Court File No.

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.

(Applicant)

FACTUM OF THE APPLICANTS
(Re: Initial Application)
(Returnable October 10, 2023)

October 10, 2023

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TO: THE SERVICE LIST

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PART I - OVERVIEW[1]

1. Tacora is a private company focused on the production and sale of high-grade iron ore concentrate mined from the Scully Mine, located near Wabush, Newfoundland and Labrador, Canada.

2. Tacora acquired the Scully Mine in 2017 and has since raised and invested significant capital in the Scully Mine to restart mining operations. Commercial production recommenced in 2019 when the Company was able to ship its first vessel of iron ore. Today, Tacora is the second largest employer in the Town of Wabush and surrounding area and is an important part of the local economy.

3. Since restarting mining operations in 2019, Tacora has encountered various operational challenges in attempting to ramp up production to nameplate capacity of 6.0 Mtpa, and, since the third quarter of 2022, the Company has faced liquidity challenges due to capital and human resources constraints, equipment failures, difficult capital project execution, continued operational issues, high indebtedness and iron ore price volatility.

4. During this period of strained liquidity, Tacora has worked collaboratively with its primary secured creditors to address these challenges by raising additional capital, deferring various debt obligations and pursuing other initiatives.

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[1] Capitalized terms used and not defined herein have the meanings ascribed to them in the Affidavit of Joe Broking sworn October 9, 2023 (the "**Broking Affidavit**") and the Affidavit of Chetan Bhandari sworn October 9, 2023 (the "**Bhandari Affidavit**").

5. In January 2023, Tacora engaged Greenhill to, among other things, undertake a strategic review process to explore, review and evaluate a broad range of alternatives for the Company including sale opportunities or additional investment into Tacora (the "**Strategic Process**"). Greenhill also assisted the Company with the various capital raises described above to improve the Company's liquidity position.

6. The current filing and commencement of the CCAA Proceedings stems from the Company's need for additional capital to address an imminent liquidity crisis and need for additional capital to operate the business, as well as the maturity and payment due dates of various debt obligations.

7. The CCAA Proceedings will allow Tacora to: (a) secure interim financing to ensure the Company can continue to operate in the ordinary course; (b) preserve the going-concern value of the Scully Mine; and (c) continue and complete the Strategic Process to execute upon a value-maximizing sale or recapitalization transaction for the benefit of stakeholders.

8. This factum is filed in support of Tacora's Application for an Initial Order:

(a) declaring that Tacora is a debtor company to which the CCAA applies;

(b) granting the Stay for an initial period of ten (10) days until and including October 20, 2023 (the "**Stay Period**");

(c) appointing FTI as Monitor of Tacora in the CCAA Proceedings;

(d) approving a DIP Facility Term Sheet (the "**DIP Agreement**") entered into by Tacora on October 9, 2023 with Cargill, Incorporated ("**Cargill Inc.**", and in its capacity as the DIP lender, the "**DIP Lender**") pursuant to which the DIP Lender has agreed to advance to Tacora a total amount of up to $75,000,000 (the "**DIP Facility**"), which will be made available to Tacora during these CCAA Proceedings, of which an initial amount of $15,500,000 will be advanced to Tacora during the initial 10-day Stay Period (the "**Initial Advance**");

(e) granting the Administration Charge, the Directors' Charge and the DIP Charge; and

(f) sealing Confidential Exhibit "A" to the Bhandari Affidavit.

PART II - FACTS

9. The facts with respect to this motion are more fully set out in the Broking Affidavit or the Bhandari Affidavit, as applicable.

A. CORPORATE STRUCTURE

10. Tacora is a private corporation incorporated pursuant to the *Business Corporations Act* (Ontario) with its registered head office in Toronto.[2] Tacora's shareholders are a collection of prominent mining investors.[3]

B. BUSINESS AND OPERATIONS

(i) Operations

11. Tacora's sole mining asset is the Scully Mine, which was acquired in 2017 as part of a court-supervised sale process in the CCAA proceedings of Cliffs Natural Resources (now Cleveland-Cliffs Inc.).[4]

12. The Scully Mine is a conventional surface mining operation whereby ore is removed from the earth using drilling and blast techniques and subsequently transported with electric and diesel hydraulic shovels and mining haul trucks.[5] Once the ore is retrieved, it is then transported to a plant, where it is crushed and processed to remove waste material and reduce moisture content to achieve high-grade iron concentrate for shipping and sale.[6]

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[2] Broking Affidavit at para 12.
[3] Broking Affidavit at para 13.
[4] Broking Affidavit at para 20.
[5] Broking Affidavit at para 22.
[6] Broking Affidavit at para 22.

13. Following the acquisition in 2017, Tacora raised significant capital and invested heavily in the Scully Mine to restart mining operations and commercial production, which was achieved in 2019 when the Company was able to ship its first vessel of iron ore.[7]

14. The iron ore concentrate is shipped on rail via the Wabush Lake Railway (operated by WLRS) to the QNS&L Railway (operated by QNS&L), which connects to Sept-Îles Junction, located on the St. Lawrence River on Quebec's north shore. From there, the iron ore is loaded onto yards in the Port, and then placed on vessels and shipped to Europe, the Middle East, and East Asia.[8]

(ii) Employees & Contractors

Tacora employs approximately 450 people, the majority of whom are full time employees. Of Tacora's employees, approximately 64% are paid on an hourly basis and approximately 36% are salaried.[9] Approximately 283 of Tacora's hourly employees are subject to a collective bargaining agreement (the "**CBA**").[10] Tacora is current in the payment of wages to its employees. Accrued vacation pay as of September 1, 2023 is approximately $563,369.[11] Tacora does not have a registered pension plan.[12]

15. Tacora also contracts with various local service providers that regularly provide staff to assist with the Company's operations.[13] Additionally, since February 2023, Tacora has engaged a mining operations consultant to, among other things, implement operation initiatives to ramp up production at the Scully Mine.[14]

(iii) Rail & Port Agreements

[7] Broking Affidavit at paras 24-25.
[8] Broking Affidavit at para 23.
[9] Broking Affidavit at paras 48 and 50.
[10] Broking Affidavit at para 50.
[11] Broking Affidavit at para 52.
[12] Broking Affidavit at para 53.
[13] Broking Affidavit at para 54.
[14] Broking Affidavit at para 55.

16. Tacora is a party to several contracts for the transportation of its iron ore concentrate from the Scully Mine to the Port of Pointe-Noire (the "**Port**").[15] Tacora is also party to a port services agreement with SFPPN, who operates the Port.[16]

(iv) Offtake Agreement & Stockpile Agreement

17. Tacora currently sells 100% of the iron ore concentrate production at the Scully Mine to Cargill pursuant to a number of contracts, including the Offtake Agreement and the Stockpile Agreement.[17]

18. The Offtake Agreement is a life of mine contract pursuant to which Tacora is required to sell and Cargill is required to buy all the iron order produced at the Scully Mine.[18] It is crucial that the Offtake Agreement remain in place during the CCAA Proceedings while Tacora does not have an alternative avenue for selling iron ore concentrate.[19]

19. Pursuant to the Stockpile Agreement, Tacora receives cash receipts on a weekly basis (rather than paying the provisional purchase price after a vessel is loaded, which occurs approximately every 3-4 weeks). This provides Tacora with significant, advanced working capital while the Stockpile Agreement remains in effect.[20]

(v) MFC Royalty

20. Tacora is party to the MFC Royalty with MFC, which provides Tacora with tenure and mining rights to certain premises constituting the Scully Mine in exchange for an ongoing royalty payment based on production.[21] Pursuant to the MFC Royalty, Tacora is required to pay the beneficiary of the MFC Royalty 7% of its net revenue derived from the sale of its iron ore concentrate in Quarterly Payments.[22]

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[15] Broking Affidavit at para 27.
[16] Broking Affidavit at para 32.
[17] Broking Affidavit at para 34.
[18] Broking Affidavit at para 34.
[19] Broking Affidavit at para 39.
[20] Broking Affidavit at para 38.
[21] Broking Affidavit at para 40.
[22] Broking Affidavit at para 41.

C. THE COMPANY'S FINANCIAL POSITION

(i) Assets and Liabilities

21. As of July 31, 2023, the Company's assets had an unaudited net value of approximately $360,660,000[23] and its liabilities had an unaudited net value of approximately $427,545,000.[24]

(ii) Secured Obligations

22. Tacora has approximately $298,000,000 in secured debt owing primarily to: (a) the Senior Noteholders pursuant to the Senior Priority Notes and Senior Notes; and (b) Cargill in respect of the Advance Payments Facility.[25]

23. The Company's secured debt and respective priority rankings are summarized in the below chart and detailed further in the Broking Affidavit:[26]

	Cargill	Senior Noteholders
First Ranking	$4,717,648 of Margin Advances and Prepay Advances pursuant to the Advance Payments Facility	$27,521,634 of Senior Priority Notes
Second Ranking	$30,000,000 of Initial Advances pursuant to the Advance Payments Facility	$225,000,000 of Senior Notes in principal and $9,281,250 in unpaid interest
Total	$34,717,648	$261,802,884

24. The various rankings of the above obligations are governed pursuant to Intercreditor Agreements between Tacora, the Notes Trustee and Cargill.[27] Tacora also has various secured leasing obligations, which are described in the Broking Affidavit.[28]

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[23] Broking Affidavit at para 64.
[24] Broking Affidavit at para 65.
[25] Broking Affidavit at para 67.
[26] Broking Affidavit at para 67.
[27] Broking Affidavit at paras 67 and 89.
[28] Broking Affidavit at paras 90, 96 and 99.

D. THE COMPANY'S FINANCIAL DIFFICULTIES

25. Since the successful restart of operations at the Scully Mine in 2019, several factors have contributed to the Company's production levels being well below name-plate production capacity. The Company's production levels have, in turn, resulted in elevated operating costs due to the high fixed-cost nature of the Business.[29]

26. In 2022, Tacora completed three key capital projects, which are critical to ramping up production at the Scully Mine. Tacora faced significant operational issues related to these projects, including design flaws that required significant attention from management and plant employees. This diverted attention away from required preventative maintenance work throughout the plant, which caused further operational challenges.[30] These challenges, among others, resulted in frequent unplanned downtime and lower production throughout 2022, which negatively impacted production volume and led to elevated production costs for the Company.[31]

27. Tacora's liquidity situation was further exacerbated by iron ore price volatility throughout 2022 and 2023, which placed significant pressure on the Company to raise new capital in order to continue operating.[32]

28. In June 2023, Tacora's operations were significantly and negatively affected by wildfires in Quebec which forced the QNS&L Railway to temporarily shutdown its rail haulage services. The rail shutdown effectively barred Tacora's ability to earn revenue in June, severely impacted revenue in subsequent months and led to disruption of the Company's dry-end operations.[33]

29. The confluence of issues have significantly impacted the Company's liquidity. For over a year, the Company has been forced to operate with minimal capital, limiting its ability to invest in ramping up production at the Scully Mine. Tacora's liquidity situation has also required management to expend

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[29] Broking Affidavit at para 111.
[30] Broking Affidavit at para 112.
[31] Broking Affidavit at paras 113.
[32] Broking Affidavit at paras 113.
[33] Broking Affidavit at para 114.

significant time and effort to obtain short-term financing injections to continue operations and assist with the Strategic Process.[34]

E. TACORA'S RESPONSE TO FINANCIAL DIFFICULTIES

(i) Liquidity Management Efforts

30. In September 2022, Tacora started exploring a variety of options to access additional capital to permit the Business to continue operations.[35]

31. In November 2022, Tacora issued 15,000,000 Class C Preferred Shares to Cargill for proceeds of $15,000,000. These proceeds were primarily used to make the semi-annual interest payment that was due in respect of the Senior Notes and to fund the Company's ongoing operations.[36]

32. In January 2023, Tacora negotiated and entered into the Advance Payment Facility Agreement with Cargill, which provided the Company with critical liquidity to continue operating.[37]

33. In April 2023, Tacora negotiated an extension of the maturity of the Advance Payment Facility with Cargill and commenced discussions with the Ad Hoc Group to provide additional financing and payment deferrals to the Company.[38]

34. In conjunction with the Advance Payment Facility or shortly thereafter, Tacora took the following additional measures to preserve liquidity:

(a) Negotiating certain amendments to the Port Agreement and Railway Agreement related to timing of payments;

(b) Transferring its issued and outstanding shares in the capital of Sydvaranger (as further described in the Broking Affidavit); and

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[34] Broking Affidavit at para 116.
[35] Broking Affidavit at para 117.
[36] Broking Affidavit at para 117.
[37] Broking Affidavit at para 118.
[38] Broking Affidavit at para 119.

(c) Engaging a mining operations consultant to assist with operational turnaround and efficiency initiatives at the Scully Mine.[39]

35. In May 2023, the Ad Hoc Group purchased $27,000,000 of Senior Priority Notes which provided the Company with additional liquidity.[40]

36. In May 2023, Tacora entered into the Second APF Amendment with Cargill to provide for $25,000,000 of Margin Advances that funded Margin Payments under the Offtake Agreement and replaced a limited line of credit existing under the Offtake Agreement while any Margin Advances or Additional Prepay Advances were outstanding.[41]

37. On June 20, 2023, Cargill advanced an additional $3,000,000 to the Company as an Additional Prepay Advance (which has since been repaid). This additional liquidity allowed Tacora to continue operations during this time amidst the Quebec wildfires.[42]

38. The Company also pursued other initiatives in response to the Quebec wildfires, which included: (a) negotiating further payment deferrals with SFPPN and QSN&L; (b) negotiating payment holidays in respect of their leases with Komatsu; and (c) negotiating tax deferrals and capital works payments owed to the Town of Wabush pursuant to a grant-in-lieu of taxes.[43]

39. Subsequently, to further enhance Tacora's liquidity position, Cargill and the Company entered into the Wetcon Agreement, whereby Cargill agreed to purchase a stockpile of 172,000 tonnes of wet concentrate from Tacora, located at the Scully Mine. The Wetcon Agreement provided for an upfront payment of $5,000,000 from Cargill to Tacora for an initial tranche of wet concentrate. A remaining payment of $2,300,000 is due to Tacora upon conversion and shipment of the remaining tranche of wet concentrate.[44]

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[39] Broking Affidavit at para 118.
[40] Broking Affidavit at para 120.
[41] Broking Affidavit at para 121.
[42] Broking Affidavit at para 122.
[43] Broking Affidavit at para 124.
[44] Broking Affidavit at para 125.

40. The Wetcon Agreement also provides an option for Cargill to purchase up to an additional 53,000 tonnes of wet concentrate (for a total of 225,000 tonnes) as an additional deferred amount and contemplates that any additional wet concentrate added to the stockpile purchased by Cargill automatically becomes the property of Cargill. As at September 4, 2023, there were approximately 194,741 tonnes of wet concentrate at the Wetcon stockpile (the "**September 4 Wetcon Amount**").[45] On September 12, 2023, as part of the discussions between Tacora's stakeholders and to assist the liquidity of the Company, the Wetcon Agreement was amended to provide that Cargill would make payment of $3,954,171.43 in full and final satisfaction of all deferred amounts owing by Cargill to Tacora under the Wetcon Agreement.[46]

(ii) Strategic Process

41. In January 2023, Tacora engaged Greenhill to assist with the Strategic Process and with the various capital raises described above to improve the Company's liquidity position.[47]

42. As part of the Strategic Process, Tacora received several letters of intent ("**LOI**") and term sheets in respect of potential transactions. Tacora executed an LOI for a sale of the Company and facilitated advanced due diligence with the interested party. However, the interested party advised it was no longer interested in advancing the transaction completed by its LOI.[48]

43. Recently, Cargill, the Senior Noteholders and another party engaged in advanced discussions regarding a consensual restructuring and recapitalization transaction. However, the parties were not able to reach a binding agreement that would avoid the CCAA filing.[49]

44. The Company intends to continue the Strategic Process, with the assistance of the Proposed Monitor and Greenhill, in the form of a court-approved sale and investment solicitation process (the

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[45] Broking Affidavit at para 125.
[46] Broking Affidavit at para 126.
[47] Broking Affidavit at para 127.
[48] Broking Affidavit at para 128.
[49] Broking Affidavit at para 129.

"**Solicitation Process**"). The Company expects to provide further details regarding the proposed Solicitation Process at the Comeback Motion.[50]

(iii) First DIP Process

45. Given the Company's challenging liquidity situation and upcoming debt maturities, on August 14, 2023, Greenhill commenced a solicitation process to obtain DIP financing proposals on behalf of Tacora (the "**First DIP Process**"). Greenhill, in consultation with the Company's management and other advisors, and FTI, in its capacity as proposed monitor, designed the contemplated First DIP Process.[51] The Company received four proposals for DIP financing[52], but two of the proposals were not actionable. The Company focussed its efforts on pursuing proposals from the Ad Hoc Group and another party.[53] Following receiving one binding proposal after a deadline set by the Company, the Company entered into a DIP agreement with the Ad Hoc Group on September 11, 2023 (the "**Original AHG DIP Agreement**").[54]

(iv) Second DIP Process

46. When negotiations of a consensual resolution between the stakeholders terminated without a deal, the Company, in consultation with FTI, Greenhill, and Stikeman, reached out to its primary secured creditors, the Ad Hoc Group and Cargill, regarding a DIP (the "**Second DIP Process**") and established a Second DIP Proposal Deadline.[55] The Company received an executed DIP term sheet from Cargill by the Second DIP Proposal Deadline.[56] The Ad Hoc Group submitted a DIP proposal which reflected the amendments they were willing to make from the Original AHG DIP Agreement.[57]

(v) Selection of DIP Lender

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[50] Broking Affidavit at para 130.
[51] Bhandari Affidavit at para 4.
[52] Bhandari Affidavit at para 6.
[53] Bhandari Affidavit at para 7.
[54] Bhandari Affidavit at para 13.
[55] Bhandari Affidavit at para 15.
[56] Bhandari Affidavit at para 17.
[57] Bhandari Affidavit at para 18.

47. Following the receipt of advice from the Company's advisors, the Company's board of directors exercised their good faith business judgement and determined that the Cargill DIP proposal received during the Second DIP Process was the superior DIP facility available for the Company for the following reasons, among others:

(a) *Cost.* Cargill's DIP proposal has a lower cash cost to the Company and cost of capital on a blended basis;

(b) *Benefit of existing arrangements*. As described in the Broking Affidavit, Tacora benefits from a variety of existing agreements with Cargill, including the Offtake Agreement, Stockpile Agreement, and Senior Secured Hedging Facility. Cargill's offer results in the Company continuing to have the benefit of these agreements throughout the CCAA Proceedings (subject to an event of default occurring under the DIP facility). Continuing these existing arrangements is expected to result in less operational disruption during the CCAA Proceedings;

(c) *Mark-to-market payments*. Cargill's DIP proposal provides the Company with more capacity to address mark-to-market payments in the event of falling iron-ore prices; and

(d) *Less risk of default*. The Cargill proposal provided more favourable covenants to the Company lessening the risk of default under the DIP facility, including providing for cumulative variance testing in respect of cash flow and no production related covenants.[58]

48. On October 9, 2023, Tacora, as borrower, and Cargill, as the DIP Lender, entered into the DIP Agreement.[59] The material terms of the DIP Facility are as follows:[60]

Summary of Key Terms of the DIP Agreement	
DIP Lender	Cargill, Incorporated

[58] Bhandari Affidavit at para 20.
[59] Bhandari Affidavit at para 22.
[60] Broking Affidavit at para 136.

Maximum DIP Facility Amount	$75,000,000 <u>Permitted Uses</u> • Pay the reasonable and documented professional and advisory fees and expenses (including legal and fees and expenses) of Tacora and the Monitor; • Pay the reasonable and documented DIP Lender Expenses; • Pay the interest, fees and other amounts owing to the DIP Lender under the DIP Agreement; and • Fund, in accordance with the DIP budget, Tacora's funding requirements during the CCAA Proceedings.
Funding/Availability	Initial Advance – $15,500,000 Subsequent Advances – Bi-weekly advances of no less than $1,000,000, with amounts determined based on the funding needs of Tacora as set forth in the DIP budget.
Interest	Interest is payable on all amounts drawn under the DIP Facility at a rate of 10% per annum in cash. Interest on all advances under the DIP Facility are calculated and compounded on a monthly basis on the principal amount of such advances and any overdue interest remaining unpaid.
Fees	Tacora is required to pay an exit fee in an amount equal to 3% of the maximum availability of $75,000,000 to the DIP Lender (the "**Exit Fee**") as compensation for the DIP Lender's commitment to provide DIP financing to Tacora. The Exit Fee is payable upon the earlier of (a) completion of a successful Restructuring Transaction (as defined below); and (b) the indefeasible repayment in full of the DIP Facility and all other obligations of Tacora under the DIP Agreement and/or cancellation of all remaining commitments in respect thereof. The Exit Fee is only earned upon the Court issuing the ARIO.
Permitted Variance (vs DIP Budget)	Up to 15% relative to the aggregate disbursements (excluding the DIP Lender Expenses (as defined in the DIP Agreement)) on a cumulative basis since the beginning of the period covered by the applicable DIP budget.
Maturity	The earlier of: • October 10, 2024; • Closing of any Restructuring Transaction • Date on which Tacora's obligations under the DIP Agreement are voluntarily prepaid in full and the DIP Facility is terminated; • Conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (as amended); and • Occurrence of any event of default under the DIP Agreement

	that has not been cured.
Milestones	Tacora is permitted to pursue a Solicitation Process approved by the Court with the following milestones, which may be extended by Tacora in accordance with the proposed Solicitation Order: • The deadline for the receipt of non-binding letters of intent: (a) for potential Restructuring Transactions; and/or (b) to provide Tacora with an offtake, services or other agreement in respect of the Tacora's business, must be no later than December 1, 2023; • Final deadline for the receipt of binding bids: (a) for potential Restructuring Transactions; and/or (b) to provide Tacora with an offtake, services or other agreement in respect of Tacora's business, must be no later than January 19, 2024 (the "**Bid Deadline**"); and • Closing of transaction(s) for potential Restructuring Transactions; and/or (b) in respect of an offtake, services or other agreement in respect of the Tacora's business, must occur no later than February 29, 2024.
Other Provisions	Provided that no Event of Default has occurred, Cargill Inc. shall cause Cargill to: (a) extend the term of the Stockpile Agreement to the maturity date under the DIP Agreement; (b) continue to perform its obligations under the Offtake Agreement; and (c) continue to honour and perform in respect of any existing side letters entered into between Tacora and Cargill in respect of hedges for the sale and purchase of iron ore under the Offtake Agreement. Among others, the occurrence of the following event shall constitute an Event of Default under the DIP Agreement: • The termination, suspension or disclaimer of the Existing Arrangements (as defined in the DIP Agreement), or the taking of any steps to terminate, suspend or disclaim (if permitted under the CCAA) any of the Existing Arrangements (which, for greater certainty, shall not include (a) the commencement and prosecution of the Solicitation Process, including the solicitation of an alternative offtake or service agreement, or (b) taking any step or related action pursuant to a binding agreement entered into in respect of a Restructuring Transaction at or after the Bid Deadline, including executing such agreement, seeking court approval of such binding agreement or taking any steps in connection with consummating the Restructuring Transaction pursuant to such binding agreement) in each case at or after the Bid Deadline, without prejudice to any rights that Cargill may have pursuant to section 32 (including subsection 32(9)(c)) of the CCAA or otherwise.

PART III - ISSUES

49. The issues in respect of the relief being sought in the Initial Order are whether:

(a) Tacora is entitled to seek protection under the CCAA;

(b) the Stay should be granted during the Stay Period;

(c) FTI should be appointed as Monitor;

(d) the DIP Agreement should be approved and Tacora should be authorized to access the DIP Facility;

(e) the Administration Charge, the Directors' Charge and the DIP Charge, including the proposed priorities of such charges, should be granted and approved; and

(f) the requested sealing order should be issued.

PART IV - LAW AND ANALYSIS

A. Tacora is Entitled to Protection Under the CCAA

(i) Jurisdiction to Grant the Relief Sought

50. Subsection 9(1) of the CCAA provides that an application under the CCAA may be made to the court that has jurisdiction in the province where the debtor company has its "head office or chief place of business."

51. The Applicant's registered office is located at 199 Bay Street, 5300 Commerce Court West, Toronto, Ontario.[61] Accordingly, the Ontario court is an appropriate venue for these CCAA Proceedings.

(ii) Tacora is a Debtor Company entitled to CCAA Protection

[61] Broking Affidavit at para 12.

52. The CCAA applies to a “debtor company" where the total of claims against the debtor company or its affiliates exceeds $5,000,000.[62] The CCAA defines a “debtor company" as, among other things, any “company” that is insolvent or has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**").[63]

53. The CCAA defines “company” as, among other things:

> Any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province and any incorporated company having assets or doing business in Canada, wherever incorporated [...].[64]

54. Subsection 2(1) of the BIA defines “insolvent person” as:

> […] [A] person who is not bankrupt and who resides, carries on business or has property in Canada, and whose liability to creditors provable as claims under this Act amount to one thousand dollars, and
>
> (a) who is for any reason unable to meet his obligations as they generally become due,
>
> (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
>
> (c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.[65]

55. The Applicant is a “debtor company” to which the CCAA applies for the following reasons:

(a) Tacora meets the definition of “company”, as it is a corporation incorporated pursuant to the *Business Corporations Act* (Ontario) that has assets and conducts business in Canada;[66]

(b) Tacora’s total indebtedness, liabilities and obligations exceed C$5,000,000;[67]

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[62] CCAA, s 3(1).
[63] CCAA, ss 2(1) and 3(1); *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [“***BIA***”].
[64] CCAA, s 2(1).
[65] BIA, s 2(1).
[66] Broking Affidavit at para 12.
[67] Broking Affidavit at paras 65.

(c) The net book value of Tacora's current and long-term liabilities exceed the net book value of its current and long-term assets such that, on a balance sheet test, the Company is insolvent;[68] and

(d) As demonstrated by the Cash Flow Forecast, without access to the DIP Facility, Tacora will be unable to meet its obligations generally as they become due.[69]

(iii) The Relief Sought is Reasonably Necessary

56. While this Court has broad discretion under section 11 of the CCAA to make any order it considers appropriate in the circumstances,[70] section 11.001 of the CCAA requires that the relief sought on an initial application be limited to what is "reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period."[71]

57. The purpose of this section is to "limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players."[72]

58. Tacora has worked with its advisors and the Proposed Monitor to limit the relief sought on this Application to only what is reasonably necessary in the circumstances to stabilize its Business, continue operations in the ordinary course and protect the value of the Property for the benefit of the Company and its stakeholders generally. Tacora has limited the relief sought during the initial Stay Period to what is immediately required and intends to seek additional relief as necessary at the Comeback Motion.

B. The Stay is Necessary

59. On an initial application, this Court has authority under subsection 11.02(1) of the CCAA to grant an order staying all proceedings against a debtor company for a period of not more than ten (10) days.[73]

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[68] Broking Affidavit at paras 64-65.
[69] Broking Affidavit at para 132.
[70] CCAA, s 11.02(1).
[71] CCAA, s 11.001.
[72] CCAA, s 11.001; *Lydian International Limited (Re)*, 2019 ONSC 7473 [**"*Lydian*"**] at para 25.

60. The "primary tool" to achieve the CCAA's restructuring objective is a stay of proceedings, which preserves the *status quo* to stabilize the debtor company's situation by shielding it from its creditors while the restructuring process is underway.[74] Without this period of stability, "there would be a free-for-all in which individual creditors would fight it out to enforce their rights without regard for the company's survival or the maximization of its liquidation value".[75]

61. The commencement of the CCAA Proceedings represents the only realistic path forward for the Company at this time.

C. The Stay Should Apply to Set-Off

62. The Initial Order includes a provision prohibiting any person from setting off pre-filing obligations against post-filing obligations.

63. The Court has broad discretion under the CCAA to grant any order necessary to "ensure that the restructuring is successful and that the CCAA objectives are achieved".[76] The Supreme Court of Canada has described this judicial discretion – which plays a prominent role in stays of proceedings – as the "true 'engine'" driving the statutory scheme of the CCAA.[77]

64. While section 21 of the CCAA contemplates the possibility of set-off within the CCAA, it does not explicitly address pre-post set-off. However, this issue was specifically addressed by the Supreme Court of Canada in *Montréal (City) v. Deloitte Restructuring Inc.*, which confirmed that sections 11 and 11.02 of the CCAA authorize the Court to stay pre-post set-off.[78]

D. DIP Agreement and DIP Charge should be Approved

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[73] CCAA, s 11.02(1).
[74] *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 ["***Century Services***"] at para 60.
[75] *Century Services*, *supra* at para 22; **see also** *Montréal (City) v Deloitte Restructuring Inc*, 2021 SCC 53 ["***Montréal***"] at para 46.
[76] *Montréal* at para 48.
[77] *Montréal* at para 48.
[78] *Montréal* at para 62.

65. This Court has jurisdiction under section 11.2 of the CCAA to grant the DIP Charge in an amount that it considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.[79]

66. Section 11.2(4) sets out the following factors to be considered by the Court in determining whether to grant a priority charge in favour of a DIP lender:

(a) The period during which the company is expected to be subject to CCAA proceedings;

(b) How the company's business and financial affairs are to be managed during the CCAA 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.[80]

67. The Court has highlighted the importance of meeting the criteria set out in section 11.2(1) in addition to those found in section 11.2(4), namely:

(a) Whether notice has been given to secured creditors likely to be affected by the security or charge;

(b) Whether the amount to be granted under a DIP facility is appropriate and required having regard to the debtors' cash-flow statement; and

(c) Whether the DIP charge secures an obligation that existed before the order approving the DIP was made.[81]

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[79] CCAA, s 11.2.
[80] CCAA, s 11.2(4).
[81] CCAA, s 11.2(1); **see also** *Canwest Publishing Inc*, 2010 ONSC 222 ["***Canwest***"] at paras 42-44.

68. The application of the facts to the criteria enumerated in sections 11.2(1) and 11.2(4) support approval of the DIP Agreement and the granting of the DIP Charge on the terms sought in the Initial Order, as:

(a) Notice of this application has been given to the Applicant's major secured creditors. Further notice will be given to the Applicant's other secured creditors before the Comeback Hearing;

(b) The Applicant, in consultation with its advisors and the Proposed Monitor, has designed a Solicitation Process (approval of which will be sought at the Comeback Hearing). Based on the Applicant's Cash Flow Forecast, the DIP Facility should provide adequate liquidity to fund the Applicant through the Solicitation Process. The initial draw under the DIP Facility has been sized to correspond with the required funding during the initial period; [82]

(c) The funding under the DIP Facility is necessary for the Applicant to continue operating and complete the Solicitation Process. The Applicant will have the benefit of assistance from Greenhill and the Proposed Monitor and the supervision of the Court in conducting the Solicitation Process to secure a value maximizing transaction. A shut down of the Applicant's business would have a devastating effect on the Applicant's creditors and other stakeholders;

(d) The DIP Charge will not secure any obligations that existed before the order is made;

(e) The Applicant requires DIP financing in order to continue operating and conduct the Solicitation Process for the benefit of all its stakeholders. Of the two actionable DIP term sheets available to the Applicant, the DIP Facility is substantially smaller and will therefore is less prejudicial to the Applicant's creditors; and

(f) the Proposed Monitor supports approval of the DIP Agreement and corresponding DIP Charge.

E. FTI should be Appointed as Monitor

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[82] *Lydian*, *supra* at paras 22-26; Broking Affidavit at para 134.

69. When an order is made on the initial application in respect of a debtor company, the Court shall appoint a person to monitor the business and financial affairs of the company.[83] The person appointed must be a trustee within the meaning of subsection 2(1) of the BIA.[84]

70. Tacora seeks to appoint FTI as Monitor in these CCAA Proceedings. FTI is a trustee within the meaning of subsection 2(1) of the BIA and is not subject to any of the restrictions as to who may be appointed as monitor pursuant to subsection 11.7(2) of the CCAA.[85] FTI has a significant amount of experience acting as a court-appointed monitor and has consented to act as the Monitor in these CCAA Proceedings.[86]

F. Administration Charge should be Granted

71. This Court has jurisdiction under section 11.52 of the CCAA to grant the Administration Charge in an amount that it considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.[87]

72. In determining whether to grant the Administration Charge, the Court may consider the following non-exhaustive factors:[88]

(a) The size and complexity of the business being restructured;

(b) The proposed role of the beneficiaries of the charge;

(c) Whether there is an unwarranted duplication of roles;

(d) Whether the quantum of the proposed charge appears to be fair and reasonable;

(e) The position of the secured creditors likely to be affected by the charge; and

(f) The position of the Monitor.[89]

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[83] CCAA, s 11.7.
[84] CCAA, s 11.7; BIA, s 2(1).
[85] Broking Affidavit at para 145.
[86] Broking Affidavit at paras 144 and 146.
[87] CCAA, s 11.52.
[88] *Canwest*, *supra* at para 54.
[89] *Canwest*, *supra* at para 54.

73. The application of the facts to the criteria enumerated in section 11.52 support approval of the Administration Charge on the terms sought in the Initial Order, as:

(a) The business is complex. Tacora is an integral part of the economy of the Town of Wabush and surrounding area, including as the area's second largest employer and as a significant customer for numerous local businesses;[90]

(b) The beneficiaries of the Administration Charge – the Monitor and its counsel, counsel to Tacora and Greenhill – will each provide unique and essential legal and financial advice to Tacora throughout these CCAA Proceedings;[91]

(c) The beneficiaries of the Administration Charge have already engaged in a significant amount of pre-filing work preparing for this CCAA application, including the development of the Cash Flow Forecast, the negotiation of the DIP Facility, developing the proposed Solicitation Process and drafting the necessary court materials, and will play a key role in advancing the CCAA proceeding;

(d) The Company's secured creditors were notified of the proposed quantum of the Administration Charge and the Company is not aware of any opposition; and

(e) The Proposed Monitor was involved in sizing the charge and has stated that it believes the proposed quantum to be reasonable.[92]

G. Directors' Charge should be Granted

74. The Court has jurisdiction under section 11.51 of the CCAA to grant the Directors' Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.[93]

75. In order to grant a directors' and officers' charge, the Court must be satisfied of the following factors:

(a) Notice has been given to the secured creditors likely to be affected by the charge;

(b) The amount of the charge is appropriate;

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[90] Broking Affidavit at paras 6-7.
[91] Broking Affidavit at para 161 and 163.
[92] Broking Affidavit at para 164.
[93] CCAA, s 11.51.

(c) The applicant could not obtain adequate indemnification insurance for the directors at a reasonable cost; and

(d) The charge does not apply in respect of any obligation incurred by a director as a result of the director's gross negligence or wilful misconduct.[94]

76. Courts have also relied on the following factors as support for granting a directors' and officers' charge: (a) the continued participation of the directors and officers, management and employees of the debtor was critical to the restructuring; (b) retaining the directors and officers would avoid destabilization; (c) the insolvency proceedings created new risks and potential liabilities for the directors and officers; (d) the charge appeared reasonable in light of the potential obligations and liabilities of the directors and officers; and (e) the debtor was unable to obtain additional or replacement directors' and officers' insurance coverage.[95]

77. The Directors' Charge protects the current and future directors and officers against obligations and liabilities they may incur as directors and officers of Tacora after the commencement of the CCAA proceeding, except to the extent that any such claims or the obligation or liability is incurred as a result of the director's or officer's gross negligence or wilful misconduct.[96]

78. The application of the facts to the factors articulated in subsection 11.51(1) and the cases referenced herein supports approval of the Directors' Charge on the terms sought in the Initial Order, as:

(a) The continued involvement of Tacora's directors and officers and the ability to draw upon their expertise and knowledge of the Company's operations will be important to maintaining stability in the operations and preserving the value of the Business to the benefit of the Company's stakeholders;[97]

(b) The Company has a D&O insurance policy, but there is always some uncertainty regarding the availability of coverage for potential claims against directors and

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[94] *Laurentian*, *supra* at para 81; **see also** *Jaguar Mining Inc, Re*, 2014 ONSC 494 at para 45.
[95] *Canwest*, *supra* at para 56.
[96] Broking Affidavit at para 4.
[97] Broking Affidavit at paras 171.

officers. Pursuant to the Initial Order, the Directors' Charge will only apply where the D&O insurance does not provide coverage;[98]

(c) The Directors' Charge does not secure obligations incurred by a director as a result of the directors' gross negligence or wilful misconduct;[99]

(d) Some or all of Tacora's directors and officers are likely to resign if the Directors' Charge is not granted;[100]

(e) The Company's secured creditors were notified of the proposed quantum of the Directors' Charge and the Company is not aware of any opposition; and

(f) The quantum of the Directors' Charge was developed in consultation with the Proposed Monitor and the Proposed Monitor is of the view that the Directors' Charge and its quantum is reasonable and appropriate in the circumstances.[101]

H. Sealing Order should be Granted

79. Tacora requests a sealing order in relation to a chart that summarizes the Cargill DIP Proposal and the Ad Hoc Group DIP Proposal, which is attached as Confidential Exhibit "A" to the Bhandari Affidavit.

80. The *Courts of Justice Act* (Ontario) provides this Court with discretion to order that any document filed in a civil proceeding be treated as confidential and sealed, and not form part of the public record.[102]

81. The test to determine if a sealing order should be granted is set out in *Sierra Club* as recast in *Sherman Estate*:

(a) court openness poses a serious risk to an important public interest;

(b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.[103]

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[98] Broking Affidavit at para 172.
[99] Broking Affidavit at para 4(ii).
[100] Broking Affidavit at para 173.
[101] Broking Affidavit at para 176.
[102] *Courts of Justice Act*, RSO 1990, c C 43, s 137(2).

82. The Supreme Court in *Sierra Club* and *Sherman Estate* explicitly recognized that commercial interests such as preserving confidential information or avoiding a breach of a confidentiality agreement are an "important public interest" for purposes of this test.[104]

83. Courts have applied the *Sierra Club* and *Sherman Estate* tests in the insolvency context and authorized sealing orders over confidential or commercially sensitive documents, including certain DIP schedules.[105]

84. The Ad Hoc Group Proposal was provided on a confidential basis and contains commercially sensitive competitive information that, if disclosed publicly and made available, could impact future negotiations, and refinancing and sales efforts in these CCAA Proceedings. The limitation on the open court principle is minimal and the order is proportional. No party will be prejudiced from the sealing order. It is therefore submitted that the test for such an order, as established by the Supreme Court of Canada, has been satisfied. The Applicant therefore requests that Confidential Exhibit "A" to the Bhandari Affidavit not form part of the court record pending further order of this Court.

PART V - ORDER SOUGHT

85. The Applicant respectfully requests that this Court grant the Initial Order substantially in the form of the Initial Order attached at Tab 4 of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of October, 2023.

Nramsaran

STIKEMAN ELLIOTT LLP
Counsel for the Applicant

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[103] *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 53 ["***Sierra Club***"]; *Sherman Estate v Donovan*, 2021 SCC 25 at paras 38 and 43 ["***Sherman Estate***"].
[104] *Sierra Club*, *supra* at para 55; *Sherman Estate*, *supra* at paras 41-43.
[105] See, for example, *In the Matter of Harte Gold Corp.* (CV-21-00673304-00CL), Initial Order of Pattillo J. and Endorsement of Pattillo J. (December 7, 2021); **see also** *Ontario Securities Commission v Bridging Finance Inc*, 2021 ONSC 4347 at paras 23-28; *Re Just Energy Corp*, 2021 ONSC 1793 at paras 123-124.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Canwest Publishing Inc*, 2010 ONSC 222.
2. *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60.
3. *In the matter of Harte Gold Corp (Re)*, Court File No. CV-21-00673304-00CL (ONSC), Initial Order and Endorsement issued December 7, 2021 (Monitor's Website).
4. *Jaguar Mining Inc, Re*, 2014 ONSC 494.
5. *Laurentian University of Sudbury*, 2021 ONSC 1098.
6. *Lydian International Limited (Re)*, 2019 ONSC 7473.
7. *Montréal (City) v Deloitte Restructuring Inc*, 2021 SCC 53.
8. *Ontario Securities Commission v Bridging Finance Inc*, 2021 ONSC 4347.
9. *PT Holdco, Inc., Re*, 2016 ONSC 495.
10. *Re Just Energy Corp*, 2021 ONSC 1793.
11. *Sherman Estate v Donovan*, 2021 SCC 25.
12. *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41.
13. *Stelco Inc, Re*, 2004 CanLII 24933 (ON SC).

SCHEDULE "B"
RELEVANT STATUTES

***Courts of Justice Act*, R.S.O. 1990, c. C.43**

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

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

Definitions

2 (1) In this Act, […]

> **company** means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies; (compagnie) […]
>
> **debtor** company means any company that
>
> > (a) is bankrupt or insolvent,
> >
> > (b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,
> >
> > (c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or
> >
> > (d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent; (compagnie débitrice)

[…]

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

[…]

Jurisdiction of court to receive applications

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

[…]

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.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[…]

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

> (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
>
> (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.

[...]

Stays — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(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.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[...]

Security or charge relating to director's indemnification

11.51 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of

the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the Bankruptcy and Insolvency Act.

Restrictions on who may be monitor

11.7 (2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

(a) if the trustee is or, at any time during the two preceding years, was

(i) a director, an officer or an employee of the company,

(ii) related to the company or to any director or officer of the company, or

(iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

(b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the Civil Code of Quebec that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3**

Definitions

2 (1) In this Act, […]

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*) […]

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

Court File No.

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

(Applicant)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

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