Court File No. CV-23-00707394-00CL

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 TACORA RESOURCES INC.

APPLICANTS

AIDE MEMOIRE OF THE CONSORTIUM OF NOTEHOLDERS
(RE: AMENDED DIP MOTION RETURNABLE APRIL 25, 2024)

April 24, 2024

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (#44066M)
Email: mwasserman@osler.com

Michael De Lellis (#48038U)
Email: mdelellis@osler.com

Jeremy Dacks (#41851R)
Email: jdacks@osler.com

Karin Sachar (#59944E)
Email: ksachar@osler.com

Tel: 416.362.2111
Fax: 416.862.6666

LAWYERS FOR THE CONSORTIUM NOTEHOLDER GROUP

PART I - OVERVIEW

1. These Submissions are filed on behalf of the Consortium Noteholder Group[1] (the "**Consortium**") in opposition to the requested approval by this Court of DIP financing in the amount of up to at least $150 million to be provided to Tacora Resources Inc. ("**Tacora**") by Cargill Inc. ("**Cargill**").

2. The proposed new Cargill DIP financing (the "**New Cargill DIP**") includes a super-priority charge ranking ahead of the senior secured notes held by the Consortium and other Noteholders. At the same time, the New Cargill DIP includes unfavourable economic terms including a second exit fee in the amount of $800,000 and payment of litigation costs of over $2 million (the "**New DIP Costs**").

3. Moreover, the New Cargill DIP contains the same restrictive condition (described further below) regarding the treatment of the uneconomic and off-market Offtake Agreement between Cargill International Trading Pte Ltd. and Tacora that has proven to be an insurmountable roadblock to restructuring Tacora throughout this proceeding (the "**Offtake Condition**"). By once again including the Offtake Condition, the New Cargill DIP effectively creates a functional veto for Cargill over any future restructuring of Tacora – a strategy which has, to date, been shown to be completely unworkable – to the material prejudice of all stakeholders, including the Noteholders. Cargill baldly states to this Court that "all roads lead through Cargill" and is effectively treating the Offtake Agreement like a right of first refusal. This is not only untrue and unfair but creates very material risks that Tacora will not be able to restructure at all.

---

[1] The Consortium is comprised of Snowcat Capital Management LP, Brigade Capital Management, LP, Millstreet Capital Management, LLC, MSD Partners, LP, O'Brien-Staley Partners, and Javelin Global Commodities (SG) Pte Ltd.

4. Despite being styled as a "Second Amended and Restated DIP Facility Term Sheet," the New Cargill DIP is just that – a new DIP agreement that the Court is being asked to approve. The Board, the Monitor and the Court cannot simply look at the changes to the previous Cargill DIP as the end of the analysis. Cargill's counsel states that this is now a "New Case." The New Cargill DIP must be looked at through that lens. The New Cargill DIP must be reviewed in its entirety, applying the factors under section 11.2(4) of the CCAA, based on all the evidence before the Court, including whether provisions such as the Offtake Condition remain appropriate at this stage of the CCAA Proceeding. It is telling that there is no mention of the Offtake Condition in the materials filed by Tacora and the Monitor for this motion or in the DIP comparison chart provided by Tacora to the Court, let alone any attempt to support or justify why it is necessary and appropriate to include it once again in the New Cargill DIP, given the history of these proceedings to date.

5. The company had another viable, preferable option. The Consortium offered an unsolicited alternate DIP facility (the "**Consortium DIP**") which Tacora has rejected, despite the fact that the Consortium DIP is a "clean" DIP with no exit fees, provides sufficient financing to the company, and does not contain the onerous Offtake Condition. The Consortium DIP is also not tied to any transaction and therefore offers Tacora maximum flexibility to restructure going forward. The Consortium voluntarily offered this proposed DIP financing and negotiated in good faith with Tacora to revise its terms to ensure that it was providing terms that are as favourable as possible. Tacora's decision to accept the New Cargill DIP, despite the Offtake Condition and the incremental New DIP Costs of $2.8 million which simply involve Cargill lending money and charging interest to pay itself, is unreasonable and not in the best interests of the company or its stakeholders. The New Cargill DIP should not be approved.

6. The Consortium therefore requests that this Court refuse to approve the New Cargill DIP and direct Tacora to accept the Consortium DIP. In this regard, the Consortium remains willing to work with Cargill and Tacora, with the assistance of the Monitor, on a joint DIP facility without an Offtake Condition in which both stakeholders participate. In the alternative, the Consortium submits that this Court should refuse to approve the New Cargill DIP unless and until the New DIP Costs and the Offtake Condition have been removed.

7. Moreover and in any event, this Court must take control of this proceeding to provide certainty to Tacora and a clear path to a definitive closing and exit from these CCAA Proceedings. This is real time litigation and Cargill's delay tactics must end. As such, the Court should provide the following directions to the parties:

(a) Tacora, Cargill and the Consortium, with the assistance of the Monitor, should be provided **4 weeks** to negotiate, finalize and execute definitive documents for a restructuring transaction; and

(b) If no definitive restructuring documents are completed within 4 weeks, a truncated and tailored **4 week** SISP should be run that only pursues an asset sale transaction for Tacora. Cargill's actions have made it clear that anything else will result in interminable delay to its sole financial benefit, and may lead to liquidation of the company.

PART II - ARGUMENT

A. The Prejudicial Effect of the Offtake Condition

8. The Offtake Condition once again ties the provision of DIP financing to the continuation of the Offtake Agreement. The New Cargill DIP provides first, that Tacora must comply with the terms of the Offtake Agreement and keep it in full force and effect, unless disclaimed pursuant to

an order of the CCAA Court. Furthermore, the termination, suspension or disclaimer of the Existing Arrangements (which include the Offtake Agreement) will be an Event of Default under the New Cargill DIP, unless effected pursuant to a court order. Finally, it is an Event of Default if Tacora commits a default under any Material Contract, with certain exceptions including where the Offtake Agreement is disclaimed pursuant to a court order.[2]

9. The Offtake Agreement and related Offtake Condition has been and continues to act as an effective shackle for Tacora in any proposed restructuring. Tacora openly acknowledges in its evidence for this motion that the Offtake Agreement is "prohibitive." Tacora also indicates the urgency to find a restructuring solution, noting that protracted litigation or negotiations will delay the conclusion of these proceedings, put Tacora at risk of further iron ore price fluctuations and allow "Cargill to continue to profit significantly from its Offtake Agreement while value is eroded from Tacora and its other stakeholders."[3] The Offtake Condition is expressly designed to preserve this unequal state of affairs for the benefit of Cargill; Tacora's decision to accept the New Cargill DIP with knowledge of this fact is unreasonable and detrimental to the company's stakeholders as a whole.

10. This restructuring must now move into a new phase, which may take the form of a negotiated solution between Cargill, Tacora and the Noteholders potentially with the assistance of a mediator or a new truncated SISP. Anything else would cause continued delay to the sole financial benefit of Cargill.

---

[2] Motion Record of the Applicant (Re: Stay Extension Order and Claims Procedure Order Returnable April 23, 2024) dated April 21, 2024, Tab 2, Second Amended and Restated DIP Facility Term Sheet, clauses 21(s), 23(d)-(e), Exhibit "A" to the Affidavit of Joe Broking sworn April 21, 2024 ("**Broking Affidavit**") [CL pp. A5730, A5733].

[3] Broking Affidavit, paras. 19-20 [CL p. A5710].

11. To the extent that the restructuring solution requires a consensual agreement among Tacora, Cargill and the Noteholders, Cargill's insistence on maintaining the Offtake Agreement, together with the limitations represented by the Offtake Condition, represent a substantial impediment to any negotiated resolution. In fact, the inclusion of the Offtake Condition in the New Cargill DIP is a deterrent to even commencing stakeholder negotiations and Cargill's claim that it is "open for business" while insisting on maintaining the Offtake Condition rings hollow. It has become clear that only the Court can restore the necessary equilibrium to allow this process to move to the next phase.

12. If a new SISP becomes necessary or desirable, Tacora and its financial advisor have already determined through the original SISP that potential buyers will not agree to invest in Tacora while the Offtake Agreement remains in place. Conducting a new SISP with the existing Offtake Agreement in place and in the face of the Offtake Condition, together with the litigation risk that it represents, would be a course of action that is doomed to fail.

13. The Monitor expressed the view in its Supplement to the Fourth Report that the restructuring of Tacora is not possible while the existing Offtake Agreement remains in place.[4] In addition, the evidence in the record is that the pre-filing restructuring efforts of Tacora, as well as the SISP, could not succeed with the existing Offtake Agreement in place.[5] Tacora's own evidence on this motion echoes these concerns. Nonetheless, Tacora is proposing to move forward with new DIP financing that severely curtails its ability to deal with that agreement and restructure. Only Cargill has sought to retain the Offtake Agreement, and yet was itself unable to attract the interest

---

[4] Supplement to the Fourth Report of FTI Consulting Canada Inc., in its Capacity as Court-Appointed Monitor, dated March 26, 2024 ("**Supplement to the Fourth Report**"), para. 29 [CL p. E489].

[5] Sale Approval Motion Record, Tab 3, Affidavit of Michael Nessim sworn February 2, 2024, paras. 5-6, 20 [CL pp. A3080, A3085]; Reply Record of the Applicant (Approval and Reverse Vesting Order) dated March 14, 2024, Tab 1, Reply Affidavit of Joe Broking sworn March 14, 2024, para. 11 [CL p. A3438].

of other equity partners to invest in the business under its proposed transaction, which contemplated the preservation of the Offtake Agreement on its current terms. To date, Cargill still does not have the necessary equity investment to move forward with a restructuring solution of its own.[6]

14. It is no answer for Cargill to say that Tacora can simply engage in the process necessary to disclaim the Offtake Agreement, if necessary. Cargill has already signaled that it does not intend to accept that the Offtake Agreement can be disclaimed under the provisions of the CCAA. It has asserted that the Offtake Agreement is an "eligible financial contract" or EFC, since EFCs are not subject to the disclaimer process set out in section 32 of the CCAA. It has further asserted that the Offtake Agreement cannot be transferred to a ResidualCo under a reverse vesting structure.[7]

15. Neither of these positions has legal merit, but it can be presumed that if Tacora were to identify a new restructuring transaction that required either the disclaimer of the Offtake Agreement or its transfer to a ResidualCo, Cargill would renew its objections and again attempt to profit from delay and uncertainty caused by its asserted need to litigate these issues. In fact, the existence of the Offtake Condition means that no equity investor or potential replacement offtake partner is likely to come forward, given the litigation risk and related delays. Any non-consensual transaction will necessarily require a new offtake partner and replacement DIP financing as a bridge to closing and it is clear that Cargill will oppose the approval of such relief.

16. Cargill's position also obfuscates the legal reality that, apart from the Offtake Condition, which has been imposed under the New Cargill DIP as a contractual matter in Cargill's self-interest

---

6 This was noted by the Monitor in the Supplement to the Fourth Report, para. 19 [CL p. E487].

7 Motion Record for Cargill's Preliminary Threshold Motion, dated February 5, 2024, Tab 1, Notice of Motion dated February 5, 2024, pp. 3-6, paras. (a)-(o) [CL pp. F2348-F2351]; Factum of Cargill, Incorporated and Cargill International Trading Pte Ltd. Re: Preliminary Threshold Motion dated March 27, 2024, paras. 26, 44.

as counterparty to the Offtake Agreement, Tacora, like any other CCAA debtor, could simply cease performing the Offtake Agreement without engaging with the formal disclaimer process. That is why Cargill has once again insisted on including the Offtake Condition as part of the New Cargill DIP. As the Alberta Court of Queen's Bench held in *Bellatrix #2,* the disclaimer process is not mandatory; it is intended to benefit debtors and creditors by providing a formal process for terminating a contract, as well as a formal opportunity for the counterparty to object. However, a debtor is entitled to unilaterally cease performing a contract without recourse to the disclaimer process. This principle applies regardless of whether the contract in question is an EFC.[8]

17. The Consortium submits that the Offtake Condition provides inappropriate leverage to Cargill, in its capacity as DIP lender, in relation to the manner in which the Offtake Agreement can be addressed in this restructuring, including by precluding Tacora from ceasing to perform the Offtake Agreement and replacing it with a new arrangement for marketing iron ore. It perpetuates the ongoing imbalance and lack of equilibrium between Cargill, as offtake counterparty and DIP lender, and other stakeholders with priority interests, including the Noteholders. This is inappropriate and prejudicial to all the stakeholders of Tacora, including the Noteholders whose security continues to erode potentially down to nothing and whose interests will be materially prejudiced if Tacora is unable to successfully restructure.

B. The Consortium DIP Should Be Approved

---

[8] *Bellatrix Exploration Ltd (Re)*, 2020 ABQB 809 [*Bellatrix #2*], leave to appeal ref'd 2021 ABCA 85. This principle was affirmed in *Bellatrix #2* even though the gas supply agreement at issue had already been determined to be an EFC: see *Bellatrix Exploration Ltd, Re*, [2020] A.J. No. 329 (Q.B.), leave to appeal granted 2020 ABCA 178, appeal subsequently dismissed for mootness 2021 ABCA 148.

18. The Consortium submits that the "clean" Consortium DIP should be approved. Certain key terms of the Consortium DIP are summarized below:

- **DIP Facility Amount**: $200 million
- **Interest**: Interest is payable on all amounts drawn under the Consortium DIP at a rate of 10% per annum payable monthly in arrears in cash on the last Business Day of each month. However, Tacora may elect at any time to pay the interest-in-kind by adding such accrued interest to the principal amount of the DIP Obligations on the last Business Day of each applicable month.
- **Fees**: Tacora is not required to pay an exit fee or extension fee.
- **DIP Lenders' Expenses**: Tacora is only required to pay the DIP Lenders' (i) go-forward reasonable and documented legal and financial advisory fees and expenses, and (ii) reasonable and documented legal and financial advisory fees and expenses incurred in connection with the Consortium DIP.
- **Maturity Date**: No later than October 31, 2024.[9]

19. In particular, the Consortium DIP contemplates the repayment in full of the prior Cargill DIP financing in the amount of approximately $160 million. As such, the Consortium is not seeking to have the Consortium DIP rank in priority to the prior Cargill DIP financing without Cargill's consent.[10]

20. More importantly, the Consortium DIP contains no conditions regarding the manner in which the Offtake Agreement can be restructured, defaulted or disclaimed. It therefore provides Tacora with broad flexibility to accept a proposal for a revised Offtake Agreement from Cargill, or if such proposal is not forthcoming on acceptable terms, to accept a more favourable proposal from an alternate offtake partner. If an offtake replacement transaction must be completed quickly, Tacora is not precluded from simply ceasing performance of the Offtake Agreement without

---

[9] See Responding Motion Record of the Consortium of Noteholders (Re: Amended DIP Motion Returnable April 25, 2024), Tab 1, DIP Facility Term Sheet, Exhibit "F" to the Affidavit of Ben Muller sworn April 23, 2024.

[10] CCAA, s. 11.2(3).

engaging the formal disclaimer process and without triggering the same litigation strategy that Cargill has already deployed.

21. The New Cargill DIP also imposes certain other more onerous terms than the Consortium DIP. These include the New DIP Costs of $2.8 million which are all simply being cycled through the company and then back to Cargill to the material prejudice of the Noteholders, consisting of:

(a) The payment of Cargill's out-of-pocket legal and financial advisory fees and expenses related to the sale approval motion in the amount of in excess of $2 million, plus taxes (this provision results in Cargill earning interest on money it is lending to have its own fees paid); and

(b) The Subsequent Exit Fee, in the amount of $800,000, which is payable unless the DIP Obligations and Post-Filing Credit Extensions are repaid in full on or before May 8, 2024 (there are no exit fees under the Consortium DIP).

22. The Consortium acknowledges that the business judgment of Tacora's Board of Directors is a factor that this Court may take into account in determining whether to approve DIP financing. However, it is only one factor. In the context of a dispute over which of two competing DIP financing proposals should be approved, the Ontario Court of Appeal stated in *Crystallex*:

> [84] The fact that a debtor's board of directors recommends interim financing is not a determinative factor, and in some cases may not be a material factor, in considering whether to make an order under s. 11.2. …
>
> [85] … In the case of interim financing, the court must make an independent determination, and arrive at an appropriate order, having regard to the factors in s. 11.2(4). It may consider, but not defer to, and is not fettered by, the recommendation of the board.[11]

[11] *Crystallex (Re)*, 2012 ONCA 404, leave to appeal to S.C.C. ref'd 2012 CanLII 56139 (emphasis added).

23. The CCAA requires the consideration of the section 11.2(4) factors, as well as a balancing of interests in approving a DIP, including where a case is ongoing. The Court must consider, among other things, "whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company," as well as "the nature and value of the company's property" and "whether any creditor would be materially prejudiced as a result of the security or charge."[12]

24. Courts have previously refused to approve DIP financing where the DIP lender has imposed an unreasonable condition that will have a chilling effect on the restructuring. The Alberta Court in *Endurance Energy* held in regard to a DIP loan that contained a right of first refusal:

> With respect to the DIP loan, after considering the factors in section 11.2(4) of the CCAA, I will not approve the DIP loan with the ROFR term. I see no point in confirming a short sale process with complicated assets, using the most expensive Financial Advisor, and then crippling the process by fettering the Court's discretion in allowing a ROFR in favour of the DIP Lender. Both the Syndicate and the DIP Lender can make credit bids, but there will be no DIP loan with the ROFR term approved. I am mindful that the DIP Lender has said that it will not fund without this term. I am satisfied that there is no point in running an expensive sale process only to have the DIP Lender thwart the process with its override ability. If this means there is no sale process and the company closes its doors, I am still satisfied that I have balanced the stakeholder interests appropriately…[13]

25. In the current circumstances, this Court must be cognizant of the fact that Tacora's restructuring is at a critical juncture and a restructuring solution must be found. All stakeholders, not to mention Tacora itself, are fully aware of the need to replace or restructure the Offtake Agreement in order for Tacora's business to survive as a going-concern and of the real impediment to such a restructuring that the Offtake Agreement and related Offtake Condition represents. Continuing to place the success of this restructuring in the sole control of Cargill, the only party

---

12 CCAA, s. 11.2(4).

13 *Endurance Energy Ltd (Re)*, 2016 ABQB 324 at para. 5(2), leave to appeal ref'd 2016 ABCA 217.

that benefits from the Offtake Agreement and from litigation risk, delay and uncertainty, is a recipe for failure.

26. In these circumstances, the New Cargill DIP will prejudice Tacora's existing secured creditors, including the Noteholders who are being required to accept up to at least $150 million of new priority indebtedness[14] ahead of their very substantial secured indebtedness, in circumstances where the Offtake Condition creates the very material risk that the restructuring cannot succeed at all. Cargill is seeking to "leapfrog" secured lenders by linking its Offtake Agreement to the New Cargill DIP, in effect priming a secured obligation with an unsecured obligation. The prejudice to stakeholders arising under the New Cargill DIP is not outweighed by the benefits of the New Cargill DIP to Tacora or stakeholders as a whole, given the very material risks of failure of this restructuring created by the Offtake Condition and the ongoing control asserted by Cargill. The balancing of the relevant factors favours the Consortium DIP, given that the Consortium DIP is available to Tacora without the New DIP Costs and the Offtake Condition.

27. The Court is required to consider the totality of the New Cargill DIP when considering if it should be approved based on the current facts and circumstances of the CCAA Proceeding. It is not appropriate to only consider new provisions in determining whether to approve the New Cargill DIP.

28. The Consortium therefore submits that this Court should refuse to approve the New Cargill DIP and require Tacora to accept the Consortium DIP. In such event, the Consortium is willing to engage with Tacora and Cargill, with the assistance of the Monitor, regarding joint participation

[14] The amount of the priming charge is described as "at least" $150 million, since the charge also covers Excess Margin Amounts and Post-Filing Hedging Arrangements, which are of an indeterminate amount.

in DIP financing without an Offtake Condition to ensure a balanced approach to the next phase of this restructuring.

29. At a minimum, this Court should refuse to approve the New Cargill DIP unless the New DIP Costs and the Offtake Condition are removed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of April, 2024.

OSLER, HOSKIN & HARCOURT LLP

Lawyers for the Consortium Noteholder Group

SCHEDULE "A"
LIST OF AUTHORITIES

Case Law

1. *Bellatrix Exploration Ltd, Re*, [2020] A.J. No. 329 (Q.B.), leave to appeal granted 2020 ABCA 178, appeal dismissed 2021 ABCA 148
2. *Bellatrix Exploration Ltd (Re)*, 2020 ABQB 809, leave to appeal ref'd 2021 ABCA 85
3. *Crystallex (Re)*, 2012 ONCA 404, leave to appeal to S.C.C. ref'd 2012 CanLII 56139
4. *Endurance Energy Ltd (Re)*, 2016 ABQB 324, leave to appeal ref'd 2016 ABCA 217

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

***Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36**

Priority — other orders

11.2 (3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

> **(a)** the period during which the company is expected to be subject to proceedings under this Act;
>
> **(b)** how the company's business and financial affairs are to be managed during the proceedings;
>
> **(c)** whether the company's management has the confidence of its major creditors;
>
> **(d)** whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
>
> **(e)** the nature and value of the company's property;
>
> **(f)** whether any creditor would be materially prejudiced as a result of the security or charge; and
>
> **(g)** the monitor's report referred to in paragraph 23(1)(b), if any.

…

Disclaimer or resiliation of agreements

32 (1) Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.

Court may prohibit disclaimer or resiliation

(2) Within 15 days after the day on which the company gives notice under subsection (1), a party to the agreement may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement is not to be disclaimed or resiliated.

Court-ordered disclaimer or resiliation

(3) If the monitor does not approve the proposed disclaimer or resiliation, the company may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement be disclaimed or resiliated.

Factors to be considered

(4) In deciding whether to make the order, the court is to consider, among other things,

(a) whether the monitor approved the proposed disclaimer or resiliation;

(b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and

(c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.

Date of disclaimer or resiliation

(5) An agreement is disclaimed or resiliated

(a) if no application is made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1);

(b) if the court dismisses the application made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1) or on any later day fixed by the court; or

(c) if the court orders that the agreement is disclaimed or resiliated under subsection (3), on the day that is 30 days after the day on which the company gives notice or on any later day fixed by the court.

Intellectual property

(6) If the company has granted a right to use intellectual property to a party to an agreement, the disclaimer or resiliation does not affect the party's right to use the intellectual property — including the party's right to enforce an exclusive use — during the term of the agreement, including any period for which the party extends the agreement as of right, as long as the party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

Loss related to disclaimer or resiliation

(7) If an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.

Reasons for disclaimer or resiliation

(8) A company shall, on request by a party to the agreement, provide in writing the reasons for the proposed disclaimer or resiliation within five days after the day on which the party requests them.

Exceptions

(9) This section does not apply in respect of

(a) an eligible financial contract;

(b) a collective agreement;

(c) a financing agreement if the company is the borrower; or

(d) a lease of real property or of an immovable if the company is the lessor.

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 TACORA RESOURCES INC.

Court File No: CV-23-00707394-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AIDE MEMOIRE OF THE CONSORTIUM OF NOTEHOLDERS

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place,
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (#44066M)
Email: mwasserman@osler.com

Michael De Lellis (#48038U)
Email: mdelellis@osler.com

Jeremy Dacks (#41851R)
Email: jdacks@osler.com

Karin Sachar (#59944E)
Email: ksachar@osler.com

Tel: 416.362.2111
Fax: 416.862.6666

Lawyers for the Consortium Noteholder Group