



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

**NOTICE OF APPLICATION**

**Name of applicant: North American Tungsten Corporation Ltd. ("NATC" or the "Petitioner")**

TO: The Service List

AND TO: Secured Creditors of the Petitioner who are not on the Service List

TAKE NOTICE that an application will be made by the applicant to the Honourable Mr. Justice Butler at the courthouse at 800 Smithe Street, Vancouver, B.C. on 16/November/2015 at 9:00 a.m. for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An order substantially in the form attached hereto as **Schedule "A"**;
2. Advice and directions with respect to certain equipment given the transition of the Cantung Mine to care and maintenance; and
3. Such other relief as this Honourable Court may deem just.

## Part 2: FACTUAL BASIS

### BACKGROUND

1. On June 9, 2015, Mr. Justice Butler granted the Initial Order providing for a stay of proceedings to July 8, 2015, and a come-back hearing was set for July 8, 2015 at 9:00 a.m.
2. On July 9, 2015, Mr. Justice Butler granted the Amended and Restated Initial Order, pursuant to which (among other things) the Stay Period was extended to 11:59 p.m. on July 17, 2015.
3. In previous applications, the Petitioner developed and disclosed an operating plan to:
  - (a) run production at the Cantung Mine until the end of October 2015, recognizing that shipments will continue for a period of time thereafter;
  - (b) conduct an orderly wind down of underground mining activities;
  - (c) undertake a staged disposition of underground mining equipment to reduce the amount outstanding to one of its senior secured lenders, Callidus Capital Corporation ("**Callidus**"); and
  - (d) move the Cantung Mine to care and maintenance over the winter  
  
(the "**Operating Plan**").
4. On July 17, 2015, Mr. Justice Butler granted an order, *inter alia*, (a) extending the Stay Period to 11:59 p.m. on October 31, 2015, (b) approving a Sale and Investment Solicitation Process (the "**SISP**") to identify long term investors or purchasers of some or all of its assets, and (c) approving the engagement of Alvarez & Marsal Canada Securities ULC as financial advisor to assist the Petitioner to implement the SISP (the "**Financial Advisor**").
5. It was intended that the SISP would run parallel to the Operating Plan, with the aim of closing a transaction by late 2015.
6. On October 14, 2015, the Stay Period was extended to 11:59p.m. on November 30, 2015.
7. The Monitor terminated the SISP effective October 21, 2015.

## TRANSITION TO CARE AND MAINTENANCE

8. The mill at the Cantung Mine was shut down on October 26, 2015. The Petitioner is carrying out the Operating Plan to transition the Cantung Mine to care and maintenance over the winter.
9. As part of the transition to care and maintenance, over the weeks following shut down of the mill, the Petitioner is preparing final shipments of production and performing various tasks related to the transition to care and maintenance, including underground shutdown and preparedness, mill shutdown, water treatment and environmental inspections, tailings ponds inspections, surface area deactivation work, building winterization, equipment maintenance, and various administrative and regulatory management.
10. Given the Petitioner's liquidity constraints, it has advised its employees that their last day of work will be November 18, 2015, subject to a limited number of employees' being kept on by the Petitioner to assist in caring for an maintaining the mine.
11. Throughout October 2015, the Petitioner had numerous discussions with the Monitor, Callidus and the Government of the Northwest Territories ("**GNWT**") in relation to, among other things, the transition of the Cantung Mine to care and maintenance, the funding of that process, and ongoing care and maintenance over the winter.
12. GNWT involved the Government of Canada ("**GC**") in such discussions.
13. The transition of the Cantung Mine to care and maintenance in accordance with the Operating Plan will be largely complete as of November 18, 2015. On or soon after that date, the Petitioner will have no funds to continue operations. The Petitioner's management and directors will also step down on or about that date.
14. Given the Petitioner's lack of liquidity and the resignation of management, the Petitioner will require funding to support the ongoing operations of the Petitioner, which after mid-November 2015 will consist of care and maintenance of the Cantung Mine through the requested extension of the Stay Period.
15. GNWT and GC are in discussions in relation to the funding of the environmental care and maintenance of the Cantung Mine, and the security and trust arrangements currently in place to secure, among other things, costs in respect of environmental management and compliance, site reclamation and site restoration at the Cantung Mine (the "**Reclamation Obligations**").
16. It is expected that GNWT and GC will make arrangements, on or before the date scheduled for hearing this Application for the funding of the carrying out of Reclamation

Obligations at the Cantung Mine by the Petitioner as directed by the Monitor within these CCAA proceedings.

17. It is contemplated that the Petitioner will continue to operate under the supervision of the Monitor, in consultation with Callidus, GNWT and GC, as applicable.

#### **LIFTING OF THE STAY IN RESPECT OF REDUNDANT EQUIPMENT AND ALLOCATION OF CCAA CHARGES**

18. The Petitioner entered into a variety of financing arrangements for certain equipment for use at the Cantung Mine and at the Petitioner's head office in Vancouver, BC (the "**Equipment**").
19. **Schedule "B"** lists the Equipment, and identifies the following categories thereof:
  - (a) the Equipment required by the Petitioner for care and maintenance operations for the Cantung Mine (collectively, the "**Retained Equipment**"); and
  - (b) the Equipment not required the Petitioner for care and maintenance operations for the Cantung Mine (the "**Redundant Equipment**"), which were purchased by the Petitioner by way of financing leases with those parties set out on that schedule (the "**Equipment Financers**").
20. Schedule "B" also sets out the results of a preliminary review conducted by counsel to the Petitioner of the security related to the Redundant Equipment, including any registrations thereof in the Personal Property Registries of British Columbia (the "**BC PPR**"), the Yukon Territory (the "**Yukon PPR**") and the Northwest Territories (the "**NWT PPR**" and, collectively with the BC PPR and the Yukon PPR, the "**PPRs**").
21. The Redundant Equipment is subject to the following priority charges that have been granted in these CCAA proceedings (collectively, the "**CCAA Charges**"):
  - (a) Administration Charge (to the maximum amount of \$500,000);
  - (b) Interim Lenders' Charge and GSA (to the maximum amount of \$2,500,000 plus all interest, costs, fees and expenses); and
  - (c) Director's Charge (to the maximum amount of \$500,000).
22. It is not expected that there will be a need to draw on the Director's Charge.
23. As a result, the maximum amount that may be secured by the CCAA Charges is \$3,000,000 plus the interest, costs, fees and expenses that may be claimed under the

Interim Lender's Charge (the "**CCAA Charge Amount**"). It is expected that stakeholders will take a position with respect to the appropriate allocation of the CCAA Charges as between the Petitioner's various assets, including the Mactung Property, the Cantung Mine, and the Petitioner's equipment, including the Redundant Equipment.

24. Given the transition of the Cantung Mine to care and maintenance, it is the Petitioner's view that the Redundant Equipment should be released, under certain conditions, to the party with the senior interest in such Equipment.
25. Because the CCAA Charges attach to the Redundant Equipment, absent opposition from other parties regarding the priority of the Equipment Financiers' interest in such Equipment, the Petitioner proposes that the stay of proceedings as against its assets be lifted for the limited purpose of permitting the Equipment Financiers to take possession of their pieces of Redundant Equipment, only upon payment to the Monitor in trust the amounts, also set forth in **Schedule "B"**, which reflects the *pro rata* allocation of the CCAA Charge Amount to each piece of Redundant Equipment (the "**Allocation Amounts**").
26. The Allocation Amounts were determined by the Monitor based upon an assessment of the relative value of the Petitioner's equipment, including the Hilco Valuation Report dated effective April 16, 2015, and assuming that the entire CCAA Charge Amount is allocated to the assets related to the Cantung Mine.
27. This allocation is not intended to be determinative of the ultimate allocation of the CCAA Charges, but is intended to be without prejudice to parties' ability to come back to Court and seek an allocation as against the Petitioner's assets.
28. By this proposal, the Petitioner seeks to resolve this outstanding matter before the full transition to care and maintenance takes place and to enable the Equipment Financiers to take possession of the Redundant Equipment before the weather conditions at the Cantung Mine make it impossible to access the Redundant Equipment.

### **Part 3: LEGAL BASIS**

1. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "**CCAA**"); and
2. The inherent and equitable jurisdiction of this Honourable Court.

### **Part 4: MATERIAL TO BE RELIED ON**

1. Amended and Restated Initial Order, made July 9, 2015;

2. Affidavit #13 of Dennis Lindahl, to be sworn;
3. Affidavit #1 of Avic Arenas, sworn November 10, 2015;
4. The Tenth Report of the Monitor, filed October 23, 2015;
5. The Eleventh Report of the Monitor, to be filed, 2015; and
6. Other pleadings and materials filed in this proceeding.

The applicant(s) estimate(s) that the application will take 1 hour.

This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master. Mr. Justice Butler is seized of these proceedings and this application has been scheduled to be heard before Mr. Justice Butler by Trial Scheduling.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days of service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: \_\_\_ / November / 2015

  
\_\_\_\_\_  
Signature of lawyer for filing party  
John R. Sandrelli

To be completed by the court only:

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this Notice of Application

with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date:

\_\_\_\_\_  
Signature of  Judge  Master

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## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial

- case plan orders: amend
- case plan orders: other
- experts



Schedule "A" to the NOTICE OF APPLICATION

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IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

ORDER MADE AFTER APPLICATION

BEFORE ) THE HONOURABLE )  
) ) 16 / Nov / 2015  
) MR. JUSTICE BUTLER )

ON THE APPLICATION of North American Tungsten Corporation Ltd. coming on for hearing at Vancouver, British Columbia on this day and on hearing John Sandrelli, counsel for North American Tungsten Corporation Ltd., and those counsel listed in **Schedule "A"** hereto;

THIS COURT ORDERS that:

- Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Initial Order granted by this Court on June 9, 2015 (as the same has been amended and amended and restated by the Amended and Restated Initial Order made July 9, 2015, as the same may be amended or amended and restated further from time to time, the "ARIO") or the Notice of Application herein (the "Notice of Application").
- The Equipment Financers are hereby authorized to take possession of the Redundant Equipment set forth on **Schedule "B"** hereto and remove the Redundant Equipment from the Petitioner's premises; *provided, however*, that prior to removing its Redundant Equipment, each Equipment Financer shall be required to pay to the Monitor in trust the amount estimated by the Monitor as necessary to satisfy the *pro rata* portion of the CCAA Charge Amount set forth on **Schedule "B"** (the "Allocation Amounts").

3. The Equipment Financers are hereby permitted to access the Cantung mine site and/or the Petitioner's head office and relocate the Redundant Equipment at their own risk and expenses, on providing 3 days' written notice to the Monitor and the Petitioner of the date of proposed access to the mine site.
4. The Petitioner shall have no liability in respect of the costs related to the removal and transport of the Redundant Equipment.
5. The Redundant Equipment, once returned to the applicable party on the terms set forth herein, shall be free and clear of the CCAA Charges.
6. The Allocation Amounts shall be held by the Monitor in trust and shall stand in place and stead of the Redundant Equipment and shall be subject to the CCAA Charges in the same relative priority as set forth in the ARIO.
7. This Order and the payment of the Allocation Amounts are without prejudice to the rights of all parties with respect to the determination of:
  - (a) whether any other Encumbrance attaches to the Redundant Equipment or the amount secured thereby; and
  - (b) the final allocation of the CCAA Charges to the Allocation Amounts.
8. In the event all or some portion of the Allocation Amounts is not required to satisfy the CCAA Charges, the Monitor is hereby authorized and directed to return the Allocation Amounts, or such pro rata portion thereof, to the applicable Equipment Financer as soon as is reasonably practicable.
9. Endorsement of this Order by counsel appearing on this application 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 \_\_\_\_\_  
Lawyer for North American Tungsten Corp.

By the Court.

\_\_\_\_\_  
Registrar

**Schedule "B" to the ORDER**

| Party                        | Manufacturer | Model            | Asset Type            | Serial No.        | Allocation Amount (\$) |
|------------------------------|--------------|------------------|-----------------------|-------------------|------------------------|
| Amalgamated Mining Inc.      | Sandvik      | DD321-40C        | Drill                 | 112D19905-1       | 163,643                |
| The Driving Force Inc.       | GMC          | Sierra 3500 W/T  | Pickup Truck          | 1GT422CG4BF146336 | 4,463                  |
| The Driving Force Inc.       | Chevrolet    | Suburban 1500 LT | Sport Utility Vehicle | 1GNSKJE33BR139900 | 5,114                  |
| The Driving Force Inc.       | GMC          | Sierra 3500 W/T  | Pickup Truck          | 1GT422CG9BF202657 | 4,463                  |
| The Driving Force Inc.       | GMC          | G3500 Savana     | Van                   | 1GJZ71FGXB1141273 | 3,161                  |
| The Driving Force Inc.       | GMC          | Sierra 3500 SLE  | Pickup Truck          | 1GT423CG0CF195475 | 5,207                  |
| Finning (Canada)             | Caterpillar  | 3516B            | Generator Set         | GZT00165          | 78,102                 |
| Finning (Canada)             | Caterpillar  | R1700G           | Scoop Tram            | SBR00893          | 145,047                |
| Finning (Canada)             | Caterpillar  | R1600G           | Scoop Tram            | 9YZ00566          | 89,260                 |
| Kancho Office Equipment Ltd. | Sharp        | MX4111N          | Copier                |                   | 1,195                  |
| Kubota Canada Ltd.           | Kubota       | RTV1140          | All-Terrain Vehicle   | 31076             | 2,510                  |
| Kubota Canada Ltd.           | Kubota       | RTV1140          | All-Terrain Vehicle   | 30515             | 2,510                  |
| Kubota Canada Ltd.           | Kubota       | RTV1140          | All-Terrain Vehicle   | 25640             | 2,510                  |
| RCAP Leasing Inc.            | Doosan       | G30P-5           | Forklift Truck        | FGA0C129002082    | 3,500                  |
| RCAP Leasing Inc.            | Doosan       | G30P-5           | Forklift Truck        | MM00454           | 1,395                  |

Schedule "B" to the NOTICE OF APPLICATION

| Party                                  | Manufacturer | Model            | Asset Type            | Serial No.        | Registration Details    | Reg. Date    | Exp. Date    | Category  | Allocation Amount |
|--|--------------|------------------|-----------------------|-------------------|-------------------------|--------------|--------------|-----------|-------------------|
| Amalgamated Mining Inc.                | Sandvik      | DD321-40C        | Drill                 | 112D19905-1       | NWT - 1237272           | Sep 4, 2015  | Sep 4, 2020  | Redundant | 163,643           |
|  |              |                  |                       |                   | YK - 08981              | Feb 19, 2015 | Feb 19, 2020 |           |                   |
|  |              |                  |                       |                   | BC - 443649I            | Feb 17, 2015 | Feb 17, 2020 |           |                   |
| Caterpillar Financial Services Limited | Caterpillar  | TH407C           | Telehandler           | MLH01016          | NWT - 1220823           | Jul 7, 2015  | Jul 7, 2022  | Retained  | 21,385            |
|  |              |                  |                       |                   | YK - 06671              | Feb 9, 2015  | Feb 9, 2021  |           |                   |
|  |              |                  |                       |                   | BC - 424813I            | Feb 4, 2015  | Feb 4, 2021  |           |                   |
| The Driving Force Inc.                 | Ford         | F350 XLT         | Car                   | 1FDWF37F71ED17536 | YK - 43855              | Jul 3, 2012  | Jul 3, 2016  | Retained  | 5,579             |
| The Driving Force Inc.                 | GMC          | Sierra 3500 SLE  | Pickup Truck          | 1GT423CG9CF195040 | YK - 87889              | Nov 10, 2014 | Nov 10, 2018 | Retained  | 5,207             |
| The Driving Force Inc.                 | GMC          | Sierra 3500 SLE  | Pickup Truck          | 1GT423CG0CF198585 | YK - 76956              | Sep 22, 2014 | Sep 22, 2018 | Retained  | 5,207             |
| The Driving Force Inc.                 | GMC          | Sierra 3500 SLE  | Pickup Truck          | 1GT423CG8CF194901 |                         |              |              | Retained  | 5,207             |
| The Driving Force Inc.                 | GMC          | Sierra 3500 W/T  | Pickup Truck          | 1GT422CG0BF202594 | YK - 81199              | Nov 30, 2012 | Nov 30, 2017 | Retained  | 4,463             |
| The Driving Force Inc.                 | GMC          | Sierra 3500 W/T  | Pickup Truck          | 1GT422CG4BF146336 | YK - 81199              | Nov 30, 2012 | Nov 30, 2017 | Redundant | 4,463             |
| The Driving Force Inc.                 | Chevrolet    | Suburban 1500 LT | Sport Utility Vehicle | 1GNSKJE33BR139900 | YK - 81199              | Nov 30, 2012 | Nov 30, 2017 | Redundant | 5,114             |
| The Driving Force Inc.                 | GMC          | Sierra 3500 W/T  | Pickup Truck          | 1GT422CG9BF202657 | YK - 81199              | Nov 30, 2012 | Nov 30, 2017 | Redundant | 4,463             |
| The Driving Force Inc.                 | GMC          | G3500 Savana     | Van                   | 1GJZ71FGXB1141273 | YK - 83704              | Mar 24, 2014 | Mar 24, 2018 | Redundant | 3,161             |
| The Driving Force Inc.                 | GMC          | Sierra 3500 SLE  | Pickup Truck          | 1GT423CG0CF195475 | YK - 83704 <sup>1</sup> | Mar 24, 2014 | Mar 24, 2018 | Redundant | 5,207             |

<sup>1</sup> Note typo in S/N in registration - listed as "11GT423CG0CF19547"

| Party                        | Manufacturer | Model   | Asset Type          | Serial No.            | Registration Details           | Reg. Date    | Exp. Date    | Category  | Allocation Amount |
|------------------------------|--------------|---------|---------------------|-----------------------|--------------------------------|--------------|--------------|-----------|-------------------|
| Finning (Canada)             | Caterpillar  | 3516B   | Generator Set       | GZT00165              | NWT - 1184756                  | Feb 5, 2015  | Feb 5, 2018  | Redundant | 78,102            |
|                              |              |         |                     |                       | YK - 30269 (lien) <sup>2</sup> | June 4, 2015 | Dec 1, 2015  |           |                   |
|                              |              |         |                     |                       | BC - 4255221                   | Feb 5, 2015  | Feb 5, 2018  |           |                   |
| Finning (Canada)             | Caterpillar  | R1700G  | Scoop Tram          | SBR00893              | NWT - 1021263                  | Mar 5, 2013  | Mar 5, 2019  | Redundant | 145,047           |
|                              |              |         |                     |                       | BC - 221137H                   | Mar 5, 2013  | Mar 5, 2019  |           |                   |
| Finning (Canada)             | Caterpillar  | R1600G  | Scoop Tram          | 9YZ00566 <sup>3</sup> | BC - 317556I                   | Dec 1, 2014  | Dec 1, 2020  | Redundant | 89,260            |
| Kancho Office Equipment Ltd. | Sharp        | MX4111N | Copier              |                       |                                |              |              | Redundant | 1,195             |
| Kubota Canada Ltd.           | Kubota       | RTV1140 | All-Terrain Vehicle | 31076                 | BC - 825804H                   | Mar 3, 2014  | Mar 3, 2018  | Redundant | 2,510             |
| Kubota Canada Ltd.           | Kubota       | RTV1140 | All-Terrain Vehicle | 30515                 | BC - 825804H                   | Mar 3, 2014  | Mar 3, 2018  | Redundant | 2,510             |
| Kubota Canada Ltd.           | Kubota       | RTV1140 | All-Terrain Vehicle | 25640                 | BC - 825804H                   | Mar 3, 2014  | Mar 3, 2018  | Redundant | 2,510             |
| RCAP Leasing Inc.            | Doosan       | G30P-5  | Forklift Truck      | FGA0C129002082        | YK - 85283                     | Apr 1, 2014  | Apr 1, 2017  | Redundant | 3,500             |
|                              |              |         |                     |                       | BC - 870499H                   | Mar 28, 2014 | Mar 28, 2017 |           |                   |
| RCAP Leasing Inc.            | Doosan       | G30P-5  | Forklift Truck      | MM00454               | YK - 85283                     | Apr 1, 2014  | Apr 1, 2017  | Redundant | 1,395             |
|                              |              |         |                     |                       | BC - 870499H                   | Mar 28, 2014 | Mar 28, 2017 |           |                   |
| Roynat Inc.                  | Bobcat       | S570    | Loader              | A7U711066             | YK - 61919                     | Nov 20, 2013 | Nov 20, 2018 | Retained  | 5,579             |
|                              |              |         |                     |                       | BC - 646850H                   | Nov 5, 2013  | Nov 5, 2018  |           |                   |

<sup>2</sup> Note, typo in S/N in registration - listed as "GZT00155".

<sup>3</sup> Only 1 year lease term.