

**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 APPLICANT  
(Re: Stay Extension, Amended DIP and Claims Procedure Order)  
(Returnable April 23, 2024)**

April 22, 2024

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley Taylor (LSO #39932E)**  
Tel: 416-869-5236  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Lee Nicholson (LSO #66412I)**  
Tel: 416-869-5604  
Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

**Natasha Rambaran (LSO #80200N)**  
Tel: 416-869-5504  
Email: [nrambaran@stikeman.com](mailto:nrambaran@stikeman.com)

**Philip Yang (LSO #82084O)**  
Tel: 416-869-5593  
Email: [pyang@stikeman.com](mailto:pyang@stikeman.com)

Counsel for the Applicant

**TO: THE SERVICE LIST**

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**PART I - OVERVIEW<sup>1</sup>**

1. Since the termination of the Successful Bid, Tacora has been focused on determining the best path forward for the Company to ensure stability and a timely exit from these CCAA Proceedings.
2. The Company intends to continue discussions and negotiations with the Ad Hoc Group and Cargill in respect of options for a consensual restructuring and recapitalization transaction for the Company. A transaction which allows the Company to emerge from the CCAA Proceedings in an expedited manner must be achieved in the near term. Time is of the essence and the status quo is not sustainable for the Company.
3. While Tacora advances such efforts, it requires additional incremental liquidity to continue operating and the certainty and stability provided by committed DIP financing. Continuation of protracted litigation without approving DIP financing will significantly delay advancement of these CCAA Proceedings and distract the Company and its stakeholders from the primary purpose of this restructuring – achieving a transaction that addresses the Company's prohibitive offtake agreement and overleveraged capital structure.
4. Tacora initially discussed entering into a further DIP agreement with Cargill following termination of the Successful Bid, but subsequently received a competing DIP proposal from the Ad Hoc Group and Javelin.

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<sup>1</sup> Capitalized terms used and not defined herein have the meanings ascribed to them in Affidavit of Joe Broking sworn April 21, 2024 (the "**Broking Affidavit**").

5. In recent weeks, Tacora engaged in multiple rounds of negotiations with both parties and was able to improve the terms originally presented in each DIP proposal.

6. Following these negotiations, the Company's Board carefully considered the two DIP proposals and exercised its business judgement to approve the Amended DIP Agreement, which it viewed as the best DIP facility available to the Company in the circumstances. Tacora entered into the Amended DIP Agreement with Cargill on April 21, 2024.

7. The Amended DIP Agreement is on substantially the same terms as the Interim DIP Agreement, which was approved by the Court on March 18, 2024, with certain amendments.

8. The economic terms of the Amended DIP Agreement and the AHG Proposal were substantially similar, however, the Amended DIP Agreement contains certain features that provide much needed stability to the Company and will permit the Company to advance the next stage of its restructuring.

9. Tacora seeks this Court's approval of the Amended DIP Agreement and an extension of the Stay Period until and including June 24, 2024.

10. Tacora also seeks this Court's approval of the Claims Procedure, which has been developed by Tacora, in consultation with its advisors and the Monitor, to solicit, identify, quantify and, if appropriate, resolve the Claims against the Company and its Directors and Officers in the event that it determines it appropriate to seek approval of a plan of compromise or arrangement.

11. The proposed Claims Procedure provides for a fair, reasonable, expeditious and streamlined adjudication of all Claims against the Company and its Directors and Officers.

## **PART II - FACTS**

### **A. Background**

12. Tacora is a private company focused on the production and sale of high-grade and quality iron ore products that improve the efficiency and environmental performance of steel

making. The Company is the second largest employer in the Labrador West region and is an important part of the local and provincial economy.<sup>2</sup>

13. On October 10, 2023, as a result of liquidity challenges and an inability to meet its obligations as they became due, Tacora sought and obtained protection under the CCAA by way of the Initial Order granted by this Court (as amended and restated on October 30, 2023, by the ARIO).<sup>3</sup>

14. Among other things, the ARIO authorized Tacora to obtain and borrow up to the principal amount of \$75 million under the DIP Facility and approved the Post-Filing Credit Extensions under the DIP Agreement up to the principal amount of \$20 million.<sup>4</sup>

15. On March 18, 2024, the Court adjourned Tacora's motion seeking approval of the Investors' DIP proposal and granted an order, which, among other things, (a) amended the ARIO to authorize Tacora to obtain and borrow up to the principal amount of \$100 million under the existing DIP Facility and increased the Post-Filing Credit Extensions available under the DIP Agreement to the principal amount of \$50 million; and (b) extended the Stay Period until and including April 26, 2024.<sup>5</sup>

16. As result of the adjournment, Tacora and Cargill entered into the Interim DIP Agreement dated March 18, 2024, with Cargill pending an adjourned hearing in respect of Tacora's motion seeking approval of the Investors' DIP proposal.<sup>6</sup>

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<sup>2</sup> Broking Affidavit at [para 6](#).

<sup>3</sup> Broking Affidavit at [para 7](#).

<sup>4</sup> Broking Affidavit at [para 8](#).

<sup>5</sup> Broking Affidavit at [para 9](#).

<sup>6</sup> Broking Affidavit at [para 10](#).

**B. Amended and Restated Interim DIP Facility Term Sheet**

17. On April 9, 2024, on being advised by counsel to the Investors that the Investors were no longer in a position to proceed with the Successful Bid, Tacora advised this Court that it would no longer be seeking approval of the Successful Bid at the motions scheduled for April 10 – 12, 2024.<sup>7</sup>

18. On April 11, 2024, Tacora and the Investors executed a mutual termination terminating the Subscription Agreement dated January 29, 2024, between the Company and the Investors.<sup>8</sup>

19. The Interim DIP Agreement only provided Tacora with limited availability pending the expected sale hearing scheduled April 10 – 12, 2024. However, as a result of the termination of the Successful Bid, Tacora requires additional incremental liquidity to continue operating while it seeks to enter into and consummate another going-concern transaction. Tacora initially discussed entering into a further DIP agreement with Cargill following termination of the Subscription Agreement, but subsequently also received a competing DIP proposal (the “**AHG Proposal**”) from the Ad Hoc Group and Javelin.<sup>9</sup>

20. Following receipt of proposals from Cargill and the Ad Hoc Group and Javelin, Tacora engaged in multiple rounds of negotiations with both parties by which Tacora was able to improve the terms originally presented in each DIP proposal.<sup>10</sup>

21. Following these negotiations, the Company’s Board carefully considered the two DIP proposals. The Board considered various factors, including, among other things, the costs and expenses of each proposal, the Company’s cash flow forecast and anticipated timeline to enter and consummate another going-concern transaction, potential risks of each DIP proposal, potential prejudice to the Company’s stakeholders and the views of the Monitor.<sup>11</sup>

22. The Board exercised its business judgement and approved the Amended DIP Agreement, which it viewed as the best DIP facility available to the Company in the

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<sup>7</sup> Broking Affidavit at [para 11](#).

<sup>8</sup> Broking Affidavit at [para 12](#).

<sup>9</sup> Broking Affidavit at [para 13](#).

<sup>10</sup> Eighth Report at [para 30\(b\)](#).

<sup>11</sup> Broking Affidavit at [para 17](#).

circumstances,<sup>12</sup> and Tacora entered into the Amended DIP Agreement with Cargill on April 21, 2024.<sup>13</sup>

23. The Amended DIP Agreement provides for a senior secured, superpriority, debtor-in-possession, interim, non-revolving credit facility up to a maximum principal amount of \$125 million and Post-Filing Margin Advances in an amount not to exceed \$25 million in the aggregate, as such amounts may be adjusted from time to time, provided that the total availability shall not exceed \$150 million at any time.<sup>14</sup>

24. The Amended DIP Agreement is on substantially the same terms as the Interim DIP Agreement, which was approved by the Court on March 18, 2024, with certain amendments. These amendments are summarized in the Eighth Report<sup>15</sup> and are shown in the redline comparison of the Interim DIP Agreement and the Amended DIP Agreement, which is attached as Exhibit “C” to the Broking Affidavit.<sup>16</sup>

25. The economic terms of the Amended DIP Agreement and the AHG DIP Proposal were similar, but ultimately, the Company, with input and advice of its advisors and the Monitor, determined the Amended DIP Proposal provided the necessary stability for the Company’s operations while it pursues the next steps in these CCAA Proceedings to achieve a going-concern transaction. In particular, the Amended DIP Proposal provides the following benefits to the Company:

- (a) The Stockpile Agreement remains in place providing predictable and consistent cash flow to the Company and results in a smaller overall DIP; and
- (b) The Amended DIP Agreement provides the Company with the ability to hedge commodity price exposure if desirable.<sup>17</sup>

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<sup>12</sup> Eighth Report at [para 30\(c\)](#).

<sup>13</sup> Broking Affidavit at [para 14](#).

<sup>14</sup> Broking Affidavit at [para 15](#).

<sup>15</sup> Broking Affidavit at [para 23](#).

<sup>16</sup> Broking Affidavit at [Exhibit “C”](#).

<sup>17</sup> Broking Affidavit at [para 18](#).

### **C. Next Steps in the CCAA Proceedings**

26. In the immediate term, the Company intends to engage in discussions and negotiations with the Ad Hoc Group and Cargill in respect of options for a consensual restructuring and recapitalization transaction for the Company.<sup>18</sup>

27. Tacora faces two fundamental obstacles for raising new capital necessary to ramp up production at the Scully Mine – a prohibitive offtake agreement and overleveraged capital structure. The Ad Hoc Group and Cargill are in a position to negotiate a resolution to solve both issues and facilitate the Company’s emergence from these CCAA Proceedings. However, in the past, negotiations have been protracted and the parties have proven intransigent on key issues. The Company intends to restart such discussions and given the current status of the restructuring, the Company expects both the Ad Hoc Group and Cargill to act in good faith and demonstrate sufficient flexibility to achieve a consensual, going-concern outcome that addresses the issues with the Offtake Agreement and Tacora’s capital structure.<sup>19</sup>

28. The continuation of protracted litigation (or protracted negotiations) delaying the conclusion of these CCAA Proceedings puts the Company at risk of further iron ore price volatility, increases the level of debt on the Company, delays the investment of necessary equity to complete the ramp-up of production. The protraction of the CCAA Proceedings also allows Cargill to continue to profit significantly from its Offtake Agreement while value is eroded from Tacora and its other stakeholders.<sup>20</sup>

29. If Cargill and the Ad Hoc Group cannot achieve a consensual resolution in the near term, the Company expects to seek further relief from this Court to establish timelines related to a short-term process that allows the Company to achieve a transaction that will allow it to emerge from these CCAA Proceedings..<sup>21</sup>

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<sup>18</sup> Broking Affidavit at [para 19](#).

<sup>19</sup> Broking Affidavit at [para 19](#).

<sup>20</sup> Broking Affidavit at [para 20](#).

<sup>21</sup> Broking Affidavit at [para 21](#).

#### D. Stay Extension

30. The Stay Period currently expires on April 26, 2024, and Tacora is seeking an extension of the Stay Period until and including June 24, 2024.<sup>22</sup>

31. Since the granting of the last order extending the Stay Period, Tacora has been working in good faith and with due diligence to advance its restructuring within these CCAA Proceedings and has, among other things:

- (a) continued to operate in the ordinary course of business;
- (b) updated and revised its cash flow forecast (the “**Updated Cash Flow Forecast**”) to address the recent, significant decreases in iron ore prices;
- (c) filed materials and conducted examinations related to the sale approval motion;
- (d) solicited and negotiated additional DIP financing;
- (e) entered into the Amended DIP Agreement;
- (f) filed materials, conducted examinations and argued the motion related to the dispute between Tacora and MFC regarding certain pre-filing claims asserted against Tacora by MFC;
- (g) appeared before the Court to advise of recent developments in these CCAA Proceedings; and
- (h) responded to creditor and stakeholder enquiries regarding these CCAA Proceedings.<sup>23</sup>

#### E. Claims Procedure

32. Tacora, in consultation with its advisors and the Monitor, has developed a comprehensive procedure to solicit, identify, quantify and if appropriate, resolve the Claims

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<sup>22</sup> Broking Affidavit at [para 22](#).

<sup>23</sup> Broking Affidavit at [para 23](#).

against the Company, and its Directors and Officers in the event that it determines it appropriate to seek approval of a plan of compromise or arrangement.<sup>24</sup>

33. Key aspects of the Claims Procedure are summarized in the Broking Affidavit and the Eighth Report.<sup>25</sup> Among other things, the Claims Procedure provides for the following features:

- (a) **Notice.** Materials related to the Claims Procedure will be publicly available in a national newspaper, posted on the Monitor's website and delivered to Known Claimants within ten (10) Business Days following the issuance of the Claims Procedure Order, if approved;<sup>26</sup>
- (b) **Claims Bar Date.** The Claims Bar Date in respect of Pre-Filing Claims and D&O Claims, including Known Claims, is 5:00 p.m. (Eastern Time) on May 31, 2024;
- (c) **Restructuring Claims Bar Date.** The Restructuring Claims Bar Date to submit a Proof of Claim with respect to all Restructuring Claims is the later of:
  - (i) The Claims Bar Date; and
  - (ii) 5:00 p.m. (Eastern Time) on the day which is fourteen (14) days after the Monitor sends a Claims Package with respect to a Restructuring Claim in accordance with the Claims Procedure Order;
- (d) **Additional Persons with Claims.** if the Monitor becomes aware of additional Persons having a Claim, the Monitor will (i) send a Claims Package to such Person; (ii) direct such Person to the documents posted on the Monitor's Website; or (iii) respond to the request for information or documents, as the Monitor considers appropriate in the circumstances.<sup>27</sup> In addition, the Monitor will deliver a Claims Package to any Person who makes a request for such materials prior to the applicable Bar Date;<sup>28</sup>

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<sup>24</sup> Broking Affidavit at [para 35](#); Eighth Report at [para 33](#).

<sup>25</sup> Broking Affidavit at [para 36](#); Eighth Report at [para 36](#).

<sup>26</sup> Broking Affidavit at [para 36\(a\)](#); Eighth Report at [para 46\(a\)](#).

<sup>27</sup> Eighth Report at [para 46\(d\)](#).

<sup>28</sup> Eighth Report at [para 46\(c\)](#).

- (e) **Notice of Dispute.** Known Claimants who wish to dispute the amounts provided in the Statement of Known Claim will be afforded sufficient time to file a Notice of Dispute;<sup>29</sup>
- (f) **Review of Proofs of Claim.** The Monitor, in consultation with Tacora, shall review all Proofs of Claim and may (i) request additional information from a Claimant; (ii) request that a Claimant file a revised Proof of Claim; (iii) attempt to resolve and settle any issue arising in a Proof of Claim or in respect of a Claim for voting and/or distribution purposes; (iv) accept, revise or disallow (each in whole or in part) the amount and/or Status of any Claim set out therein for voting and/or distribution purposes;
- (g) **Notice of Dispute of Revision or Disallowance.** An Unknown Claimant who intends to dispute a Notice of Revision or Disallowance, shall deliver a Notice of Dispute of Revision or Disallowance no later than fourteen (14) days after such Claimant is deemed to have received the Notice of Revision or Disallowance; and
- (h) **Claims Officer.** The Applicant may, in consultation with the Monitor, apply to the Court for an Order appointing a Claims Officer to resolve disputed claims on such terms and in accordance with such process as may be ordered by the Court.<sup>30</sup>

## PART II - ISSUES

34. The issues to be determined on this motion are whether this Court should grant (a) an order (i) extending the Stay Period until and including June 24, 2024; and (ii) approving the Amended DIP Agreement; and (b) the Claims Procedure Order.

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<sup>29</sup> Broking Affidavit at [para 36\(d\)](#).

<sup>30</sup> Eighth Report at [para 58](#).

## PART III - LAW AND ANALYSIS

### A. The Stay Extension and Amended DIP Approval Order Should be Granted

#### 1. The Court Should Approve the Amended DIP Agreement

##### (a) *Framework and considerations for approval of DIP financing*

35. DIP financing is specifically authorized under section 11.2 of the CCAA. Subsection 11.2(4) sets out the following factors that the Court may consider in determining whether to make an order approving DIP financing:

- (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.<sup>31</sup>

36. Courts have recognized that while the factors set out in subsection 11.2(4) of the CCAA are typically addressed in the context of whether a particular interim financing proposal will be approved, these factors are "equally applicable in deciding who shall be the DIP lender and on what terms the DIP financing is to be provided."<sup>32</sup> In selecting a DIP proposal, the Court must also make an "independent determination" having regard to the factors in subsection 11.2(4).<sup>33</sup>

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<sup>31</sup> CCAA, [s. 11.2\(4\)](#).

<sup>32</sup> *Great Basin Gold Ltd (Re)*, [2012 BCSC 1459](#) ("*Great Basin*") at [para. 14](#).

<sup>33</sup> *Crystallex (Re)*, [2012 ONCA 404](#) ("*Crystallex*") at [para 85](#).

The Company's selection of the DIP facility and the business judgement of the Board is not determinative but is a factor that should be weighed by the Court.<sup>34</sup>

**(b) *The Amended DIP Agreement best serves the interests of Tacora and its stakeholders as a whole***

37. In *Great Basin*, the Court considered pricing and fees, milestones and other covenants of the DIP proposals in deciding which DIP proposal should be approved. The Court acknowledged that "the financial terms of each proposal, [and] factors such as timing, prejudice, risk and uncertainty play a central role in assessing each proposal."<sup>35</sup>

38. In choosing between the two DIP proposals, the Company's Board, in consultation with its advisors and the Monitor, carefully reviewed the DIP proposals to determine which DIP proposal would best serve the interests of the Company's stakeholders at this time by providing the most stability and certainty while the Company attempts to advance its restructuring. Among other things, the Company considered the following factors:

- (a) the costs and expenses of the DIP proposals, including the interest rate and fees;
- (b) the Company's cash flow forecast and the anticipated timeline to enter into and consummate another going-concern transaction;
- (c) potential risks of each DIP proposal, including the cost and delay resulting from litigation;
- (d) potential prejudice to the Company's stakeholders, including the need to restructure the Company and emerge from these CCAA Proceedings as soon as possible; and
- (e) the views of the Monitor.<sup>36</sup>

39. Given each of the DIP proposals provides sufficient funding for Tacora during the next stage of the CCAA Proceedings, in selecting a DIP proposal, the Board further considered

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<sup>34</sup> *Crystalex*, *supra* at [para 84](#).

<sup>35</sup> *Great Basin*, *supra* at [paras 10, 14](#).

<sup>36</sup> Broking Affidavit at [para 17](#).

whether any creditor would be materially prejudiced and provide stability to Tacora during the next stage of the CCAA Proceedings.<sup>37</sup>

40. While the economic terms of the Amended DIP Agreement and the AHG Proposal are substantially similar, the Amended DIP Agreement contains certain benefits to the Company. The Amended DIP Agreement will also provide the necessary stability for the Company's operations while it pursues the next steps in these CCAA Proceedings to achieve a going-concern transaction.<sup>38</sup>

41. The Monitor recommends that the Court grant Tacora's request for approval of the Amended DIP Agreement.<sup>39</sup>

42. The Monitor has reviewed and compared the exit fees in the Amended DIP Agreement to similar fees of other senior-secured debtor-in-possession facilities in comparable restructuring proceedings in Canada. The Monitor is of the view that the exit fees are reasonable based on the circumstances of these CCAA Proceedings.<sup>40</sup>

43. The Monitor has also noted that (a) reimbursement of fees and expenses of a DIP Lender incurred during a CCAA proceeding is customary and a reasonable cost of the DIP financing. Therefore, the Monitor is of the view that the reimbursement of the Cargill out-of-pocket expenses during the CCAA Proceeding is reasonable; and (b) reimbursement of certain fees of the Ad Hoc Group is intended to facilitate their participation in the next stage of this CCAA proceeding with the hope of moving forward in a productive manner.<sup>41</sup>

44. For these reasons, the Amended DIP Agreement will best serve the interests of the Company's stakeholders as a whole by enhancing the prospects of a successful restructuring and it should therefore be approved by this Court.

## **2. The Court Should Grant the Stay Extension**

45. Tacora is seeking an extension of the Stay Period from April 26, 2024, to and including June 24, 2024. The extension of the Stay Period is necessary and appropriate in the

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<sup>37</sup> Eighth Report at [para 28](#).

<sup>38</sup> Broking Affidavit at [para 18](#).

<sup>39</sup> Eighth Report at [para 32](#).

<sup>40</sup> Eighth Report at [para 25](#).

<sup>41</sup> Eighth Report at [para 26](#).

circumstances to provide Tacora with sufficient time to secure another going-concern transaction.<sup>42</sup>

46. The Court may grant an extension of the Stay Period “for any period that the court considers necessary” where: (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and (b) the applicant satisfies the court that it has acted, and is acting, in good faith and with due diligence.<sup>43</sup>

47. The extension of the Stay Period until and including June 24, 2024, is necessary and appropriate in the circumstances, as:

- (a) the proposed extension of the Stay Period is necessary for Tacora, together with its advisors and the Monitor, to continue to review and advance its potential available alternatives and pursue a value-maximizing transaction for the benefit of the Company and its stakeholders generally;<sup>44</sup>
- (b) Tacora has acted, and continues to act, in good faith and with due diligence to advance its restructuring within these CCAA Proceedings;<sup>45</sup>
- (c) Tacora’s creditors will not be materially prejudiced by the proposed extension of the Stay Period;<sup>46</sup>
- (d) the Updated Cash Flow Forecast reflects that, subject to the assumptions related thereto, Tacora is forecast to have sufficient liquidity to fund its obligations and the costs of the CCAA Proceedings through the end of the proposed extension of the Stay Period;<sup>47</sup> and
- (e) the Monitor supports the requested extension of the Stay Period.<sup>48</sup>

48. Accordingly, Tacora believes the requested extension of the Stay Period until and including June 24, 2024, is necessary and appropriate in the circumstances.

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<sup>42</sup> Broking Affidavit at [para 22](#).

<sup>43</sup> CCAA, [s. 11.02\(2\)-\(3\)](#).

<sup>44</sup> Broking Affidavit at [para 25](#); Eighth Report at [para 71\(a\)](#).

<sup>45</sup> Broking Affidavit at [para 23](#); Eighth Report at [para 71\(d\)](#).

<sup>46</sup> Broking Affidavit at [para 26](#); Eighth Report at [para 71\(c\)](#).

<sup>47</sup> Eighth Report at [para 70](#).

<sup>48</sup> Eighth Report at [para 71](#).

## B. Claims Procedure Order should be Granted<sup>49</sup>

### 1. Framework and Considerations for Approval of Claims Processes

49. Section 11 of the CCAA gives the Court authority to make any order it considers appropriate in the circumstances, which includes the ability to approve a process to solicit and determine claims against a debtor company and/or its directors and officers.<sup>50</sup>

50. The Court's routine practice of approving claims processes, including those providing for a "negative claims process" (as is the case here),<sup>51</sup> in CCAA proceedings is "well accepted".<sup>52</sup> Claims processes and claims bar dates allow a debtor company to "determine the universe of claims" against it and/or its directors and officers,<sup>53</sup> even where there is no plan contemplated.<sup>54</sup>

51. Claims processes should be "flexible and expeditious"<sup>55</sup> and further the remedial objectives of the CCAA. In addition, claims procedure orders should be carefully drafted to ensure that the claims process for determining claims is both fair and reasonable to all affected stakeholders.<sup>56</sup>

52. Claims processes typically include the following features:

- (a) a method to communicate to potential creditors that there is a process by which they must prove their claims and the date by which they must do so;
- (b) an opportunity for the debtor company or its representative to review and, if appropriate, contest claims made by creditors;
- (c) an adjudication mechanism for claims that cannot be agreed upon or settled through negotiation;

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<sup>49</sup> Capitalized terms used in this section and not otherwise defined have the meanings given to them in the draft [Claims Procedure Order](#), Motion Record of the Applicant dated April 21, 2024 at Tab 4.

<sup>50</sup> CCAA, [s. 11](#).

<sup>51</sup> See, for example, *Toys "R" US*, *supra* at [paras 11-14](#); **see also** *Re Just Energy Entities*, (September 15, 2021), Ont SCJ (Commercial List), Court File No. CV-21-00658423-00CL ([Claims Procedure Order](#)).

<sup>52</sup> *Re ScoZinc Ltd*, [2009 NSSC 136](#) ("**ScoZinc**") at [para 25](#); **see also** *Re Toys "R" Us (Canada) Ltd*, [2018 ONSC 609](#) ("**Toys 'R' US**") at [para 8](#); **see also** *Re US Steel Canada Inc*, [2017 ONSC 1967](#) at [paras 5-6](#).

<sup>53</sup> *Timminco Limited (Re)*, [2014 ONSC 3393](#) ("**Timminco**") at [para 43](#).

<sup>54</sup> See, for example, *Re Aralez Pharmaceuticals*, (October 10, 2018), Ont SCJ (Commercial List), Court File No. CV-18-603054-00CL ([Claims Procedure Order](#)); **see also** *Re Timminco*, (June 15, 2012), Ont SCJ (Commercial List), Court File No. CV-12-9539-00CL ([Claims Procedure Order](#)).

<sup>55</sup> *ScoZinc*, *supra* at [para 23](#).

<sup>56</sup> *Laurentian University of Sudbury*, [2021 ONSC 3885](#) at [para 32](#).

- (d) a “claims bar date” by which claims must be submitted; and
- (e) the barring of late claims to ensure that the Court-appointed monitor and the debtor company can make accurate and informed determinations for voting and distribution purposes.<sup>57</sup>

## 2. The Claims Procedure is Fair, Reasonable and Appropriate

53. It is appropriate for the Court to exercise its discretion to approve the Claims Procedure and grant the proposed Claims Procedure Order given that:

- (a) the Claims Procedure is intended to provide a comprehensive, fair and expeditious means of identifying, quantifying and resolving Claims against the Company and its Directors and Officers;<sup>58</sup>
- (b) the Claims Procedure was developed in consultation with the Company’s advisors and the Monitor,<sup>59</sup> and the Monitor supports approval of the Claims Procedure;<sup>60</sup>
- (c) the “negative claims process” was designed to streamline the Claims Procedure for Claimants and the Applicant, and provides for appropriate flexibility;<sup>61</sup>
- (d) the Claims Procedure will assist the Company with the development of its restructuring strategy and help to facilitate an orderly exit from the CCAA Proceedings;<sup>62</sup>
- (e) the proposed Bar Dates are fair and reasonable in the circumstances, were selected by the Company in consultation with the Monitor, and provide sufficient time for potential Claimants to submit and/or dispute their Claims;<sup>63</sup>
- (f) the direct notification and publication of notice to potential Claimants will make the Claims Procedure widely distributed and publicized;<sup>64</sup> and

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<sup>57</sup> *Toys “R” Us*, supra at [para 8](#); *Timminco*, supra at [para 43](#); *ScoZinc*, supra at [para 23](#).

<sup>58</sup> Eighth Report at [para 59](#).

<sup>59</sup> Eighth Report at [paras 59-60](#).

<sup>60</sup> Eighth Report at [paras 59-60](#).

<sup>61</sup> Eighth Report at [para 40](#).

<sup>62</sup> Eighth Report at [para 59](#).

<sup>63</sup> Eighth Report at [para 59](#).

- (g) in the event that disputed claims cannot be resolved, the Applicant may, in consultation with the Monitor, apply to the Court for an Order appointing a claims officer to resolve such Claims on such terms and in accordance with such process as may be ordered by the Court.<sup>65</sup>

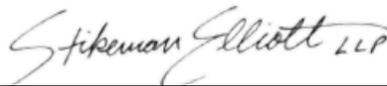
54. The proposed Claims Procedure Order satisfies the overarching purpose of claims processes generally: “to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost-efficient manner.”<sup>66</sup>

55. For these reasons, the proposed Claims Procedure Order is fair, reasonable and appropriate in the circumstances and should be approved by this Court.

#### **PART IV - ORDER SOUGHT**

56. Tacora respectfully requests that this Court grant (a) an order (i) extending the Stay Period until and including June 24, 2024; and (ii) approving the Amended DIP Agreement; and (b) the Claims Procedure Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 22<sup>nd</sup> day of April, 2024.



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**STIKEMAN ELLIOTT LLP**  
Counsel for the Applicant

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<sup>64</sup> Eighth Report at [para 59](#).

<sup>65</sup> Eighth Report at [para 58](#).

<sup>66</sup> *Canwest Global Communications Corp*, [2011 ONSC 2215](#) at [para 40](#).

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Canwest Global Communications Corp*, [2011 ONSC 2215](#).
2. *Crystallex (Re)*, [2012 ONCA 404](#).
3. *Great Basin Gold Ltd (Re)*, [2012 BCSC 1459](#).
4. *Laurentian University of Sudbury*, [2021 ONSC 3885](#).
5. *Re Aralez Pharmaceuticals*, (October 10, 2018), Ont SCJ (Commercial List), Court File No. CV-18-603054-00CL ([Claims Procedure Order](#)).
6. *Re Just Energy Entities*, (September 15, 2021), Ont SCJ (Commercial List), Court File No. CV-21-00658423-00CL ([Claims Procedure Order](#)).
7. *Re ScoZinc Ltd*, [2009 NSSC 136](#).
8. *Re Timminco*, (June 15, 2012), Ont SCJ (Commercial List), Court File No. CV-12-9539-00CL ([Claims Procedure Order](#)).
9. *Re Toys “R” Us (Canada) Ltd*, [2018 ONSC 609](#).
10. *Re US Steel Canada Inc*, [2017 ONSC 1967](#).
11. *Timminco Limited (Re)*, [2014 ONSC 3393](#).

**SCHEDULE “B”  
RELEVANT STATUTES**

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

**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.

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

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

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

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

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

**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.

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.

(Applicant)

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANT  
(Re: Stay Extension, DIP Amendment and  
Claims Procedure Order)**

**STIKEMAN ELLIOTT LLP**  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

**Ashley Taylor (LSO #39932E)**  
Tel: 416-869-5236  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Lee Nicholson (LSO #66412I)**  
Tel: 416-869-5604  
Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

**Natasha Rambaran (LSO #80200N)**  
Tel: 416-869-5504  
Email: [nrambaran@stikeman.com](mailto:nrambaran@stikeman.com)

**Philip Yang (LSO #82084O)**  
Tel: 416-869-5593  
Email: [pyang@stikeman.com](mailto:pyang@stikeman.com)

Counsel for the Applicant