ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00707394-00CL **DATE: APRIL 12, 2024**

NO. ON LIST: 1

TITLE OF PROCEEDING:
IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA RESOURCES INC.

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE KIMMEL:

[1] Two matters were scheduled at yesterday's case conference to return today for the court's consideration:

a. The Monitor's motion for a sealing order that was returnable at the outset of the hearing of the motions scheduled to commence on April 10, 2024, with respect to the temporary sealing of exhibits to certain affidavits, certain cross-examinations and exhibits thereto and certain answers to undertakings listed in Schedules A, B and C to the Monitor's Notice of Motion dated April 4, 2024 that had been designated as confidential (the "First Sealing Order Motion");

b. The request by 1128349 B.C. Ltd. ("112 Ltd."), an affiliate of 0778539 B.C. Ltd. (formerly called MFC Bancorp Ltd.) ("MFC"), to adjourn the Applicant's motion returnable on April 16,2024 in which various declarations are sought regarding the calculation and amount of quarterly royalties to be paid by the Applicant to 112 derived from the sale of "Iron Ore Products" from the Scully Mine (the "MFC Royalty"), the "MFC Royalty Motion".

The First Sealing Order Motion

[2] The documents sought to be temporarily sealed by the First Sealing Order Motion were relevant to the Applicant's motion (the "Sale Approval Motion") that sought, among other things, approval of the Subscription Agreement entered into between Tacora as issuer and a consortium consisting of the Ad Hoc Group', Resource Capital Fund VII L.P. and Javelin Global Commodities (SG) Pte Ltd. ("Javelin") (collectively, the "Investors") and approval of the

transaction contemplated therein (the "Investor Transaction" or "Investor Bid") and relevant to certain other motions that were to be heard at the same time as the Sale Approval Motion.

[3] As detailed in the Monitor's Second Supplement to its Fourth Report, on April 9, 2024 the Monitor was advised by counsel to the Investors that the Investors were not in a position to proceed with the Investor Bid and, as a result, the Applicant did not proceed with the Sale Approval Motion on April 10, 2024. Nor did any of the other four motions scheduled to be heard on April 10, 11 and 12, 2024 (including the First Sealing Order Motion) proceed.

[4] In light of this development, the Monitor, the Applicant and the parties who had requested or had an interest in the confidentiality designations (including Cargill and the Investors) advised the court today that their preferred and recommended course of action was not to proceed with the First Sealing Order Motion and to simply not file with the court any of the materials over which the temporary sealing order was being sought, since there are no motions proceeding at this time in respect of which those materials are being relied upon.

[5] I agree that this is the most efficient and cost effective manner of proceeding, in the circumstances. Leave is granted for the First Sealing Order Motion to be withdrawn on that basis. The implicated materials need not be filed in the public court file at this time, namely: The Joint Transcript Brief (including transcripts, exhibits and answers to undertakings), Exhibit C to the February 2, 2024 Affidavit of Joe Broking, the transcript of the cross-examination of Joe Broking held October 9, 2023 and Exhibit C to the Affidavit of Michael Nessim sworn February 2, 2024

[6] To the extent that ancillary materials with redactions have already been filed (such as factums filed in connection with the Sale Approval Motion or any other motion that was returnable on April 10-12, 2024) those redacted materials are also no longer being relied upon but may remain in their redacted form in the court file.

[7] If there is another transaction that the court is asked to consider, and if any party wishes to rely upon any of the materials over which the temporary sealing order would have been sought by the First Sealing Order Motion, a new sealing order motion should be brought that addresses any such materials (and any new materials subject to confidentiality designations).

[8] To be clear, the court has not considered the propriety of the confidentiality designations or the sealing order request. It will have to be satisfied that the request is appropriate in the context of any future motion.

The Request to Adjourn the MFC Royalty Motion

[9] In light of the withdrawal of the Sale Approval Motion, 112 requested that the MFC Royalty Motion be adjourned. The MFC Royalty Motion was the subject of an arbitration that 112 had commenced prior to the Tacora CCAA filing, alleging, among other things, historic and continuing underpayments of royalties. That arbitration was stayed as a result of these CCAA proceedings.

[10] The MFC Royalty motion was scheduled to be heard in conjunction with (immediately after) the Sale Approval Motion because of implications that the calculation and amount of quarterly royalties to be paid by the Applicant to 112 could have had on the Investor Transaction. Since that Investor Transaction is not proceeding, 112 contends that there is no urgency to these determinations being made. While 112 acknowledges that its royalty claim will have to be quantified at some point, it argues that having it quantified now will prejudice its ability to negotiate with prospective purchasers once the Applicant determines its course of action going forward. 112 would prefer to have the leverage of the uncertainty of the MFC Royalty in dealing with potential acquirors. In the meantime, it is prepared to allow Tacora to pay the lower amounts while reserving its rights with respect to pre-filing and post-filing underpayments of royalties.

[11] Tacora opposes the adjournment of the MFC Royalty Motion. The parties have exchanged their materials, produced documents, conducted examinations and all but the reply factum have been exchanged in accordance with the pre-hearing briefing schedule. They are ready to proceed with the MFC Royalty Motion as scheduled on April 16, 2024. Two out of the three issues that were raised for the court's determination on this motion will need to be determined, irrespective of the Investor Transaction that is not going ahead.

[12] Tacora asks that these two remaining issues on the MFC Royalty Motion be determined by way of summary application pursuant to s. 20.1(iii) of the CCAA. Tacora needs and wants the certainty going forward of knowing the proper method of calculating the MFC Royalty and what is owing. It could have implications for its cash flow and cash reserves.

[13] The Monitor supports the company's position and the need for certainty.

[14] Having considered the parties positions and submissions, I find that it is in the best interests of the Applicant and its stakeholders, and in the interest of justice, for the MFC Motion to proceed as scheduled on April 16, 2024 so that the court can determine the two issues that are not tied to the Investor Transaction. I do not consider the loss of leverage to the royalty holder created by the uncertainty of the outcome of these determinations to be a prejudice that outweighs the interests of the company and its stakeholders in having the issues determined and the certainty of knowing the proper method of calculating the MFC Royalty and what is owing and payable to 112 and the value of its pre-filing claims which may have to be cured in the context of any future transaction.

[15] The request by 112 to adjourn the MFC Royalty Motion is denied. That motion will proceed in person on Tuesday April 16, 2024 as scheduled, immediately following any uncontested or consent or administrative matters that the court has directed may be presented at 10:00 a.m. via zoom that day.

KIMMEL J.