

**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 JAGUAR MINING INC.

Applicant

**FACTUM OF THE APPLICANT  
(Returnable January 14, 2014)**

January 9, 2014

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**FACTUM OF THE APPLICANT**

**PART I - OVERVIEW**

1. Since the Initial Order was granted in this proceeding on December 23, 2013, the Applicant has continued to work in good faith and with due diligence to progress toward completion of a recapitalization transaction (the "**Recapitalization**") supported by the holders of approximately 93% of the Applicant's Notes (as defined below).

2. As contemplated by the Orders granted on December 23, 2013, the Applicant will require longer than the initial 30 day stay period to complete the Recapitalization. The Applicant brings this motion for, among other things, an extension of the stay granted under the Initial Order through to and including February 28, 2014 (the "**Stay Extension**"). The Stay Extension is supported by the Monitor and an ad hoc committee of the Applicant's noteholders (the "**Ad Hoc Committee of Noteholders**"), representing the vast majority of the Applicant's unsecured creditors who are affected by this proceeding.

## PART II - THE FACTS

### A. Background

3. On December 23, 2013, Jaguar Mining Inc. (the “**Applicant**” or “**Jaguar**”) sought and obtained an Initial Order (the “**Initial Order**”), a Claims Procedure Order (the “**Claims Procedure Order**”) and a Meeting Order (the “**Meeting Order**”) in this proceeding.<sup>1</sup> Among other things, the Initial Order implemented a stay of proceedings until January 22, 2014 (the “**Stay Period**”).<sup>2</sup>

4. The principal objective of this proceeding is to effect the Recapitalization on an expedited basis to provide a stronger financial foundation for Jaguar and its subsidiaries (collectively, the “**Jaguar Group**”) going forward and additional liquidity to allow the Jaguar Group to continue to work towards its operational and financial goals.<sup>3</sup>

5. The Recapitalization would result in a reduction of over \$268 million of debt, and new liquidity upon exit of approximately \$50 million.<sup>4</sup>

6. The Recapitalization is supported, subject to certain conditions, by beneficial holders of approximately 93% of the outstanding principal value of the Notes (the “**Consenting Noteholders**”), including the Ad Hoc Committee of Noteholders.<sup>5</sup>

7. Jaguar must complete the Recapitalization as soon as reasonably possible to avoid a liquidity crisis that is foreseeable in the very near future and to resolve outstanding obligations under the 4.5% unsecured convertible notes due November 1, 2014 and the 5.5% unsecured convertible notes due March 31, 2016 (collectively, the “**Notes**”).<sup>6</sup>

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<sup>1</sup> Affidavit of T. Douglas Willock sworn January 8, 2014, Application Record of the Applicant [the “Willock Affidavit”] at para. 3.

<sup>2</sup> Initial Order, Application Record of the Applicant at paras. 14-21.

<sup>3</sup> Willock Affidavit, at para. 4.

<sup>4</sup> Willock Affidavit, at para. 6.

<sup>5</sup> Willock Affidavit, at para. 4.

<sup>6</sup> Willock Affidavit, at para. 5.

8. The Notes are Jaguar's primary unsecured liability. Jaguar's other unsecured liabilities are limited and identifiable.<sup>7</sup>

9. Jaguar's secured creditors are unaffected by the Recapitalization.

**B. The Jaguar Group's Progress**

10. Since the Initial Order, Jaguar has proceeded in good faith and with due diligence to advance the Recapitalization.

11. Jaguar has operated within its cash flow forecast (as last filed with the Court on December 23, 2013) and has honoured its post-filing financial commitments as they become due.<sup>8</sup>

12. The Jaguar Group has continued to operate in the ordinary course.<sup>9</sup>

13. As required by the Meeting Order:

- (a) the Applicant has scheduled the meeting of its affected unsecured creditors to vote upon the Recapitalization on January 28, 2014;
- (b) the Information Package (as such term is defined in the Meeting Order) has been distributed in accordance with the terms of the Meeting Order;
- (c) notices of this proceeding have been published in the Globe and Mail (National Edition) on December 31, 2013 and January 7, 2014 and in the Wall Street Journal on December 30, 2013 and January 6, 2014; and
- (d) the Applicant has worked with the Monitor, the Ad Hoc Committee of Noteholders and the indenture trustee for the Notes to determine the allowed claim under the Notes for voting and distribution purposes.<sup>10</sup>

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<sup>7</sup> Willock Affidavit, at para. 5.

<sup>8</sup> Willock Affidavit, at para. 8.

<sup>9</sup> Willock Affidavit, at para. 8.

14. Jaguar has continued to keep key stakeholders apprised of developments in this proceeding.<sup>11</sup>

15. Discussions between Jaguar and its senior secured lender, Global Resource Fund, regarding the Recapitalization have continued, and Jaguar has continued to comply with its ongoing obligations under its senior secured credit facility with Global Resource Fund.<sup>12</sup>

### **Stay Extension Is Appropriate and Necessary**

16. The Applicant requires the additional time under the proposed Stay Extension to complete the Recapitalization in accordance with the Meeting Order and the Claims Procedure Order. In particular, the Applicant must:

- (a) complete discussions with the Toronto Stock Exchange and the TSX Venture Exchange regarding the continued listing of the common shares of Jaguar upon the implementation of the Recapitalization;
- (b) review claims that may be filed in accordance with the Claims Procedure Order on or before the prescribed bar date of January 22, 2014;
- (c) hold the meeting of its affected unsecured creditors to vote upon the recapitalization in accordance with the Meeting Order, which meeting is currently scheduled for January 28, 2014;
- (d) seek this Court's approval of the Recapitalization; and
- (e) implement the Recapitalization, including completing all necessary steps to implement the share offering contemplated by the Recapitalization.<sup>13</sup>

17. The Applicant is requesting an extension of the Stay Period to and including February 28, 2014. As indicated in its application materials, the Support Agreement with the Consenting

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<sup>10</sup> Willock Affidavit, at para. 10.

<sup>11</sup> Willock Affidavit, at para. 11.

<sup>12</sup> Willock Affidavit, at para. 11.

<sup>13</sup> Willock Affidavit, at para. 14.

Noteholders contains an outside date of February 28, 2014 for completion of the Recapitalization. The Applicant currently expects to complete the Recapitalization by that date and is working toward a completion date by mid-February 2014.<sup>14</sup>

18. Updated cash flow forecasts prepared by the Applicant and reviewed by the Monitor show that the Applicant has sufficient resources to meet its post-filing obligations during the Stay Extension period.<sup>15</sup> The Applicant will continue to monitor its liquidity closely and has commenced a review of potential interim financing options in case interim financing becomes necessary.<sup>16</sup>

19. The Monitor and the Ad Hoc Committee of Noteholders support the requested Stay Extension.

### **PART III - ISSUES AND THE LAW**

20. The Applicant submits that the proposed Stay Extension is appropriate in the circumstances.

21. Subsection 11.02(2) of the CCAA authorizes a court, other than on an initial application, to make an order staying all proceedings in respect of a debtor company for any period of time necessary.<sup>17</sup>

22. To obtain a stay extension, an applicant must show that:

- (a) circumstances exist that make the order appropriate; and
- (b) the applicant has acted, and is acting, in good faith and with due diligence.<sup>18</sup>

23. The purpose of a stay of proceedings under the CCAA is to allow the debtor to “focus and concentrate its efforts on the business purpose of negotiating the compromise or arrangement.”<sup>19</sup>

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<sup>14</sup> Willock Affidavit, at para. 16.

<sup>15</sup> Willock Affidavit, at para. 17.

<sup>16</sup> Willock Affidavit, at para. 18.

<sup>17</sup> CCAA, s 11.02(2).

<sup>18</sup> CCAA, s 11.02(3).

24. In a case where a recapitalization has been negotiated and is in the process of implementation, an extended stay of proceedings promotes the purpose of the CCAA:

The purpose of the CCAA is to facilitate arrangements that might avoid liquidation of the company and allow it to continue in business to the benefit of the whole economic community, including the shareholders, the creditors (both secured and unsecured) and the employees.<sup>20</sup>

There is an overarching policy concern favouring the possibility of a going concern solution and the potential of a long-term upside value for a broad constituency of stakeholders.<sup>21</sup>

25. The circumstances of this case make the extension of the stay of proceedings appropriate. In particular, the Applicant has moved forward with its restructuring plan in the manner contemplated by the Initial Order, the Claims Procedure Order and the Meeting Order, and has always anticipated, and all stakeholders would have reasonably assumed, that the Stay Extension would be required.

26. The Applicant has acted, and is continuing to act, in good faith and with due diligence since the issuance of the Initial Order. The Applicant has complied with all requirements of the Initial Order, the Meeting Order and the Claims Procedure Order. The Applicant has ensured that all stakeholders have appropriate notice of these proceedings and of the steps that the Applicant is taking. The Jaguar Group has continued business in the ordinary course.

27. The Stay Extension will provide the Applicant with the stability necessary to focus on completing the Recapitalization and to maintain its going concern operations, while avoiding a potential liquidation, all in the interests of its stakeholders.

28. The Applicant's primary affected stakeholders and the Monitor support this motion.

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<sup>19</sup> *Timminco Ltd. (Re)*, [2012] O.J. No. 266 (Ont. S.C.J.) at para. 18.

<sup>20</sup> *Citibank Canada v. Chase Manhattan Bank of Canada* (1991), 5 C.B.R. (3d) 165 (Ont. Gen. Div.) at para. 49. See also *Consumers Packaging Inc. (Re)* (2001), 27 C.B.R. (4th) 197 (O.N. C.A.) at para. 5, and *Killaugh v. Canadian Red Cross Society*, 2001 BCSC 1060 at para. 12.

<sup>21</sup> *Residential Warranty Co. of Canada Inc. (Re)*, 2006 ABQB 236 at para. 78 [*Residential Warranty*].

**A. NATURE OF THE ORDER SOUGHT**

29. In light of the foregoing, the Applicant requests an order granting the Stay Extension.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this <sup>9<sup>th</sup></sup>1 day of January, 2014.

NORTON ROSE FULBRIGHT CANADA LLP *GR*  
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Lawyers for the Applicant



**Schedule "A"**

**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

- 1 *Timminco Ltd. (Re)*, [2012] O.J. No. 266 (Ont. S.C.J.)
- 2 *Citibank Canada v. Chase Manhattan Bank of Canada* (1991), 5 C.B.R. (3d) 165 (Ont. Gen. Div.)
- 3 *Consumers Packaging Inc. (Re)* (2001), 27 C.B.R. (4th) 197 (O.N. C.A.)
- 4 *Killough v. Canadian Red Cross Society*, 2001 BCSC 1060
- 5 *Residential Warranty Co. of Canada Inc. (Re)*, 2006 ABQB 236

**Schedule "B"**

**SCHEDULE "B"**  
**RELEVANT STATUTES.**

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

**Stays, etc. — other than initial application**

**11.02 (2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

**(3)** The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F).

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Court File No: CV-13-10383-00CL

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Proceeding commenced at Toronto

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(Returnable January 14, 2014)**

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