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.

FACTUM OF CARGILL, INCORPORATED AND CARGILL INTERNATIONAL TRADING PTE LTD.

(Sale Approval Motion Returnable July 26, 2024)

July 24, 2024

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PART I – OVERVIEW

1. Cargill supports the positions set out in Tacora's factum on its motion asking this Honourable Court to grant: (1) the Approval and Reverse Vesting Order that seeks approval of the Subscription Agreement, the Transactions contemplated therein, and the Releases; and (2) the Stay Extension, DIP, and Fees Approval Order.[1] In this factum, Cargill will not repeat the matters outlined in Tacora's factum, but seeks to lend limited additional factual and legal support in favour of granting the Approval and Reverse Vesting Order.

2. The Transactions will result in numerous benefits for Tacora and its stakeholders, including a deleveraged capital structure, up to $250 million of equity financing, the possibility of new debt financing, a new Offtake Agreement with Cargill, along with working capital through a new Stockpile Agreement and margining facility with Cargill. The Transactions will allow Tacora to continue as a going concern and preserve employment for all of its approximately 463 employees.

3. The Transactions are to be implemented by way of a reverse vesting order ("**RVO**"). While an RVO is, and should remain, an exceptional remedy, the Transactions here represent the appropriate use of an RVO, in the circumstances, to implement the proposed going concern sale. The key criteria developed in the jurisprudence – including the requirement to demonstrate that the RVO structure does not cause greater prejudice to any stakeholder than would exist under another transaction structure and clear evidence of necessity rather than convenience – have been satisfied.

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[1] Capitalized terms not otherwise defined in this factum have the definitions in the Affidavit of Heng Vuong sworn July 21, 2024 (the "**Vuong Affidavit**").

PART II – FACTS

A. Cargill's Relationship with Tacora

4. The Court is familiar with the long-standing relationship between Cargill, Incorporated and Cargill International Trading Pte Ltd. (together, "**Cargill**") and Tacora Resources Inc. ("**Tacora**"). Cargill is, among other things, the DIP lender, a secured creditor, and the counterparty to an existing offtake agreement with Tacora.[2] Cargill has been a key source of financial and operational support for Tacora.

5. Cargill will not repeat all of the facts set out in the materials Tacora has served in support of this motion, and will only highlight below certain key factual matters.

B. Sale Process

6. Tacora has been attempting to restructure and solicit offers for a transaction in respect of its shares or assets since prior to October 2023.[3]

7. Following termination of a prior subscription agreement, Tacora sought and obtained a Sale Process Order dated June 5, 2024. Tacora was authorized and directed to undertake a sale process to consider offers to purchase all the shares of Tacora or all or substantially all of Tacora's assets (the "**Sale Process**").[4]

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[2] Vuong Affidavit, para. 9 [A17]

[3] See generally, Vuong Affidavit, paras. 13-27 [A18 – A21]; Affidavit of Michael Nessim sworn July 19, 2024 (the "**Nessim Affidavit**") at paras. 8-25 [A260 - A266]

[4] Vuong Affidavit, para. 19 [A19]

8. The Monitor was involved in developing the procedures for the Sale Process, which the Monitor believes are fair and reasonable, and in supervising and monitoring the Sale Process, during which significant efforts were taken to solicit bids.[5]

9. Consistent with its longstanding efforts to seek a consensual resolution of matters involving Tacora, Cargill participated in the Sale Process in a consortium with two noteholders, Millstreet Capital Management LLC (as investment manager on behalf of multiple noteholders) and OSP, LLC (on behalf of certain managed funds) (together with Cargill, the "**Investors**").[6]

10. The Investors submitted a bid on July 12, 2024 for all of the shares of Tacora, to be implemented pursuant to a subscription agreement (the "**Investor Bid**"). The Investor Bid included a support agreement executed by the Investors and two other holders of notes in Tacora, collectively holding 71.5% of the obligations of Tacora's aggregate notes (being 55.3% of the Senior Priority Notes and 73.4% of the Senior Notes). Cargill, as lender of 100% of the DIP Obligations and a secured creditor in respect of other secured debt obligations of Tacora, also supports the Transactions. The Investor Bid was the only bid submitted in the Sale Process.[7]

11. The Investors participated in further negotiation and discussion of the Investor Bid in the days following its submission.[8] On July 21, 2024, the revised Subscription Agreement (the "**Subscription Agreement**") was entered into between Tacora and the Investors.[9]

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[5] Monitor's Eleventh Report at paras. 20-24 [E8], 51(a)-(b) [E21]

[6] Vuong Affidavit, para. 22 [A19]; Eleventh Report of the Monitor dated July 22, 2024 ("**Monitor's Eleventh Report**") at para. 38 [E12]

[7] Vuong Affidavit, para. 22 [A19]

[8] Vuong Affidavit, para. 23 [A20]

[9] Vuong Affidavit, para. 26 [A21] and Exhibit "A" [A37]

C. The Subscription Agreement

12. The key terms of the Subscription Agreement are set out in the Affidavit of Heng Vuong sworn July 21, 2024 and the Monitor's Eleventh Report.[10] Among other things, the Transactions contemplated by the Subscription Agreement: deleverage Tacora's capital structure by extinguishing existing debt and equity; provide for the assumption of, among other things, substantially all Pre-Filing Trade Amounts and royalty obligations of Tacora on terms and amounts to be agreed by Tacora and the Investors, Post-Filing Trade Amounts on terms and amounts to be agreed by Tacora and the Investors, and Liabilities under Retained Contracts on terms and amounts to be agreed by Tacora, the Investors and the counterparties of the Retained Contracts; provide Tacora with equity financing of up to $250 million, as well as working capital through a new Stockpile Agreement and margining facility with Cargill; and provide for a new Offtake Agreement with Cargill with a fixed fee payment mechanism rather than a profit share and a 10-year term.[11] The Monitor is of the view that the Transactions are of "significant benefit" to Tacora and the "vast majority of its stakeholders", and are more beneficial to Tacora's creditors than a sale or disposition under a bankruptcy.[12]

13. The Transactions will allow Tacora to continue operating as a going concern, continue to employ all its approximately 463 employees, and maintain ongoing business relationships for its suppliers of goods and services.[13]

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[10] Vuong Affidavit, para. 28 [A22]; Monitor's Eleventh Report at para. 38 [E12]

[11] Vuong Affidavit, paras. 25 [A20], 28 [A22]; Nessim Affidavit, para. 24 [A264]; Monitor's Eleventh Report at para. 51 [E21]

[12] Monitor's Eleventh Report at para. 51(c), (e) [E21]

[13] Vuong Affidavit, para. 27 [A21]

14. The Transactions are to be implemented by way of an RVO or alternative structures (namely, a CCAA plan of arrangement or asset sale).[14] An RVO transaction has various benefits, including the preservation of Tacora's permits and licenses and tax attributes, and timely completion to avoid consequences arising as a result of the volatile price of iron ore and the ongoing significant costs of these proceedings.[15] The Monitor is of the view that the RVO proposed as part of the Investor Bid is necessary and appropriate in the circumstances and that implementation of the Transactions through the granting of the Approval and Reverse Vesting Order is the optimal structure as it will maximize the value available for Tacora's stakeholders.[16]

15. The Subscription Agreement contemplates that, among other contracts, Tacora and Cargill will enter into the new Offtake Agreement and Stockpile Agreement.[17] It also contemplates that Tacora's current offtake agreement and stockpile agreement with Cargill will be vested out to residualco as Excluded Contracts, and claims in respect of those agreements will not be satisfied.[18] In this way, if the Transactions are implemented, based on the amount of Cargill's potential claim in respect of these agreements and the unsecured deficiency claims of the secured creditors supporting the Transactions, such creditors would be in a position to carry an unsecured creditor class vote (in addition to a secured class vote), if such votes were held as part of a CCAA plan.

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[14] Vuong Affidavit, Ex. A, s. 6.2 [A74] and 6.3 [A74]

[15] Vuong Affidavit, paras. 35-38 [A26 – A28]

[16] Monitor's Eleventh Report at paras. 43-45 [E19 – E20]

[17] Monitor's Eleventh Report at paras. 40-41 [E19]

[18] Monitor's Eleventh Report at para. 36(c) [E11]

PART III – ISSUES AND THE LAW

16. Cargill will not repeat the legal arguments set out in Tacora's factum in support of this motion, and will only highlight below certain key legal matters.

A. RVO Approval is Available Here, in Circumstances Akin to Plan Approval

17. The CCAA provides a mechanism whereby the stakeholders of a distressed enterprise can effect a restructuring or reorganization of their affairs that avoids the social and economic fallout of a liquidation in bankruptcy.[19] The CCAA is fundamentally about creditor democracy and incentivizing compromises.[20]

18. A plan of arrangement under s. 6 of the CCAA is one vehicle for effecting a transfer of the CCAA debtor company's shares so as to avoid the potential uncertainty and delay associated with obtaining or transferring permits and licences and preserve tax attributes within a debtor company.

19. The RVO has emerged in recent years as another means of implementing a going-concern restructuring transaction. Where an RVO is necessary and appropriate, unwanted assets and liabilities of a debtor company may be "vested out" to a newly incorporated company without any assets or operations ("residualco"), while the shares of the debtor company are transferred to a purchaser.[21]

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[19] *9354-9186 Québec inc. v. Callidus Capital Corporation*, 2020 SCC 10 at paras. 41, 43 ("***Callidus***")

[20] *Callidus* at paras. 51, 57.

[21] *Plasco Energy (Re)* (July 17, 2015), CV-15-10869-00CL ("***Plasco***"), Cargill Book of Authorities dated July 24, 2024 (**"Cargill BOA"**) at Tab 1.

20. As was initially the case with asset sales,[22] the CCAA does not expressly provide for RVO transactions, but they may be approved pursuant to the Court's statutory discretion under s. 11 of the CCAA.[23]

21. In exercising its discretion, the Court should view an RVO structure through the same lens as it would a CCAA plan, including considering overall fairness and other key factors. The initial Court decisions on RVOs were made in cases where there was no (or no material) creditor opposition and the RVO benefitted stakeholders by avoiding the expense and delay associated with going through the process associated with a plan of arrangement to achieve an equivalent result.[24]

22. In the first case, *Plasco Energy (Re)*, the Court approved a global settlement involving the transfer of Plasco's shares to a purchaser (thus preserving Plasco's tax attributes), the sale of certain of Plasco's equipment, and the transfer of Plasco's remaining assets to "New Plasco", which would assume all the liabilities and obligations of Plasco. The Court considered that, in the context of the particular proceedings, the settlement was analogous to a CCAA plan of arrangement and the RVO should be approved on the basis that there had been extensive consultation with both secured and unsecured creditors, the secured creditors and more than two-thirds of the unsecured creditors (including the deficiency claim of the secured creditors) supported the settlement that was to be implemented through the RVO, and the RVO advanced the orderly transfer of the company while providing for the cost-effective decommissioning of its facility.[25]

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[22] *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 at paras. 24, 31, 35, 48

[23] *Harte Gold Corp. (Re)*, 2022 ONSC 653 at paras. 24, 36-37 ("***Harte Gold***")

[24] *Harte Gold*, at paras. 24-25

[25] *Plasco*, Cargill BOA at Tab 1; see also discussion of this case in Janis P. Sarra, *Reverse Vesting Orders – Developing Principles and Guardrails to Inform Judicial Decisions*, 2022 CanLIIDocs 431 at pp. 4-5

23. The Approval and Reverse Vesting Order, in the circumstance of this matter, is akin to a CCAA plan of arrangement and the use of an RVO is simply a more efficient means to an identical end. If the Transactions were presented to creditors for a vote, the outcome would be unchanged as Cargill is of the view that no secured or unsecured creditor could be in a position to block a CCAA plan.

24. In the leading Ontario decision, *Harte Gold Corp. (Re)*, Justice Penny noted that to "the extent there might be concerns that an RVO structure could be used to thwart creditor democracy and voting rights", such concerns did not arise on the facts of that case because almost all creditors, both secured and unsecured, would be paid in full.[26] Given those circumstances, it was "hard to see how anything would change under a creditor class vote scenario".[27]

25. An important measure of whether a CCAA plan is fair and reasonable is the degree to which the parties have given their approval to the plan.[28] Where the required majorities of each class of creditors have voted for a plan, the Court should respect their business judgment.[29]

26. Similarly, where affected creditors decide in their business judgment that a proposed RVO structure is acceptable to them, and either consent to or do not oppose the RVO, it is appropriate for the Court to approve the proposed RVO. There can be no doubt in the current circumstances facing Tacora that the Sale Process has been conducted fairly and has fully canvassed the market. The Transactions contemplated by the Investor Bid are the only viable going-concern restructuring

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[26] *Harte Gold* at para. 57

[27] *Harte Gold* at para. 57

[28] *Olympia & York Developments Ltd. (Re)*, 1993 CanLII 8492 (ON SC) at para. 36

[29] *Olympia & York Developments Ltd. (Re)*, 1993 CanLII 8492 (ON SC) at para. 37

solution for Tacora to emerge from this process. The RVO transaction structure is both necessary and appropriate, as well as fair to stakeholders as a whole.

27. Viewing RVO transactions through this lens is consistent with the exercise of the discretionary power under s. 11 on which Courts have relied in approving RVOs. Section 11 gives the Court the power to make "any order [the Court] considers appropriate in the circumstances". Appropriateness is assessed "by inquiring whether the order sought advances the policy objectives underlying the CCAA" and extends not only to the purpose of the order, but also to the means it employs, as "chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit."[30]

28. Here, Tacora and a significant majority of its secured creditors (including Cargill) have achieved common ground through extensive negotiation to arrive at the Transactions that produce the best possible outcome in the circumstances. The Transactions are supported by potentially the largest unsecured creditor, Cargill, and secured creditors who would hold deficiency unsecured claims. A significant amount of other unsecured claims are being paid or assumed as part of the Transactions. There is no viable alternative to the proposed RVO, and indeed the Investor Bid was the only bid in the Sale Process.

B. The Transactions Meet the Test Developed in the Jurisprudence

29. The Courts have established guardrails to ensure that the principle that creditors are to be engaged and "treated as advantageously and fairly as the circumstances permit"[31] is not sacrificed

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[30] *Century Services Inc. v. Canada*, 2010 SCC 60 at para. 70 ("***Century Services***")

[31] *Century Services* at para. 70

to expediency. The proposed Approval and Reverse Vesting Order is well within those guardrails. In particular, it is necessary, does not prejudice any party's rights, and is demonstrably preferable to any other alternative.[32]

30. Courts have looked to the factors set out in s. 36 of the CCAA for the approval of asset sales as an "analytical framework" for assessing RVOs.[33] Consideration of these factors seeks to ensure that the transaction is "appropriate, fair and reasonable" as a whole.[34]

31. Courts have considered the *Harte Gold* factors in evaluating RVOs, asking whether:

(a) the RVO is necessary;

(b) it would produce an economic result at least as favourable as any other viable alternative;

(c) it would not leave any stakeholder worse off than it would have been under any other viable alternative; and

(d) the consideration provided for the debtor's business reflects the importance and value of the intangibles being preserved under the RVO.[35]

32. These factors all militate in favour of the RVO in this instance:

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[32] *Harte Gold* at paras. 24, 25, 38

[33] *Harte Gold* at para. 37

[34] *Veris Gold Corp., Re*, 2015 BCSC 1204 at para. 23

[35] *Harte Gold* at para. 38

(a) the combination of the past solicitation efforts and the Sale Process – which was subject to creditor comment, was supported by the Monitor, and approved by the Court – was robust and thorough in canvassing the market;[36]

(b) Tacora's largest stakeholders and secured creditors, including Cargill and the other Investors and certain other holders of the Senior Notes and Senior Priority Notes, support the Subscription Agreement and the relief sought on this motion, as does the Monitor;[37]

(c) Tacora's secured creditors were actively involved throughout Tacora's restructuring efforts and the Sale Process;[38]

(d) the Monitor was actively involved in the previous solicitation efforts and the most recent Sale Process and was consulted by Tacora throughout, and supports the Subscription Agreement and the relief sought on this motion;[39]

(e) there are simply no other viable alternative transactions available to Tacora, no reasonable prospect of obtaining one, and thus no stakeholder is worse off than under any viable alternative;[40]

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[36] Nessim Affidavit, para. 25 [A265]; Vuong Affidavit, paras. 30 [A25] and 42 [A28]

[37] Vuong Affidavit, para. 42 [A28]; Monitor's Eleventh Report at para. 45 [E20]

[38] Vuong Affidavit, para. 42 [A28]

[39] Monitor's Eleventh Report at paras. 1-9 [E3-E5], 19-27 [E8-E9], 42-45 [E19-E20], 51-52 [E21-E23]

[40] Vuong Affidavit, paras. 31 [A25] and 41 [A28]

(f) an RVO will allow for the preservation of Tacora's permits and licenses and tax attributes, which was an important consideration in pricing the Investor Bid;[41] and

(g) the Subscription Agreement results in Tacora preserving employment for all its approximately 463 employees and providing the opportunity for ongoing business relationships for its suppliers of goods and services.[42]

33. Consistent with the Court's approach to approving a CCAA plan, RVOs have been approved where there was little or no creditor opposition to the RVO (or any issues with creditors were worked out) and the RVO did not prejudice creditors.[43] An RVO may also be approved where the opposing stakeholders could not have had any effect on plan approval, and there was no viable plan alternative.

34. In *Just Energy*, Justice McEwen approved an RVO transaction in a situation where no material unsecured creditor objected to the RVO: the only objectors were a shareholder and a former employee with a dubious claim.[44] The court-approved sale process demonstrated that there was no prospect of an unsecured CCAA plan alternative. A previous attempt at a plan had failed and the class action and mass tort claimants who had blocked the previous plan and whose unsecured claim would remain unsatisfied by the debtor did not oppose the RVO transaction.[45]

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[41] Vuong Affidavit, para. 38 [A27]

[42] Vuong Affidavit, para. 41 [A28]

[43] See, for example: *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828 at paras. 105-107, 124; *Harte Gold* at paras. 50-52, 65; *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314 at paras. 18, 27-30; *PricewaterhouseCooopers Inc. v. Canada Fluorspar (NL) Inc.*, 2023 NLSC 88 at paras. 13, 65, 67, 70; *Rambler Metals and Mining Ltd. (Re)*, 2023 NLSC 134 at paras. 8, 69, 72

[44] *Just Energy Group Inc. v. Morgan Stanley Capital Group Inc.*, 2022 ONSC 6354 at paras. 25, 95 ("***Just Energy***")

[45] *Just Energy* at paras. 13-15, 25

35. In *Nemaska*, the provable claims of the objecting creditor, Mr. Cantore, only represented 4% of unsecured creditors' claims, and could have no impact on a plan vote. The Quebec Court of Appeal, refusing leave to appeal the decision granting an RVO, rhetorically asked "What would be the true impact of the Cantore vote on the RVO transaction if it were made subject to prior approval on the part of the creditors as he suggests?" In that context, the Court of Appeal decided that the arguments advanced by Cantore were no more than a "bargaining tool".[46]

36. In this case, there is broad stakeholder consensus on the RVO transaction contemplated by the Subscription Agreement and Transactions. An RVO is necessary here in order to preserve Tacora's permits, licences, and tax attributes. It will benefit all stakeholders by preserving Tacora's business and its employee and supplier arrangements. No viable alternative exists. There is no possibility of greater recovery to the Senior Notes or Senior Priority Notes. Due to the size of the DIP Facility at $125 million, the evidence demonstrates no party would pay the DIP Facility in full and also provide recovery to the Senior Notes or Senior Priority Notes.[47]

37. Approval of the Approval and Reverse Vesting Order here is entirely consistent with the guidance provided by the case law. No precedent-setting relief is sought.[48] Cargill submits that the Approval and Reverse Vesting Order should be approved.

C. The Proposed Releases Should be Approved

38. The proposed third-party releases are appropriate and should be approved pursuant to s. 11 of the CCAA. There is a reasonable connection between the claims being compromised and the

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[46] *Arrangement relatif à Nemaska Lithium inc.*, 2020 QCCA 1488 at paras. 38-39

[47] Vuong Affidavit, para. 31 [A25]

[48] As in *Mjardin Group, Inc., Re* (3 April 2023), CV-22-000682102-00CL at para. 13 (SCJ – Commercial List), Cargill BOA at Tab 2.

restructuring achieved by the RVO.[49] The factors set out in *Lydian International Limited, Re*[50] justify the releases in this case for the reasons set out in Tacora's materials and the Monitor's Eleventh Report.[51] The releases are an integral component of the Transactions contemplated by the Subscription Agreement and an important feature allowing Tacora to emerge from these proceedings as a "cleaned company" and a going-concern business.

PART IV – ORDER REQUESTED

39. For the foregoing reasons, Cargill respectfully requests that this Court approve the Transactions contemplated by the Approval and Reverse Vesting Order on the terms proposed by Tacora, and also approve the Stay Extension, DIP, and Fees Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

July 24, 2024

/s/ Goodmans LLP

Goodmans LLP

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[49] *Metcalfe & Mansfield Alternative Investments II Corp, Re*, 2008 ONCA 587 at para. 70, lv to app ref'd 2008 CanLII 46997

[50] *Lydian International Limited, Re*, 2020 ONSC 4006 at para. 54.

[51] Vuong Affidavit, paras. 43-51 [A29 – A31]; Monitor's Eleventh Report, paras. 46-50 [E20]

SCHEDULE A

LIST OF AUTHORITIES

1. *9354-9186 Québec inc. v. Callidus Capital Corporation*, 2020 SCC 10
2. *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314
3. *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828
4. *Arrangement relatif à Nemaska Lithium inc.*, 2020 QCCA 1488
5. *Century Services Inc. v. Canada*, 2010 SCC 60
6. *Harte Gold Corp. (Re)*, 2022 ONSC 653
7. *Just Energy Group Inc. v. Morgan Stanley Capital Group Inc.*, 2022 ONSC 6354
8. *Lydian International Limited, Re*, 2020 ONSC 4006
9. *Metcalfe & Mansfield Alternative Investments II Corp, Re*, 2008 ONCA 587, lv to app ref'd 2008 CanLII 46997
10. *Mjardin Group, Inc., Re* (3 April 2023), CV-22-000682102-00CL (SCJ – Commercial List)
11. *Nortel Networks Corporation (Re)*, 2009 CanLII 39492
12. *Olympia & York Developments Ltd. (Re)*, 1993 CanLII 8492 (ON SC)
13. *Plasco Energy (Re)* (July 17, 2015), CV-15-10869-00CL
14. *PricewaterhouseCooopers Inc. v. Canada Fluorspar (NL) Inc.*, 2023 NLSC 88
15. *Rambler Metals and Mining Ltd. (Re)*, 2023 NLSC 134
16. Sarra, Janis P., *Reverse Vesting Orders – Developing Principles and Guardrails to Inform Judicial Decisions*, 2022 CanLIIDocs 431
17. *Veris Gold Corp., Re*, 2015 BCSC 1204

SCHEDULE B

EXCERPTS OF STATUTES AND REGULATIONS

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

Compromises to be sanctioned by court

- **6 (1)** If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding
    - **(a)** on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and
    - **(b)** in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act* or is in the course of being wound up under the *Winding-up and Restructuring Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

General power of court

- **11** Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

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FACTUM OF
CARGILL, INCORPORATED AND CARGILL INTERNATIONAL TRADING PTE LTD.
RE: SALE APPROVAL MOTION

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