

**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.**

**AIDE MEMOIRE OF CARGILL, INCORPORATED AND CARGILL
INTERNATIONAL TRADING PTE LTD.
(Case Conference – May 24, 2024)**

May 24, 2024

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert Chadwick LSO#: 35165K
rchadwick@goodmans.ca

Caroline Descours LSO#: 58251A
cdescours@goodmans.ca

Peter Kolla LSO#: 54608K
pkolla@goodmans.ca

Sarah Stothart LSO#: 73068O
sstothart@goodmans.ca

Tel: 416.979.2211

Lawyers for Cargill, Incorporated and Cargill
International Trading Pte Ltd.

TO: **THE SERVICE LIST**

Overview

1. If a consensual resolution between the parties cannot be reached, this aide memoire outlines the position of Cargill, Incorporated and Cargill International Trading Pte Ltd. (together, “Cargill”) as to the most efficient and cost-effective litigation path forward.
2. Cargill believes the following motions should be briefed, heard, and determined in parallel:
 - A. **Company Sale Process Motion (“Sale Motion”)**: Cargill has reviewed and provided comments on the draft procedures for the sale process proposed by the Company. In the event the Company continues to seek approval for its current draft procedure by way of the Sale Motion, Cargill will oppose the motion. Cargill hopes to proceed on consent on the Sale Motion on or before June 5, 2024.
 - B. **Cargill Motion for a Meeting Order to present a CCAA Plan (“Plan Motion”)**: Cargill intends to amend its Notice of Responding Cross-Motion dated March 1, 2024 to seek a meeting order, among other things, authorizing Cargill to file with the Court an amended and updated CCAA plan of compromise and arrangement (the “Plan”) to be voted on by unsecured creditors, and to call such meeting on a date to be determined. Cargill believes this meeting procedure should proceed in conjunction with the Company’s sale process in order to present the greatest flexibility to the Company. The meeting order would set the wheels in motion for plan steps to advance, no meeting would be called until after the sale process bid deadline, and the Plan could incorporate any additional plan matters that may later arise. The Plan Motion should be heard on June 5, 2024.
 - C. **Cargill Motion for a Declaration on a Global Process Issue impacting the availability of an RVO (the “Global Process Motion”)**: Cargill will bring a motion seeking a declaration that, as a point of law, an RVO transaction structure is not available to a debtor where (i) there is a large unsecured creditor in a position to vote against a CCAA plan; (ii) that unsecured creditor opposes the RVO; and (iii) there is an unsecured CCAA plan alternative which provides for consideration to all affected unsecured creditors in the form of restructured shares or other

consideration. If granted, Cargill believes this declaration eliminates an RVO transaction structure which vests out the Offtake Agreement over its objection. This motion should be heard and determined prior to expending the time and resources on a disclaimer dispute that may never be necessary. The Global Process Motion should be heard on June 26, 2024, unless matters are resolved in the interim.

D. **Company RVO Preliminary Motion (the “Company RVO Preliminary Motion”)**: The Company has indicated it wishes to now have heard Cargill’s preliminary threshold motion served on February 5, 2024. The relief sought by Cargill’s preliminary threshold motion was a ruling that the Company was required to assign or disclaim the Offtake Agreement using the procedures set out in the CCAA prior to effecting an RVO structure. The Company has now sought to disclaim the Offtake Agreement using such procedure – which disclaimer will be challenged by Cargill on other grounds. Cargill further understands that the Company seeks a determination with respect to the transferability of the secured notes indenture. The relief sought by the Company appears to be different and broader than that contemplated in Cargill’s preliminary threshold motion, the appropriate procedure is for the Company to serve its own Notice of Motion and supporting evidence to which all parties can respond. If the Company RVO Preliminary Motion proceeds, Cargill anticipates that it will oppose the position of the Company. The Company RVO Preliminary Motion should be heard at the same time as the Global Process Motion on June 26, 2024. If the Company is successful on the Company RVO Preliminary Motion, it may not proceed with its disclaimer of the Cargill Offtake Agreement.

3. With respect to the Company’s Notice of Disclaimer served May 16, 2024, Cargill intends to apply to the Court to oppose the disclaimer of the Offtake Agreement (the “**Disclaimer Motion**”). However, it believes that the Disclaimer Motion – which will involve new evidence and argument not previously advanced, particularly on the issue of whether the disclaimer enhances the prospects of a viable compromise or arrangement – should not be heard unless and until the Global Process Motion has been determined in the Company’s favour. The Disclaimer Motion can be briefed and adjudicated either immediately before

or in conjunction with an approval motion for a proposed RVO transaction (“**RVO Motion**”), if necessary.

Rationale for Cargill Proposed Process

4. The next steps proposed by the Company – namely, proceeding immediately to hear and determine the Disclaimer Motion and the Company RVO Preliminary Motion – will result in considerable additional cost to the parties without actually providing any certainty or resolving litigation risk. The Disclaimer Motion, and potentially the Company RVO Preliminary Motion, will require service of new materials and likely cross-examinations. As conceded by the Company’s counsel on the May 22, 2024 case conference, neither motion removes the Court’s discretion to later find that an RVO is or is not appropriate on the facts of the case. And neither motion may even be necessary: if the Company proceeds with a bid submitted by way of asset sale or there is a consensual transaction arising before or as part of the sale process, then they will have wasted time and resources litigating the disclaimer and threshold issues.
5. Indeed, the Disclaimer Motion and Company RVO Preliminary Motion are only relevant if the Company seeks to present an RVO for approval. And if that is the case, then the Company would need to re-attend before the Court to argue the ultimate issue of the appropriateness of an RVO in any event. By contrast, both motions would be mooted in the event Cargill succeeds on its Global Process Motion or there is a consensual transaction arising before or as part of the sale process.
6. Pursuant to the Company RVO Preliminary Motion, the Company is seeking to get a legal determination as to whether it needs a disclaimer in order to proceed with an RVO transaction. To the extent Cargill is right on the Company RVO Preliminary Motion, the Company will require a disclaimer as a next step to try to proceed with an RVO transaction. If the Company is successful on the Company RVO Preliminary Motion, it may elect not to pursue the disclaimer path and the disclaimer dispute may be irrelevant and not needed. This further supports deferring expending the time and costs of litigating the disclaimer dispute until after the Company RVO Preliminary Motion is determined.

Similarly with the Global Process Motion, if Cargill is right, the Company would not proceed with disclaimer.

7. The Disclaimer Motion involves factual disputes in this case as to whether the disclaimer of the Cargill Offtake Agreement enhances the prospects of a compromise or arrangement (i.e. a CCAA plan), in addition to the other matters in dispute regarding the disclaimer. The Disclaimer Motion will involve factual determinations, three competing expert reports, determinations on multiple and complex legal points (including determinations around eligible financial contracts, financing agreements and the test under Section 32 of the CCAA). The results of the sale process will assist the Court in making the Section 32 determinations, which would be only two weeks following the Company's June 26 proposed date for the Disclaimer Motion. Parties may submit a share structure and some parties may want Cargill to be part of the solution with the Offtake Agreement or an amended Offtake Agreement without creating a claim. If the disclaimer proceeds it eliminates a plan option as it creates a large material claim in favour of Cargill and clearly does not enhance the prospect of a compromise or plan. Rather, it eliminates the prospect of a plan. The better option is to hear the Disclaimer Motion with the benefit of the results of the sale process, which will permit the Court to properly determine whether the disclaimer enhances the prospects of a plan (and that determination may not be needed after the sale process). Cargill's position is that the Court should make that determination with the benefit of the facts on the sale process - not on a hypothetical.
8. There is no certainty to any bidders that they can complete a share deal pursuant to an RVO transaction as an RVO remains at best subject to the discretion of the Court based on the circumstances of the transaction and all the factors that Court has to consider. The sale process should provide for share transaction bids or assets transaction bids and in all circumstances should include an asset sale structure (unless a plan can be agreed on prior to the bid deadline). A plan structure agreement in advance of the bid deadline is fundamental to providing that potential bidder certainty. The key date driver for all parties in the sale process is the phase 1 deadline - that is the tool needed and not adverse costly hypothetical litigation. There needs to be a commercial solution and not a litigation solution, as all parties agree that time is of the essence. Cargill believes its proposed

structure and schedule is the most efficient path forward, provides a better opportunity to create certainty and reach a potential consensual resolution, eliminates litigation and maximizes value for stakeholders.

9. The Global Process Motion offers the benefit of actually providing certainty to the parties on an expedited basis – if Cargill is successful in its argument that an RVO is not available to the Company in the present circumstance, then parties cannot submit bids to be implemented via an opposed RVO; if Cargill is unsuccessful, then RVO bids can be submitted and one of the fundamental arguments against their approval shall have been determined.
10. In conjunction with seeking a declaration with respect to the Global Process Motion, Cargill will advance a CCAA Plan to restructure the shares of Tacora. This approach allows for far greater optionality and flexibility to potential bidders in the sale process. Bidders can consider purchasing the assets of the Company in isolation or in addition to the shares of the Company, which come with the benefit of the Company's tax losses. They can also seek to purchase the shares of the Company through an alternative plan to be presented.
11. The Company RVO Preliminary Motion and the Global Process Motion should be heard together as they both deal with legal issues and the determinations of those motions may result in not needing to proceed with the disclaimer dispute. The time and cost of the Disclaimer Motion could be avoided. The Company RVO Preliminary Motion and the Global Process Motion should be heard together on June 26 to allow time for matters to be properly briefed (both are new motions). This scheduling would also provide the parties time to see if they can resolve such matters in advance of June 26 which would provide more certainty to bidders in the sale process.
12. Cargill is cognizant of and appreciates the Monitor's and Court's comments on the May 22, 2024 case conference that procedure and form ought not trump practicality. Cargill's concern is that the process proposed by the Company involves pre-emptive litigation of issues that ultimately reach no further in addressing the substantive legal disputes at play or offering certainty to bidders and the parties. Cargill has proposed a process that would

engage with the real global process issue now, rather than weeks or months into the future, and preserve optionality for the Company in the form of the parallel-tracked sale and plan meeting processes. Cargill believes the most important motion to be scheduled is the Sale Motion and that it should proceed as soon as possible.

13. Cargill remains open to participating in negotiations with a view to avoiding further litigation. Cargill would also support and participate in a Monitor-led or third party-led mediation convened to assist the parties and to try to avoid the ongoing time, expense, and uncertainty of litigation. The costs of such mediation could be funded from the DIP in an amount to be agreed by the parties.
14. The mediation should be focused on two potential goals: (1) providing more certainty to all bidders in advance of a phase 1 bid deadline, or (2) finding a global transaction solution which eliminate the need for a sale process and contested litigation. An achievement of either goal would be an improvement to the current situation which exists today.
15. The Court setting the June 26 motion date would provide time to potentially resolve matters and the June 26 motions can run in parallel to consensual negotiations or mediation.

Proposed Litigation Schedule

Tacora to serve Motion Record re: Sale Motion	May 29, 2024
Cargill to serve Amended Cross-Motion Record re: Plan Motion	
Cargill to serve Responding Motion Record re: Sale Motion	May 31, 2024
Tacora to serve Responding Motion Record re: Plan Motion	
Cargill to serve Notice of Motion re: Disclaimer Motion (with Motion Record to be filed at later date)	By May 31, 2024
Tacora to serve Factum re: Sale Motion and Responding Factum re: Plan Motion	June 4, 2024
Cargill to serve Factum re: Plan Motion and Responding Factum re: Sale Motion	

Hearing of Sale Motion and Plan Motion	June 5, 2024
Cargill to serve Motion Record re: Global Process Motion Tacora to serve Motion Record re: Company RVO Preliminary Motion	June 7, 2024
Tacora to serve Responding Motion Record re: Global Process Motion Cargill to serve Responding Motion Record re: Company RVO Preliminary Motion	June 12, 2024
Cargill to serve Factum re: Global Process Motion Tacora to serve Factum re: Company RVO Preliminary Motion	June 18, 2024
Tacora to serve Responding Factum re: Global Process Motion Cargill to serve Responding Factum re: Company RVO Preliminary Motion	June 24, 2024
Hearing of Global Process Motion and any Preliminary Motion	June 26, 2024
Disclaimer Motion in conjunction with any RVO Motion, if necessary, with briefing schedule to be set	TBD in July, if necessary

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TACORA RESOURCES INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced At Toronto

**CARGILL AIDE MEMOIRE
(CASE CONFERENCE – MAY 24, 2024)**

Goodmans LLP

Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert Chadwick LSO#: 35165K
rchadwick@goodmans.ca

Caroline Descours LSO#: 58251A
cdescours@goodmans.ca

Peter Kolla LSO#: 54608K
pkolla@goodmans.ca

Sarah Stothart LSO#73068O
sstothart@goodmans.ca

Tel: 416.979.2211

Lawyers for Cargill, Incorporated and Cargill International Trading
Pte Ltd.