

employees, and pursuing all avenues of refinancing for all or part of the Lydian Group's business, in whole or in part.

20. Further, through the Amended and Restated Initial Order, the Applicants are seeking to expand the Monitor's ability, as contemplated in the Model Initial Order, to advise the Applicants in the development of a Plan of Compromise or Arrangement, hold and administer meeting(s) for voting purposes, as well as returning some of the additional protective language found in the Model Initial Order.

B. Charges

(a) D&O Charge

21. In light of the extension of the Applicants' D&O insurance coverage through to March 2, 2020, the Applicants do not intend to seek an increase in the D& O Charge of USD \$200,000 at this time.

(b) BMO Engagement and Transaction Charge

22. The Applicants do not currently anticipate seeking to increase their Administration Charge as it relates to counsel or the Monitor at this time. The Applicants are seeking to expand the Administration Charge to grant protection to the Applicants' financial advisor, BMO. BMO's services in connection with the SISP and the solicitation process for the financing of the Treaty Arbitration were provided pursuant to an engagement letter between BMO and Lydian International, which was most recently amended on October 1, 2019 (the "**BMO Engagement Letter**"). The BMO Engagement letter (in the form to be filed) sets out the scope of BMO's services as financial advisor to Lydian International, and provides for a monthly work fee and a transaction fee payable to BMO upon the completion of a successful sale or refinancing transaction, consisting of a percentage of the transaction value.

23. In order to secure Lydian International's obligations under the BMO Engagement Letter, the Applicants are seeking to increase the Administration Charge to cover BMO's monthly work fee, to the maximum amount of USD\$500,000. In addition, the Applicants will also be seeking a charge, in an amount to be determined and disclosed prior to the hearing of this motion (the "**Transaction Charge**") to secure BMO's potential transaction fee payable if a successful

transaction is implemented. The Amended and Restated Initial Order provides that the Transaction Charge shall rank third on the property of the Applicants, and that the unredacted form of the BMO Engagement Letter be sealed.

24. BMOs has worked extensively with Lydian International since its initial engagement and has significant knowledge with respect to the business, operations and finances of the Lydian Group. As noted, BMO has worked diligently to assist the Applicants in carrying out the SISP and the solicitation for the financing of the Treaty Arbitration. BMO's continued involvement will be critical to the successful completion of a transaction as part of the CCAA Proceedings that will maximize value for stakeholders.

PART 3 - STAY EXTENSION

25. Since the Initial Order, the Applicants have continued to act diligently and in good faith in respect of all matters relating to the CCAA Proceedings. To date, the Applicants and their advisors have been largely focused on maintaining operational stability of the Lydian Group, while continuing to engage with lenders and various stakeholders on a viable path forward, including advancing discussions relating to parties interested in pursuing a transactional outcome for the Lydian Group and/or financing the Treaty Arbitration.

26. The Stay Period granted in the Initial Order, as extended through the Stay Order, had the effect of imposing a stay of proceedings until and including January 23, 2020. The Applicants are requesting an extension of the Stay Period until and including February 25, 2020 to provide stability to the Applicants and allow them to continue their efforts to achieve a viable path forward that will maximize recoveries for all stakeholders.

27. During the extended Stay Period through to February 25, 2020, the Applicants will:

- (a) attempt to continue discussions with the GOA regarding regaining access to the Amulsar site;
- (b) continue negotiating a transactional outcome with a potential purchaser who emerged through the SISP;
- (c) continue canvassing financing options for the Treaty Arbitration. As noted, the Applicants have been approached by additional parties potentially interested in

financing the Treaty Arbitration since the commencement of the CCAA Proceedings; and

(d) consider whether to take any steps to advance the Treaty Arbitration.

28. I have been advised that the Monitor will be filing a report, which I understand will include the Applicants' prepared cash flows, demonstrating that the Applicants will have sufficient funds to continue operating through the proposed Stay Period. Funding for the proposed Stay Period includes a continuation of the Applicants' practice of transferring funds from Lydian Armenia (a Non-Applicant Stay Party) to Lydian International (an Applicant) pursuant to the Cash Management System, on an as-needed basis, and may include transfers from other members of the Lydian Group.

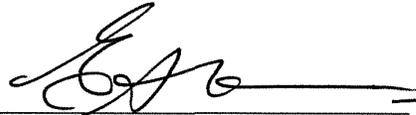
29. To the extent that the Applicants will need debtor-in-possession financing to fund the next phase of the CCAA Proceedings, the Applicants will report to the Court on those requirements on February 25, 2020. In the circumstances, I do not believe that any creditor will suffer material prejudice as a result of the extension of the Stay Period.

SWORN BEFORE ME at the City of
Toronto, Province of Ontario, on
January 20, 2020.



Commissioner for Taking Affidavits

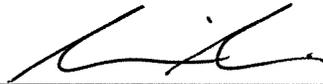
Sanja Sopic



Edward A. Sellers

TAB C

This is
EXHIBIT "C"
referred to in the Affidavit of
EDWARD A. SELLERS
sworn March 10, 2020



A Commissioner etc.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
CHIEF JUSTICE MORAWETZ

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)
)

THURSDAY, THE 23rd
DAY OF JANUARY, 2020

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

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

Applicants

AMENDED AND RESTATED INITIAL ORDER
(Amending Initial Order dated December 23, 2019)



THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order amending and restating the Initial Order (the "Initial Order") issued on December 23, 2019 (the "Initial Filing Date") and extending the stay of proceedings provided for therein was heard this day at 130 Queen Street West, Toronto, Ontario.

ON READING the affidavit of Edward A. Sellers sworn December 22, 2019 (the "Sellers Initial Affidavit"), the affidavit of Edward A. Sellers sworn January 20, 2020 (the "Sellers Comeback Affidavit"), and on hearing the submissions of counsel for the Applicants, counsel for Alvarez & Marsal Canada Inc. (the "Monitor"), and counsel for Caterpillar Financial Services (UK) Limited, with counsel for Orion Capital Management, counsel for Resource Capital Fund VI LP, counsel for Osisko Bermuda Limited and counsel for ING Bank N.V. / ABS Svensk Exportkredit (publ) in attendance and not opposing, and on being advised that those parties listed in the affidavits of service filed were given notice of this motion,

INITIAL ORDER AND INITIAL FILING DATE

1. **THIS COURT ORDERS** that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for herein.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, Lydian Armenia CJSC, Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation (the "**Non-Applicant Stay Parties**") shall enjoy certain of the benefits and the protections provided herein and as subject to the restrictions as hereinafter set out.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicants 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. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their 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 Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are 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 them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to use the central cash management system currently in place among the Applicants, the Non-Applicant Stay Parties and any other of the entities in the Lydian Group as described in the Sellers Initial Affidavit (the “Cash Management System”) and that any present or future bank providing the Cash Management System to the Applicants or the Non-Applicant Stay Parties 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 Applicants 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 Applicants, 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.

7. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after the Initial Filing Date:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the Initial Filing Date, 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 Applicants in respect of these proceedings, at their standard rates and charges.

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

- (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 Applicants following the Initial Filing Date.

9. **THIS COURT ORDERS** that the Applicants 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 Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the Initial Filing Date but not required to be remitted until on or after the Initial Filing 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 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 Applicants.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are 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 Applicants to any of their creditors as of the Initial Filing Date; (b) to grant no security interests, trust, liens, charges or encumbrances

upon or in respect of any of their 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 Applicants shall, subject to such requirements as are imposed by the CCAA have the right to:

- (a) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and
- (b) continue negotiations with stakeholders in an effort to pursue restructuring options for the Applicants including without limitation all avenues of refinancing of their 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 Applicants to proceed with an orderly restructuring of their business (the “**Restructuring**”).

PROCEEDINGS AGAINST THE APPLICANTS, THE NON-APPLICANT STAY PARTIES OR THE PROPERTY

12. **THIS COURT ORDERS** that until and including March 2, 2020, or such later date as this Court may subsequently order (the “**Stay Period**”), no proceeding or enforcement process in or out of any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court.

13. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of the Non-Applicant Stay Parties, or any of their current and future assets, businesses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the “**Non-Applicants’ Property**”, and together with the Non-Applicants’ businesses, the “**Non-Applicants’ Property and Business**”) including, without limitation, terminating, making any demand, accelerating, amending or declaring in default or taking any enforcement steps under any agreement or agreements with respect to which any of the Applicants are a party, borrower, principal obligor or guarantor.

NO EXERCISE OF RIGHTS OR REMEDIES

14. **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 Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are 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.

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any Person against or in respect of the Non-Applicant Stay Parties, or affecting the Non-Applicants' Property and Business are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Non-Applicant Stay Parties to carry on any business which the Non-Applicant Stay Parties are 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, lease, sublease, licence or permit in favour of or held by the Applicants or the Non-Applicant Stay Parties except with the written consent of the Applicants 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 Applicants 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 Applicants, 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 Applicants, and that the Applicants shall be entitled to the continued use of their 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 Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants 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 or the Initial 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 Initial Filing Date, nor shall any Person be under any obligation on or after the Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order or the Initial Order shall derogate from the rights conferred and obligations imposed by the CCAA.

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 Applicants with respect to any claim against the directors or officers that arose before the Initial Filing Date and that relates to any obligations of the Applicants 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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants

after the commencement of the within proceedings, 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 Applicants 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 \$263,280 (being US\$200,000 as per the Bank of Canada's published exchange rate on December 20, 2019), as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 33 and 35 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 Applicants' 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 Alvarez & Marsal Canada Inc. is, as of the Initial Filing Date, appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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.

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 Applicants' receipts and disbursements, including to the extent deemed appropriate by the Monitor as it relates to the Non-Applicant Stay Parties who utilize the Cash Management System with the Applicants, in order to review and

consider the cash requirements and reasonableness of the cash flow forecast prepared by the Applicants, and the continued use of the Cash Management System;

- (b) have full and complete access to the books, records, data, including data in electronic form, and other financial documents of the Non-Applicant Stay Parties to the extent that is necessary to adequately assess the Applicants' business and financial affairs and prospects for a restructuring or transaction of any kind, to report on cash flow forecasts prepared by the Applicants, or to perform its duties arising under this or any further Order of this Court and such Non-Applicant Stay Parties shall cause their respective employees, contractors, agents, advisors, directors and/or officers, as may be necessary, available to the Monitor for such purposes;
- (c) 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;
- (d) advise the Applicants in the preparation of the Applicants' cash flow statements, including as it relates to the availability of cash to the Applicants under the Cash Management System by the Non-Applicant Stay Parties;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, 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 Applicants, wherever situate, in order to assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) assist the Applicants in connection with any arbitration proceedings with the Government of Republic of Armenia ("GOA") that may be commenced by any

Applicant or Non-Applicant Stay Party that involves or affects any of the Applicants' Business or Property (an "Arbitration");

- (i) perform such other duties as are required by this Order or by this Court from time to time; and
- (j) 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.

25. **THIS COURT ORDERS** that the Applicants shall make best reasonable efforts to the extent possible to cause the Non-Applicant Stay Parties (including their respective employees, contractors, agents, advisors, directors and/or officers) to cooperate fully with the Monitor in relation to its information requests and its powers and duties set forth herein, and for so long as the stay of proceedings in favour of the Non-Applicant Stay Parties shall remain in place.

26. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property of the Applicants, or any property of the Non-Applicant Stay Parties, 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.

27. **THIS COURT ORDERS** that 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.

28. **THIS COURT ORDERS** that the Monitor shall provide any creditor of any of the Applicants with information provided by the Applicants 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 Applicants 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 Applicants may agree.

29. **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 or the Initial Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order or the Initial Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, Canadian counsel to the Applicants and the Applicants' counsel in connection with the recognition proceedings in the United Kingdom and the Bailiwick of Jersey shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants.

31. **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.

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicants' 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 \$460,740 (being US\$350,000 as per the Bank of Canada's published exchange rate on December 20, 2019), 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 the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 33 and 35 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

33. **THIS COURT ORDERS** that the priorities of the Directors' Charge and the Administration Charge as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$460,740);

Second - Directors' Charge (to the maximum amount of \$263,280).

34. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge or the Administration 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 to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

35. **THIS COURT ORDERS** that each of the Directors' Charge and the Administration 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.

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

37. **THIS COURT ORDERS** that the Directors' Charge, and the Administration 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") 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 *Bankruptcy and Insolvency Act* (Canada) (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, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, 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 Applicants 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 the creation of the Charges; and
- (c) the payments made by the Applicants 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.

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

SERVICE AND NOTICE

39. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the Initial Filing 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 Applicants of more than \$1,000, 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.

40. **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/eservice-commercial>) 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 <<http://www.alvarezandmarsal.com/Lyidian>>.

41. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants 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 Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants 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.

42. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

43. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

44. **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 Applicants, the Business or the Property.

45. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, Armenia, the Bailiwick of Jersey, the United Kingdom, or the United States to give effect to this Order and to assist the Applicants, 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

46. **THIS COURT DECLARES** that it shall issue a letter substantially in the form of the letter attached hereto as Schedule "A" to request the assistance of the Royal Court of Jersey in these proceedings.

47. **THIS COURT ORDERS** that each of the Applicants 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.

48. **THIS COURT ORDERS** that any interested party (including the Applicants 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.

49. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 9:30 a.m. Eastern Standard/Daylight Time on the date of this Order.

A handwritten signature in blue ink, possibly reading "A. H. Jones C.J.", is written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JAN 31 2020

PER / PAR:

SCHEDULE "A"
(Letter of Request for the Royal Court of Jersey)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

**LETTER OF REQUEST
(COMITY APPLICATION)**

To: The Bailiff of the Royal Court of Jersey
Royal Court Building, Royal Square
St Helier, Jersey
JE1 1JG

The Ontario Superior Court of Justice (Province of Ontario, Canada) ("**Ontario Court**"), respectfully requests the assistance of the Royal Court of Jersey to provide assistance to the Ontario Court as set out below and assures the Royal Court of Jersey reciprocal assistance in appropriate circumstances.

WHEREAS:

1. By an order dated the 23 December 2019 of the Ontario Court ("**CCAA Order**"), Lydian International Limited ("**Lydian International**"), Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited (collectively, the "**Debtors**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (Canada) ("**CCAA**") on the grounds that they were unable to pay their debts. Certain other non-applicant entities were also granted a stay of proceedings¹ (the non-applicant entities together with the Debtors are the "**Lydian Group**"). A copy of the CCAA Order is attached hereto as Schedule "A".

¹ Lydian Armenia CJSC, Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation.

2. The Ontario Court was advised that the Lydian Group is connected to Jersey by means of Lydian International, a corporation continued under the laws of Jersey from the Province of Alberta, Canada, pursuant to the *Companies (Jersey) Law 1991* (Lydian International was originally incorporated under the *Business Corporations Act* (Alberta)). Lydian International's registered office is located at Bourne House 1st Floor, Francis Street, St Helier, Jersey.

3. Pursuant to paragraphs 2 and 3 of the CCAA Order, the Debtors, including Lydian International, are companies to which the CCAA applies, shall enjoy certain of the benefits and the protections provided for in the CCAA Order, and shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

4. Pursuant to paragraph 21 of the CCAA Order, Alvarez & Marsal Canada Inc. was appointed as the monitor (the "Monitor"), an officer of the Ontario Court, to monitor the business and financial affairs of the Debtors pursuant to the CCAA.

5. Pursuant to the CCAA and the CCAA Order, the Monitor has broad powers including the authorization to have full and complete access to the Debtor's Property (as the term "Property" is defined in the CCAA Order), including the premises, books, records, data (including in electronic form) and other financial documents of the Debtors, to the extent that is necessary to adequately assess the Debtors' business and financial affairs or to perform its duties arising under the CCAA Order (see e.g. paragraph 22(d) of the CCAA Order).

6. Pursuant to paragraph 42 of the CCAA Order, the Debtors and the Monitor were authorized "to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of [the CCAA Order] and for assistance in carrying out the terms of [the CCAA Order]". The same paragraph further provides 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."

NOW:

7. I, the Honourable Geoffrey B. Morawetz, Chief Justice of the Ontario Court, confirm that, as a matter of international comity, the courts of the provinces and territories of Canada will consider giving effect to orders made by the Royal Court of Jersey relating to the

bankruptcy of an individual or company (save for the purpose of enforcing the fiscal laws of Jersey).

8. It having been shown to the satisfaction of the Ontario Court that it is necessary for the purposes of justice and to assist the Debtors and the Monitor with the carrying out of the terms of the CCAA Order, and assist the Monitor in the performance of its duties, pursuant to the CCAA Order of the Ontario Court, I hereby request the assistance of the Royal Court of Jersey to act in aid of the Debtors and the Monitor in the conduct of the reorganization of the Debtors and in particular (without prejudice to the generality of the foregoing):

- (a) by recognising the appointment of the Monitor with such appointment to be registered in the Rolls of the Royal Court of Jersey in respect of Lydian International;
- (b) by recognising the rights and powers of the Debtors and Monitor in respect of the Property of Lydian International;
- (c) by declaring that no action shall be taken or proceeded with against Lydian International except by leave of the Ontario Court and subject to such terms as the Ontario Court may impose; and
- (d) by granting such further or other relief as it thinks fit in aid of the Debtors and the Monitor and the reorganization of Lydian International.

Dated: 23 December 2019



The Honourable Geoffrey B. Morawetz,
Chief Justice of the Superior Court of Justice
(Ontario)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION AND LYDIAN U.K. CORPORATION LIMITED

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

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL
ORDER**

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon LSO#: 35638M
Tel: (416) 869-5623
Email: epillon@stikeman.com

Maria Konyukhova LSO#: 52880V
Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

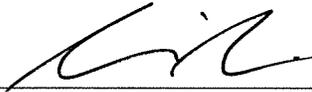
Sanja Sopic LSO#: 66487P
Tel: (416) 869-6825
Email: ssopic@stikeman.com

Nicholas Avis LSO#: 76781Q
Tel: (416) 869-5504
Email: navis@stikeman.com
Fax: (416) 947-0866

Lawyers for the Applicants

TAB D

This is
EXHIBIT "D"
referred to in the Affidavit of
EDWARD A. SELLERS
sworn March 10, 2020



A Commissioner etc.

In the Royal Court of Jersey

Samedi Division

2020/019

In the year two thousand and twenty, the twenty-fifth day of February.

Before Robert James MacRae, Esquire, Deputy Bailiff of Jersey, assisted by
Jurats Rozanne Barbara Thomas and David Gareth Hughes.

IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL
LIMITED

AND IN THE MATTER OF THE LETTER OF REQUEST FROM THE ONTARIO
SUPERIOR COURT OF JUSTICE

Upon receipt of a letter of request to the Royal Court of Jersey from the Ontario Superior Court of Justice (the Ontario Court) dated the 23rd December, 2019, issued under an order of the Ontario Court dated the 23rd January, 2020.

And upon reading the representation of Lydian International Limited (Lydian International).

And upon hearing the Advocate for Lydian International, the Court, for reasons to be set out in a judgment to be delivered by the Deputy Bailiff at a later date, ordered that the directions and orders of the Ontario Court be recognised and be given effect to as follows, so that:-

1. Alvarez & Marsal Canada Inc. ("the Monitor") be appointed as the monitor of Lydian International with such appointment registered in the rolls of the Royal Court and the appointment of the Monitor notified to the Jersey Financial Services Commission;
2. Lydian International shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever in Jersey and, subject to further order of the Ontario Court, Lydian International shall continue to carry on business in a manner consistent with the preservation of its business and property;
3. No proceeding or enforcement process in or out of any court or tribunal shall be commenced or continued against or in respect of Lydian International, or affecting its

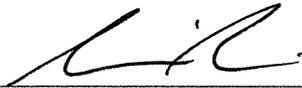
- business or its property, except with the written consent of Lydian International, or with leave of the Ontario Court; and
4. Lydian International and any party affected by this Representation, including the creditors of Lydian International, shall have liberty to apply.


Greffier Substitute

MO (SJA)

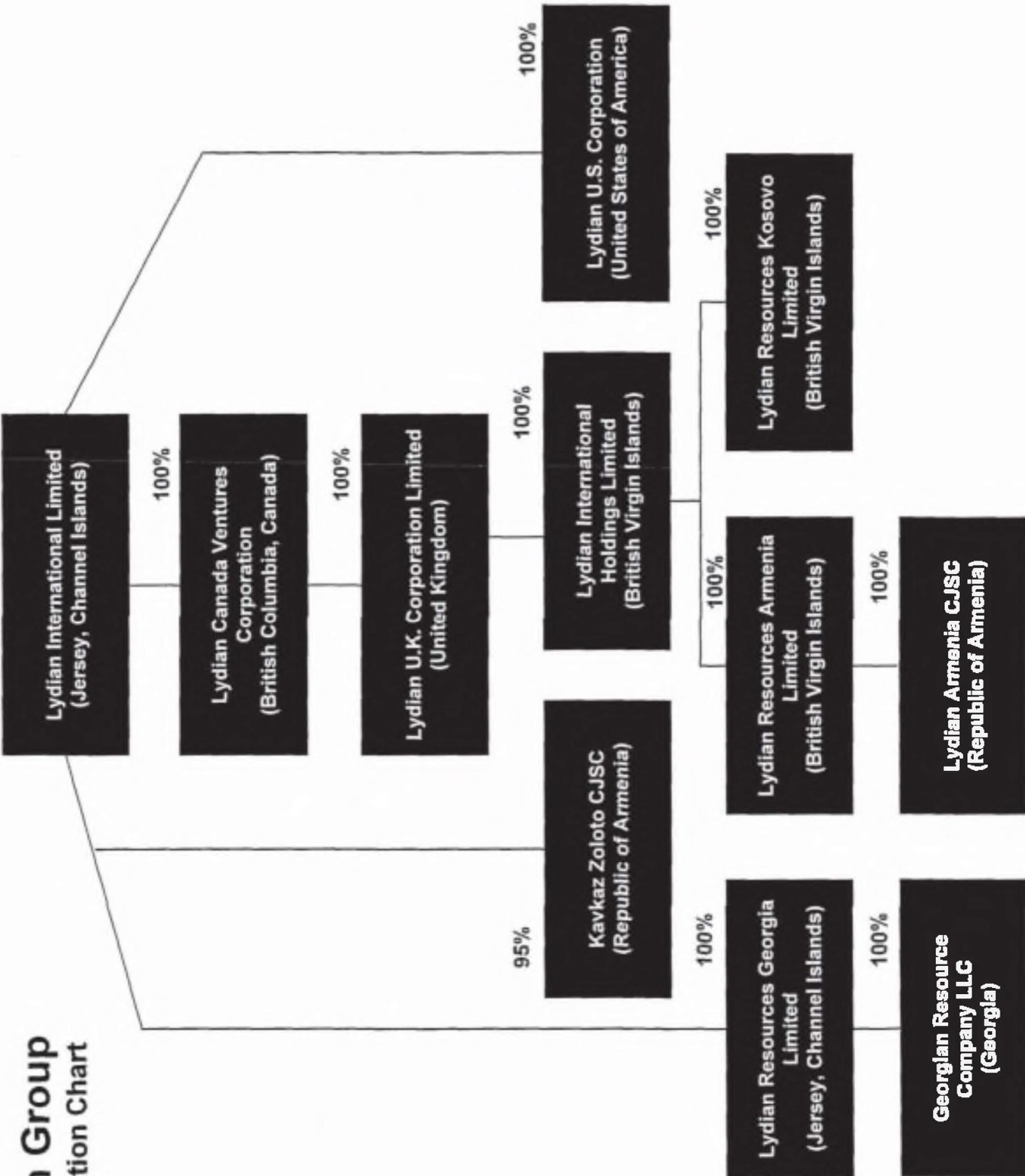
TAB E

This is
EXHIBIT "E"
referred to in the Affidavit of
EDWARD A. SELLERS
sworn March 10, 2020



A Commissioner etc.

Lydian Group Organization Chart



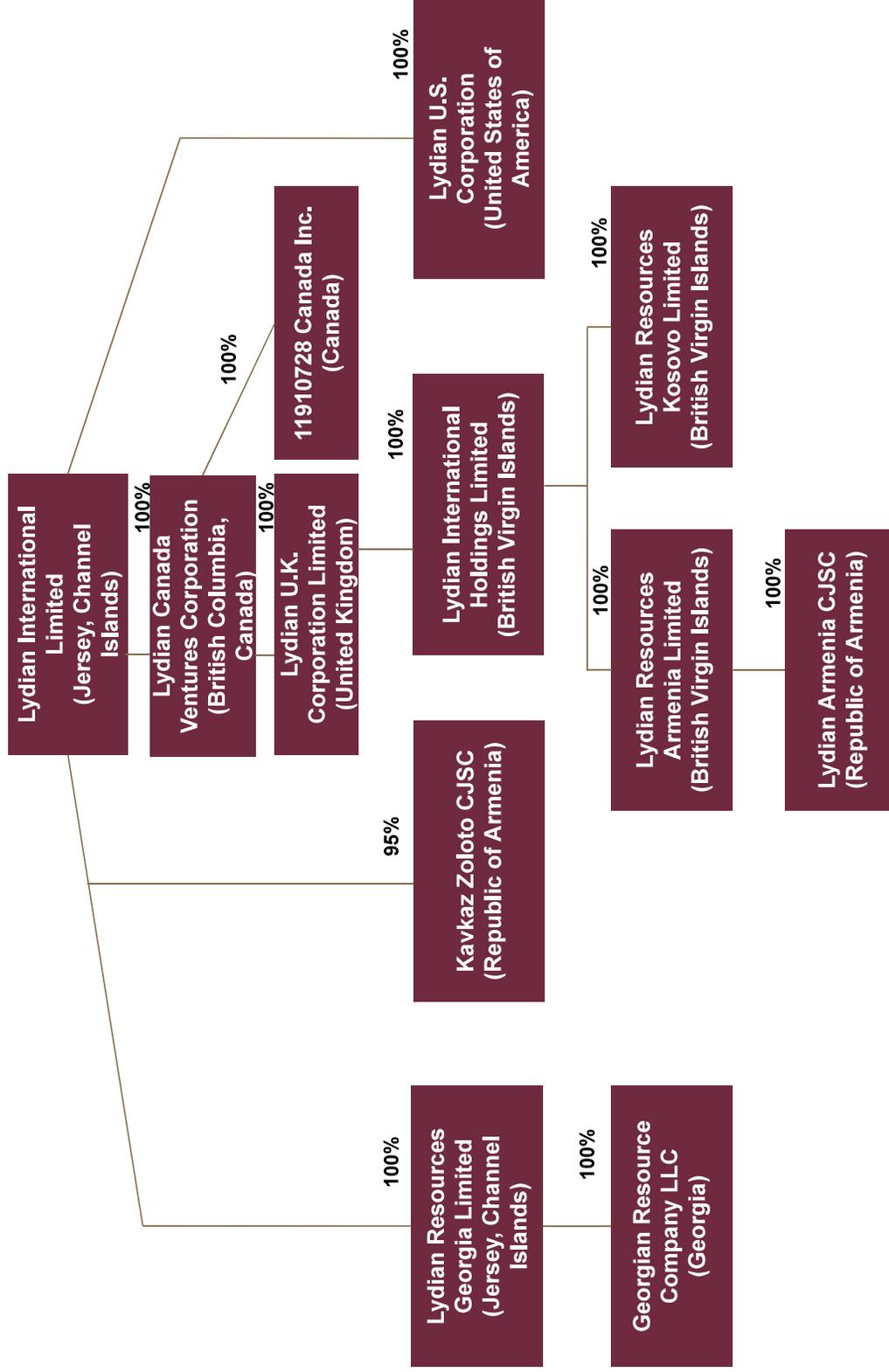
TAB F

This is
EXHIBIT "F"
referred to in the Affidavit of
EDWARD A. SELLERS
sworn March 10, 2020



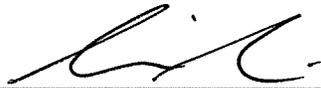
A Commissioner etc.

Lydian Organization Chart - Post-Reorganization



TAB G

This is
EXHIBIT "G"
referred to in the Affidavit of
EDWARD A. SELLERS
sworn March 10, 2020



A Commissioner etc.

To: Honorable Geoffrey B. Morawetz Chief Justice, Ontario Superior Court of Justice
Copy to: Alvarez & Marsal Canada Inc.

February 28, 2020

Letter in Relation to Court File No.CV-19-00633392-00CL Motion Record of January 20, 2020 Presented by Lydian Group's Lawyers

Attachment 1. Police of Armenia, clarification on implementing court order regarding the Amulsar blockades

Honorable Chief Justice Morawetz and Superior Court of Justice (Commercial List),

We, Arpine Galfayan, Anna Shahnazaryan, Mariam Davtyan, Ani Khachatryan and Levon Galstyan, are citizens of Armenia and concerned parties regarding Lydian Group's mining activities in Armenia as mining affects the environment and economy of the whole country. We are also self-organized in a volunteer environmental watchdog group.

We have seen the Motion Record of Lydian Group's Lawyers including Lydian Group's CEO Edward Sellers' affidavit of December 2019 and Chief Justice Geoffrey Morawetz's appeal to the Royal Court of Jersey published by Alvarez and Marshal on their website (<https://bit.ly/2PwOs81>).

We find it of utmost importance to inform you of the factual misrepresentations and therefore material misleading found in Mr. Edward Sellers' affidavit of December 2019. We also present to you additional information regarding court decisions made in Armenia in relation to Lydian's assets. While the government of Armenia has positioned itself in support of Lydian and has not made sanctions in relation to misleading conducted by the company for the past 6-7 years, and although we have found over two dozen instances of factual misrepresentations, by this letter we submit only three important points and express willingness to submit further clarifications, as requested.

Regarding the blockades and the Police of Armenia not implementing court order

1. Lydian provided factually incorrect information regarding implementation by Armenia's police of court decisions. Mr. Sellers claims: *"Police forces in Armenia have not acted on orders made by Armenian courts requiring the removal of blockaders and the commencement of criminal proceedings against them, and the GOA [Government of Armenia] has failed to cause the police to enforce court orders, further extending the illegal blockades."*

Lydian Armenia's court complaint was not about removal of blockades but about acting on trespassing in real estate in ownership of the company. The matter was the fact that protesters had set-up a protest site at the intersection of a main road and company-used gravel roads leading to its facilities and the mountain. The police recognized the action of the people as peaceful assembly in protection of their rights and right to protest. And so did the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his report to the Human Rights Council (May 2019, Visit to Armenia, para. 75-80). The police did carry out the order of the court to "eliminate trespassing" and ordered removal of the protestors' house-trailers from the territory of the real estate in the ownership of the company. It also took note that no trespassers were present in facilities owned by Lydian. The fact that the protests and resistance against a disastrous mining project continue immediately in the buffer zone of the inter-city road, is not a matter of compliance or non compliance with court orders. We requested the Armenian Police to clarify whether they implemented the court order and received a response which we are attaching to this letter. It is translated through a Notary approval and Apostille verification.

Regarding court decisions affecting Lydian's assets in Armenia

2. On December 12, 2019, the Civil Court of Vayk, Republic of Armenia, made a final decision over civil case AVD3/0249/02/19 (full case description found at DataLex, official website of Ministry of Justice of Armenia on court cases, http://datalex.am/?app=AppCaseSearch&case_id=27303072741028376) by which it approved the Settlement (Truce) Agreement of November 29, 2019 made between plaintiff "Lydian Armenia" (counter respondent) and respondent "Jermuk Ashkharh" CVJC (counter plaintiff, a hotel company). Earlier, by its claim of February 2019, Lydian demanded protection from the hotel owner's unilateral severance of property rental agreement in Jermuk, Armenia at the address of Shahumyan 20. Hotel owner "Jermuk Ashkharh" made a counter-claim and demanded circa 150.000 USD of damages resulting from Lydian's non-compliance with the rental agreement. By November 2019, Lydian offered a settlement (truce) and engaged in an agreement with "Jermuk Ashkharh" to annul the property rental agreement, to return the property to the owner and redeem damages in an amount of 1.270.000 USD, in addition to the earlier claimed amount of around 150.000 USD, calculated as non-paid rental and utility costs. The damages were calculated in relation to Lydian's restructuring of some parts of the hotel's building. **We draw your attention to the fact that during a period when Lydian was trying to extend forbearance agreements with its creditors and insolvency procedures were predictable, it engaged in a truce to pay a hotel company in Jermuk an amount, exceeding initial claims by almost 9 times.**

Regarding Assessment of Lydian's Environmental and Social Impact Assessment

3. In their affidavit of December 2019 (ELARD Audit (para. 58-70), para. 61), Mr. Sellers claims: "*ELARD completed the audit and released its report to the GOA on August 7, 2019, concluding that the Amulsar Project does not present a danger to the local water systems, and proposing some minor technical recommendations. In its report, ELARD did not challenge the validity of Lydian Armenia's EIA [emphasis added].*"

However, the Independent 3rd Party Assessment of the Impacts on Water Resources and Geology, Biodiversity and Air Quality, carried out by ELARD and TRC, claims the opposite:

"The ESIA/EIA assessments are deficient and corresponding conclusions are unreliable. Accordingly, the question of whether exploitation of the ore deposit can conclusively be considered safe cannot be answered [emphasis added]. The question about environmental damage is answered in responses to previous questions. (4.1. Responses to specific ToR questions, Question #10)"

The ELARD report clearly shows dozens of evidences of the company's deliberate misrepresentation of the reviewers' conclusions. Despite the fact that Lydian and Armenia's government attempted to subvert the detailed analysis of independent experts, we expect the Court and Bankruptcy Monitor to familiarize themselves with the full report and draw conclusions on how Lydian has misled them (as it did with its investors and creditors) in relation to the findings of this report (full report accessible at: <http://www.investigative.am/images/2019/lidian/porcaqnnutyun/amulsar11.pdf>).

We remain at your disposal to provide more information, our address is: Spendaryan 5, apt 24, Yerevan 0002, Armenia, email: armecofront@gmail.com.

Arpine Grigoryan *Arpine Grigoryan*
Ani KHACHATRYAN *Ani Khachatryan*
Levon Galstyan *Levon Galstyan* 2
Mariam Davtyan *Mariam Davtyan*
Anna Shakhazaryan *Anna Shakhazaryan*

REPUBLIC OF ARMENIA
VAYOTS DZOR REGIONAL DEPARTMENT OF THE POLICE
JERMUK DIVISION

3701, Jermuk city, Myasnikyan 3, tel./fax (010) 59 06 38, (0287) 2 14 42

No 84/277

18.02.2020

To the journalist of the «Infocom.am» sity
Tehmine Yenokyan

In response to your enquiry dated 06.02.2020 we would like to inform you that the Administrative Court of RA under its decision taken on the case No VD/9786/05/18 which entered in legal force obliged the Police to eliminate the tresspassory entries into the territory of the real estate under the ownership of the plaintiff.

Back on 21.05.2019 the employees of the Vayots Dzor regional department of the Police visited the territory under the ownership of “Lydian Armenia” company adjoined to the Gndevaz village of the Vayots Dzor region where the mobile house trailers actually belonging to the ecology campaigners were situated. As a result of awareness-raising activities the trailers were removed from the territory of the company with help of a crane and other heavy machinery brought to the area by the Police and placed near the Gndevaz-Jermuk road.

Nevertheless, the company informed the Police about its objections declaring that the house trailers have still remained in the area under its ownership.

The Jermuk Division of the Vayots Dzor Regional Department of the Police of RA addressed a relevant petition to the Head of the Jermuk Community on 30.05.2019 requesting to assist in works for setting out the units of real estate in the sections RENCO-km9+200 of the M-2 Gndevaz-Jermuk H-43 road and site No 28-km8+00 under the coordinates indicated. On 01.06.2019 the presence of qualified employees of the «Geodesy and Cartography” SNCO was provided in the area adjoined to the Gndevaz village of the Jermuk community through the mediation of the Head of the Jermuk community.

The Police preliminary communicated with an employee of the «Lydian Armenia» company suggesting to participate in setting out and measurement of the land plots but the latter elected not to participate referring to the absence of the management’s permit.

On 01.06.2019 the qualified specialist under the control and immediate participation of the Police employees set out the units of real estate on site with help of special measurement devices.

The whole process was video-recorded by the Police, all details of the actions taken and the questions put to the specialist were fixed in the reports drawn up which were signed by the participants of the action. As a result, the specialist-geodesist drew two maps where the on-site positions of the real estate and mobile house trailers corresponding to the coordinates specified under the Court decision was clearly shown. According to the opinion signed by the specialist on 05.06.2019 the point with the coordinates specified in the first case is situated on the Gndevaz-Jermuk road and two mobile house trailers 183m north-east from it.

In the second case the point with the coordinates specified is situated at the Gndevaz-Jermuk roadside edge, 15m north from the mobile trailer.

Thus, it was ascertained that the mobile house trailers were not situated in the territory of the units of real estate under the ownership of the company as well as there were not any natural persons in those land plots, hence there was not any trespassory entry.

On the base of aforesaid we would like to inform you that the requirements defined under the court decision taken on the case VD/9786/05/18 have been adhered in full.

Any other judicial cases related to the decisions of the courts of RA regarding the «Lydian Armenia» CJSC have not been filed with the Jermuk Division of the Vayots Dzor Regional Department of the Police of RA.

Head,
Major of the Police signature A. Armenakyan
Seal

Translated by Arpine Bartikyan _____

On this twenty-first day of February of twenty twenty, I, Atom Hayrapetyan, Notary of the Yerevan notarial circuit of RA, certify the authenticity of the signature of the translator of this text from Armenian into English. According to the 68th article of the Law of RA "About Notary's Office" I certify that the translation of this document was done by the translator known to me, but not the facts stated in it.

Registration N 1968
State duty and payment for service is levied according to the Laws of RA "About State Duty" and "About Notary's Office"
Notary signature, seal





Երկու հազար քսան թվականի փետրվարի քսանմեկ

Ես, ՀՀ Երևան նոտարական տարածքի նոտար՝ ԱՏՈՄ ԳՐԻԳՈՐԻԻ ՀԱՅՐԱՊԵՏՅԱՆՍ, վավերացնում եմ տվյալ տեքստի հայերեն լեզվից անգլերեն լեզվով թարգմանչի ստորագրության իսկությունը:

<Նոտարիատի մասին> ՀՀ օրենքի 68 հոդվածի համաձայն հաստատում եմ փաստաթղթի թարգմանությունը կատարած թարգմանչի ստորագրության իսկությունը, այլ ոչ թե դրանում շարադրված փաստերը:

Գրանցված է գրանցամատյանում թիվ 1368

Գանձված են պետական տուրք հինգ հարյուր ՀՀ դրամ և հինգ հարյուր ՀՀ դրամ ծառայության վճար, համապատասխանաբար պետական տուրքի մասին> և <Նոտարիատի մասին> ՀՀ օրենքների



Handwritten signature in blue ink, written over the notary seal.

Ատոմ Գրիգորիի Հայրապետյան



ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ
 ԱՐՏԱԲԻՆ ԳՈՐԾԵՐԻ ՆՆՆԱԲԱՐՈՒԹՅՈՒՆ
 The Consular Department of the Ministry of Foreign
 Affairs of the Republic of Armenia authenticates the
 signature of YEREVAN NOTARIAL TERRITORY
NOTARY PUBLIC A. HAYRAPETYAN
 " 27 " FEBRUARY 2018
 N L-501
HEAD OF DIVISION V. BOGHYAN



ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅՈՒՆ
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ԶԵՐՍՈՒԿԻ ԲԱԺԻՆ

3701, ք. Ջերմուկ, Մյասնիկյան 3 հեռ. ֆաքս /010/ 59.06.38, /0287/ 2.14.42

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«infocom.am» կայքի լրագրող
Թեհմինե Ենոքյանին

Ձեր 06.02.2020 թ. հարցմանն ի պատասխան տեղեկացնում ենք, որ ՀՀ վարչական դատարանը թիվ ՎԴ/9786/05/18 գործով կայացրած և օրինական ուժի մեջ մտած վճռով ոստիկանությանը պարտավորեցրել է վերացնել հայցվարին սեփականության իրավունքով պատկանող անշարժ գույքերի տարածք կատարած ներխուժումները:

Դեռևս 2019 թ. մայիսի 21-ին ոստիկանության Վայոց ձորի մարզային վարչության ծառայողները այցելել են Վայոց ձորի մարզի Գնդեվազ գյուղին հարակից՝ «Լիդիան Արմենիա» ընկերությանը պատկանող անշարժ գույքի տարածք, որտեղ առկա են եղել բնապահպան ակտիվիստներին փաստացի պատկանող շարժական վագոն տնակները: Իրականացված բացատրական աշխատանքների արդյունքում, ոստիկանության կողմից տարածք բերված վերամբարձ կռունկի և այլ ծանր տեխնիկայի միջոցով տնակները հանվել են ընկերության տարածքից և տեղադրվել Գնդեվազ-Ջերմուկ ավտոճանապարհի մոտ:

Չնայած դրան, ընկերությունը գրավոր անհամաձայնություն է հայտնել ոստիկանություն՝ հայտարարելով, որ տնակները մինևույն է գտնվում են իրենց պատկանող տարածքում:

ՀՀ ոստիկանության Վայոց ձորի մարզային վարչության Ջերմուկի բաժինը 30.05.2019թ. համապատասխան միջնորդությամբ դիմել է Ջերմուկ համայնքի ղեկավարին՝ խնդրելով աջակցել Մ-2 Գնդեվազ-Ջերմուկ Հ-43 ճանապարհի ՌԵՆԿՈ -կմ9+200 և թիվ 28 տեղամաս-կմ 8+00 հատվածներում ներկայացված կորդինատներով անշարժ գույքային միավորների նշահարման աշխատանքներին: Ջերմուկ համայնքի ղեկավարի, միջնորդությամբ 01.06.2019թ. ապահովվել է «Գեոդեզիա և քարտեզագրություն» ՊՈԱԿ-ի որակավորում



ունեցող աշխատակիցների ներկայությունը Ջերմուկ համայնքի Գնդեվազ գյուղից հարակից՝ խնդրո առարկա տարածքներում:

Ոստիկանության կողմից նախապես կապ է հաստատվել «Լիդիան Արմենիա» ընկերության աշխատակցի հետ, առաջարկել մասնակցել հողամասերի նշագրմանը, չափագրման աշխատանքներին, սակայն վերջինս հղում անելով ղեկավարության թույլտվության բացակայությանը, հրաժարվել է մասնակցությունից:

01.06.2019թ., այցելելով տեղանք, ոստիկանության ծառայողների ղեկավարությամբ և անմիջական մասնակցությամբ որակավորված մասնագետը հատուկ չափիչ գործիքների օգնությամբ իրականացրել է գույքային միավորների նշահարում տեղանքում:

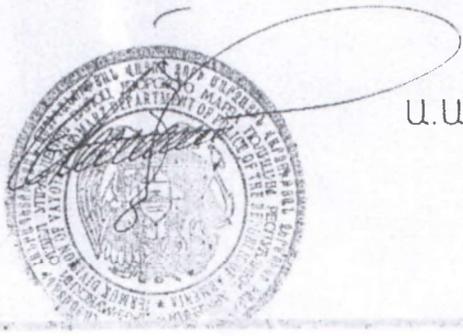
Ամբողջ գործընթացը տեսագրվել է ոստիկանության կողմից, կատարված գործողությունների բոլոր մանրամասները և մասնագետին առաջադրված հարցերը արտացոլվել են կազմված արձանագրություններում, որոնք ստորագրել են գործողության մասնակիցները: Արդյունքում, մասնագետ գեոդեզիստի կողմից կազմվել են տեղանքի երկու քարտեզներ, որոնցում հստակ երևում են վճռում նշված կորդինատներով գույքի և շարժական տնակների դասավորությունը տեղանքում՝ իրական ժամանակի մեջ: Մասնագետի կողմից ստորագրված 05.06.2019թ. եզրակացության համաձայն՝ 1-ին ղեպքում տրված կորդինատներով կետը գտնվում է Գնդեվազ-Ջերմուկ ավտոճանապարհի վրա, իսկ երկու շարժական տնակները դրանից 183 մետր հյուսիս-արևելք: Երկրորդ ղեպքում՝ տրված կորդինատներով կետը գտնվում է Գնդեվազ-Ջերմուկ ավտոճանապարհի եզրին՝ շարժական տնակից 15 մետր դեպի հյուսիս:

Այսպիսով, պարզվել է, որ շարժական տնակները չեն գտնվում ընկերությանը պատկանող անշարժ գույքային միավորների տարածքում, ինչպես նաև այդ հողամասերում բացակայում են ֆիզիկական անձինք, հետևապես՝ ներխուժում առկա չէ:

Վերոգրյալից ելնելով, հայտնում ենք, որ թիվ ՎԴ/9786/05/18 գործով կայացրած դատական ակտի պահանջները ոստիկանության կողմից ամբողջությամբ կատարվել են:

Ոստիկանության Վայոց ձորի մարզային վարչության Ջերմուկի բաժնում «Լիդիան Արմենիա» ՓԲ ընկերության հետ 22 դատարանների վճիռների հետ կապված այլ դատական գործեր չեն եղել:

Պետ,
Ոստիկանության մայրո՝



Ա.Արմենակյան

TAB H

This is
EXHIBIT "H"
referred to in the Affidavit of
EDWARD A. SELLERS
sworn March 10, 2020



A Commissioner etc.

REPUBLIC OF ARMENIA
ADMINISTRATIVE COURT

RULING

Administrative case No VD/9786/05/18

In the name of the Republic of Armenia

April 10, 2019

Yerevan city

The administrative case opened by Lydian Armenia, CJSC (hereinafter referred to as the Company or Claimant) against RA Police, represented by the Jermuk Department of the RA Police division for Vayots Dzor province (hereinafter referred to as the Department or Respondent), is being heard by the Administrative Court of the Republic of Armenia (hereinafter referred to as the Court) at the open sitting,

chaired by

Judge AVAGYAN Artur, with clerks NERSISYAN Inna and HOVAKIMYAN Nelli;

and attended by:

Claimant's counsel NASIBYAN Khoren (license No 1509, based on power of attorney executed by Lydian Armenia, CJSC on Sept. 19, 2018); and

Respondent's counsel SARGSYAN Arman (based on the power of attorney executed by Police Deputy Chief on Oct.05, 2018).

Under the case, the Claimant seeks a decision that will make the Police Department to remove trespassing from the Claimant-owned real property areas with coordinates of 39.740911, 45.609243 and 39.734013, 45.608475.

Below are the facts determined by the Court.

1. Procedural history

On Sept. 20, 2018, a claim was brought by the Company's counsel seeking to instruct the Police (represented by the Department) to remove trespassers from the Company-owned real property areas with coordinates of 39.740911, 45.609243 and 39.734013, 45.608475.

The claim was admitted for hearing based on the Court's ruling of Sept. 27, 2018.

The preliminary court sitting, held on October 29, 2018, was attended by Claimant's counsel Khoren Nasibyan and Respondent's counsel Arman Sargsyan.

Under the Evidence Disclosure Decision passed by the Court on October 29, 2018, the RA Police division for Vayots Dzor province was instructed to provide all the case information collected in relation to the Company-submitted applications.

Under the statement of claim, supplemented on Sept.20, 2018, the Company's counsel asked the Court to instruct the Police Department to remove trespassers from the Company-owned real property areas with 39.740911, 45.609243 and 39.734013, 45.608475 coordinates.

The preliminary court sitting, held on November 20, 2018, was attended by Claimant's counsel Khoren Nasibyan and Respondent's counsel Arman Sargsyan.

The preliminary court sitting, scheduled for December 21, 2018, at 3 p.m., was not held because of the absence of judge Artur Avagyan, who participated in the general meeting of judges.

The preliminary court sitting, held on January 30, 2019, was attended by Claimant's counsel Khoren Nasibyan and Respondent's counsel Arman Sargsyan, with the decision made by the Court to allow the case to proceed.

The court hearing held on March 21, 2019, at 3 p.m., was attended by Claimant's counsel Khoren Nasibyan and Respondent's counsel Arman Sargsyan. The Court completed the court examination of the case at its March 21 sitting and set the date of announcing the judgement on the merits, that is April 10, 2019, at 5 p.m.

2. Legal Reasoning of the Claimant

Below are the facts, reasoning and demands made by the Claimant under the statement of claim:

In early June 2018, a group of people trespassed on the Claimant-owned territory (with the coordinates of 39.740911, 45.609243) and installed a trailer therein, having no owner's permission and/or any legal authority thereunto. On August 13, 2019, Police report was filed by the Company counsel Khoren Nasibyan to remove the trespassers from the above-mentioned Company-owned territory. The Police report was accompanied with the areas' legal-possession-certifying document, namely certificates on State registration of real property rights for the land areas. Under the RA Government's Resolution No 797-N of May 10, 2007, clause 4 of the Annex, the Police department officers were supposed to visit the real property area within a 3 hours' period upon receipt of the police report, but none of them did so and/or made a call within the prescribed period of time. Instead, on August 14, 2018 the Police department chief sent a letter No 84/1367 to the Company requiring a submission of plans of the real property units, specified by the above-mentioned State registration certificates. The demand for the plan submission was not justified and was made irrespective of the fact that no plan-submission requirement is stipulated by the RA Government's Resolution. Under the Police department Chief's note No 84/1376 of August 15, 2018, the Claimant counsel was invited to the Police department for presenting the case. Based on the Police department chief's letter No 84/1394 of August 20, 2018, the Police found no elements of trespassing in this case.

On August 22, 2018, the Claimant had to re-file his Police report because of the ongoing actions at the site impeding the exercise of the ownership rights by the Claimant. In response, the Police department chief sent another incomprehensible letter No 84/1394 on August 23, 2018 stating that the trailer was installed at the territory beyond the Company-owned area, which was not consistent with the reality. The actions and inactivity of the Police department officers were not appealed by way of subordination by the Claimant. Until the day of submission of the statement of claim, the Claimant was deprived of the opportunity to exercise his property ownership rights because of the failure of the Police department's staff to exercise the authorities stipulated by the above-mentioned Annex to the RA Government's Resolution No 797-N of May 10, 2007.

When applying the provisions of the RA Constitution (article 10.1), the RA Civil Code (articles 163.1, 203.1, 203.4 and 203.5), as well as the RA Government's Resolution No 797-N of May 10, 2007 on the "Procedure and Conditions of Police Authorization by Legal Possessor of Real Property for the purpose of Preventing and/or Removing Trespassing" (Annex sections 1, 2, 4, 11, 12 and 14) to the facts of the case, it becomes clear that the Police department officers were supposed to discharge the duties prescribed by the above-mentioned Government's Resolution (Annex, clause 4), namely to visit the real property area within a three hours' period upon receipt of the Claimant's report, which was not done de facto. Besides, under the letter of August 14, 2018, the Police required the plans of the real property units aside from the Certificates on the State registration of the real property rights, having no reasonable cause to do so. The above-mentioned Government's Resolution (Annex, clause 2) states that a certificate on State registration of real property rights shall be deemed as the document that certifies the legal possession of the real property. Meanwhile, the Police report submitted by the Claimant on August 13, 2018, was accompanied with both the mentioned certificates and the plans of the areas, which are not required under the law. Under the circumstances, the Police's demand is groundless and unnecessary, and it implies a breach of the principle of the prohibition of abuse of formal requirements, prescribed by article 5 of the RA law on "Fundamentals of Administration and Administrative Procedure", as well as a disregard of the Principle of the Maximum, stipulated by article 9 of the same law.

It is worth mentioning that the failure to open an investigation based on filed police reports and the above-mentioned disregard of procedural and substantive rules were justified by the Police by the fact that the trespassers were exercising their constitutional right for freedom of assembly (RA Constitution, article 44.1), according to the the Police department Chief's letter No 84/1394 of August 20, 2018. The Police department has missed the point of the RA law on "Freedom of assemblies" article 4.1 stating that no mass meetings shall be held in a privately-owned area unless authorized by the owner thereof and no trailers/lodge shall be installed and/or constructed by the mass meeting participants therein even with the connivance of the law enforcement bodies. Besides, the RA law on "Freedom of assemblies" article 4.1 states that "the place of assembly should be the one to which everyone has access."

It will be difficult to regard the privately-owned production site, which is a matter of dispute, as "accessible for everyone". Such a liberal interpretation of the law implies ominous consequences for the society and the Police department's logic suggests that everyone may break another's fundamental rights and may trespass to a privately-owned real property just by force of the right for freedom of assemblies prescribed by the RA Constitution article 44.

Police were supposed to be guided by RA law on "Regulatory legal acts" article 41. The literal interpretation of the law on "Freedom of assemblies" article 1.4 implies that a privately-owned land area may serve as a place of assembly if accessible for everyone (namely, if authorized by the land area owner or if organized by the latter, and etc.). In this case, the situation differs as the Claimant, who is the owner of the land area, is deprived of the opportunity to exercise his ownership rights as prescribed by RA Constitution article 10. At this, the land area, which is privately owned by the Claimant, may not serve as a place for assembly.

With regard to legal position of the European court on human rights under the case *Djavit An v. Turkey* (2003), para.56; *Rassemblement Jurassien Unite Jurassienne v. Switzerland* (1979), p.119, we may state that the case situation is completely different from similar ones, when the right for freedom of assemblies is being exercised on State- and/or community-owned facilities.

In this case, the administrative body has disregarded the peculiarities of the situation and the principle of “prohibition of arbitrariness” prescribed by the RA law on “Fundamentals of Administration and Administrative Procedure” article 7. As proceeding from article 7.2 of the same law, Police has obviously disregarded the peculiarities of the situation (the fact of the land area being privately owned and not accessible for everyone), which implies “displaying individual approach towards essentially different factual circumstances.”

The Police department’s chief’s letter No 84/1394 of August 20, 2018 refers to RA Civil Code article 203.2, which states that *“It shall not be deemed to be intrusion where 1) the land parcel is not fenced or walled in, or 2) there is no written or voice message or image sign prohibiting the entrance into the land parcel.”* And the prerequisite is that *“the entry into the land parcel will not cause any damage to the land parcel”*. The disputed land areas are not fenced but are deemed to be mining area and *there is* a sign stating the fact (image sign). And what about the numerous voice statements and messages, made by the land owner’s representatives, and the Police reports filed on August 13, 2018 and August 22, 2018. What are they if not the written and voice messages prohibiting the entrance to the land parcel?

The Police has also disregarded the prerequisite of the RA Civil Code article 203.2, stating that *“the entrance shall not cause any damage to the land parcel”*. As mentioned above, the land parcel is a mining area and the fact that the Claimant is deprived of the opportunity to provide for a proper protection, possession and use of the land area because of a group of trespassers means that the land plot may be damaged.

As to the incomprehensible letter No 84/1394, sent by the Police department Chief on August 23, 2018 and stating that the trailer was installed at the area not owned by the Claimant, it’s worth dwelling on reasonability of the statement, as it is completely groundless and does not meet the reality, as the land areas do belong to the Company which fact is proven by the certificates on State registration of real property ownership.

Based on the RA law on “Regulatory legal acts” article 41, we may state that the law does not restrict the land plot owner’s and/or legal possessor’s right to possess the land area, subjected to trespassing and installation of an unknown trailer by trespassers. In addition, it should be mentioned that according to the RA law on “Police of the RA”, article 2.1.5, the Police shall provide for an equal protection of all forms of ownership. The improper examination of the police reports, as prescribed by RA law on “Police service of the RA” articles 20.1.1 and 20.1.6, and the failure to remove trespassers, mean that the Police has failed to discharge its duties prescribed by the above norms and the RA law on “Fundamentals of Administration and Administrative procedure” article 4, 5, 7 and 9, as well as the RA Government’s Resolution No 292-N of May 10, 2007 on “Procedure and Conditions of Police Authorization by Legal Possessor of Real Property for the purpose of Preventing and/or Removing Trespassing” (Annex sections 1, 2, 4, 11, 12 and 14)”, by bringing to lasting breach of property rights certified under the real property rights registration certificates No 18082016-10-0021, 18082016-10-0011, 18082016-10-0055, 18082016-10-0069 and 18082016-10-0013.

On November 14, 2018, the Claimant counsel supplemented the statement of claim as follows:

Material events, which followed the filing of the statement of claim, were not responded by the Respondent properly. Thus, on October 22, 2018, the Claimant filed a report with the Respondent stating that the Claimant-owned territory (coordinates of 39.734013, 45.608475) was trespassed on October 21, 2019 by third persons bypassing the prohibiting sign, and a 3-room metal trailer

was installed there. The report was filed by the Claimant in a manner prescribed by the RA Government's Resolution No 797-N of May 10, 2007, as in previous case.

Just like before, no actions prescribed by the above Resolution No 797-N were implemented by the Respondent. Namely, on October 26, 2018 the Respondent sent a formal letter No 84/1848, signed by Police department acting chief A.Armenakyan, saying that a number of measures were taken by the Police department staff for the purpose of removing the trailer, installed at the entrance of the Claimant's site by a group of Jermuk residents, such as negotiating with the persons and the delivery of crane at the site, and etc., with no tangible results achieved.

Article 203.2 of the RA Civil Code was quoted by the Respondent irrespective of the above-mentioned "measures taken" implying that the Respondent did not recognize the lawfulness of the Claimant's demands, and by this the Respondent contradicted the above paragraph, and disregarded the fact that the above-mentioned prohibiting sign had been installed just in front of the site entrance. By the letter, the Respondent urged the Claimant to take measures required to remove the property illegally installed at his own territory, which means that the Respondent once again recognized the legal rights that the Claimant held in the area and the fact of trespassing to the area by third persons.

Based on the above-mentioned, the Claimant asked the Respondent to remove trespassers from the areas, lawfully possessed by him (the Claimant) and having the coordinates of 39.740911, 45.609243 and 39.734013, 45.608475.

3. Legal Reasoning of the Respondent

Below is the reasoning presented by the Respondent in writing:

On August 13, 2018, at 8 p.m., a police report was filed by Khoren Nasibyan, the counsel for the Company, asking to remove the trespassers from the Company-owned territory with coordinates of 39.740911, 45.609243. The report was accompanied with certificates No 18082016-10-0021, 18082016-10-0011, 18082016-10-0055, 18082016-10-0069 and 18082016-10-0013 on State registration of real property rights, and a power of attorney. The report was received by e-mail and immediately assigned to Police officer G.Tadevosyan to proceed with. The same day, at 8:03 p.m., G.Tadevosyan communicated with the Company counsel Kh.Nasibyan by mobile (098-190000), who said that he would not be able to visit the mentioned site as he was leaving for Yerevan. G.Tadevosyan presented the procedure saying that the Police were to visit the real property site within a 3 hours' period upon receipt of the Police report to identify the person filing the report, to check the documents certifying the real property rights and to identify the trespassers and/or those trying to intrude the territory and to determine the reasons and/or bases of their presence or attempted entry and to draw up a report of the incident. The same day, at 8:45 p.m., G.Tadevosyan arrived at the site with 3 police officers. The site was occupied by a group of Jermuk city residents protesting against the Amulsar gold mine project. No Company representative was present at the area within the period, G.Tadevosyan had two phone calls the same day at 8:49 p.m. and 9:43 p.m. with Kh.Nasibyan, who said that no Company representative would visit the real property area and that they (the Police) should remove the trespassers. The transcripts of the calls made from G.Tadevosyan's phone within the period are attached. The calls made to Kh.Nasibyan's phone number of 098190000 are detailed by hour and minutes and coincide with the time period when the report was drawn up under the case materials. The