Aug-15	4-Sep-15	11-Sep-15	18-Sep-15	25-Sep-15	2-Oct-15	7-Oct-15	14-Oct-15	21-Oct-15	28-Oct-15
Cash flow from operations		\$ 984	\$ 326	\$ 760	\$ 1,017	\$ 46	\$ 930	\$ -	\$ -	\$ 40	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Collection of accounts receivable		182	(523)	(190)	(809)	(843)	(24)	(64)	(24)	(64)	(24)	(44)	(24)	(44)	(24)	(44)	(24)	(44)	(24)	(44)	(24)
Other receipts		(334)	(0)	(23)	(23)	(23)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)
Employee costs - mine site		(29)	(41)	(40)	(170)	(96)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)
Mining raw materials		(38)	(3)	(96)	(192)	(96)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Mill raw materials		(335)	(1)	(11)	(76)	(176)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Fuel		(3)	(1)	(52)	(100)	(100)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Equipment parts and supplies		(73)	(66)	(111)	(100)	(73)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)
Operating lease and insurance		(125)	(107)	(118)	(289)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)
Freight and expediting		(125)	(107)	(118)	(289)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)
Catering and janitorial		(125)	(107)	(118)	(289)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)
Tailings management and dredging		(125)	(107)	(118)	(289)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)
Other operating costs		(125)	(107)	(118)	(289)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)
Mill maintenance		(125)	(107)	(118)	(289)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)
Contingency		(125)	(107)	(118)	(289)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)
Net cash flow from operations		129	(531)	21	(674)	(613)	831	(170)	(78)	(145)	(74)	(104)	(110)	(150)	(74)	(104)	(110)	(142)	(74)	(92)	(25)
Head office disbursements		(79)	(33)	(14)	-	(39)	(9)	(39)	(9)	(24)	(4)	(19)	(4)	(19)	(4)	(19)	(4)	(17)	(4)	(16)	(16)
Employee costs - head office		(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Operating leases and insurance		(12)	(25)	(25)	(25)	(25)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)
Head office and corporate costs		(90)	(33)	(61)	(25)	(64)	(14)	(65)	(14)	(29)	(9)	(124)	(31)	(24)	(9)	(24)	(31)	(22)	(9)	(21)	(702)
Total head office disbursements		(102)	(58)	(90)	(52)	(109)	(28)	(109)	(28)	(53)	(13)	(143)	(36)	(48)	(13)	(48)	(36)	(29)	(13)	(37)	(702)
Non-operating disbursements		(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Reclamation costs		(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Development costs - Mactung		(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Restructuring professional fees		(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Total non-operating disbursements		(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Net cash flow before interim financing		37	(565)	(40)	(1,145)	(737)	780	(422)	(278)	(494)	(303)	(448)	(260)	(244)	(153)	(198)	(210)	(234)	(221)	(261)	(5,392)
Net cash flow from interim financing		-	-	500	1,000	1,000	-	500	-	500	500	500	500	-	500	-	500	-	500	-	500
Proceeds of interim financing		-	-	500	1,000	1,000	-	500	-	500	500	500	500	-	500	-	500	-	500	-	500
Interim financing fees and interest		-	-	-	(25)	(383)	-	(30)	-	-	-	(391)	(71)	-	-	-	(81)	-	-	-	(1,547)
Principal and interest on existing Callidus loans		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net cash flow from interim financing		-	-	500	975	617	-	79	-	500	500	500	38	-	500	-	36	-	500	-	500
Net Cash Flow		37	(565)	460	(170)	(120)	780	(343)	(278)	6	197	52	(221)	(244)	347	(198)	(174)	286	(221)	239	(146)
Opening Cash Position		626	663	98	558	388	268	1,049	705	427	434	631	683	462	218	566	368	195	461	241	626
Closing Cash Position		\$ 663	\$ 98	\$ 558	\$ 388	\$ 268	\$ 1,049	\$ 706	\$ 427	\$ 434	\$ 631	\$ 683	\$ 462	\$ 218	\$ 566	\$ 368	\$ 195	\$ 461	\$ 241	\$ 460	\$ 480

North American Tungsten Corporation Ltd.
 Cash Flow Statement
 Accelerated Transition to Care & Maintenance
 For the 20 Week Period ending October 23, 2015
 (\$000's)

This is the 9th affidavit
of Dennis M. Lindahl in this case
and was made on 21 / Jul / 2015

NO. S-154746
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985 c. C-44, as amended

AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

AFFIDAVIT

I, **DENNIS M. LINDAHL**, of 1640 – 1188 West Georgia Street, Vancouver, British Columbia, businessperson, SWEAR (OR AFFIRM) THAT:

1. I am the chief financial officer and a director of North American Tungsten Corporation Ltd., the petitioner in this proceeding ("**NATC**" or the "**Company**"), and as such have personal knowledge of the matters deposed to in this Affidavit except where I depose to a matter based on information from an informant I identify, in which case, I believe that both the information from the informant and the resulting statement are true.
2. I am authorized to make this Affidavit on behalf of the Petitioner in support of the relief sought in the Notice of Application filed in the above-captioned proceedings seeking approval of a certain accounts receivable funding facility from Callidus Capital Corporation ("**Callidus**").

Summary of First Affidavit

3. By way of background, the following is a summary of certain key information regarding the Company, as set out in more detail in my First Affidavit sworn June 8, 2015.

4. NATC is a publicly traded company, engaged in the acquisition, exploration, development, mining and milling of minerals, primarily tungsten concentrate. NATC's principal product is tungsten concentrate, which is sold to its customers and refined into Ammonium Paratungstate ("**APT**").

5. NATC has two properties:

- (a) the "**Cantung Mine**" and associated mine facilities, which is an operating mine located in the south-west corner of the Northwest Territories; and
- (b) the "**Mactung Property**", which is an undeveloped exploration property located on the border of the Yukon Territory and the Northwest Territories.

6. At or around the filing date, NATC had total liabilities of approximately \$84.4 million, including approximately \$14 million of unsecured liabilities.

7. With respect to its secured liabilities, most of NATC's (pre-filing) secured creditors held security over the assets of either the Cantung Mine or the Mactung Property. The secured creditors with an interest in the Cantung Mine assets include:

- (a) Callidus;
- (b) Various parties (the "**Debentureholders**"), who also hold security over the Mactung Property assets; and
- (c) Queenwood Capital Partners II LLC ("**Queenwood II**"), who also hold security over the Mactung Property assets.

8. The secured creditors with an interest in the Mactung Property assets include:

- (a) The Government of the Northwest Territories ("**GNWT**");
- (b) Global Tungsten & Powders Corp. ("**GTP**");
- (c) Wolfram Bergbau and Hutten AG ("**WBH**"); and
- (d) the Debentureholders and Queenwood II, as noted above.

9. In early June, 2015, NATC was unable to meet its financial obligations as they became due, and was accordingly insolvent. NATC's insolvency was caused by a number of factors, but was primarily due to a significant drop in APT market prices.

Payment of GTP Receivables

10. By way of further background, the following is a summary of certain key information regarding the Company's receivables from GTP, as set out in more detail in my Fourth Affidavit sworn July 2, 2015 (the "**Fourth Lindahl Affidavit**").

11. The Petitioner has two customers: Global Tungsten & Powders Corp. ("**GTP**") and Wolfram Bergbau und Hütten AG ("**WBH**"). NATC has supply agreements with both customers which initially provided for payment within 30 days of shipments being made from NATC's Cantung Mine site.

12. However, to manage cashflow, NATC had entered into arrangements with both customers to allow for payment within approximately 5 days of shipment. In the case of GTP, early payment was achieved through a factoring agreement between the Petitioner and Royal Bank of Scotland plc ("**RBS**").

13. In late June, 2015, the Petitioner learned that RBS was discontinuing payments under the factoring arrangement, and that GTP would not accelerate their existing payment terms to allow for continued early payment to the Petitioner for ongoing shipments.

14. This created an urgent need for further liquidity in order for NATC to continue operations through these proceedings. To address the urgent cashflow situation, NATC sought approval of an interim financing facility in the amount of \$2.5 million (the "**Interim Financing**") from its main equipment lender, Callidus.

Operating Plan and SISP

15. As further set out in the Fourth Lindahl Affidavit, the Company has developed an operating plan to:

- (a) continue operations at the Cantung Mine until at least the end of October, 2015, including management of environmental care;
- (b) conduct an orderly wind down of underground mining activities, including a staged disposition of underground mining equipment (primarily mobile equipment) to reduce amounts owed to Callidus and positioning the Cantung Mine for care and maintenance through to the spring of 2016;

- (c) continue efforts to reconfigure its mill facilities for tailings reprocessing and progressive reclamation, which will create additional operating flexibility for an investor or purchaser; and
 - (d) continue to work and negotiate with the Government of the Northwest Territories to preserve the long term value of the Mactung Property and mitigate reclamation liabilities at the Cantung Mine,
- (collectively, the "**Operating Plan**").

16. The Operating Plan, and in particular continuing with the Cantung Mine operations, will have a substantial benefit to all stakeholders, and will allow NATC to generate an additional net \$4 million over the period to October 31, 2015 from operating revenues, as compared to the results from implementing an accelerated wind down of the Cantung Mine.

17. Concurrently with the Operating Plan, the Petitioner has developed a Sale and Investment Solicitation Process (the "**SISP**") to identify long-term investors in NATC or purchasers of some or all of its assets or business, which SISP will run parallel to the Operating Plan, with the aim of closing a transaction that benefits the Company's stakeholders (a "**Successful Transaction**") by late 2015.

Need for Accounts Receivable Financing

18. NATC has filed cashflow projections to October 23, 2015, included in the Monitor's Fourth Report, dated July 7, 2015. These projections show that, with the Interim Financing, there is sufficient funding to carry NATC's operations through to the end of October, 2015, consistent with the Operating Plan and the SISP.

19. However, while Interim Financing addressed some of the Petitioner's immediate and longer term cash needs, the mid-term projections assumed that NATC would make arrangements to obtain early payment of GTP's ongoing receivables to better manage its cash inflows and outflows through the Operating Plan and the SISP.

20. Without those arrangements, the timing of the Petitioner's receipts in its cashflow projections will be delayed, and it will not have sufficient liquidity to meet its ongoing obligations in a timely way. Accordingly, the Company has been pursuing a solution to the timing issue in the cashflow.

21. On July 21, 2015, the Petitioner received an offer from Callidus to provide additional financing, primarily secured by the receivables due from GTP (the "**AR**

Financing Facility”), to facilitate the Company’s ability to meet its obligations in a timely way. The essential terms of the AR Financing Facility are as follows:

- (a) Callidus will provide a revolving credit facility, up to a maximum of \$2,500,000;
- (b) Advances will be made based on accounts receivable owed by GTP from time to time, to be made within 5 days of invoicing and proof of shipment;
- (c) NATC will enter into a blocked account agreement with Callidus, under which payments from GTP are deposited into a separate account and immediately swept by Callidus as received to pay down the AR Financing Facility; and
- (d) As additional security for the AR Financing Facility, Callidus is to receive the benefit of a court ordered priority charge over all of the Petitioner’s assets, including the Cantung Mine and the Mactung Property (the “**AR Lender’s Charge**”).

22. Now shown to me and attached hereto as **Exhibit “A”** is a copy of the AR Financing Facility term sheet, executed by NATC. NATC anticipates receiving confirmation of Callidus Credit Committee approval and thus a fully executed copy of the term sheet from Callidus shortly.

23. It is important to note that advances under the AR Financing Facility will only be made once a shipment is made to GTP, and advances will be such that the facility will be fully repaid from the funds in the blocked account once GTP makes payment on the invoices from NATC (due 30 days after shipment date, or approximately 25 days after an advance).

24. As a result, the AR Lender’s Charge will only be relevant and impact other stakeholders if GTP fails to pay the outstanding invoices arising from shipments made since the filing date under the CCAA and specifically financed by Callidus under the AR Financing Facility. GTP has been a customer of NATC for several years, and given their prompt payment history over that period of time NATC considers this risk to be remote.

Balance of Prejudice

25. In the Fourth Lindahl Affidavit, I set out the rationale for the Company’s application for Interim Financing, and the relative benefits and prejudices that would accrue if the Interim Financing was or was not approved. Those apply equally to approval of the AR Financing Facility but have more weight given the limited risk of non-payment by GTP.

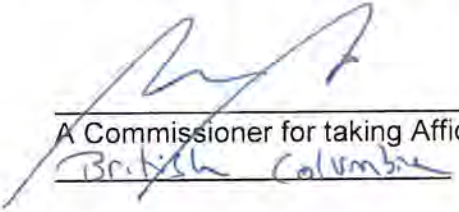
26. In particular, if the AR Financing Facility and the AR Lender's Charge are not approved, the Petitioner may be unable to keep the Cantung Mine in operation. That result will likely lead to enforcement by the Petitioner's secured creditors and liquidation of the Petitioner's assets, with little or no recovery for the majority of the Petitioner's stakeholders.

27. Furthermore, a shutdown of the Cantung Mine would effectively result in an abandoned mine site, and could leave the Government of the Northwest Territories with a significant reclamation obligation. Allowing the Cantung Mine to stay in operation, while the Company meets its post-filing obligations in a timely way, preserves the Petitioner's ability to manage any environmental issues quickly and efficiently, and work towards progressive reclamation of the mine site in an orderly fashion (thereby reducing any ultimate reclamation that may be required).

28. The AR Financing Facility will provide stability and predictability to the Petitioner's cash flow allowing for payment of operating expenses in the ordinary course, and increasing the prospect of the Petitioner achieving a Successful Transaction and/or restructuring.

29. Callidus is not willing to advance any funds under the AR Financing Facility absent the AR Lender's Charge.

SWORN (OR AFFIRMED) BEFORE ME at
Vancouver, BC, on 21 / 07 / 2015.


A Commissioner for taking Affidavits within
British Columbia



DENNIS M. LINDAHL

JORDAN D. SCHULTZ
Barrister & Solicitor
DENTONS CANADA LLP
20th Floor, 250 Howe Street
Vancouver, B.C. V6C 3R8
Telephone (604) 687-4460



This is the 10th affidavit
of Dennis M. Lindahl in this case
and was made on ___ / Jul / 2015

NO. S-154746
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985 c. C-44, as amended

AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

AFFIDAVIT

I, **DENNIS M. LINDAHL**, of 1640 – 1188 West Georgia Street, Vancouver, British Columbia, businessperson, SWEAR (OR AFFIRM) THAT:

1. I am the chief financial officer and a director of North American Tungsten Corporation Ltd., the petitioner in this proceeding ("**NATC**" or the "**Company**"), and as such have personal knowledge of the matters deposed to in this Affidavit except where I depose to a matter based on information from an informant I identify, in which case, I believe that both the information from the informant and the resulting statement are true.
2. I am authorized to make this Affidavit on behalf of the Petitioner.
3. This affidavit is sworn further to my 9th affidavit, sworn July 21, 2015 (the "**Ninth Affidavit**"). All capitalized terms not otherwise defined in this affidavit have the meaning ascribed to them in the Ninth Affidavit.

Agreements with Global Tungsten & Powders Corp.

4. Now shown to me and attached hereto as **Exhibit “A”** is a copy of the Loan Agreement (without schedules) between Global Tungsten & Powders Corp. (“**GTP**”) and NATC, dated December 19, 2013 (the “**Loan Agreement**”).

5. Now shown to me and attached hereto as **Exhibit “B”** is a copy of the Supply Agreement between GTP and NATC, dated December 19, 2013, with terms related to quantity, quality specifications and price redacted (the “**Supply Agreement**”).

Payment of GTP Invoices

6. As noted in the Ninth Affidavit, GTP is both a customer and creditor of NATC.

7. In particular:

(a) Prior to and as at June 9, 2015 (the “**Filing Date**”), NATC was indebted to GTP in the amount of approximately US \$4.4 million, pursuant to the terms of the Loan Agreement (the “**NATC Pre-Filing Debt**”); and

(b) As at today’s date, GTP was indebted to NATC in the amount of approximately US \$1.68 million, pursuant to various shipments of tungsten ore made after the Filing Date to GTP, in accordance with the Supply Agreement (the “**GTP Post-Filing Debt**”).

8. I note, for clarity, that the amount of NATC Pre-Filing Debt has not changed since the Filing Date.

9. Now shown to me and attached hereto as **Exhibit “C”** is a schedule of all invoices that have been issued to GTP in respect of shipments of tungsten ore made after the Filing Date. I note that the invoice dates generally coincide within one or two days of the date the shipments leave the mine gate. As noted in that schedule:

(a) The invoice sent on June 9, 2015 for a shipment on or about that same day, totaling US \$236,776.21, was paid by RBS, under the then existing factoring agreement;

(b) The invoices issued between June 16 and 18, 2015, totaling US \$752,330.28, were paid by GTP, albeit on 30 day terms (as a result of RBS terminating the factoring agreement, as noted in the Ninth Affidavit);

- (c) The invoices issued between June 22 and 23, 2015, totaling US \$504,295.11, were expected to be paid this week (ending July 24, 2015), again on 30 day terms; and
- (d) The invoices issued between July 7 and 23, 2015, totaling \$1,178,531.60, were expected to be financed during the week ending July 31, 2015 under the proposed AR Financing Facility, and thus paid into the proposed Blocked Account 30 days following the invoice date.

10. I note the shipment in respect of the July 23, 2015 invoice was only sent yesterday, while the events described below transpired. That shipment is currently in Watson Lake, Yukon. The invoice was just processed by NATC today and has not been sent to GTP as of yet.

11. Now shown to me and attached hereto as **Exhibit "D"** are copies of the 7 unpaid invoices that are referenced in the above noted schedule.

Discussions with GTP

12. I have had numerous discussions with representatives of GTP over the course of these restructuring proceedings. GTP is a major stakeholder, as both a customer and a secured creditor, and was therefore consulted with extensively while the Company developed its Operating Plan.

13. In addition, when RBS terminated the factoring agreement (as noted in the Ninth Affidavit), both myself and other representatives of NATC had multiple communications with GTP in an effort to arrange early payment in respect of shipments sent to GTP.

14. At no time whatsoever in any of these discussions was I advised that GTP would not pay for shipments nor that it would seek to set-off payments as against the NATC Pre-Filing Debt.

15. Now shown to me and attached hereto as **Exhibit "E"** are, to the best of my knowledge, copies of substantially all of the email correspondence between NATC and GTP that I either received or sent since the commencement of these proceedings.

16. In addition to the foregoing, I have had several phone calls with representatives of GTP, including:

- (a) On or about July 6, 2015, I attended a conference call with Andreas Lackner, the President and CEO of GTP, certain representatives of WBH, their respective counsel and others. Prior to that call, detailed presentation materials were prepared by NATC and circulated to the

participants, including GTP, setting out NATC's proposed Operating Plan, proposed sale process and the cashflow projections to the end of October, 2015, including anticipated receipts from GTP. These materials, and in particular the cashflow projections, were generally consistent with what has been filed in these proceedings. The call was specifically scheduled to go through these presentation materials, and address any questions the participants may have had. At no time during that call did anyone from or on behalf of GTP advise that GTP did not intend to pay for further shipments of tungsten ore.

- (b) On July 15, I had a brief conversation with Karin Laursen, the Strategic Raw Materials Purchasing Manager of GTP, regarding payments of the invoices with a due date of July 16 and 18. Ms. Laursen indicated payment of the invoices due July 16 would be paid on July 16 and the invoice due July 18 would be paid on July 20. In fact, all three of the invoices were paid on July 16. At no time did Ms. Laursen advise that future invoices would not be paid. This was my last conversation with anyone at GTP to date.
17. I am advised by Kurt Heikkila, the Chief Executive Officer of NATC, and verily believe that he has also had numerous discussions with representatives of GTP over the course of these restructuring proceedings. I am further advised by Mr. Heikkila that at no time whatsoever in any of these discussions was he advised that GTP would not pay for shipments nor that it would seek to set-off payments as against the NATC Pre-Filing Debt.
18. Now shown to me and attached hereto as **Exhibit "F"** is a copy of an email exchange between Mr. Heikkila and Mr. Lackner, dated on or around June 25, 2015. I note this is around the time NATC learned RBS had terminated the factoring agreement.
19. I am advised by Mr. Heikkila and verily believe that he had a call with Mr. Lackner following this email exchange. I am advised by Mr. Heikkila and verily believe that during that call they discussed NATC's need for ongoing cashflow to fund its operations. I am further advised by Mr. Heikkila that at no time did Mr. Lackner advise that GTP would not pay for the shipments GTP had received or would receive and the corresponding future invoices.
20. I am also advised by Mr. Heikkila and verily believe that he had a further call with Ms. Laursen on July 20, 2015. I am further advised by Mr. Heikkila that at no time during that call did Ms. Laursen advise that future invoices would not be paid, and in fact Ms. Laursen specifically asked for a copy of the marketing document prepared by NATC

as part of the court approved SISP. Lastly, I am advised by Mr. Heikkila that this was the last conversation he had with anyone at GTP to date.

21. Now shown to me and attached hereto as **Exhibit “G”** is a copy of an email sent from Sharon Link on behalf of NATC to Ms. Laursen, dated July 21, 2015, attaching the marketing materials requested by Ms. Laursen in the above noted conversation.

Notice of Set-Off

22. Now shown to me and attached hereto as **Exhibit “H”** is a copy of a letter sent to NATC from GTP on July 22, 2015.

23. The above letter was the first time GTP gave any indication that it would not pay the GTP Post-Filing Debt. Prior to receipt of that letter, based on GTP’s conduct to date (including having already paid various Post-Filing invoices, as noted above), I was of the belief that GTP would continue to pay all invoices (although only on 30 day terms) in accordance with the Supply Agreement.

24. Now shown to me and attached hereto as **Exhibit “I”** is a copy of a letter in response sent from counsel to NATC to counsel to GTP on July 22, 2015.

25. Had GTP raised its claim of set-off in a timely way, it could have been negotiated and, if necessary, argued before the Court in conjunction with NATC’s earlier applications, at which time the proposed cashflow and the Operating Plan were front and center, and in conjunction with the application to approve the SISP, the Interim Financing and the extension of the stay of proceedings.

26. If GTP is permitted to set-off the NATC Pre-Filing Debt against the GTP Post-Filing Debt, NATC will not have sufficient liquidity to meet its post-filing obligations.

27. I note that Callidus, the existing Interim Lender and proposed AR Facility Lender, has indicated through its counsel it will not approve additional financing if GTP invoices are not being paid in the ordinary course, and NATC does not have any other commitments for additional financing at this time.

SWORN (OR AFFIRMED) BEFORE ME at
Vancouver, BC, on 24 / 07 / 2015.

Minneapolis, MN

Rita M. Schepers

A Commissioner for taking Affidavits within
Minnesota

Dennis M. Lindahl

DENNIS M. LINDAHL



This is Exhibit "D" referred to in the Affidavit of
DENNIS M. LINDAHL, sworn before me at
Minneapolis, Minnesota
this 24 day of July, 2015.

Rita M. Schepers

A Commissioner for taking
Affidavits within Minnesota





1640 1188 West Georgia Street Vancouver, B.C. V6E 4A2

Provisional Invoice		Invoice Number		
		G2015-211		
Order Date	Terms of Payment	Customer P. O.	Order Number	
6/22/2015		1074664601		
Shipping Point	Carrier	Terms Of Delivery		
Tungsten Northwest Territories		CIF Towanda		
Sold To: Global Tungsten & Powders Corp. Hawes Street, Towanda PA 18848 Phone : Fax :		Ship To: Global Tungsten & Powders Corp. Hawes Street, Towanda PA 18848 USA		
All prices are in USD				
ITEM	Description	Unit Price Per	Quantity In MTU	Extension
1	Tungsten Gravity Concentrate-2083G(NTCG15049) (43,000 lbs net @65.01% WO3)	\$194.44 MTU	1,267.90	\$ 246,530.48
			(Bags - G1-13350-13358, 13360)	
	Add: Freight - 1 truck (Mine to Watson Lake)			\$1,248.00
	Add: Freight - 1 truck (Watson Lake to Towanda)			\$5,251.00
	Add: Surcharge @31.3%			\$1,643.56
	50%			\$8,142.56
				\$4,071.28
	Actual average US\$243.06 80.0000% US\$194.44		Net Invoice Amount	\$250,601.76
	North American Tungsten Corp. LTD Product of Canada HTS code 2611.00.6000			
<p>This is to certify that the above named articles do not come within the classification of dangerous cargo according to the applicable regulations of the Department of Transportation.</p> <p>These commodities, technology or software were exported from Canada in accordance with export administration regulations.</p> <p>This invoice is a provisional invoice. The final invoice will be issued based on analysis results. Export weights and lot numbers are on attached packing list.</p>				



1640 - 1188 West Georgia Street Vancouver, B.C. V6E 4A2

Provisional Invoice

Invoice Number	
G2015-213	
Order Date	Terms of Payment
6/23/2015	
Customer P. O.	Order Number
1074664601	
Shipping Point	Carrier
Tungsten Northwest Territories	
Terms Of Delivery	
CIF Towanda	

Sold To: Global Tungsten & Powders Corp. Hawes Street, Towanda PA 18848 Phone : Fax :	Ship To: Global Tungsten & Powders Corp. Hawes Street, Towanda PA 18848 USA
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All prices are in USD

ITEM	Description	Unit Price	Per	Quantity in MTU	Extension
1	Tungsten Gravity Concentrate-2085G(NTCG15050) (43,000 lbs net @65.82% WO3)	\$194.44	MTU	1,283.80	\$ 249,622.07
				(Bags - G1-13359, 13361- 13367, 13369, 13370)	
	Add: Freight - 1 truck (Mine to Watson Lake)				\$1,248.00
	Add: Freight - 1 truck (Watson Lake to Towanda)				\$5,251.00
	Add: Surcharge @31.3%				\$1,643.56
	50%				\$8,142.56
					\$4,071.28
	Actual average US\$243.06 80.0000% US\$194.44			Net Invoice Amount	\$253,693.35
	North American Tungsten Corp. LTD Product of Canada HTS code 2611.00.6000				

This is to certify that the above named articles do not come within the classification of dangerous cargo according to the applicable regulations of the Department of Transportation.

These commodities, technology or software were exported from Canada in accordance with export administration regulations.

This invoice is a provisional invoice. The final invoice will be issued based on analysis results. Export weights and lot numbers are on attached packing list.



1640 - 1188 West Georgia Street Vancouver, B.C. V6E 4A2

Provisional Invoice		Invoice Number		
		G2015-221		
Order Date	Terms of Payment	Customer P. O.	Order Number	
7/7/2015		1074664601		
Shipping Point	Carrier	Terms Of Delivery		
Tungsten Northwest Territories		CIF Towanda		
Sold To:		Ship To:		
Global Tungsten & Powders Corp. Hawes Street, Towanda PA 18848 Phone : Fax :		Global Tungsten & Powders Corp. Hawes Street, Towanda PA 18848 USA		
All prices are in USD				
ITEM	Description	Unit Price Per	Quantity in MTU	Extension
1	Tungsten Gravity Concentrate-2093G(NTCG15051) (43,000 lbs net @63.43% WO3)	\$182.00	MTU	1,237.30 \$ 225,188.60
			(Bags - G1-13394, 13395, 13399, 13402, 13404, 13406- 13408, 13410, 13411)	
	Add: Freight - 1 truck (Mine to Watson Lake)			\$1,248.00
	Add: Freight - 1 truck (Watson Lake to Towanda)			\$5,251.00
	Add: Surcharge @31.3%			\$1,643.56
	50%			\$8,142.56
				\$4,071.28
	Actual average US\$227.50 80.0000% US\$182.00		Net Invoice Amount	\$229,259.88
	North American Tungsten Corp. LTD Product of Canada HTS code 2611.00.6000			
<p>This is to certify that the above named articles do not come within the classification of dangerous cargo according to the applicable regulations of the Department of Transportation.</p> <p>These commodities, technology or software were exported from Canada in accordance with export administration regulations.</p> <p>This invoice is a provisional invoice. The final invoice will be issued based on analysis results. Export weights and lot numbers are on attached packing list.</p>				



1640 - 1188 West Georgia Street Vancouver, B.C. V6E 4A2

Provisional Invoice

Invoice Number		G2015-225	
Order Date	Terms of Payment	Customer P. O.	Order Number
7/14/2015		1074664601	
Shipping Point	Carrier	Terms Of Delivery	
Tungsten Northwest Territories		CIF Towanda	
Sold To:		Ship To:	
Global Tungsten & Powders Corp. Hawes Street, Towanda PA 18848 Phone : Fax :		Global Tungsten & Powders Corp. Hawes Street, Towanda PA 18848 USA	

All prices are in USD

ITEM	Description	Unit Price Per	Quantity in MTU	Extension
1	Tungsten Gravity Concentrate-2097G(NTCG15052) (43,000 lbs net @65.94% WO3)	\$182.00 MTU	1,286.10	\$ 234,070.20
			(Bags - G1-13409, 13412, 13421, 13422, 13427, 13433- 13436, 13438)	
	Add: Freight - 1 truck (Mine to Watson Lake)			\$1,248.00
	Add: Freight - 1 truck (Watson Lake to Towanda)			\$5,251.00
	Add: Surcharge @31.3%			\$1,643.56
	50%			\$8,142.56
				\$4,071.28
	Actual average US\$227.50 80.0000% US\$182.00		Net Invoice Amount	\$238,141.48
	North American Tungsten Corp. LTD Product of Canada HTS code 2611.00.6000			

This is to certify that the above named articles do not come within the classification of dangerous cargo according to the applicable regulations of the Department of Transportation.

These commodities, technology or software were exported from Canada in accordance with export administration regulations.

This invoice is a provisional invoice. The final invoice will be issued based on analysis results. Export weights and lot numbers are on attached packing list.



1640 - 1188 West Georgia Street Vancouver, B.C. V6E 4A2

Provisional Invoice		Invoice Number		
		G2015-228		
Order Date	Terms of Payment	Customer P. O.	Order Number	
7/16/2015		1074664601		
Shipping Point		Carrier	Terms Of Delivery	
Tungsten Northwest Territories			CIF Towanda	
Sold To:		Ship To:		
Global Tungsten & Powders Corp. Hawes Street, Towanda PA 18848 Phone : Fax :		Global Tungsten & Powders Corp. Hawes Street, Towanda PA 18848 USA		
All prices are in USD				
ITEM	Description	Unit Price Per	Quantity in MTU	Extension
1	Tungsten Gravity Concentrate-2100G(NTCG15053) (43,000 lbs net @65.71% WO3)	\$182.00 MTU	1,285.20	\$ 233,906.40
			(Bags - G1-13396, 13368, 13432, 13437, 13439- 13444)	
	Add: Freight - 1 truck (Mine to Watson Lake)			\$1,248.00
	Add: Freight - 1 truck (Watson Lake to Towanda)			\$5,251.00
	Add: Surcharge @31.3%			\$1,643.56
	50%			\$8,142.56
				\$4,071.28
	Actual average US\$227.50 80.0000% US\$182.00		Net Invoice Amount	\$237,977.68
	North American Tungsten Corp. LTD Product of Canada HTS code 2611.00.6000			
This is to certify that the above named articles do not come within the classification of dangerous cargo according to the applicable regulations of the Department of Transportation.				
These commodities, technology or software were exported from Canada in accordance with export administration regulations.				
This invoice is a provisional invoice. The final invoice will be issued based on analysis results. Export weights and lot numbers are on attached packing list.				



1640 - 1188 West Georgia Street Vancouver, B.C. V6E 4A2

Provisional Invoice		Invoice Number		
		G2015-230		
Order Date	Terms of Payment	Customer P. O.	Order Number	
7/20/2015		1074664601		
Shipping Point	Carrier	Terms Of Delivery		
Tungsten Northwest Territories		CIF Towanda		
Sold To:		Ship To:		
Global Tungsten & Powders Corp. Hawes Street, Towanda PA 18848 Phone : Fax :		Global Tungsten & Powders Corp. Hawes Street, Towanda PA 18848 USA		
All prices are in USD				
ITEM	Description	Unit Price Per	Quantity in MTU	Extension
1	Tungsten Gravity Concentrate-2102G(NTCG15054) (43,000 lbs net @66.13% WO3)	\$182.00	MTU 1,270.70	\$ 231,267.40
			(Bags - G1-13417, 13418, 13446, 13450-13452, 13454- 13457)	
	Add: Freight - 1 truck (Mine to Watson Lake)			\$1,248.00
	Add: Freight - 1 truck (Watson Lake to Towanda)			\$5,251.00
	Add: Surcharge @31.3%			\$1,643.56
	50%			\$8,142.56
				\$4,071.28
	Actual average US\$227.50 80.0000% US\$182.00		Net Invoice Amount	\$235,338.68
	North American Tungsten Corp. LTD Product of Canada HTS code 2611.00.6000			
<p>This is to certify that the above named articles do not come within the classification of dangerous cargo according to the applicable regulations of the Department of Transportation.</p> <p>These commodities, technology or software were exported from Canada in accordance with export administration regulations.</p> <p>This invoice is a provisional invoice. The final invoice will be issued based on analysis results. Export weights and lot numbers are on attached packing list.</p>				



1640 - 1188 West Georgia Street Vancouver, B.C. V6E 4A2

Provisional Invoice			Invoice Number		
			G2015-232		
Order Date	Terms of Payment	Customer P. O.	Order Number		
7/23/2015		1074664601			
Shipping Point		Carrier	Terms Of Delivery		
Tungsten Northwest Territories			CIF Towanda		
Sold To: Global Tungsten & Powders Corp. Hawes Street, Towanda PA 18848 Phone : Fax :			Ship To: Global Tungsten & Powders Corp. Hawes Street, Towanda PA 18848 USA		
All prices are in USD					
ITEM	Description	Unit Price	Per	Quantity in MTU	Extension
1	Tungsten Gravity Concentrate-2104G(NTCG15055) (43,000 lbs net @65.84% WO3)	\$182.00	MTU	1,284.30	\$ 233,742.60
				(Bags - G1-13345, 13447-13449, 13453, 13459, 13460, 13462, 13464, 13466)	
	Add: Freight - 1 truck (Mine to Watson Lake)				\$1,248.00
	Add: Freight - 1 truck (Watson Lake to Towanda)				\$5,251.00
	Add: Surcharge @31.3%				\$1,643.56
	50%				\$8,142.56
					\$4,071.28
	Actual average US\$227.50 80.0000% US\$182.00			Net Invoice Amount	\$237,813.88
	North American Tungsten Corp. LTD Product of Canada HTS code 2611.00.6000				
<p>This is to certify that the above named articles do not come within the classification of dangerous cargo according to the applicable regulations of the Department of Transportation.</p> <p>These commodities, technology or software were exported from Canada in accordance with export administration regulations.</p> <p>This invoice is a provisional invoice. The final invoice will be issued based on analysis results. Export weights and lot numbers are on attached packing list.</p>					

VANCOUVER
AUG 06 2015
COURT OF APPEAL
REGISTRY

This is the 1st affidavit
of Krystal Shayler in this case
and was made on 06/Aug/2015

Court of Appeal File No. CA 42990
Court of Appeal File No. CA 42991
Supreme Court File No. S154746
Supreme Court Registry: Vancouver

COURT OF APPEAL

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

and

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44,
as amended

and

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

BETWEEN:

NORTH AMERICAN TUNGSTEN CORPORATION LTD.

Respondent
(Petitioner)

AND:

GLOBAL TUNGSTEN AND POWDERS CORP.

Appellant

AND:

ALVAREZ & MARSAL CANADA INC., Monitor, CALLIDUS CAPITAL CORPORATION,
WOLFRAM BERGBAU UND HUTTEN AG, and GOVERNMENT OF THE NORTHWEST
TERRITORIES

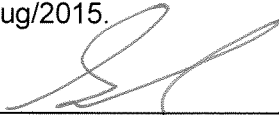
Respondents

AFFIDAVIT

I, KRYSTAL SHAYLER, of 1800 – 510 West Georgia Street, Vancouver, British Columbia, Legal Administrative Assistant, SWEAR (OR AFFIRM) THAT:

- 1. I am a legal administrative assistant at Bull, Housser &Tupper, LLP (“BHT”), counsel for Global Tungsten and Powders Corp. (“GTP”), and as such have personal knowledge of the facts and matters herein deposed to, save and except where the same are stated to be based on information and belief and where so stated I verily believe the same to be true.
- 2. Attached as **Exhibit “A”** to this Affidavit is a true photocopy of the Amended and Restated Initial Order made in this proceeding (the “CCAA Proceeding”) by Mr. Justice Butler on July 9, 2015.
- 3. Attached as **Exhibit “B”** to this Affidavit is a true photocopy of the Supreme Court of British Columbia Practice Direction 45, and the Model CCAA Initial Order embedded in the link posted therein.
- 4. Attached as **Exhibit “C”** to this Affidavit is a true photocopy of the Ontario Superior Court of Justice Commercial List Model CCAA Initial Order, which I retrieved from the website of the Ontario Courts today.
- 5. Attached as **Exhibit “D”** to this Affidavit is a true photocopy of an e-mail sent by Steffen Schmidt, the representative of Wolfram Bergbau und Hutten AG (“WBH”) to Dennis Lindahl, the representative of North American Tungsten Corporation Ltd. on July 27, 2015, a copy of which e-mail was provided by counsel for WBH to Scott M. Boucher, an associate at our office, on July 30, 2015.
- 6. Attached as **Exhibit “E”** to this Affidavit is a true photocopy of an e-mail sent by Kieran E. Siddall, a partner at our office, to John Sandrelli, counsel for the Petitioner, and the Service List, on July 29, 2015.


SWORN (OR AFFIRMED) BEFORE ME)
at Vancouver, British Columbia, on)
06/Aug/2015.)


 _____)
 A Commissioner for taking)
 Affidavits for British Columbia)

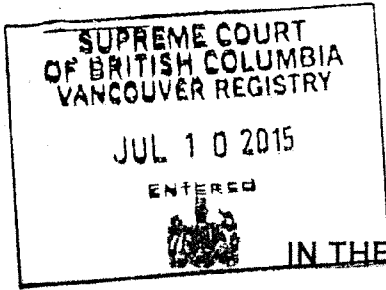

 _____)
 KRYSTAL SHAYLER)

SCOTT BOUCHER
 BARRISTER & SOLICITOR
 BULL, HOUSSER & TUPPER LLP
 SUITE 1800 - 510 WEST GEORGIA STREET
 VANCOUVER, B.C. V6B 0M3
 (604) 641-4920

This is **Exhibit "A"** referred to in the
Affidavit of **KRYSTAL SHAYLER**
sworn before me at Vancouver
this 6th day of August, 2015.



A Commissioner for Taking Affidavits
for British Columbia



NO. S154746
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985 c. C-44, as amended

AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

O R D E R MADE AFTER APPLICATION

)	THE HONOURABLE)	
BEFORE))	09 / JULY / 2015
)	MR. JUSTICE BUTLER)	

ON THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia on July 8, 2015; AND ON HEARING John Sandrelli and Jordan Schultz, counsel for the Petitioner, and those counsel listed in Schedule "A" hereto; AND UPON READING the material filed, including the Fourth Affidavit of Dennis Lindahl sworn July 2, 2015, the Fifth Affidavit of Dennis Lindahl sworn July 6, 2015 and the Fourth Report of the Monitor, dated July 7, 2015; AND UPON having granted the Initial Order dated June 9, 2015, granting a stay period to July 8, 2015, as extended to July 10, 2015 by Order made July 8, 2015; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "CCAA"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court; *and judgment being reserved to this date;*

THIS COURT ORDERS AND DECLARES THAT:

1. This Amended and Restated Initial Order amends and restates the Initial Order (the "Initial Order") of this Court entered in these proceedings on June 9, 2015 (the "Order Date"), as amended by the Orders of this Court made June 12 and July 8, 2015.

2. This Amended and Restated Initial Order is not intended to, and does not, modify or amend the terms of the Order of this Court entered in these proceedings on June 26, 2015.

JURISDICTION

3. The Petitioner is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

4. The Petitioner shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

5. Subject to this Order and any further Order of this Court, the Petitioner shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to carry on its business (the "**Business**") in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioner shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order; provided, however, for the avoidance of doubt, Property does not include funds held by Computershare Trust Company of Canada in trust for the Territorial Government of the Northwest Territories in respect of the reclamation obligations of the Petitioner related to mining operations at the Cantung site.

6. The Petitioner shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding

severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "**Wages**");

- (b) all amounts owing to or in respect of individuals working as independent contractors in connection with the Petitioner's Business;
- (c) the fees and disbursements of any Assistants retained or employed by the Petitioner or the Monitor which are related to the Petitioner's restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioner and the Monitor, whenever and wherever incurred, in respect of:
 - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioner or any subsidiaries or affiliated companies of the Petitioner are domiciled;
 - (ii) any litigation in which the Petitioner is named as a party or is otherwise involved, whether commenced before or after the Order Date; and
 - (iii) any related corporate matters; and
- (d) all amounts owing for goods and services actually supplied, both prior to and subsequent to the Order Date, to the Petitioners:
 - (i) by reagent and chemical suppliers, fuel suppliers, food and janitorial service providers, personnel transport providers, utilities, and explosive and other mining materials suppliers, with the prior consent of the Monitor and, if, in the opinion of the Petitioner and the Monitor the supplier is critical to the Business and the ongoing operations of the Petitioner and payment is required to ensure ongoing supply;
 - (ii) by freight and logistics suppliers, freight carriers, warehousemen and shippers with the prior consent of the Monitor, if, in the opinion of the Petitioner and the Monitor the supplier is critical to the Business and the

ongoing operations of the Petitioner and payment is required to ensure ongoing supply;

- (iii) by other parties providing goods or services to the Petitioner, with the prior consent of the Monitor, if, in the opinion of the Petitioner and the Monitor the supplier is critical to the Business and the ongoing operations of the Petitioner and payment is required to ensure ongoing supply; and
- (iv) with the prior consent of the Monitor, all amounts owing to creditors who, prior to the Order Date, lawfully retained Property or exercised valid and enforceable possessory liens against any asset of the Petitioner where the value of such asset exceeds the amount of the possessory or statutory liens or where the asset is deemed critical by the Petitioner and the Monitor to the Business;

provided, however, that the Monitor shall provide Callidus Capital Corporation ("**Callidus**") with notice of any such payments in respect of goods or services supplied prior to the Order Date which have been approved by the Monitor 24 hours in advance of payment, and, with respect to any such payments greater than \$50,000, the prior consent of Callidus shall be required.

7. Except as otherwise provided herein, the Petitioner shall be entitled to pay all expenses reasonably incurred by the Petitioner in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure exceeding \$500,000 shall be approved by the Monitor;
- (b) all obligations incurred by the Petitioner after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioner following the Order Date (including those under purchase orders outstanding at

the Order Date but excluding any interest on the Petitioner's obligations incurred prior to the Order Date); and

- (c) fees and disbursements of the kind referred to in paragraph 6(c) which may be incurred after the Order Date.

8. The Petitioner is authorized to remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioner in connection with the sale of goods and services by the Petitioner, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

9. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioner shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioner and the landlord from time to time ("**Rent**"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

10. Except as specifically permitted herein, the Petitioner is hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioner to any of its creditors, other than Callidus, as of the Order Date except as authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of its Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to its customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioner to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

RESTRUCTURING

11. Subject to such requirements as are imposed by the CCAA, the Petitioner shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of its Business or operations and commence marketing efforts in respect of any of its redundant or non-material assets;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing for its Business or Property, in whole or part;

all of the foregoing to permit the Petitioner to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. The Petitioner shall provide each of the relevant landlords with notice of the Petitioner's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioner's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioner, or by further Order of this Court upon application by the Petitioner, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioner disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioner's claim to the fixtures in dispute.

13. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioner and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioner, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioner of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Petitioner, in the course of these proceedings, is permitted to,

and hereby shall, disclose personal information of identifiable individuals in its possession or control to stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioner or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

15. Until and including July 17, 2015, or such later date as this Court may order (the "**Stay Period**"), no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioner and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

16. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioner and the Monitor or leave of this Court.

17. Nothing in this Order, including paragraphs 15 and 16, shall: (i) empower the Petitioner to carry on any business which the Petitioner is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioner.

NO INTERFERENCE WITH RIGHTS

18. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioner and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

19. During the Stay Period, all Persons having oral or written agreements with the Petitioner or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioner, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioner in accordance with normal payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioner on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioner with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioner whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioner, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioner or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioner that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE

22. The Petitioner shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioner after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. The directors and officers of the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not

exceed an aggregate amount of \$500,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraph 41 and 43 herein.

24. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioner's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

APPOINTMENT OF MONITOR

25. Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioner with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioner and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioner pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Petitioner's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Petitioner in its preparation of the Petitioner's cash flow statements;

- (d) advise the Petitioner in its development of the Plan and any amendments to the Plan;
- (e) assist the Petitioner, to the extent required by the Petitioner, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioner, to the extent that is necessary to adequately assess the Petitioner's business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (h) perform such other duties as are required by this Order or by this Court from time to time.

27. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

28. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the

British Columbia *Fish Protection Act*, the Northwest Territories *Environmental Protection Act*, the Northwest Territories *Waters Act*, the Yukon *Environment Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. The Monitor shall provide any creditor of the Petitioner with information provided by the Petitioner in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioner is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioner may agree.

30. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

31. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioner as part of the cost of these proceedings. The Petitioner is hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioner on a periodic basis and, in addition, the Petitioner is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioner, retainers in the amounts of up to \$50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

32. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

33. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioner's restructuring. The Administration Charge shall have the priority set out in paragraph 41 and 43 hereof.

INTERIM FACILITY

34. The Petitioner is hereby authorized to enter into, and perform all obligations as set out in, a forbearance agreement (the "**Forbearance Agreement**") with Callidus Capital Corp. (the "**Interim Lender**"), substantially in the form attached as Exhibit "B" to the Affidavit #5 of Dennis Lindahl, sworn July 6, 2015.

35. The Petitioner is hereby authorized and empowered to borrow under a credit facility (the "**Interim Facility**") from the Interim Lender in order to finance the continuation of the Petitioner's business and preservation of its property, provided that borrowings authorized under the Interim Facility shall not exceed \$2,500,000 (the "**Interim Loan**") unless and until permitted by further Order of this Court.

36. The Interim Facility shall be made on the terms and conditions set forth in the term sheet between the Petitioner and the Interim Lender dated as of July 6, 2015, attached as Schedule "B" to the Forbearance Agreement (the "**Term Sheet**").

37. The Petitioner is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, including, without limitation, a general security agreement charging all present and after acquired personal

property of the Petitioner (the "GSA") and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Term Sheet or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Petitioner is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

38. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "Interim Lender's Charge") on the Property in an amount equal to \$2,500,000 plus all interest, fees, costs and other amounts payable under the Term Sheet and the Definitive Documents. The Interim Lender's Charge shall not secure an obligation that exists before this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 41 and 43 hereof.

39. Notwithstanding any other provision of this Order:

- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Lender's Charge, the Interim Lender, upon ten days' notice to the Petitioner and the Monitor and subject to any further order of this Court, may exercise any and all of its rights and remedies against the Petitioner or the Property under or pursuant to the Term Sheet, Definitive Documents and the Interim Lender's Charge, including without limitation, to cease making advances to the Petitioner and set off and/or consolidate any amounts owing by the Interim Lender to the Petitioner against the obligations of the Petitioner to the Interim Lender under the Term Sheet, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioner and for the appointment of a trustee in bankruptcy of the Petitioner; and

- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioner or the Property.

40. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioner under the CCAA, or any proposal filed by the Petitioner under the *Bankruptcy and Insolvency Act of Canada* (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

41. The priorities of the Administration Charge, the Interim Lender's Charge and the Directors' Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – Interim Lenders' Charge and the GSA (to the maximum amount of \$2,500,000 plus all interest, costs, fees and expenses as provided in the Term Sheet); and

Third - Directors' Charge (to the maximum amount of \$500,000)

42. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Interim Lenders' Charge, the GSA and the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

43. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except:

- (a) those claims contemplated by section 11.8(8) of the CCAA; and
- (b) that the priority of the Directors' Charge over any Encumbrance existing as of the Order Date shall be limited to \$250,000.

44. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioner obtains the prior written consent of the Monitor, the Interim Lender, and the beneficiaries of the Administration Charge and the Director's Charge.

45. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Petitioner; and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Petitioner of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Petitioner pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

46. Any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioner's interest in such real property leases.

SERVICE AND NOTICE

47. The Monitor shall (i) without delay, publish in the Vancouver Sun and the Whitehorse Daily Star a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioner of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

48. The Petitioner and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioner's creditors or other interested parties at their respective addresses as last shown on the records of the Petitioner and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

49. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: www.alvarezandmarsal.com/northamerican.

50. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: www.alvarezandmarsal.com/northamerican.

51. Notwithstanding paragraphs 47 and 48 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

52. The Petitioner or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

53. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioner, the Business or the Property.

54. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

55. Each of the Petitioner and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioner to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

56. The Petitioner may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioner determines that such a filing is appropriate.

57. The Petitioner is hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

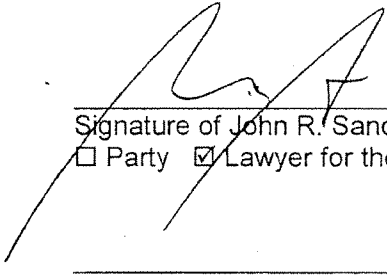
58. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

59. Any interested party (including the Petitioner and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

60. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

61. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

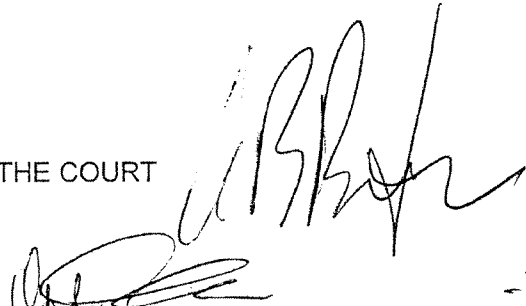
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of John R. Sandrelli
 Party Lawyer for the Petitioner

BY THE COURT

REGISTRAR



Handwritten note: "ok form" with a checkmark

Schedule "A"

LIST OF COUNSEL

Name of Counsel	Appearing For
John Sandrelli Jordan Schultz	North American Tungsten Corporation Ltd.
Kibben Jackson	Alvarez & Marsal Canada Inc ("Monitor")
William E. J. Skelly	Callidus Capital Corporation
Mary Buttery Lance Williams	Government of Northwest Territories
Jonathan McLean Angela Crimeni	Wolfram Bergbau and Hutten AG Agent for counsel for Global Tungsten & Powders Corp.

NO. S-154746
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT

R.S.C. 1985, c. C-36, as amended

AND

IN THE MATTER OF THE CANADA BUSINESS CORPORATIONS ACT,

R.S.C. 1985 c. C-44, as amended

AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.


PETITIONER

ORDER MADE AFTER APPLICATION

DENTONS CANADA LLP
BARRISTERS & SOLICITORS
250 Howe Street, 20th Floor
Vancouver, BC V6C 3R8
Phone No.: (604) 687-4460
Attention: John Sandrelli

File No. 508753-89

This is **Exhibit "B"** referred to in the
Affidavit of **KRYSTAL SHAYLER**
sworn before me at Vancouver
this 6th day of August, 2015.



A Commissioner for Taking Affidavits
for British Columbia



SUPREME COURT OF BRITISH COLUMBIA

Effective date: 2015/03/9

Number: PD - 45

Title:

Practice Direction**Model Orders - *Companies' Creditors Arrangement Act*****Summary:**

Superior courts across Canada have coordinated to standardize orders made under federal insolvency legislation, and to update the standard forms of orders from time to time to reflect developments in the law. This Practice Direction prescribes three standard forms of orders. The first is the standard form of order for initial orders made in CCAA proceedings commenced in British Columbia. The other two standard forms of order are for use in cross-border CCAA proceedings where the main proceedings were commenced elsewhere.

Direction:

1. PD-29 - *Model Companies' Creditors Arrangement Act Initial Order* dated June 6, 2011 is rescinded.
2. This Practice Direction prescribes the use of the following standard forms of order, which may be found at the links noted:

- a. Model CCAA Initial Order ("Initial Order");

http://www.courts.gov.bc.ca/supreme_court/practice_and_procedure/practice_directions/civil/CCAA_Model_Initial_Order_November_5_2014.docx

- b. Model Order Made After Application -Foreign Main Proceeding ("Initial Recognition Order");

http://www.courts.gov.bc.ca/supreme_court/practice_and_procedure/practice_directions/civil/Model_Initial_Recognition_Order.docx

- c. Model Order Made After Application-Supplemental Order in Foreign Main Proceeding ("Supplemental Recognition Order").

http://www.courts.gov.bc.ca/supreme_court/practice_and_procedure/practice_directions/civil/Model_Supplemental_Recognition_Order.docx

3. None of these standard forms of order is determinative of the applicant's right to the relief provided for in the form of order. Rather, in each case the applicant must satisfy the Court that the relief provided for in the standard form of order is appropriate.
4. If the applicant seeks relief that is different from that provided for in the standard form of order, the applicant must:
 - a. identify the difference by providing a black line copy of the order sought as compared to the Initial Order, the Initial Recognition Order, or the Supplemental Recognition Order, as the case may be.
 - b. explain to the Court the basis upon which it should grant relief on terms different from those provided for in the relevant standard form of order.

Chief Justice C. E. Hinkson

BC MODEL CCAA INITIAL ORDER – November 5, 2014

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE [CANADA BUSINESS CORPORATIONS ACT, R.S.C. 1985, c. C-44 and/or the BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57 and/or any other applicable Provincial Statute]

AND

IN THE MATTER OF [Petitioner(s)]

PETITIONER(S)

ORDER MADE AFTER APPLICATION¹

BEFORE THE HONOURABLE)
) dd/mm/yyyy
)

THE APPLICATION of the Petitioner coming on for hearing² at Vancouver, British Columbia, on the _____ day of _____, 201____ (the “**Order Date**”); AND ON HEARING _____, counsel for the Petitioner and those other counsel listed on Schedule “A” hereto; AND UPON READING the material filed, including the First Affidavit of _____ sworn _____, 201____ and the consent of _____ to _____

¹ This model Order is not in any way determinative of the applicant’s entitlement to the relief provided for in this model Order. It is the responsibility of counsel to ensure that the form of Order they propose is appropriate in the circumstances of the case and to justify the relief they are seeking, including by providing the necessary evidentiary support and judicial authority.

² Section 11(1) of the CCAA provides for notice of an application to be given. CCAA orders may, and in some cases must, be sought on notice to affected parties, if this is possible. Applications may be made without notice “as [the court] may see fit”, although recent British Columbia cases have commented on the appropriateness of bringing such applications without notice: *Re Encore Developments Ltd.* 2008 BCSC 13 and *Re Marine Drive Properties Ltd.* 2009 BCSC 145. If service has been abridged, the Order should reflect that.

act as Monitor; AND UPON BEING ADVISED that the secured creditors [and others] who are likely to be affected by the charges created herein were given notice³; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "CCAA"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

JURISDICTION

1. The Petitioner is a company to which the CCAA applies.

SUBSEQUENT HEARING DATE

2. The hearing of the Petitioner's application for an extension of the Stay Period (as defined in paragraph [15] of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at [REDACTED] .m. on [REDACTED], the [REDACTED] day of [REDACTED], 201 [REDACTED] or such other date as this Court may order.

PLAN OF ARRANGEMENT

3. The Petitioner shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. Subject to this Order and any further Order of this Court, the Petitioner shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the

³ Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2)

“**Property**”), and continue to carry on its business (the “**Business**”) in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioner shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

[Cash Management System⁴]

5. The Petitioner shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:⁵

⁴ This provision but should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash. If to be included, the model wording for the provision is as follows: “THIS COURT ORDERS that the Petitioner shall be entitled to continue to utilize the central cash management system currently in place as described in the Affidavit of [NAME] sworn [DATE] or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Petitioner of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Petitioner, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.”

⁵ Paragraphs 5 and 6 were separated to make it clear that only very limited payments may be made on account of pre-filing accruals and expenses. The Petitioner may consider seeking authority to make other payments during the stay, such as an amendment to paragraph 5 allowing certain payments to creditors, including critical suppliers, on the following terms:

“..... with the written consent of the Monitor:

- (i) pay the entire amount of its obligations to any creditor if the amount of such obligations, as agreed between the Petitioner and the creditor, is \$ [REDACTED] or less as at the Order Date;
- (ii) pay \$ [REDACTED] to any other creditor to which the outstanding obligations of the Petitioner are greater than \$ [REDACTED] as at the Order Date, provided such creditor agrees to accept that amount in full satisfaction of all obligations of the Petitioner to such creditor as at the Order Date;
- (iii) pay amounts owing to creditors who hold possessory or statutory liens against any asset of the Petitioner where the value of such asset exceeds the amount of the possessory or

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- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively “Wages”);⁶ and
- (b) the fees and disbursements of any Assistants retained or employed by the Petitioner which are related to the Petitioner’s restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioner, whenever and wherever incurred, in respect of:
 - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioner or any subsidiaries or affiliated companies of the Petitioner are domiciled;
 - (ii) any litigation in which the Petitioner is named as a party or is otherwise involved, whether commenced before or after the Order Date; and
 - (iii) any related corporate matters.

6. Except as otherwise provided herein, the Petitioner shall be entitled to pay all expenses reasonably incurred by the Petitioner in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures⁷ reasonably incurred and which are necessary for the preservation of the Property or the Business including, without

statutory liens or where the asset is deemed critical by the Petitioner and the Monitor to the business operations of the Petitioner; and

- (iv) amounts outstanding to creditors for goods and services provided prior to the Order Date where expressly authorized by this Order or any further Order of this Court.”

⁶ The Petitioner may wish to specifically apply to pay severance pay outstanding as at the Order Date.

⁷ The Petitioner may wish to consider a limit on this prohibition to allow for flexibility: “.... provided that any capital expenditure exceeding \$ [redacted] shall be approved by the Monitor.”

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limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure exceeding \$ shall be approved by the Monitor;

- (b) all obligations incurred by the Petitioner after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioner following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioner's obligations incurred prior to the Order Date); and
- (c) fees and disbursements of the kind referred to in paragraph **[5(b)]** which may be incurred after the Order Date.

7. The Petitioner is authorized to remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;⁸
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioner in connection with the sale of goods and services by the Petitioner, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and

⁸ The definition of Wages in paragraph 5(a) is intended to allow payment of these amounts even if owed prior to the Order Date in recognition of the fact that Wages are paid at the end of a stub period and that continued employment is critical to the ongoing operations of the Petitioner. The extension of the ability of the Petitioner to make payments in addition to just Wages in this paragraph is intended to : (a) protect directors and officers from statutory claims; and (b) recognize that Section 6(3) of the CCAA provides for the payment of some of these amounts in a restructuring in any event . It is anticipated that the magnitude of such obligations will be brought to the attention of the Court if significant.

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

8. Until such time as a real property lease is disclaimed⁹ in accordance with the CCAA, the Petitioner shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioner and the landlord from time to time (“**Rent**”), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

9. Except as specifically permitted herein, the Petitioner is hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioner to any of its creditors as of the Order Date except as authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of its Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;¹⁰

⁹ The term "resiliate" should be used if there are leased premises in the Province of Quebec – see also paras. 12 and 13.

¹⁰ Counsel may wish to consider adding a provision allowing the granting of PMSI security after the Order Date.

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- (d) to not grant credit except in the ordinary course of the Business only to its customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioner to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

FINANCIAL ARRANGEMENTS

10. Notwithstanding any other provision in this Order:

- (a) the Petitioner is hereby authorized and empowered to borrow, repay and reborrow from [REDACTED] (the “**Lender**”) such amounts from time to time as the Petitioner considers necessary, and the Lender shall be entitled to revolve its operating loan facility (the “**Lender Loan Facility**”) and collect interest, fees and costs on the Lender Loan Facility, subject to such amendments as are agreed between the Lender and the Petitioner;
- (b) the Lender Loan Facility shall be secured by the same charge (the “**Lender Charge**”) as secured the Lender Loan Facility as at the Order Date; and
- (c) the Petitioner is authorized to deal with the Lender in respect of the Lender Loan Facility on such terms as may be negotiated and agreed upon between the Petitioner and the Lender.

RESTRUCTURING

11. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioner shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of its Business or operations and commence marketing efforts in respect of any of its

redundant or non-material assets [and to dispose of redundant or non-material assets not exceeding \$ _____ in any one transaction or \$ _____ in the aggregate]¹¹

- (b) [terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate];¹² and
- (c) pursue all avenues of refinancing for its Business or Property, in whole or part;

all of the foregoing to permit the Petitioner to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. The Petitioner shall provide each of the relevant landlords with notice of the Petitioner's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioner's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioner, or by further Order of this Court upon application by the Petitioner, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioner disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioner's claim to the fixtures in dispute.

¹¹ Section 36 of the CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)), but rather requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or been made available at the initial CCAA hearing.

¹² It is not clear to the BCMIOC whether the termination of an employee is a "disclaimer or resiliation" of the employment agreement within the meaning of Section 32 of the CCAA. Since the termination of an employee may not be a matter governed by Section 32 of the CCAA (except to the extent that collective agreements are exempted from the application of that Section), the BCMIOC has left this provision in the Model Order.

13. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioner and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioner, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioner of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Petitioner, in the course of these proceedings, is permitted to, and hereby shall, disclose personal information of identifiable individuals in its possession or control to stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioner or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue

to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.¹³

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES^{14 15}

15. Until and including [REDACTED] [MAX. 30 DAYS FROM ORDER DATE], or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioner and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

16. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioner and the Monitor or leave of this Court.

17. Nothing in this Order, including paragraphs [15] and [16], shall: (i) empower the Petitioner to carry on any business which the Petitioner is not lawfully entitled to carry on; (ii)

¹³ Counsel should consider whether the inclusion of this paragraph concerning exemption from privacy legislation should be included as part of the Initial Order. The paragraph is intended to enable the Petitioner to disclose personal information in the course of its dealings with potential lenders, investors or purchasers. Section 18(1)(o) of the British Columbia *Personal Information Protection Act* allows the release of such information only when “required or authorized by law”. Accordingly, it may be appropriate to wait until such a transaction is contemplated before seeking to include this term in an order, and counsel may wish to consider whether it is necessary to adduce evidence showing the court that disclosure is necessary.

¹⁴ In keeping with the underlying philosophy of the Model Order, these provisions include a succinct stay provision which is intended to encapsulate the very broad stay provisions authorized in Section 11 of the CCAA. These provisions are specifically subject to specific limitations, including to permit a regulatory body to continue its investigations of the Petitioner or to permit a lien or security-holder to make filings and commence Proceedings necessary to preserve their lien or security. If a case can be made out that such a Proceeding would have the effect of prejudicing the Petitioner’s ability to restructure, then, on application based on the applicable facts, the Model Order can be amended to stay such Proceedings.

¹⁵ In addition, counsel should consider clauses dealing with Section 81.1 and 81.2 of the BIA, as may be appropriate.

affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioner.

NO INTERFERENCE WITH RIGHTS

18. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioner and the Monitor or leave of this Court.¹⁶

CONTINUATION OF SERVICES

19. During the Stay Period, all Persons having oral or written agreements with the Petitioner or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioner, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioner in accordance with normal payment

¹⁶ The Petitioner may wish to consider whether an application should be made relating to the ongoing entitlement/benefit of any applicable volume rebates or discounts based upon volumes supplied during the period prior to the Order Date.

practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner and the Monitor, or as may be ordered by this Court.¹⁷

NON-DEROGATION OF RIGHTS

20. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioner on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.¹⁸

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioner with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioner whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioner, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioner or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioner that might otherwise be barred or

¹⁷ Counsel may wish to consider whether to seek an order deeming one or more suppliers “critical suppliers” in accordance with Section 11.4 of the CCAA. Notice of an application to deem a supplier a critical supplier must be given to the proposed critical supplier and any secured creditors likely to be affected by the security or charge granted in favour of the proposed critical supplier. Suggested wording for the additional paragraph is as follows: “THIS COURT ORDERS that [Name of supplier] is hereby deemed a critical supplier (the “Critical Supplier”) in accordance with section 11.4 of the CCAA and shall, from the Order Date, continue to supply goods and services to the Petitioner on such terms and conditions as are consistent with the supply relationship between the Critical Supplier and the Petitioner. The Critical Supplier is hereby granted a charge (the “Critical Suppliers Charge”) on the Property, which charge shall not exceed an aggregate amount of \$_____, as security for any amounts for which the Petitioner becomes indebted to the Critical Supplier for the supply of goods or services after the Order Date. The Critical Suppliers Charge shall have the priority set out in paragraphs 40 and 42 herein.”

¹⁸ This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).

extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE ¹⁹

22. The Petitioner shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioner after the commencement of the within proceedings²⁰, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. The directors and officers of the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**")²¹ on the Property, which charge shall not exceed an aggregate amount of \$ _____, as security for the indemnity provided in paragraph [22] of this Order. The Directors' Charge shall have the priority set out in paragraphs [40] and [42] herein.

24. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioner's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [22] of this Order.

¹⁹ Counsel should be aware that the provisions relating to Directors/Officers/Employees Indemnification and Charge may not be appropriate in all circumstances.

²⁰ The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge) and the scope of the indemnity are discretionary matters that should be addressed with the Court.

²¹ Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Petitioner could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

APPOINTMENT OF MONITOR

25. [REDACTED] is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioner with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioner and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioner pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Petitioner's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Petitioner, to the extent required by the Petitioner, in its dissemination, to the Interim Lender (as hereinafter defined)²² and its counsel on a [TIME INTERVAL] basis of financial and other information as agreed to between the Petitioner and the Interim Lender which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;
- (d) advise the Petitioner in its preparation of the Petitioner's cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the Interim Lender;

²² This Model Order assumes that there is an Interim Lender.

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- (e) advise the Petitioner in its development of the Plan and any amendments to the Plan;
- (f) assist the Petitioner, to the extent required by the Petitioner, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioner, to the extent that is necessary to adequately assess the Petitioner's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

27. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

28. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other

contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder (the "**Environmental Legislation**")²³, provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. The Monitor shall provide any creditor of the Petitioner and the Interim Lender with information provided by the Petitioner in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioner is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioner may agree.

30. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.²⁴

ADMINISTRATION CHARGE

31. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioner as part of the cost of these proceedings. The Petitioner is hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioner

²³ Counsel should consider whether the Petitioner has property in any other Provinces and, if so, consider whether it is appropriate to include a reference to the relevant environmental legislation of those Provinces.

²⁴ Counsel should be aware that the provision exempting the Monitor in situations except for gross negligence may not be appropriate in all circumstances.

on a periodic basis and, in addition, the Petitioner is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioner, retainers in the amount[s] of \$ [REDACTED] [respectively] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

32. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

33. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$ [REDACTED], as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioner's restructuring. The Administration Charge shall have the priority set out in paragraphs [40] and [42] hereof.²⁵

INTERIM FINANCING

34. The Petitioner is hereby authorized and empowered to obtain and borrow under a credit facility from [INTERIM LENDER'S NAME] (the "**Interim Lender**") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed \$ [REDACTED] unless permitted by further Order of this Court.

35. Such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Petitioner and the Interim Lender dated as of [DATE] (the "**Commitment Letter**"), filed.

²⁵ Counsel should be aware that the provision allowing for an Administration Charge in favour of the Petitioner's counsel may not be appropriate in all circumstances.

36. The Petitioner is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Petitioner is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

37. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property. The Interim Lender's Charge shall not secure an obligation that exists before this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs [40] and [42] hereof.

38. Notwithstanding any other provision of this Order:

- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Lender's Charge, the Interim Lender, upon [REDACTED] days notice to the Petitioner and the Monitor, may exercise any and all of its rights and remedies against the Petitioner or the Property under or pursuant to the Commitment Letter, Definitive Documents and the Interim Lender's Charge, including without limitation, to cease making advances to the Petitioner and set off and/or consolidate any amounts owing by the Interim Lender to the Petitioner against the obligations of the Petitioner to the Interim Lender under the Commitment Letter, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a

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bankruptcy order against the Petitioner and for the appointment of a trustee in bankruptcy of the Petitioner; and

- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioner or the Property.

39. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioner under the CCAA, or any proposal filed by the Petitioner under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. The priorities of the Administration Charge, the Directors' Charge and the Interim Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$ _____);

Second – Interim Lender's Charge;

Third - Directors' Charge (to the maximum amount of \$ _____).²⁶

41. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Interim Lender's Charge and the Directors' Charge (collectively, the "Charges") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable²⁷ for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

²⁶ The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.

²⁷ The term "opposable" should be included if there is Property in the Province of Quebec.

42. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”), in favour of any Person.²⁸

43. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioner obtains the prior written consent of the Monitor, the Interim Lender and the beneficiaries of the Administration Charge and the Director’s Charge.

44. The Administration Charge, the Director’s Charge, the Commitment Letter, the Definitive Documents and the Interim Lender’s Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the Interim Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Petitioner; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive

²⁸ This Model Order is not intended to be determinative of whether the Court has the jurisdiction to grant the Administration Charge, the Interim Lender’s Charge and the Director’s Charge priority over the deemed trusts identified in subsection 37(2) of the CCAA. If the Petitioner seeks an order granting priority for such charges over any such deemed trusts, notice of the application should be given to the Federal and Provincial Crowns, as appropriate. If the Petitioner does not seek an order subordinating any such deemed trust to such charges, the following should be added to the end of paragraph 42: “with the exception of any deemed trust amounts provided for in subsection 37(2) of the CCAA.”

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Documents shall create or be deemed to constitute a breach by the Petitioner of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioner entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Petitioner pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

45. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioner's interest in such real property leases.

SERVICE AND NOTICE

46. The Monitor shall (i) without delay, publish in [newspapers specified by the Court] a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioner of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

47. The Petitioner and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioner's creditors or other interested parties at their respective addresses as last shown on the

records of the Petitioner and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.²⁹

48. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the “**Service List**”) to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: [INSERT WEBSITE ADDRESS].

49. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: [INSERT WEBSITE ADDRESS].

50. Notwithstanding paragraphs [47] and [49] of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns³⁰ in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.³¹

²⁹ In all instances, counsel should address the manner of service with the Court, including advising as to how service was or is proposed to be effected.

³⁰ Counsel should consider whether the Petitioner has property in any other Provinces and, if so, consider whether it is appropriate to include a reference to those Provinces and the relevant legislation of those Provinces with respect to service.

³¹ *The Crown Proceeding Act*, R.S.B.C. 1996, c. 89, s. 8 provides for service on the British Columbia Crown, as follows:

8. A document to be served on the government
 - (a) must be served on the Attorney General at the Ministry of the Attorney General in the City of Victoria, and
 - (b) is sufficiently served if
 - (i) left there during office hours with a solicitor on the staff of the Attorney General at Victoria, or
 - (ii) mailed by registered mail to the Deputy Attorney General at Victoria.

GENERAL

51. The Petitioner or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

52. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioner, the Business or the Property.

53. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

54. Each of the Petitioner and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioner to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

A similar provision relating to the Federal Crown is found at s. 23(2) of the *Crown Liability and Proceeding Act*, R.S. 1985, c. C-50, which provides for service on the Deputy Attorney General of Canada or the chief executive officer of the agency in whose name the proceedings are taken, as the case may be. The Federal Crown requests that service of documents be by delivery to Department of Justice, 900 - 840 Howe Street, Vancouver, B.C. V6Z 2S9.

55. The Petitioner may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioner determines that such a filing is appropriate.

56. The Petitioner is hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

57. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

58. Any interested party (including the Petitioner and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

59. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.³²

60. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.³³

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

³² Counsel should be aware that the final form of the Order may be modified before entry at the discretion of the Chambers Judge.

³³ For a provision of this or any subsequent order in these proceedings to make any provincial law inapplicable or inoperative, notice must be given under s. 8 of the *Constitutional Question Act* R.S.B.C. 1996, c. 68. If notice is not given, the provision could later be challenged and set aside.

Signature of
 Party Lawyer for the Petitioners

<Print Name>

Signature of
 Party Lawyer for <name of party(ies)>

<Print Name>

BY THE COURT

REGISTRAR

Schedule "A"

(List of Counsel)

No.

Vancouver Registry

IN THE SUPREME COURT OF BRITISH
COLUMBIA

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

AND IN THE MATTER OF
[REDACTED]

PETITIONER

CCAA INITIAL ORDER ([REDACTED], 201 [REDACTED])

Counsel: [REDACTED]

Matter No: [REDACTED]

This is **Exhibit "C"** referred to in the
Affidavit of **KRYSTAL SHAYLER**
sworn before me at Vancouver
this 6th day of August, 2015.

A Commissioner for Taking Affidavits
for British Columbia

Revised: January 21, 2014

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEEKDAY, THE #
)
JUSTICE) DAY OF MONTH, 20YR
)

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 [APPLICANT'S NAME] (the "Applicant")

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of [NAME] sworn [DATE] and the Exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for [NAMES], no one appearing for [NAME]¹ although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of [MONITOR'S NAME] to act as the Monitor,

¹ Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated² so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. [THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system³ currently in place as described in the Affidavit of [NAME]

² If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

sworn [DATE] or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.]

6. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

³ This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed [**or resiliated**]⁴ in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, [**and to dispose of redundant or non-material assets not exceeding \$● in any one transaction or \$● in the aggregate**]⁵

⁴ The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.

⁵ Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.

- (b) **[terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate];** and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims **[or resiliates]** the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer **[or resiliation]** of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer **[or resiliation]** is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer **[or resiliation]**, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer **[or resiliation]**, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including [DATE – MAX. 30 DAYS], or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data

services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.⁶

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

⁶ This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,⁷ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")⁸ on the Property, which charge shall not exceed an aggregate amount of \$●, as security for the indemnity provided in paragraph [20] of this Order. The Directors' Charge shall have the priority set out in paragraphs [38] and [40] herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [20] of this Order.

APPOINTMENT OF MONITOR

23. THIS COURT ORDERS that [MONITOR'S NAME] is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with

⁷ The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.

⁸ Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a [TIME INTERVAL] basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the

Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a [TIME INTERVAL] basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$● [, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

30. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$●, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs [38] and [40] hereof.

DIP FINANCING

32. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from [DIP LENDER'S NAME] (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate

purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$● unless permitted by further Order of this Court.

33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed.

34. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs [38] and [40] hereof.

36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ● days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the

Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

37. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows⁹:

First – Administration Charge (to the maximum amount of \$●);

Second – DIP Lender's Charge; and

Third – Directors' Charge (to the maximum amount of \$●).

39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent

⁹ The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.

to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

42. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

44. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in [newspapers specified by the Court] a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

45. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<@>’.

46. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

47. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

48. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

49. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

50. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative

in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

51. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

52. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

This is **Exhibit "D"** referred to in the
Affidavit of **KRYSTAL SHAYLER**
sworn before me at Vancouver
this 6th day of August, 2015.

A Commissioner for Taking Affidavits
for British Columbia

Angela Crimeni

From: s.schmidt@wolfram.at
Sent: Monday, July 27, 2015 8:10 AM
To: Dennis M.Lindahi; Kurt Heikkila
Cc: bpenich@natungsten.com; u.wedberg@wolfram.at; m.dornhofer@wolfram.at; m.svensson@wolfram.at; Angela Crimeni
Subject: Follow-up on GTP letter dated July 22, 2015

Dear Dennis,

We have been provided with a copy of Global Tungsten & Powders Corp.'s ("GTP") letter dated July 22, 2015, which asserts a right to set-off \$1,209,673.49 USD against the amount owing under its Loan Agreement dated December 19, 2013.

In light of GTP's position, Wolfram Bergbau and Hütten AG ("WBH") hereby reserves its set-off rights under the CCAA as well.

Please also be advised that regardless of what happens with GTP's Supply Agreement, WBH is not in a position to take any additional volumes of concentrates above and beyond the quantities and qualities mandated by the NATC-WBH Supply Agreement.


Best regards, Steffen

Steffen Schmidt, P.Geo.
Project Manager – International Mining
Wolfram Bergbau und Hütten AG
Bergla 33
A-8543 St. Martin i.S., Austria
Tel. +43 (0) 3465 7077-559
Mob. +43 (0) 664 222 9092
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Firmenbuchnummer: 174652t; Firmenbuchgericht: HG Wien; Firmensitz: Wien

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This is **Exhibit "E"** referred to in the
Affidavit of **KRYSTAL SHAYLER**
sworn before me at Vancouver
this 6th day of August, 2015.



A Commissioner for Taking Affidavits
for British Columbia

From: Siddall, Kieran
Sent: Wednesday, July 29, 2015 4:13 PM
To: 'Dominguez, Miriam'; Sandrelli, John; Jeffries, Tevia; Schultz, Jordan; Arenas, Avic; tmartin@alvarezandmarsal.com; tpowell@alvarezandmarsal.com; Marianna.lee@alvarezandmarsal.com; kjackson@fasken.com; nwolf@fasken.com; vtickle@fasken.com; llewis@fasken.com; Colin.Brousseau@gowlings.com; michele.hay@gowlings.com; wskelly@blg.com; LHiebert@blg.com; dmccarthy@stikeman.com; jmclean@stikeman.com; drbrown@stikeman.com; acrimeni@stikeman.com; tflanagan@amalgamatedmining.com; sleahy@westpac.ca; gord@fernandeshearn.com; ian_blackstock@gov.nt.ca; gmacdonald@anton.yk.ca; tracey.durand@sodexo.com; mgardhouse@norterra.com; TMacDonald@northernindustrialsales.ca; pkyriakakis@mccarthy.ca; mary.buttery@dlapiper.com; lance.williams@dlapiper.com; susan.wood@dlapiper.com; sue.danielisz@dlapiper.com; bpenich@natungsten.com; gbond@natungsten.com; krasnick@shaw.ca; clachance@dwpv.com; gplottel@millertomson.com; aschalles@millertomson.com; vlever@millertomson.com; jason.levine@justice.gc.ca; Melissa.Nicolls@justice.gc.ca; scollins@mccarthy.ca; wmilman@mccarthy.ca; wmacleod@mccarthy.ca; Boucher, Scott
Subject: RE: In the Matter of the CCAA and In the Matter of North American Tungsten Corporation Ltd. (S.C.B.C. Action No. S-154746, Vancouver Registry)

John,

As you are likely aware, our client arranged today for the transmission of funds to your client, in the amounts required by Butler J.'s July 27 order. This e-mail is intended to give notice that those funds were paid under compulsion of that order. Correspondingly, in the event the order is varied either by Butler J. or by the Court of Appeal, such that payment was incorrectly compelled, our client asserts an absolute priority to the return of those funds. Our position in that regard is that our client retains a beneficial interest in the funds, which your client holds as constructive trustee. Your client and any recipient of the monies with notice of these matters would be unjustly enriched by retaining the funds.

Kieran E. Siddall*

Partner, Dispute Resolution + Litigation / Insolvency + Restructuring
 T 604.641.4868 F 604.646.2539 kes@bht.com
 Assistant Nadine Abram T 604.641.4556 nca@bht.com

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WE HAVE MOVED | our new address is: 1800 - 510 West Georgia Street Vancouver, BC V6B 0M3.

From: Dominguez, Miriam [<mailto:miriam.dominguez@dentons.com>]
Sent: Tuesday, July 28, 2015 5:36 PM

To: Sandrelli, John; Jeffries, Tevia; Schultz, Jordan; Arenas, Avic; Dominguez, Miriam; tmartin@alvarezandmarsal.com; tpowell@alvarezandmarsal.com; Marianna.lee@alvarezandmarsal.com; kjackson@fasken.com; nwolf@fasken.com; vtickle@fasken.com; llewis@fasken.com; Colin.Brousson@gowlings.com; michele.hay@gowlings.com; wskelly@blg.com; LHiebert@blg.com; dmccarthy@stikeman.com; jmclean@stikeman.com; drbrown@stikeman.com; acrimeni@stikeman.com; tflanagan@amalgamatedmining.com; sleahy@westpac.ca; gord@fernandeshearn.com; ian_blackstock@gov.nt.ca; gmacdonald@anton.yk.ca; tracey.durand@sodexo.com; mgardhouse@norterra.com; TMacDonald@northernindustrialsales.ca; pkiriakakis@mccarthy.ca; mary.buttery@dlapiper.com; lance.williams@dlapiper.com; susan.wood@dlapiper.com; sue.danielisz@dlapiper.com; bpenich@natungsten.com; gbond@natungsten.com; krasnick@shaw.ca; clachance@dwpv.com; gplottel@millerthomson.com; aschalles@millerthomson.com; vlever@millerthomson.com; jason.levine@justice.gc.ca; Melissa.Nicolls@justice.gc.ca; scollins@mccarthy.ca; wmilman@mccarthy.ca; wmacleod@mccarthy.ca; Siddall, Kieran; Boucher, Scott

Subject: In the Matter of the CCAA and In the Matter of North American Tungsten Corporation Ltd. (S.C.B.C. Action No. S-154746, Vancouver Registry)

To the Service List:

We enclose, for service upon you:

- Court stamped first page of Affidavit No. 10 of Dennis Lindahl, sworn July 24, 2015 ; and
- Requisition of the Petitioner to re-set Application to July 30, 2015;

Thank you,

Miriam



Miriam Dominguez
Assistant to John R. Sandrelli and Tevia Jeffries

D +1 604 648 6512
miriam.dominguez@dentons.com
Website

Dentons Canada LLP
20th Floor, 250 Howe Street Vancouver, BC V6C 3R8 Canada

Salans FMC SNR Denton

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Court of Appeal File No. CA 42990
Court of Appeal File No. CA 42991
Supreme Court File No. S154746
Supreme Court Registry: Vancouver

COURT OF APPEAL

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

and

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS
ACT*, R.S.C. 1985, c. C-44, as amended

and

IN THE MATTER OF NORTH AMERICAN TUNGSTEN
CORPORATION LTD.

AFFIDAVIT

BULL, HOUSSER & TUPPER LLP
Barristers & Solicitors
1800 – 510 West Georgia Street
Vancouver, BC V6B 0M3
Telephone: (604) 687-6575
Facsimile: (604) 641-4949
E-mail: litigation@bht.com
Attention: Kieran E. Siddall

KES/nca

Matter# 15-3341

MEMORANDUM OF ARGUMENT

Part I. STATEMENT OF FACTS

1. These applications for leave to appeal, and for associated partial stays of the orders from which leave to appeal is sought, arise from ongoing proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA"). As a result, leave to appeal is required by CCAA, s. 13.
2. This case presents a scenario in which a CCAA creditor (the appellant, Global Tungsten and Powders Corp., or "GTP") is also a customer of the insolvent debtor, North American Tungsten Corporation Ltd. ("NATC"). By purchasing goods (tungsten) while at the same time having a right to be repaid monies it loaned to NATC, circumstances arose in which GTP possessed a right at law to set off the amounts it owed to NATC against the amounts NATC owed on account of the loan – a right which the CCAA judge, Butler J., rightly recognized that GTP holds.
3. However, Butler J. made two further findings, adverse to GTP. First, he found that GTP breached certain model provisions of the CCAA amended and restated initial order (the "ARIO") by asserting its right of set-off. Second, he found that the CCAA conferred upon him the power and discretion to stay GTP's set-off rights for the duration of the CCAA proceedings – and he so ordered. Both of these conclusions were the product of errors of law. Both, moreover, raise wider questions of major import to insolvencies across the country, about which there has yet to be any appellate guidance: To what extent may rights of set-off be raised in CCAA proceedings? And what power does a CCAA judge possess to prevent their exercise?
4. GTP says the answer to both questions is controlled by s. 21 of the CCAA itself. That provision reads:

The law of set-off or compensation applies to all claims made against a debtor company and to all actions instituted by it for the recovery of debts due to the company in the same manner and to the same extent as if the company were plaintiff or defendant, as the case may be. [emphasis added]

And the order in place in the present case preserves the right to assert set-off “in the same manner and to the same extent” as in ordinary debt claims. Paragraph 20 of the ARIO reads, “Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.” Thus, the “right conferred” by s. 21 resolves in GTP’s favour both the question of compliance with the order, and the question of the limits of the CCAA’s judge’s power to restrain set-off.

5. GTP therefore seeks the following relief on these applications:

- (a) leave to appeal the part of the order made by Butler J. on the 27th day of July, 2015, and varied on the 30th day of July, 2015, declaring that GTP violated the ARIO made July 9, 2015 and requiring GTP to make immediate payment of all invoices issued in respect of shipments made by NATC on or after June 9, 2015 and on or before July 22, 2015, as and when the same become due (the “Payment Order”);
- (b) leave to appeal the part of the order made by Butler J. on the 30th day of July, 2015, staying GTP’s right of set-off with respect to amounts owing to NATC until October 31, 2015 (the “Stay Order”);
- (c) staying the orders under appeal (together, the “Orders”) pending appeal; and
- (d) granting all of the foregoing relief on short notice.

6. The relevant background is as follows. NATC is insolvent. On that basis, NATC was granted an initial order on June 9, 2015. NATC subsequently filed for, and was granted, the ARIO on July 9, 2015.

7. NATC is engaged in the exploration and mining of tungsten. GTP is one of its customers. GTC purchases tungsten concentrates from NATC. Prior to the commencement of the CCAA proceeding, GTP provided NATC with a loan in the amount of USD\$4,700,000 (the “GTP Loan”). After the commencement of the CCAA proceeding, NATC continued to provide GTP with tungsten under a supply agreement.

8. On July 22, 2015, GTP delivered to NATC notice that pursuant to its right of set-off, it intended to retain the amount of USD\$1,209,673.49 from funds owing to NATC and to apply it against the amounts owing under the GTP Loan (the "Set-off Claim").

That step triggered the proceedings giving rise to the orders under appeal.

9. On July 24, 2015, NATC filed a notice of application seeking, *inter alia*, an order and declaration that by refusing to pay amounts owed on the basis of the Set-off Claim, GTP is in violation of paragraphs 15 and 16 of the ARIO. On July 24, 2015, GTP filed a notice of application seeking, *inter alia*, a declaration that the Set-off Claim is valid.

10. These applications were heard on July 27 and 30, 2015 before Butler J. At the hearing on July 27, 2015, Butler J. declared that the Set-off Claim violated the ARIO, made the Payment Order as described above, and directed that the hearing be continued on July 30, 2015 with respect to the remaining relief sought by the parties (see Affidavit of Krystal Shayler sworn August 6, 2015 (the "Shayler Affidavit"), Ex. A, paras. 15-16 and 20; Agreed form of Order of Butler J. made July 27, 2015, varied July 30, 2015).

11. At the hearing on July 30, 2015, Butler J. varied his order to clarify that GTP is obliged to make immediate payment of all invoices issued in respect of shipments made by NATC on or after June 9, 2015 and on or before July 22, 2015, as and when the same become due. Butler J. also made a declaration that the Set-off Claim was valid under s. 21 of the CCAA, but, through the Stay Order, stayed the exercise of the right until October 31, 2015 (see Agreed form of Order of Butler J. made July 30, 2015).

12. The Payment Order requires GTP to make payment for the following invoices on or before the "due date" listed (see Affidavit #10 of Dennis Lindahl sworn July 24, 2015 ("Lindahl Affidavit #10), para. 11, Ex. D, pp. 86-94):

Invoice No.	Invoice Date	Due Date	Amount
NTCG201549	June 22, 2015	July 22, 2015	\$250,601.76
NTCG201550	June 23, 2015	July 23, 2015	\$253,693.35

NTCG201551	July 7, 2015	August 7, 2015	\$229,259.22
NTCG201552	July 14, 2015	August 14, 2015	\$238,141.48
NTCG201523	July 16, 2015	August 16, 2015	\$237,977.68

13. NATC says it needs the funds ordered to be paid under the Payment Order immediately, in order to continue its operations. GTP has made the first two payments. The third payment, which was due August 7, 2015, by agreement of the parties will be paid to the Monitor pending resolution of these applications.

PART II. POINTS IN ISSUE

14. There are two issues:

- (1) Should GTP be granted leave to appeal from the Orders?
- (2) Should the relevant parts of the Orders be stayed pending appeal?

15. On the first issue, GTP proposes to advance three grounds of appeal:

- (a) The CCAA judge erred in law by finding that GTP violated paragraphs 15 and/or 16 of the ARIO, when GTP asserted a right of set-off arising from amounts owing by NATC to GTP.
- (b) The CCAA judge erred in law in interpreting s. 11 and/or s. 11.02 of the CCAA to confer upon the court the jurisdiction to stay otherwise valid rights of set-off.
- (c) The CCAA judge erred in law in failing to give effect to s. 21 of the CCAA, which protects GTP's ability to assert its rights of set-off.

Part III. ARGUMENT

A. Leave to Appeal

16. The same test applicable to all other leave applications should be utilized when considering an application for leave to appeal from a CCAA order (see *Edgewater Casino Inc. (Re)*, 2009 BCCA 40, para. 17).

17. The relevant considerations for granting leave to appeal are as follows: 1) whether the point on appeal is of significance to the practice; 2) whether the point raised is of significance to the action itself; 3) whether the appeal is *prima facie* meritorious; and 4) whether the appeal will unduly hinder the progress of the action (see *Tracy v. Instaloans Financial Solutions Centres (B.C.) Ltd.*, 2006 BCCA 373, para. 13).

18. The paragraphs that follow will apply these four factors to GTP's two appeals (and the three grounds of appeal they encompass) collectively, given the close connection between the various aspects of the proposed appeals, which all come down to whether and to what extent GTP's set-off rights are restrained, and can be restrained, in a CCAA proceeding. Every factor favours granting leave.

1) Whether the point on appeal is of significance to the practice

19. The issues on appeal are of great significance to insolvency practice, for five reasons.

20. First, the CCAA is a federal statute. Any decision of this Court will be influential in proceedings across the country.

21. Second, the point of interpretation of the ARIO will be of general interest to insolvency practice, because the provisions in question – in particular, paragraphs 15, 16 and 20 of the ARIO – all originate from “model orders” that are commonly issued at the outset of CCAA proceedings (see Shayler Affidavit, Exs. B and C). The provisions read as follows:

15. Until and including _____, or such later date as this Court may order (the “Stay Period”), no action, suit or proceeding in any court or tribunal (each, a “Proceeding”) against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written

consent of the Petitioner and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

16. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioner and the Monitor or leave of this Court.

...

20. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioner on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

22. Paragraphs 15 and 16 are of particular importance to insolvency proceedings, as they constitute the core of what such proceedings are about: they establish the general stay of proceedings and remedies that allows a restructuring to take place. It is precedential to conclude, as Butler J. did, that the general stay extends even to rights specifically protected by the CCAA itself (here, s. 21), despite the language of paragraph 20. The correct interpretation and application of these paragraphs has potential importance to every CCAA proceeding.

23. Third, the practical consequence of Butler J.'s interpretation is to create significant uncertainty about the reach of paragraph 20 of the ARIO. In the present case, GTP was found to be in violation of a court order for doing nothing more than asserting its rights of set-off in the usual "manner" (to use the language of s. 21). If leave of the court is required to do so, *per* paragraph 16 of the ARIO, then the non-derogation of rights provision in paragraph 20 may come to be regarded as a dead letter, or at least as too uncertain in its protection to be relied upon.

24. Fourth, the implications of Butler J.'s treatment of the court's jurisdiction under the CCAA go well beyond issues of set-off. He reasoned that the court's jurisdiction under s. 11 of the CCAA to "make any order that it considers appropriate in the

circumstances” is not limited by provisions like s. 21. The Supreme Court of Canada, in *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, has concluded that the court’s discretion must be exercised in furtherance of the CCAA’s purposes (see para. 59). In that case, the discretion was used to preclude the assertion of rights under statutory regimes other than the CCAA. The distinct but crucial question this case raises is whether the court’s admittedly broad jurisdiction also allows it to suspend even the rights conferred or protected by the CCAA itself. Manifestly, this will be a matter of great interest to future insolvencies.

25. Fifth and finally, there is no direct appellate guidance on the set-off issues the proposed appeals will raise. To that extent, the issues raised here will be matters of first impression for this Court, and of significant precedential value across the country. While *Century Services* lays down important general principles, this case is an important opportunity to consider the application of those principles in a distinct context.

2) Whether the point raised is of significance to the action itself

26. Both of the issues raised by GTP with respect to the Payment Order and the Stay Order are vitally important to the underlying CCAA proceeding. As a starting point, the dollar-value of the issue is potentially quite high: GTP is a significant creditor of NATC, with approximately \$4.4M outstanding on its loan. That is a lot of debt to set-off against payment for tungsten. And GTP, along with Wolfram Bergbau und Hutten AG (“WBH”), are NATC’s only two customers.

27. The proposed appeals will decide whether GTP will continue to pay for the tungsten it receives, or is instead entitled to take the tungsten and simply reduce the amount owing on the loan. If the former, then the CCAA proceeding will carry on as intended by NATC and the CCAA judge. If the latter, then a primary source of cash flow for NATC will be cut off. In that event, if NATC cannot make alternate arrangements to fund its short-term obligations (see Affidavit # 9 of Dennis Lindahl, sworn July 21, 2015, paras. 18-21 and 26; Lindahl Affidavit #10, para. 26) NATC would likely have to cease operations and transition its mine into a care and maintenance mode, which could also result in the termination of CCAA proceeding, and liquidation of NATC’s assets. If GTP

is right in law, then that is as it should be; but in any event, the stakes on appeal for this proceeding are high.

28. The stakes are raised further still by the position WBH has taken subsequent to the commencement of the applications before the CCAA judge. In response to the Notice of Application filed by GTP with respect to its right of set-off, WBH has advised NATC that it also reserves its right of set-off (see Shayler Affidavit, Ex. D). If GTP succeeds on appeal, NATC's cash flow may end entirely.

29. The stakes are also high for GTP itself. If the orders of Butler J. are upheld on appeal, GTP must continue to pay for tungsten. At the end of the day, GTP will be out-of-pocket to the extent it cannot subsequently recoup in the CCAA proceedings the \$4.4M owing to it on account of the GTP Loan. While that amount cannot be ascertained at present, GTP is likely to be left with a substantial shortfall in its recovery, as is usually the case in insolvency proceedings.

3) Whether the appeal is *prima facie* meritorious

30. The merit threshold in determining whether to grant leave is low (see *Soprema Inc. v. Wolrige Mahon LLP*, 2014 BCCA 366, para. 9). The question is not whether the appeal will succeed but whether the points raised are arguable or "not frivolous" or "whether there is any possibility of the appeal succeeding" (see *Windshield Doctor Canada Ltd v. Glass Masters Ltd.*, 2005 BCCA 220, para. 11). GTP submits that a strong *prima facie* case is apparent on the face of the provisions in issue.

31. First, with respect to the Payment Order, GTP submits that Butler J., in finding that the Set-off Claim violated the stay of proceedings imposed by the ARIO, failed to give due effect to paragraph 20 of the ARIO, which as noted, states that nothing in the ARIO shall derogate from the rights conferred by the CCAA. And s. 21 of the CCAA states that the law of set-off applies to all claims made by or against a debtor company.

32. Second, with respect to the Stay Order, GTP submits that Butler J. failed to properly consider the limit on his discretion imposed by s. 21 of the CCAA. Crucially, s. 11 of the CCAA states that the court's power to make any order it considers appropriate is "subject to the restrictions set out in this Act". Section 21 must be regarded as one of

the “restrictions set out in” the CCAA. Far from being able to assert its set-off rights “in the same manner and to the same extent” as in an ordinary debt claim, GTP finds itself unable to assert those rights at all during the expected currency of the CCAA proceedings. The Stay Order effectively renders s. 21 of the CCAA entirely unavailable to GTP, and meaningless.

4) Whether the appeal will unduly hinder the progress of the action

33. The appeals will not hinder the progress of the CCAA proceeding. As this is a CCAA proceeding, no trial dates are upcoming, and the stay of proceedings in this matter does not expire until October 31, 2015.

34. The appeals raise confined issues of law, which do not involve significant factual inquiry, such that the appeals can likely be heard in one day or less. Moreover, GTP is prepared to move the appeals forward with expedition. A hearing date in mid-September should be feasible, if a division of the Court is then available.

B. Stay of Execution

35. A justice has the power to order a stay of proceedings pending appeal, pursuant to s. 18 of the *Court of Appeal Act*, which authorizes a justice to order that all or part of the proceedings, including execution, in the case or matter from which the appeal has been taken are stayed in whole or in part.

36. The tests for the granting of a stay pending appeal are similar to those applicable to interim injunctions. The applicant for a stay is required to show that:

- (a) There is some merit to the appeal in the sense that there is a serious question to be determined. The applicant need not show a strong *prima facie* case to meet this threshold (see *Roxul (West) Inc. v. McCarthy Tétrault*, 2001 BCCA 20);
- (b) Irreparable harm would be occasioned to the applicant if the stay were refused. Irreparable harm may be found where there is a real risk that the appellant, if successful on appeal, might not be able to recover from the respondent (see *Acciona Infrastructure Canada Inc. v. Allianz Global Risks US Insurance Company*, 2015 BCCA 6, paras. 8-11); and

- (c) On balance, the inconvenience to the applicant if the stay was refused would be greater than the inconvenience to the respondent if the stay were granted (see *TCC Mortgage Holdings Inc. v. The Bergen Family Trust*, 2014 BCCA 363).
37. With respect to the application of the above test to the case at bar, GTP submits that:
- (a) For the reasons discussed above, GTP can demonstrate a strong *prima facie* case on appeal of the Orders. At the very least, GTP's appeals raise serious and precedential issues;
- (b) Any monies paid by GTP in observance of the Orders will be disbursed by NATC in the course of its short-term operations – as noted, GTP is one of only two sources of cash flow for NATC – thus giving rise to a real risk that those monies will be unrecoverable later. GTP has asserted that if the Orders are eventually overturned, it should have what is effectively a super-priority to the return of any monies paid under compulsion of court orders that this Court has found ought not to have been made. However, that assertion is not supported by clear authority and its prospects of ultimate success are uncertain. The risk to GTP if it continues to be denied the ability to exercise its right of set-off is clear; and
- (c) Importantly, Butler J. affirmatively found that GTP has a right of set-off – a right that is being denied every time GTP makes a payment required by the Orders. This denial of legal rights is a clear and profound prejudice that outweighs anything that might be raised in opposition to a stay. The worst that will happen for NATC if a stay is granted is that it will have to transition to a care and maintenance program of its mine operations in August, rather than at the end of October, as presently intended (see Affidavit #4 of Dennis Lindahl, sworn July 2, 2015, paras. 25-33, Exs. B and C). The only substantial reason NATC would prefer to delay transition to care and maintenance of its mine operations to October is its speculative hope that greater value for stakeholders might be realized. Such speculation gives no cause to allow actual, continuing injury to

GTP. Further, as noted above, GTP will expedite its appeal to the greatest extent possible, to ensure that any prejudice arising from the stay is short-lived.

PART IV: NATURE OF ORDER REQUESTED

38. GTP requests: an order granting leave to appeal the Orders, an order staying the Orders pending appeal; and an order that the time for service of this application for leave to appeal be abridged so that the application was properly returnable on Tuesday, August 11, 2015. Costs should be in the cause.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 6th day of August, 2015



Counsel for the Appellant
Kieran E. Siddall

LIST OF AUTHORITIES

Case Law	Paragraph
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COURT OF APPEAL ACT

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*COURT OF APPEAL ACT***COURT OF APPEAL ACT**
CHAPTER 77 [RSBC 1996]

[includes 2012 Bill 33, c. 11 (B.C. Reg. 117/2012) amendments (effective May 31, 2012)]

Stay of proceeding

- 18.** (1) After an appeal or application for leave to appeal is brought, a justice may, on terms the justice considers appropriate, order that all or part of the proceedings, including execution, in the cause or matter from which the appeal has been taken are stayed in whole or in part.
- (2) After an appeal has been decided, a justice may, on terms the justice considers appropriate, order that all or part of the proceedings, including execution, in the cause or matter from which the appeal was taken are stayed and the justice may make any other order to preserve the rights of the parties pending further proceedings.
- (3) Without limiting subsection (1) or (2), a justice may order one or more of the following:
- (a) that documents be delivered;
 - (b) that possession of land or personal property be given;
 - (c) that property be placed in the custody of a person designated by the justice;
 - (d) that an instrument be executed;
 - (e) that perishable property be sold and the proceeds paid into the Court of Appeal or the court appealed from;
 - (f) that a direction be given to a sheriff or poundage be disallowed;
 - (g) that a person be paid money received by the sheriff under an execution;
 - (h) that security be given for any purpose in a form and manner directed by the justice.
- (4) A justice may dismiss as abandoned the appeal of an appellant who fails to comply with an order made under subsection (1).

1982-7-18; 1985-51-15; 1989-30-8; 1999-6-2.



CANADA

CONSOLIDATION

CODIFICATION

Companies' Creditors Arrangement Act

Loi sur les arrangements avec les créanciers des compagnies

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

L.R.C. (1985), ch. C-36

Current to July 9, 2015

À jour au 9 juillet 2015

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Arrangements avec les créanciers des compagnies — 9 juillet 2015

Publication ban	<p>(3) The court may make an order prohibiting the release to the public of any cash-flow statement, or any part of a cash-flow statement, if it is satisfied that the release would unduly prejudice the debtor company and the making of the order would not unduly prejudice the company's creditors, but the court may, in the order, direct that the cash-flow statement or any part of it be made available to any person specified in the order on any terms or conditions that the court considers appropriate.</p> <p>R.S., 1985, c. C-36, s. 10; 2005, c. 47, s. 127.</p>	<p>(3) Le tribunal peut, par ordonnance, interdire la communication au public de tout ou partie de l'état de l'évolution de l'encaisse de la compagnie débitrice s'il est convaincu que sa communication causerait un préjudice indu à celle-ci et que sa non-communication ne causerait pas de préjudice indu à ses créanciers. Il peut toutefois préciser dans l'ordonnance que tout ou partie de cet état peut être communiqué, aux conditions qu'il estime indiquées, à la personne qu'il nomme.</p> <p>L.R. (1985), ch. C-36, art. 10; 2005, ch. 47, art. 127.</p>	<p>Interdiction de mettre l'état à la disposition du public</p>
General power of court	<p>11. Despite anything in the <i>Bankruptcy and Insolvency Act</i> or the <i>Winding-up and Restructuring Act</i>, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.</p> <p>R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.</p>	<p>11. Malgré toute disposition de la <i>Loi sur la faillite et l'insolvabilité</i> ou de la <i>Loi sur les liquidations et les restructurations</i>, le tribunal peut, dans le cas de toute demande sous le régime de la présente loi à l'égard d'une compagnie débitrice, rendre, sur demande d'un intéressé, mais sous réserve des restrictions prévues par la présente loi et avec ou sans avis, toute ordonnance qu'il estime indiquée.</p> <p>L.R. (1985), ch. C-36, art. 11; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 1997, ch. 12, art. 124; 2005, ch. 47, art. 128.</p>	<p>Pouvoir général du tribunal</p>
Rights of suppliers	<p>11.01 No order made under section 11 or 11.02 has the effect of</p> <p>(a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or</p> <p>(b) requiring the further advance of money or credit.</p> <p>2005, c. 47, s. 128.</p>	<p>11.01 L'ordonnance prévue aux articles 11 ou 11.02 ne peut avoir pour effet :</p> <p>a) d'empêcher une personne d'exiger que soient effectués sans délai les paiements relatifs à la fourniture de marchandises ou de services, à l'utilisation de biens loués ou faisant l'objet d'une licence ou à la fourniture de toute autre contrepartie de valeur qui ont lieu après l'ordonnance;</p> <p>b) d'exiger le versement de nouvelles avances de fonds ou de nouveaux crédits.</p> <p>2005, ch. 47, art. 128.</p>	<p>Droits des fournisseurs</p>
Stays, etc. — initial application	<p>11.02 (1) 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 30 days,</p> <p>(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the <i>Bankruptcy and Insolvency Act</i> or the <i>Winding-up and Restructuring Act</i>;</p> <p>(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and</p>	<p>11.02 (1) Dans le cas d'une demande initiale visant une compagnie débitrice, le tribunal peut, par ordonnance, aux conditions qu'il peut imposer et pour la période maximale de trente jours qu'il estime nécessaire :</p> <p>a) suspendre, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime de la <i>Loi sur la faillite et l'insolvabilité</i> ou de la <i>Loi sur les liquidations et les restructurations</i>;</p> <p>b) surseoir, jusqu'à nouvel ordre, à la continuation de toute action, poursuite ou autre procédure contre la compagnie;</p>	<p>Suspension : demande initiale</p>

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	(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.	c) interdire, jusqu'à nouvel ordre, l'introduction de toute action, poursuite ou autre procédure contre la compagnie.	
Stays, etc. — other than initial application	(2) 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,	(2) Dans le cas d'une demande, autre qu'une demande initiale, visant une compagnie débitrice, le tribunal peut, par ordonnance, aux conditions qu'il peut imposer et pour la période qu'il estime nécessaire :	Suspension : demandes autres qu'initiales
	(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);	a) suspendre, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime des lois mentionnées à l'alinéa (1)a);	
	(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and	b) surseoir, jusqu'à nouvel ordre, à la continuation de toute action, poursuite ou autre procédure contre la compagnie;	
	(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.	c) interdire, jusqu'à nouvel ordre, l'introduction de toute action, poursuite ou autre procédure contre la compagnie.	
Burden of proof on application	(3) The court shall not make the order unless	(3) Le tribunal ne rend l'ordonnance que si :	Preuve
	(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and	a) le demandeur le convainc que la mesure est opportune;	
	(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.	b) dans le cas de l'ordonnance visée au paragraphe (2), le demandeur le convainc en outre qu'il a agi et continue d'agir de bonne foi et avec la diligence voulue.	
Restriction	(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.	(4) L'ordonnance qui prévoit l'une des mesures visées aux paragraphes (1) ou (2) ne peut être rendue qu'en vertu du présent article.	Restriction
	2005, c. 47, s. 128, 2007, c. 36, s. 62(F).	2005, ch. 47, art. 128, 2007, ch. 36, art. 62(F).	
Stays — directors	11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.	11.03 (1) L'ordonnance prévue à l'article 11.02 peut interdire l'introduction ou la continuation de toute action contre les administrateurs de la compagnie relativement aux réclamations qui sont antérieures aux procédures intentées sous le régime de la présente loi et visent des obligations de la compagnie dont ils peuvent être, <i>ès qualités</i> , responsables en droit, tant que la transaction ou l'arrangement, le cas échéant, n'a pas été homologué par le tribunal ou rejeté par celui-ci ou les créanciers.	Suspension — administrateurs
Exception	(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.	(2) La suspension ne s'applique toutefois pas aux actions contre les administrateurs pour les garanties qu'ils ont données relativement aux obligations de la compagnie ni aux mesures de la nature d'une injonction les visant au sujet de celle-ci.	Exclusion

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<p>company is secured by a charge on the real property and on any other real property of the company that is contiguous thereto and that is related to the activity that caused the environmental condition or environmental damage, and the charge</p>	<p>un de ses biens immeubles est garantie par une sûreté sur le bien immeuble en cause et sur ceux qui sont contigus à celui où le dommage est survenu et qui sont liés à l'activité ayant causé le fait ou le dommage; la sûreté peut être exécutée selon le droit du lieu où est situé le bien comme s'il s'agissait d'une hypothèque ou autre garantie sur celui-ci et, par dérogation aux autres dispositions de la présente loi et à toute règle de droit fédéral et provincial, a priorité sur tout autre droit, charge ou réclamation visant le bien.</p>		
<p>(a) is enforceable in accordance with the law of the jurisdiction in which the real property is located, in the same way as a mortgage, hypothec or other security on real property; and</p>			
<p>(b) ranks above any other claim, right or charge against the property, notwithstanding any other provision of this Act or anything in any other federal or provincial law.</p>			
<p>Claim for clean-up costs</p>	<p>(9) A claim against a debtor company for costs of remedying any environmental condition or environmental damage affecting real property of the company shall be a claim under this Act, whether the condition arose or the damage occurred before or after the date on which proceedings under this Act were commenced.</p>	<p>(9) La réclamation pour les frais de réparation du fait ou dommage lié à l'environnement et touchant un bien immeuble de la compagnie débitrice constitue une réclamation, que la date du fait ou dommage soit antérieure ou postérieure à celle où des procédures sont intentées au titre de la présente loi.</p>	<p>Précision</p>
	<p>1997, c. 12, s. 124; 2007, c. 36, s. 67.</p>	<p>1997, ch. 12, art. 124; 2007, ch. 36, art. 67.</p>	
<p>Fixing deadlines</p>	<p>12. The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.</p>	<p>12. Le tribunal peut fixer des échéances aux fins de votation et aux fins de distribution aux termes d'une transaction ou d'un arrangement.</p>	<p>Échéances</p>
	<p>R.S., 1985, c. C-36, s. 12; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 2004, c. 25, s. 195; 2005, c. 47, s. 130; 2007, c. 36, s. 68.</p>	<p>L.R. (1985), ch. C-36, art. 12; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 2004, ch. 25, art. 195; 2005, ch. 47, art. 130; 2007, ch. 36, art. 68.</p>	
<p>Leave to appeal</p>	<p>13. Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.</p>	<p>13. Sauf au Yukon, toute personne mécontente d'une ordonnance ou décision rendue en application de la présente loi peut en appeler après avoir obtenu la permission du juge dont la décision fait l'objet d'un appel ou après avoir obtenu la permission du tribunal ou d'un juge du tribunal auquel l'appel est porté et aux conditions que prescrit ce juge ou tribunal concernant le cautionnement et à d'autres égards.</p>	<p>Permission d'en appeler</p>
	<p>R.S., 1985, c. C-36, s. 13; 2002, c. 7, s. 134.</p>	<p>I.R. (1985), ch. C-36, art. 13; 2002, ch. 7, art. 134.</p>	
<p>Court of appeal</p>	<p>14. (1) An appeal under section 13 lies to the highest court of final resort in or for the province in which the proceeding originated.</p>	<p>14. (1) Cet appel doit être porté au tribunal de dernier ressort de la province où la procédure a pris naissance.</p>	<p>Cour d'appel</p>
<p>Practice</p>	<p>(2) All appeals under section 13 shall be regulated as far as possible according to the practice in other cases of the court appealed to, but no appeal shall be entertained unless, within twenty-one days after the rendering of the order or decision being appealed, or within</p>	<p>(2) Tous ces appels sont régis autant que possible par la pratique suivie dans d'autres causes devant le tribunal saisi de l'appel; toutefois, aucun appel n'est recevable à moins que, dans le délai de vingt et un jours après qu'a été rendue l'ordonnance ou la décision faisant l'ob-</p>	<p>Pratique</p>

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(i) in the case of a company in the course of being wound up under the *Winding-up and Restructuring Act*, proof of which has been made in accordance with that Act,

(ii) 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*, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the *Bankruptcy and Insolvency Act*, but if the amount so provable is not admitted by the company, the amount is to be determined by the court on summary application by the company or by the creditor; and

(b) the amount of a secured claim is the amount, proof of which might be made under the *Bankruptcy and Insolvency Act* if the claim were unsecured, but the amount if not admitted by the company is, in the case of a company subject to pending proceedings under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, to be established by proof in the same manner as an unsecured claim under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, as the case may be, and, in the case of any other company, the amount is to be determined by the court on summary application by the company or the creditor.

Admission of claims

(2) Despite subsection (1), the company may admit the amount of a claim for voting purposes under reserve of the right to contest liability on the claim for other purposes, and nothing in this Act, the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act* prevents a secured creditor from voting at a meeting of secured creditors or any class of them in respect of the total amount of a claim as admitted.

R.S., 1985, c. C-36, s. 20; 2005, c. 47, s. 131; 2007, c. 36, s. 70.

Law of set-off or compensation to apply

21. The law of set-off or compensation applies to all claims made against a debtor company and to all actions instituted by it for the recovery of debts due to the company in the same manner and to the same extent as if the

(i) dans le cas d'une compagnie en voie de liquidation sous le régime de la *Loi sur les liquidations et les restructurations*, dont la preuve a été établie en conformité avec cette loi,

(ii) dans le cas d'une compagnie qui a fait une cession autorisée ou à l'encontre de laquelle une ordonnance de faillite a été rendue sous le régime de la *Loi sur la faillite et l'insolvabilité*, dont la preuve a été établie en conformité avec cette loi.

(iii) dans le cas de toute autre compagnie, dont la preuve peut être établie sous le régime de la *Loi sur la faillite et l'insolvabilité*, mais si le montant ainsi prouvable n'est pas admis par la compagnie, il est déterminé par le tribunal sur demande sommaire de celle-ci ou du créancier;

b) le montant d'une réclamation garantie est celui dont la preuve pourrait être établie sous le régime de la *Loi sur la faillite et l'insolvabilité* si la réclamation n'était pas garantie, mais ce montant, s'il n'est pas admis par la compagnie, est, dans le cas où celle-ci est assujettie à une procédure pendante sous le régime de la *Loi sur les liquidations et les restructurations* ou de la *Loi sur la faillite et l'insolvabilité*, établi par preuve de la même manière qu'une réclamation non garantie sous le régime de l'une ou l'autre de ces lois, selon le cas, et, s'il s'agit de toute autre compagnie, il est déterminé par le tribunal sur demande sommaire de celle-ci ou du créancier.

(2) Malgré le paragraphe (1), la compagnie peut admettre le montant d'une réclamation aux fins de votation sous réserve du droit de contester la responsabilité quant à la réclamation pour d'autres objets, et la présente loi, la *Loi sur les liquidations et les restructurations* et la *Loi sur la faillite et l'insolvabilité* n'ont pas pour effet d'empêcher un créancier garanti de voter à une assemblée de créanciers garantis ou d'une catégorie de ces derniers à l'égard du montant total d'une réclamation ainsi admis.

L.R. (1985), ch. C-36, art. 20; 2005, ch. 47, art. 131; 2007, ch. 36, art. 70.

Admission des réclamations

Compensation

21. Les règles de compensation s'appliquent à toutes les réclamations produites contre la compagnie débitrice et à toutes les actions intentées par elle en vue du recouvrement de ses

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company were plaintiff or defendant, as the case may be.

1997, c. 12, s. 126; 2005, c. 47, s. 131.

CLASSES OF CREDITORS

Company may establish classes

22. (1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

Factors

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

(a) the nature of the debts, liabilities or obligations giving rise to their claims;

(b) the nature and rank of any security in respect of their claims;

(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

Related creditors

(3) A creditor who is related to the company may vote against, but not for, a compromise or arrangement relating to the company.

1997, c. 12, s. 126; 2005, c. 47, s. 131; 2007, c. 36, s. 71.

Class — creditors having equity claims

22.1 Despite subsection 22(1), creditors having equity claims are to be in the same class of creditors in relation to those claims unless the court orders otherwise and may not, as members of that class, vote at any meeting unless the court orders otherwise.

2005, c. 47, s. 131; 2007, c. 36, s. 71.

MONITORS

Duties and functions

23. (1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

créances, comme si elle était demanderesse ou défenderesse, selon le cas.

1997, ch. 12, art. 126; 2005, ch. 47, art. 131.

CATÉGORIES DE CRÉANCIERS

22. (1) La compagnie débitrice peut établir des catégories de créanciers en vue des assemblées qui seront tenues au titre des articles 4 ou 5 relativement à une transaction ou un arrangement la visant; le cas échéant, elle demande au tribunal d'approuver ces catégories avant la tenue des assemblées.

(2) Pour l'application du paragraphe (1), peuvent faire partie de la même catégorie les créanciers ayant des droits ou intérêts à ce point semblables, compte tenu des critères énumérés ci-après, qu'on peut en conclure qu'ils ont un intérêt commun :

a) la nature des créances et obligations donnant lieu à leurs réclamations;

b) la nature et le rang de toute garantie qui s'y rattache;

c) les voies de droit ouvertes aux créanciers, abstraction faite de la transaction ou de l'arrangement, et la mesure dans laquelle il pourrait être satisfait à leurs réclamations s'ils s'en prévalaient;

d) tous autres critères réglementaires compatibles avec ceux énumérés aux alinéas a) à c).

(3) Le créancier lié à la compagnie peut voter contre, mais non pour, l'acceptation de la transaction ou de l'arrangement.

1997, ch. 12, art. 126; 2005, ch. 47, art. 131; 2007, ch. 36, art. 71.

22.1 Malgré le paragraphe 22(1), les créanciers qui ont des réclamations relatives à des capitaux propres font partie d'une même catégorie de créanciers relativement à ces réclamations, sauf ordonnance contraire du tribunal, et ne peuvent à ce titre voter à aucune assemblée, sauf ordonnance contraire du tribunal.

2005, ch. 47, art. 131; 2007, ch. 36, art. 71.

CONTRÔLEURS

23. (1) Le contrôleur est tenu :

a) à moins que le tribunal n'en ordonne autrement, lorsqu'il rend une ordonnance à

Établissement des catégories de créanciers

Critères

Créancier lié

Catégorie de créanciers ayant des réclamations relatives à des capitaux propres

Attributions