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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

(Applicant)

FACTUM OF THE APPLICANT
(Re: Approval and Reverse Vesting Order and Stay Extension, DIP, and Fees Approval Order)
(Returnable July 26, 2024)

July 24, 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

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

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

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

Counsel for the Applicant

TO: SERVICE LIST

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PART I - OVERVIEW[1]

1. On June 5, 2024, the Court approved and ratified the Sale Process, which followed extensive prior strategic processes run by the Company prior to and during the CCAA Proceedings.

2. The Sale Process culminated in a single Bid from Millstreet Capital Management LLC, as investment manager on behalf of multiple noteholders ("**Millstreet**"), OSP, LLC, on behalf of certain managed funds ("**OSP**"), and Cargill, Incorporated (collectively, the "**Investors**"). Following receipt of the Bid and negotiation of a definitive Subscription Agreement, the Bid from the Investors was declared the Successful Bid under the Sale Process.

3. Execution of the Subscription Agreement represents the culmination of extensive solicitation efforts on the part of Tacora and Greenhill, which commenced in March 2023 and continued after the commencement of the CCAA Proceedings in accordance with the Court-ordered Solicitation Process and subsequent Sale Process. The Subscription Agreement and the Transactions contemplated thereunder is the best and only transaction available to Tacora.

4. The Subscription Agreement contemplates, among other things, an equity injection of up to US$250 million by the Investors, assumption of substantially all pre-filing and post-filing trade amounts, the assignment of key contractual arrangements, full repayment of the DIP facility, and continued employment for Tacora's existing employees. It also contemplates a new Cargill offtake agreement that will allow Tacora to generate higher net realized revenue per tonne.

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[1] Capitalized terms used and not defined herein have the meanings ascribed to them in the Affidavit of Heng Vuong sworn July 21, 2024 (the "**Vuong Affidavit**") and the Affidavit of Michael Nessim sworn July 21, 2024 (the "**Nessim Affidavit**").

5. As a result of the Transactions contemplated by the Subscription Agreement, Tacora will continue operating as a going concern as the second largest employer in the Labrador West region, preserving employment for its approximately 463 employees and providing the opportunity for ongoing business relationships for its suppliers of goods and services. The Transactions will also allow Tacora to significantly deleverage its balance sheet and provide new capital to execute on its long-term plan to upgrade and modernize the Scully Mine. The Subscription Agreement contemplates a target closing date of August 30, 2024.

6. On this motion, Tacora seeks this Court's approval of:

(a) the Approval and Reverse Vesting Order, among other things:

(i) approving the Subscription Agreement entered into between Tacora and the Investors dated July 21, 2024;

(ii) approving the Transactions contemplated in the Subscription Agreement, including, *inter alia*, execution of a new offtake agreement, new iron ore onshore purchase agreement, and new margin facility between the Company and Cargill to replace the Offtake Agreement, the Stockpile Agreement, and the Margin Advances available to the Company under the APF, and authorizing and directing Tacora to take such additional steps and execute such additional documents as are necessary or desirable for completion of the Transactions; and

(iii) granting Releases in favour of the Released Parties from the Released Claims;

(b) the Stay Extension, DIP, and Fees Approval Order, among other things:

(i) extending the Stay Period to and including October 7, 2024;

(ii) approving the Third Amended and Restated DIP Facility Term Sheet dated July 12, 2024, between Tacora and Cargill, Incorporated (the "**Third A&R DIP Agreement**");

(iii) approving the Monitor's Reports and the activities of the Monitor referred to therein; and

(iv) approving the fees of the Monitor and its counsel, Cassels Brock & Blackwell LLP.

PART II - FACTS[2]

A. Background

7. Tacora operates the Scully Mine which produces high-grade and quality iron ore products. The Company is the second largest employer in the Labrador West region, employing approximately 463 employees, and is an important part of the local and provincial economy of Newfoundland and Labrador.[3]

B. The Pre-Filing Strategic Process[4]

8. In January 2023, the Company engaged Greenhill to formally commence the Pre-Filing Strategic Process to explore, review, and evaluate a broad range of alternatives for the Company, including sale opportunities or additional investments into Tacora.[5]

9. In July 2023, Cargill and the Ad Hoc Group engaged in extensive discussions regarding a possible consensual restructuring and recapitalization transaction for the Company. Ultimately, the parties were unable to reach an agreement to avoid the need for Tacora to file for protection under the CCAA. As a result, on October 10, 2023, Tacora commenced the CCAA Proceedings and the Court granted the Initial Order.[6]

C. The Solicitation Process[7]

10. On October 30, 2023, this Court granted the Solicitation Order, which, among other things: (a) approved the Solicitation Process to solicit offers or proposals for a sale, restructuring, or recapitalization transaction in respect of Tacora's assets and business operations; (b) authorized Tacora to market and solicit offers in respect of the Offtake

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[2] The facts with respect to this motion are more fully set out in the Vuong Affidavit and the Nessim Affidavit.
[3] Vuong Affidavit at para. 7.
[4] The Pre-Filing Strategic Process is described more fully in the Nessim Affidavit at paras. 4-7.
[5] Vuong Affidavit at para. 13; Nessim Affidavit at para. 4.
[6] Vuong Affidavit at para. 14; Nessim Affidavit at para. 7.
[7] The Solicitation Process is described more fully in the Nessim Affidavit at paras. 8-13.

Opportunity; and (c) authorized and directed Tacora, Greenhill and the Monitor to immediately commence the Solicitation Process.[8]

11. On January 19, 2024, the Phase 2 Bid Deadline, Tacora received three Phase 2 Bids: (a) a Bid from a consortium consisting of the Ad Hoc Group, RCF and Javelin (collectively, the "**AHG Consortium**") for all the shares of Tacora pursuant to a reverse vesting order ("**RVO**"); (b) a Bid from Cargill for all the assets of Tacora; and (c) a Bid from Bidder #3 for all the shares of Tacora pursuant to an RVO.[9]

12. Ultimately, on January 29, 2024, the Board exercised its good faith business judgement and unanimously determined that the Phase 2 Qualified Bid submitted by the AHG Consortium should be declared the Successful Bid under the Solicitation Process (the "**First Successful Bid**").[10]

13. As a result of a drop in iron ore prices, Tacora was unable to fulfill a net debt condition in the First Successful Bid under the Solicitation Process. On April 9, 2024, the AHG Consortium advised Tacora that they were no longer able to proceed with the First Successful Bid. On April 11, 2024, Tacora and the AHG Consortium executed a mutual termination of the First Successful Bid.[11]

D. The Sale Process[12]

14. Following termination of the First Successful Bid, Tacora sought and obtained the Sale Process Order on June 5, 2024. Among other things, the Sale Process Order authorized and directed Tacora to undertake the Sale Process to identify the highest and/or best offer for the sale of: (a) all the shares of Tacora to be implemented pursuant to a subscription agreement; or (b) all or substantially all Tacora's Property and Business pursuant to an asset purchase agreement.[13]

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[8] Vuong Affidavit at para. 15; Nessim Affidavit at para. 8.
[9] Vuong Affidavit at para. 17; Nessim Affidavit at para. 11.
[10] Vuong Affidavit at para. 17; Nessim Affidavit at para. 13.
[11] Vuong Affidavit at para. 18; Nessim Affidavit at para. 13.
[12] The Sale Process is described more fully in the Nessim Affidavit at paras. 14-22.
[13] Vuong Affidavit at para. 17.

15. The Sale Process commenced in the latter half of May 2024, prior to Court approval and ratification.[14]

16. Thirteen Potential Bidders were contacted by Greenhill following the commencement of the Sale Process. Greenhill also had knowledge of certain other potentially interested parties who were working with Bidders in the Sale Process and therefore did not contact these parties individually.[15]

17. On July 12, 2024, being the Bid Deadline for definitive offers, Tacora received one Bid, the Investors' Bid for all the shares of Tacora to be implemented pursuant to a Subscription Agreement and an RVO. The Bid contained, among other things, a support agreement executed by the Investors, Brigade Capital Management, LP ("**Brigade**") and MSD, LP ("**MSD**", and together with Brigade, the "**Other RSA Parties**"), pursuant to which the Investors and the Other RSA Parties agreed to support a transaction containing substantially the same terms as those included in the Investors' Bid. The Investors and the Other RSA Parties, collectively, hold 100% of the DIP Obligations, 55.3% of the Senior Priority Notes and 73.4% of the Senior Notes.[16]

18. Following the Bid Deadline, Greenhill and Stikeman, in consultation with the Monitor and its counsel and with assistance from management, reviewed and assessed the submitted Subscription Agreement. Stikeman, Greenhill, the Monitor and its counsel participated in several follow-up calls with the Investors to provide feedback on certain terms of their Bid, ask clarifying questions, and negotiate certain terms of the Subscription Agreement.[17]

19. On July 18, 2024, following these negotiations, the Board, with input and advice from Greenhill and Stikeman, and in consultation with the Monitor and its counsel, assessed and carefully considered the revised Subscription Agreement submitted by the Investors. Following this assessment and considering the factors outlined in the Sale Process to evaluate Bids, the Board exercised its good faith business judgement and determined that the revised Subscription Agreement submitted by the Investors should be declared the Successful Bid under the Sale

[14] Nessim Affidavit at para. 17.
[15] Nessim Affidavit at para. 19.
[16] Vuong Affidavit at para. 22; Nessim Affidavit at para. 21.
[17] Vuong Affidavit at para. 23; Nessim Affidavit at para. 22.

Process.[18] On July 21, 2024, the revised Subscription Agreement was entered into between Tacora and the Investors.[19]

20. The Subscription Agreement represents a consensual outcome between Cargill and certain members of the Ad Hoc Group and is the best and only actionable Bid received by the Company through the Sale Process.[20]

21. The key terms of the Subscription Agreement are summarized below:[21]

Key Terms	Subscription Agreement
Investors	Millstreet Capital Management LLC, as investment manager on behalf of multiple noteholders, OSP, LLC (on behalf of certain managed funds), and Cargill, Incorporated.
Other New Equity Investors	Any Person that enters into an Other New Equity Subscription Agreement acceptable to the Investors.
Purchased Assets	The Subscribed Shares and the New Warrants, which represent all the issued outstanding equity interests in the Company on Closing. All contracts, other than Excluded Contracts will remain with the Company. Excluded Liabilities include, without limitation, all Claims of or against the Company immediately prior to Closing, other than Assumed Liabilities, all pre-filing Claims, any and all Claims relating to any change of control provision that may arise in connection with the change of control contemplated by the Transactions, all Claims relating to or under the Excluded Contracts and Excluded Assets, Liabilities for Employees whose employment is terminated on or before Closing, and Liabilities to or in respect of the Company's Affiliates.
Purchase Price	The subscription price for the Subscribed Shares consists of (1) the New Equity Offering Initial Cash Consideration and New Equity Offering Retained Cash Consideration; and (2) Assumption of Assumed Liabilities. (1) New Equity Offering Initial Cash Consideration and New Equity Offering Retained Cash Consideration – cash consideration for the Subscribed Shares includes $175 million. (2) Assumption of Assumed Liabilities – discussed in greater detail below.

[18] Vuong Affidavit at para. 24; Nessim Affidavit at para. 23.
[19] Vuong Affidavit at para. 26.
[20] Nessim Affidavit at para. 24.
[21] Vuong Affidavit at para. 28.

	The Company will also work with the Investors to complete the New Secured Priority Notes Offering for New Secured Priority Notes in the maximum aggregate principal amount of $100 million, and up to an additional $25 million to be issued, if applicable, upon conversion of the Unsecured Takeback Notes.
Additional Equity Contribution	Following Closing, the Investors shall contribute additional equity of up to $250 million in aggregate (i.e. $250 million less the New Equity Offering Initial Cash Consideration and the New Equity Offering Retained Cash Consideration contributed on Closing) for additional Subscribed Shares.
Deposit	$16,000,000.
Transaction Structure	Reverse vesting structure, as well as alternative structures that may be considered.
Regulatory Approvals	The Company and the Investors are to work together to determine whether any material Permits and Licenses required from any Governmental Entity or under any Applicable Law relating to the business and operations of the Company and the Mining Rights are required to be obtained to permit the Company and the Investors to complete the Transactions. In the event any such determination is made, the Company and the Investors will use commercially reasonably efforts to apply for and obtain such Permits and Licenses.
Outside Date for Closing	October 10, 2024.
Employees	All employees will continue to be employed by the Company on the same terms and conditions as they currently enjoy, except in respect of change of control payments for senior management, which amounts shall be waived or are Excluded Liabilities. The Investors acknowledge and agree that the Company shall remain subject to any collective agreement with the Company and shall inherit all obligations and liabilities associated with any collective agreement which applies to the Employees.
Assumed Liabilities	Assumed Liabilities include: • Substantially all Pre-Filing Trade Amounts and royalty obligations of the Company on terms and amounts to be agreed by the Company and the Investors; • Post-Filing Trade Amounts on terms and amounts to be agreed by the Company and the Investors; • Liabilities under Retained Contracts on terms and amounts to be agreed by the Company, the Investors, and the counterparty of the Retained Contracts; • Liabilities relating to the Retained Assets arising from and after

	the Closing Time; • Liabilities of the Company under the Retained Contracts and Permits and Licenses arising from and after the Closing Time; and • Grievances of the Union under the collective agreement.
Administrative Expense Reserve	On the Closing Date, the Monitor shall be paid an Administrative Expense Reserve in an amount to be agreed by the Investors, the Company and the Monitor on or before July 26, 2024 (or such other date agreed to by the Investors, the Company and the Monitor) for the benefit of Persons entitled to be paid the Administrative Expense Costs. Any unused portion of the Administrative Expense Reserve after payment or reservation for all Administrative Expense Costs, as determined by the Monitor, shall be transferred by the Monitor to the Company. The Administrative Expense Costs include: • The reasonable and documented fees and costs of the Monitor and its professional advisors and the professional advisors of ResidualCo, in each case for services performed prior to and after the Closing Date, relating directly or indirectly to the CCAA Proceedings or this Agreement, including without limitation, costs required to wind down and/or dissolve and/or bankrupt ResidualCo and costs and expenses required to administer the Excluded Assets, Excluded Contracts, Excluded Liabilities and ResidualCo; and • Amounts owing in respect of obligations secured by the CCAA Charges that rank ahead of the DIP Charge and are not paid or assumed on Closing.
Key Condition to Closing	Court approval of the Approval and Reverse Vesting Order which becomes a Final Order.
Cost Reimbursement	In consideration for the Investors having expended considerable time and expense in connection with the Subscription Agreement and the negotiation thereof, the Company shall reimburse the Investors documented out-of-pocket third party expenses incurred by the Investors up to a maximum aggregate amount of CAD$3,000,000 (the "**Cost Reimbursement Amount**") on the earlier of the termination of the Subscription Agreement and the Closing, unless waived by the Investors.

22. Execution of the Subscription Agreement represents the culmination of extensive solicitation efforts on the part of Tacora and Greenhill, which commenced in March 2023 and

continued after the commencement of the CCAA Proceedings in accordance with the Solicitation Process and the Sale Process.[22] Together, the three processes resulted in a broad and robust canvassing of parties potentially interested in Tacora's business and assets.[23]

23. The timelines under the Solicitation Process and the Sale Process were sufficient to allow all potentially interested parties to properly participate. The Monitor believes the timelines and terms of the Solicitation Process and the Sale Process were well known to all participants and were reasonable in the circumstances.[24]

24. The Transactions contemplate full repayment of the DIP Facility and partial repayment of the APF while the Senior Notes, the Senior Priority Notes, and its associated obligations will be transferred and "vested out" to ResidualCo. The secured claim in favour of the holders of the Senior Notes and Senior Priority Notes from this transfer and "vesting out" will not be satisfied. The "vesting out" is necessary to deleverage Tacora's capital structure which contributed to its inability to raise the necessary financing prior to the CCAA Proceedings.[25]

25. There are no alternative transactions available that would provide repayment to the Senior Notes or Senior Priority Notes. Due to the length of the CCAA Proceedings, the DIP Facility has grown to $125 million and could increase by up to $40 million prior to closing of the Transactions contemplated by the Subscription Agreement. Based on the results of the Sale Process and feedback from participants, the Company does not believe there are any parties that would pay the DIP Facility in full and provide recovery to the Senior Priority Notes or Senior Notes.[26]

E. Releases

26. Tacora is seeking the issuance of the Releases in favour of the following Released Parties: (a) Tacora, ResidualCo, and their respective present and former directors, officers, employees, legal counsel and advisors; (b) the Monitor, its legal counsel, and their respective present and former directors, officers, partners, employees and advisors; (c) the Notes Trustee and its respective present and former directors, officers, partners, employees and advisors; (d) the Investors and their respective present and former directors, officers, employees, legal

[22] Vuong Affidavit at para. 29.
[23] Vuong Affidavit at para. 30; Eleventh Report of the Monitor dated July 22, 2024 ("**Eleventh Report**") at para. 51(a).
[24] Vuong Affidavit at para. 30.
[25] Vuong Affidavit at para. 31.
[26] Vuong Affidavit at para. 31.

counsel and advisors; and (e) the Other New Equity Investors and their respective present and former directors, officers, employees, legal counsel and advisors.[27]

27. The Releases contemplate that the Released Parties will be released from the Released Claims, which include any and all present and future claims of any nature or kind whatsoever based in whole or in part on any act or omission, transaction or dealing or other occurrence existing or taking place on or prior to delivery of the Monitor's Certificate in connection with the Approval and Reverse Vesting Order, the CCAA Proceedings, the Subscription Agreement, the closing documents and/or the consummation of the Transactions.[28]

28. Released Claims under the proposed Approval and Reverse Vesting Order do not include (a) any claim against ResidualCo that is in respect of the Purchasers' Senior Secured Notes and/or Senior Priority Notes; (b) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA; or (c) any claim resulting from fraud or wilful misconduct.[29]

F. Stay Extension

29. The Stay Period currently expires on July 29, 2024. Tacora is seeking an extension of the Stay Period until and including October 7, 2024.[30]

30. 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) prepared an Updated Cash Flow Forecast;

(c) conducted and finalized the Sale Process by accepting the Investors' Bid as the Successful Bid;

(d) finalized definitive transaction documents for the Successful Bid with the Investors;

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[27] Vuong Affidavit at para. 43; Eleventh Report at para. 47.
[28] Eleventh Report at para. 47.
[29] Eleventh Report at para. 47.
[30] Vuong Affidavit at para. 59.

(e) solicited and negotiated additional DIP financing;

(f) entered into the Third A&R DIP Agreement; and

(g) responded to creditor and stakeholder enquiries regarding the CCAA Proceedings.[31]

G. Third A&R DIP Facility

31. The cash flow forecast appended to the Ninth Report shows that, subject to Tacora drawing the remaining available funds under the DIP Facility, Tacora is expected to have sufficient liquidity to maintain its operations up to the week ending July 28, 2024.[32]

32. On June 20, 2024, Tacora submitted a DIP advance request for the remaining maximum amount of $10 million available under the DIP Facility, and Tacora is expected to draw an additional $5 million on or around July 30, 2024, from availability converted from the Post-Filing Credit Extensions.[33]

33. On July 12, 2024, in connection with the Investor's Bid, Tacora received a DIP proposal contemplating an incremental $30 million of additional DIP financing, to be funded by Millstreet and OSP on an equal basis. As Cargill is the existing DIP Lender and Millstreet and OSP are the other Investors under the Subscription Agreement, Tacora did not attempt to solicit DIP proposals from other third parties. Tacora entered into the Third A&R DIP Agreement on July 12, 2024.[34]

34. The Third A&R DIP Agreement provides for a senior secured, super priority, debtor-in-possession, non-revolving credit facility up to a maximum principal amount of $160 million and Post-Filing Margin Advances not to exceed $20 million in the aggregate, as such amounts may be adjusted from time to time, provided that the total availability shall not exceed $180 million at any time.[35]

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[31] Vuong Affidavit at para. 61.
[32] Vuong Affidavit at para. 52.
[33] Vuong Affidavit at para. 53.
[34] Vuong Affidavit at para. 54.
[35] Vuong Affidavit at para. 55.

35. The terms of the Third A&R DIP Agreement are substantially similar to the Amended DIP Agreement, which was approved by the Court on April 26, 2024. The material differences between the two are:

(a) an increase of $35 million to the maximum principal amount which may be drawn under the DIP Facility from $125 million to $160 million;

(b) a decrease of $5 million to the maximum principal amount of Post-Filing Margin Advances from $25 million to $20 million;

(c) an incremental exit fee, in cash, in the amount of $600,000 to be payable in connection with the increase to the maximum amount principal amount which may be drawn under the DIP Facility; and

(d) the Third A&R DIP Agreement requires the Applicant to reimburse Cargill, OSP, Millstreet, and any other party to the Support Agreement, for additional reasonable and documented out-of-pocket legal and financial advisory fees and expenses incurred in connection with the CCAA Proceeding from and after June 24, 2024.[36]

PART II - ISSUES

36. The issues on this motion are whether this Court should grant (a) the Approval and Reverse Vesting Order; and (b) the Stay Extension, DIP, and Fees Approval Order.

PART III - LAW AND ANALYSIS

A. The Subscription Agreement and the Transactions Should be Approved

37. The Subscription Agreement and the Transactions represent the culmination of the Company's extensive solicitation of the market for potential investors and/or purchasers, which commenced in March 2023 and continued after the commencement of the CCAA Proceedings in accordance with the Court-ordered Solicitation Process and subsequent Sale Process.[37]

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[36] Vuong Affidavit at para. 56.
[37] Vuong Affidavit at para 29.

38. The Subscription Agreement and the Transactions contemplated thereunder remain the best and only transaction available to Tacora in the circumstances, and, among other things: (a) preserves Tacora as a going concern for the benefit of its employees, suppliers and other stakeholders; (b) deleverages Tacora and capitalizes the Company with committed equity financing; (c) avoids the need to transfer the Company's permits and licenses; and (d) preserves the Company's tax attributes.[38]

1. The Court has Jurisdiction to Approve an RVO Transaction

39. The Subscription Agreement contemplates an RVO that vests out and transfers the Excluded Assets, Excluded Contracts, and Excluded Liabilities to ResidualCo.

40. The jurisdiction to approve a transaction implemented through an RVO is found in section 11 of the CCAA, which gives the Court broad powers to make any order it thinks fit.[39] Section 36 of the CCAA is also relevant in providing guidance to the Court on the factors to be considered in exercising its discretion to approve a transaction and granting the Court jurisdiction to vest off "other restrictions".[40]

41. The Court's jurisdiction is beyond doubt. Courts have applied this jurisdiction in granting RVOs in over 50 cases. Numerous respected commercial courts and judges have opined on when an RVO may be appropriate. The jurisprudence establishes that RVOs are appropriate in at least three circumstances:

(a) where the debtor operates in a highly regulated environment in which its existing permits, licences or other rights would be difficult or impossible to assign to a purchaser;

(b) where the debtor is party to certain key agreements that would be difficult or impossible to assign to a purchaser; and

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[38] Vuong Affidavit at paras. 25, 38; Nessim Affidavit at para. 24.
[39] CCAA, s. 11; *Arrangement relatif à Blackrock Metals Inc*, 2022 QCCS 2828 ("***Blackrock Metals***") at para. 87; *Quest University (Re)*, 2020 BCSC 1883 at para. 27; *Harte Gold (Re)*, 2022 ONSC 653 ("***Harte Gold***") at paras. 36-37.
[40] CCAA, s. 36; *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, 2022 ONSC 6354 ("***Just Energy***") at paras. 30-31.

(c) where maintaining the existing legal entity would preserve tax attributes that would otherwise be lost in a traditional asset sale.[41]

2. *Harte Gold* Factors are Met

42. In *Harte Gold*, Justice Penny held that scrutiny of a proposed reverse vesting transaction may be informed by the following enquiries:

(a) why the reverse vesting order is necessary in this case;

(b) whether the reverse vesting transaction structure produces an economic result at least as favourable as any other viable alternative;

(c) whether any stakeholder is worse off under the reverse vesting transaction structure than they would have been under any other viable alternative; and

(d) whether the consideration being paid for the debtors' business reflects the importance and value of the licenses and permits (or other intangible assets) being preserved under the reverse vesting transaction structure.[42]

43. Application of the *Harte Gold* factors support this Court's approval of the Subscription Agreement and the Transactions and the granting of the Approval and Reverse Vesting Order.

(a) The Proposed RVO is Necessary in the Circumstances

44. The Subscription Agreement was structured as a reverse vesting transaction because: (a) it will permit Tacora to maintain its Permits and Licenses and avoid the risks and costs associated with potential delays in attempting to transfer same, allowing for the seamless continuation of operations at the Scully Mine; and (b) it will preserve Tacora's $650 million in tax attributes. The advantages associated with a reverse vesting structure were an important consideration for the Investors in pricing their Bid.[43]

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[41] See *Blackrock Metals*, *supra* at paras. 114-116; *Harte Gold*, *supra* at para. 71; *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314 ("***Acerus***") at paras. 13-14 and 21; *Quest University (Re)*, 2020 BCSC 1883 at para. 136, referring to the RVO granted in *Re Comark Holdings Inc et al*, (July 13, 2020), Toronto CV-20-00642013-00CL (Ont. SCJ [Commercial List]) proceeding to preserve tax attributes, and para. 142, referring to the RVO granted in *JMB Crushing Systems Inc (Re)*, 2020 ABQB 763 to preserve both licenses and tax attributes.
[42] *Harte Gold*, *supra* at para. 38; *In the Matter of the Companies' Creditors Arrangement Act and In the Matter of CannaPiece Group Inc*, 2023 ONSC 841 ("***CannaPiece***") at para. 52; *Just Energy*, *supra* at para. 33.
[43] Vuong Affidavit at para. 38.

45. Tacora operates in the highly regulated mining industry,[44] where RVOs are frequently used to facilitate sale transactions.[45] Tacora maintains eight material Permits and Licenses, along with six mining claims, leases, and other property rights that are required to maintain its mining operations and allow Tacora to perform exploration work on various parts of the Scully Mine, as well as other forest resource licenses and fire permits. Each of these Permits and Licenses would need to be in place for any prospective purchaser to continue operations at the Scully Mine.[46]

46. The transfer of the Permits and Licenses under a traditional asset sale transaction structure would require the consent of the relevant government authority or lessor, and in some cases, require advance discussions between a purchaser and the relevant government authority or lessor. This process may be complicated by the fact that several of the Permits and Licenses are issued by different government departments (both federal and provincial), some of which have no prescribed transfer process.[47]

47. The ability to transfer these Permits and Licenses to a third-party purchaser and the timing of any such transfer is uncertain and has the potential to be significantly delayed. There are also governmental approvals that Tacora is seeking that are critical to future operations of the Scully Mine that may be delayed further due to the logistics of transferring an application that has been underway for approximately two years for approval, which has not yet been obtained.[48]

48. Fluctuations in the price of iron ore can have a significant impact on Tacora's liquidity. Given the volatile nature of the iron ore market, the uncertainty associated with securing the

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[44] Vuong Affidavit at para. 18.
[45] See, for example, *Arrangement relatif à Nemaska Lithium Inc*, 2020 QCCA 1488, where an RVO granted in October 2020 by the Court in respect of a chemical company operating a spodumene mine and commercializing lithium hydroxide; **see also** *Harte Gold*, *supra*, where this Court an RVO was granted in February 2022 in respect of a gold producer operating a gold mine in northern Ontario; **see also** *Blackrock Metals*, *supra*, where an RVO was granted in June 2022 by the Superior Court of Québec in respect of a metals and materials manufacturing business; **see also** *PricewaterhouseCoopers Inc v Canada Fluorspar (NL) Inc*, 2023 NLSC 88, where the Court granted an RVO in June 2023 in respect of a company operating a fluorspar mine; **see also** *Rambler Metals and Mining Limited, Re*, 2023 NLSC 134, where the Court granted an RVO in September 2023 in respect of a copper and gold mining and development company operating a copper and gold mine.
[46] Vuong Affidavit at para. 33.
[47] Vuong Affidavit at para. 34.
[48] Vuong Affidavit at para. 35.

transfer of Permits and Licenses and the potential for delays in such transfers creates significant risk and uncertainty for the Company and its stakeholders.[49]

49. In addition, recently there have been forest fires in the Labrador West region. On July 12, 2024, the Province of Newfoundland and Labrador issued an evacuation order for Labrador City, which is where the majority of Tacora's employees reside. As a result, Tacora shut down operations to ensure the safe evacuation of its employees from the Scully Mine and their homes in Labrador City. The recent fires emphasize the need to emerge from these CCAA Proceedings and provide more stability and certainty for Tacora, its employees and suppliers. Delays in closing the Transactions will continue to put the Company at risk of factors outside its control.[50]

(b) The Subscription Agreement and the Transactions Produce the Best Economic Result for Tacora and its Stakeholders in the Circumstances

50. As described above, the Subscription Agreement and the Transactions (a) were the product of a broad market canvass conducted through the Pre-Filing Solicitation Process, the Solicitation Process and the Sale Process; (b) is the best and only actionable transaction available to Tacora; and (c) results in significant benefits for the "economic community" consisting of Tacora and its stakeholders. Among other things, the Subscription Agreement:

(a) deleverages the Company's capital structure by eliminating its pre-filing indebtedness and associated debt service, which was $21.2 million annually prior to the CCAA Proceedings;

(b) provides for partial repayment of approximately $12.5 million of the Company's secured debt owed to Cargill under the APF by way of set-off;

(c) repays the $6.2 million owed under the existing Cargill Margining Facility;

(d) provides for the assumption of, *inter alia*, substantially all Pre-Filing Trade Amounts and royalty obligations of the Company on terms and amounts to be agreed by the Company and the Investors;

(e) provides a firm, irrevocable commitment to finance the Transaction, including a significant Deposit;

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[49] Vuong Affidavit at para. 36.
[50] Vuong Affidavit at para. 36.

(f) contains limited conditions to closing and limited expected regulatory approvals;

(g) provides equity financing and the possibility of attracting new debt to fund emergence costs and the Company's ongoing operational costs;

(h) provides for a new Offtake Agreement with Cargill which removes any mechanism for a profit share, provides Cargill's fee as a fixed percentage of the sales price, and has a 10-year term;

(i) provides working capital to the Company through a Stockpile Agreement and margining facility with Cargill;

(j) provides for the ongoing employment of all the Company's employees; and

(k) if the conditions to Closing the Transactions are not (or cannot reasonably be) satisfied by the contemplated outside date for closing, contains an agreement from the DIP Lender, subject to certain terms, to subscribe for and purchase shares of Tacora in exchange for an amount equivalent to all of the outstanding DIP Obligations owed at the applicable time.[51]

(c) The Subscription Agreement does not result in any stakeholder being worse off than they would have been under any other viable alternative

51. The RVO structure does not result in material prejudice or impairment to any of Tacora's creditors' rights that they would not otherwise suffer under a traditional asset sale structure.

52. The treatment of the Company's creditors would be the same or worse under an asset sale. The Subscription Agreement provides that to the extent the Approval and Reverse Vesting Order is not granted, and the structure of the Transaction is converted into an asset sale, the parties thereto shall amend the structure of the Transactions accordingly, so long as the material terms contained therein are continued into the amended structure of the Transactions (including, without limitation, the new Cargill Offtake Agreement), and provided that:

[51] Vuong Affidavit at para. 25; Nessim Affidavit at para. 24.

(a) the transfer and assignment of the Mining Rights (or replacements thereof) shall be a condition to the implementation of the Transactions pursuant to such asset purchase agreement; and

(b) the Investors and Company shall negotiate, in good faith, a reduction in the amount of the Pre-Filing Trade Amounts that form part of the Assumed Liabilities as reduced consideration under the Transactions to reflect any decrease in value arising from the adverse impact to the tax attributes that would be acquired pursuant to the amended structure of the Transaction or as a result of additional costs that may need to be incurred in connection with an asset purchase, including assigning any Mining Rights or applying for and obtaining any replacement Mining Rights (each as defined in the Subscription Agreement).[52]

53. Accordingly, Tacora's trade suppliers and other key vendors could be significantly impaired if the Approval and Reverse Vesting Order is not granted.[53]

(d) The consideration payable under the Subscription Agreement is fair, reasonable, and reflects the importance of the assets being preserved under the RVO structure

54. Tacora has now tested the market on three separate occasions with the benefit of experienced advisors. The Transactions, if approved by this Court, will result in a going concern solution for Tacora's business and represent the best possible outcome for Tacora, its creditors, and other stakeholders in the circumstances. The consideration payable under the Subscription Agreement is fair and reasonable, as confirmed by the results of the Pre-Filing Strategic Process, the Solicitation Process and the Sale Process.[54]

55. In addition to the various benefits of the Transactions set out above, the consideration payable pursuant to the Subscription Agreement reflects the importance of: (a) maintaining the benefit of the Permits and Licenses without incurring the delay and risk associated with

[52] Vuong Affidavit at para. 39.
[53] Vuong Affidavit at para. 40.
[54] Vuong Affidavit at para. 42.

attempting to transfer same in an asset sale; and (b) preserving Tacora's tax attributes. This is exactly the type of case where courts have found RVOs to be appropriate.[55]

56. The Monitor is of the view that the consideration is reasonable and fair, taking into account Tacora's market value.[56]

3. Section 36(3) Factors are Met

57. When exercising its jurisdiction under section 11 of the CCAA to approve a reverse vesting transaction, this Court has also concurrently considered the non-exhaustive factors enumerated under section 36(3) of the CCAA and those articulated in *Royal Bank v. Soundair*.[57]

58. The following additional factors support this Court's approval of the Subscription Agreement and the Transactions and the granting of the Approval and Reverse Vesting Order:

(a) **The Sale Process was Fair and Reasonable.** The process leading to the proposed Transactions, beginning with the Pre-Filing Strategic Process and including the Solicitation Process, was reasonable in the circumstances and provided for a broad, open, fair and transparent process with an appropriate level of independent oversight;[58]

(b) **The Court and Monitor approved the Sale Process.** The Sale Process was recommended by the Monitor and approved by the Court;[59]

(c) **Monitor Supports Approval of the Transactions.** In the view of the Monitor, the Transactions are more beneficial to Tacora's creditors than a sale or disposition under a bankruptcy. The Monitor has expressed its support for the Court's approval of the Subscription Agreement and the Transactions as requested in the Approval and Reverse Vesting Order;[60]

(d) **Creditors were Consulted during the Sale Process.** Tacora's major secured creditor groups, Cargill and holders of the Senior Notes and Senior Priority

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[55] *Just Energy*, *supra* at paras. 30-31.
[56] Eleventh Report at para. 51(f).
[57] CCAA, s. 36(3); *Royal Bank of Canada v Soundair Corp*, 1991 CanLII 2727 (Ont CA) at para. 16. See also, *Harte Gold*, *supra* at paras. 20-21; *CannaPiece*, *supra* at paras. 53-54; *Just Energy*, *supra* at paras. 31-32.
[58] Vuong Affidavit at para. 42(a); Eleventh Report at para. 51(a).
[59] Vuong Affidavit at para. 42(d); Eleventh Report at para. 51(b).
[60] Vuong Affidavit at para. 42(g); Eleventh Report at para. 51(c).

Notes, were involved in the Sale Process and are supportive of the relief sought on this motion.[61] No substantive objections to the terms of the Sale Process have been raised;[62] and

(e) **Effects of the Transaction Benefit Creditors and other Interested Parties.** As described above, the Transactions are of significant benefit to the Applicant and the vast majority of its stakeholders.[63]

59. Tacora has now tested the market on three separate occasions with the benefit of experienced advisors. The Transactions, if approved by this Court, will result in a going concern solution for Tacora's business and represent the best possible outcome for Tacora, its creditors, and other stakeholders in the circumstances.

B. The Releases Should be Granted

60. The Approval and Reverse Vesting Order includes releases in favour of the Released Parties from the Released Claims. The Releases in favour of the Released Parties are being sought to achieve certainty and finality for the Released Parties in the most efficient and appropriate manner given the circumstances.[64]

1. This Court has Jurisdiction to Approve the Releases

61. It is now common practice for third party releases in favour of the parties to a restructuring, their professional advisors, their directors and officers, and the Monitor to be approved outside of a CCAA plan in the context of a transaction, including in the context of RVO transactions.[65] In approving releases in *Harte Gold*, Justice Penny, citing Chief Justice Morawetz in *Lydian*, applied the following criteria ordinarily considered with respect to third-party releases provided for under a plan:

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[61] Vuong Affidavit at para. 42(b)-(c) and (g).
[62] Eleventh Report at para. 51(d).
[63] Eleventh Report at para. 51(e).
[64] Vuong Affidavit at para. 44.
[65] *Blackrock Metals, supra*, at para. 128; *Harte Gold*, *supra* at para. 79; *Green Relief Inc (Re)*, 2020 ONSC 6837 ("***Green Relief***") at para. 76; *Re Nelson Education Limited*, 2015 ONSC 5557 at para. 49; *Golf Town Canada Holdings Inc (Re)* (March 29, 2018), Toronto, CV-16-11527-00CL (CCAA Termination Order) (ON SC); *Green Growth Brands Inc et al (Re)* (May 19, 2021), Toronto, Court File No. CV-20-00641220-00CL (Order Terminating CCAA Proceedings) (ON SC); *Fire & Flower Holdings Corp (Re)*, (August 29, 2023), Toronto, Court File No. CV-23-00700581-00CL (Approval and Reverse Vesting Order) (ON SC).

(a) whether the claims to be released are rationally connected to the purpose of the restructuring;

(b) whether the release contributed to the restructuring;

(c) whether the release is fair, reasonable and not overly broad;

(d) whether the restructuring could succeed without the release;

(e) whether the release benefits the debtor as well as the creditors generally; and

(f) creditors' knowledge of the nature and the effect of the releases.[66]

62. Justice Penny found that it is not necessary for each of the above factors to apply for a release to be approved.[67]

2. The Releases Should be Granted in the Circumstances

63. The Releases comply with the *Lydian* factors applied in *Harte Gold* and *Green Relief*, are consistent with releases previously approved by this Court, are reasonable and appropriate in the circumstances,[68] and should be granted:

(a) **The Releases are rationally connected to the purpose of the restructuring.** The Releases will have the effect of diminishing claims against the Released Parties, which in turn will diminish indemnification claims by the Released Parties against the Administration Charge and the Directors' Charge. Given that a purpose of CCAA proceedings is to maximize creditor recovery, a release that helps achieve this goal is rationally connected to the purpose of Tacora's restructuring;

(b) **The Released Parties made significant and material contributions to the restructuring** in connection with Tacora's efforts to address its financial difficulties, the Pre-Filing Strategic Process, the Solicitation Process, the Sale Process, the CCAA Proceedings, and negotiation of the Subscription Agreement and the contemplated Transactions, which provide for a going concern solution for Tacora's business and represents the best outcome available to Tacora. The

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[66] *Harte Gold*, *supra* at paras. 78-86; *Lydian International Limited (Re)*, 2020 ONSC 4006 at para. 54; **see also** *Green Relief*, *supra*, at para. 27, where Justice Koehnen also cited Chief Justice Morawetz's decision in *Lydian*.
[67] *Harte Gold*, *supra* at para. 80.
[68] *Harte Gold*, *supra* at paras. 78-86; *Green Relief*, *supra* at paras. 50-57.

Released Parties will also be critical to implementing the Transactions, if approved;[69]

(c) **The Releases are fair, reasonable and not overly broad**. Other than Aequor's Rule 2004 Examination Motion described in the Vuong Affidavit, Tacora is not aware of any potential claim against the Released Parties.[70] The scope of the Releases is consistent with recognized precedents, including *Harte Gold* and *Just Energy*.[71] Further, the Releases explicitly carve out any claims (a) resulting from fraud or wilful misconduct; or (b) that are not permitted to be released pursuant to section 5.1(2) of the CCAA;[72]

(d) **The Applicant's restructuring could be jeopardized without the Releases.** The Releases will achieve certainty and finality for the Released Parties in the most efficient and appropriate manner given the circumstances.[73] Similar to *Harte Gold*, the Releases are an essential component of the Transactions.[74] The Monitor is of the view that each of the Released Parties contributed meaningfully and were necessary to Tacora's efforts to address its financial difficulties, the Sale Process, the CCAA Proceedings and the Transactions and that each of the Released Parties is a necessary part of achieving a successful restructuring;[75]

(e) **The Releases benefit Tacora as well as the creditors generally** by reducing the potential for claims against the Released Parties and the Released Parties seeking indemnification from Tacora; and

(f) **All creditors and contractual counterparties have knowledge of the nature and effect of the Releases.** Throughout the CCAA Proceedings, Tacora has issued press releases announcing that it had filed for CCAA protection, commenced the Solicitation Process and entered into the Subscription

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[69] Vuong Affidavit at para. 45.
[70] Vuong Affidavit at para. 47.
[71] *Harte Gold (Re)* (January 28, 2022), Toronto, CV-21-00673304-00CL (Approval and Reverse Vesting Order) (ON SC); *Just Energy (Re)* (November 3, 2022), Toronto, CV-21-00658423-00CL (Approval and Vesting Order) (ON SC).
[72] Eleventh Report at para. 47.
[73] Vuong Affidavit at para. 44.
[74] *Harte Gold*, *supra* at para. 84.
[75] Eleventh Report at para. 49.

Agreement. Potentially affected stakeholders, including Aequor, have been served with this Motion.[76]

64. The Released Parties have played a necessary part in the successful restructuring of the Company and, in the case of Tacora's directors and officers, continued in their roles or joined Tacora notwithstanding the increase in risk and scrutiny due to these proceedings. The CCAA Proceedings resulted in the Transactions, which represent a going concern outcome where all Tacora's approximately 463 employees preserve their employment.[77]

65. The Monitor is of the view that the proposed Release provisions are essential to the Transactions and the Subscription Agreement. The proposed Releases in favour of the directors and officers are necessary to allow for the release of the Directors' Charge, which in turn is necessary to allow the Transactions to close. The Monitor is also of the view, having considered the facts of the situation, that each of the Released Parties contributed meaningfully and was necessary to Tacora's efforts to address its financial difficulties, the Sale Process, the CCAA Proceeding, and the Transactions and each of the Released Parties was a necessary part of the successful restructuring. Accordingly, the Monitor is of the view that the proposed Releases are reasonable and not overly broad in the circumstances, and supports the relief requested by Tacora.[78]

C. The Stay Extension, DIP, and Fees Approval Order Should be Granted

66. Tacora is also seeking this Court's approval of the Stay Extension, DIP, and Fees Approval Order to, among other things: (a) extend the Stay Period until and including October 7, 2024; (b) approve the fees and activities of the Monitor and its counsel; and (c) approve the Third A&R DIP Agreement.

1. Stay Extension

67. Tacora is seeking an extension of the Stay Period from July 29, 2024, until and including October 7, 2024. The extension of the Stay Period is necessary and appropriate in the circumstances to provide Tacora with sufficient time to close the Transactions.[79]

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[76] Affidavit of Service of Philip Yang filed July 22, 2024.
[77] Vuong Affidavit at para. 46.
[78] Eleventh Report at para. 50.
[79] Vuong Affidavit at para. 59.

68. 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.[80]

69. The extension of the Stay Period until and including October 7, 2024, is necessary to close the Transactions.[81]

2. Third A&R DIP Agreement

70. DIP financing is specifically authorized under section 11.2 of the CCAA.[82] In selecting a DIP proposal, the Court must make an "independent determination" having regard to the non-exhaustive factors in section 11.2(4):[83]

(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.[84]

71. 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.[85]

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[80] CCAA, s. 11.02(2)-(3).
[81] Huong Affidavit at para. 59; Eleventh Report at para. 63(a).
[82] CCAA, s. 11.2.
[83] *Crystallex (Re)*, 2012 ONCA 404 ("***Crystallex***") at para. 85.
[84] CCAA, s. 11.2(4).

72. The Third A&R DIP Agreement will enhance the prospects of a successful restructuring of Tacora, as it provides the necessary stability for the Company's operations while it advances its efforts to close the Transactions. The Third A&R DIP Agreement also continues to provide the benefits associated with the Amended DIP Agreement.

73. Tacora requires additional financing to continue operating while it closes the Transactions, if approved, and seeks to emerge from the CCAA Proceedings.[86] Accordingly, the Third A&R 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.

74. The Monitor is of the view that the exit fees are reasonable based in the circumstances and consistent with the Amended DIP Agreement,[87] and recommends that this Court grant Tacora's request for approval of the Third A&R DIP Agreement.[88]

PART IV - ORDER SOUGHT

75. Tacora respectfully requests that this Court grant the Approval and Reverse Vesting Order and the Stay Extension, DIP, and Fees Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of July 2024.

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Counsel for the Applicant

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[85] *Crystallex*, *supra* at para. 84.
[86] Eleventh Report at para. 57.
[87] Eleventh Report at para. 56.
[88] Eleventh Report at para. 58.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314.

2. *Arrangement relatif à Blackrock Metals Inc*, 2022 QCCS 2828.

3. *Arrangement relatif à Nemaska Lithium Inc*, 2020 QCCA 1488.

4. *Crystallex (Re)*, 2012 ONCA 404.

5. *Fire & Flower Holdings Corp (Re)*, (August 29, 2023), Toronto, Court File No. CV-23-00700581-00CL (Approval and Reverse Vesting Order).

6. *Golf Town Canada Holdings Inc (Re)* (March 29, 2018), Toronto, CV-16-11527-00CL (CCAA Termination Order) (ON SC).

7. *Green Growth Brands Inc et al (Re)* (May 19, 2021), Toronto, Court File No. CV-20-00641220-00CL (Order Terminating CCAA Proceedings) (ONSC).

8. *Green Relief Inc (Re)*, 2020 ONSC 6837.

9. *Harte Gold (Re)*, 2022 ONSC 653.

10. *Harte Gold (Re)* (January 28, 2022), Toronto, CV-21-00673304-00CL (Approval and Reverse Vesting Order) (ON SC).

11. *In the Matter of the Companies' Creditors Arrangement Act and In the Matter of CannaPiece Group Inc,* 2023 ONSC 841.

12. *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, 2022 ONSC 6354.

13. *Just Energy (Re)* (November 3, 2022), Toronto, CV-21-00658423-00CL (Approval and Vesting Order) (ON SC).

14. *Lydian International Limited (Re)*, 2020 ONSC 4006.

15. *Nelson Education Limited (Re)*, 2015 ONSC 5557.

16. *PricewaterhouseCoopers Inc v Canada Fluorspar (NL) Inc*, 2023 NLSC 88.

17. *Quest University (Re)*, 2020 BCSC 1883.

18. *Rambler Metals and Mining Limited, Re*, 2023 NLSC 134.

19. *Royal Bank of Canada v Soundair Corp*, 1991 CanLII 2727 (Ont CA).

SCHEDULE "B"
RELEVANT STATUTES

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

Claims against directors — compromise

5.1(1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

5.1(2) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

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

11.02(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

11.2(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

11.2(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

11.2(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

11.2(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.

Disclaimer or resiliation of agreements

32(1) Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.

Court may prohibit disclaimer or resiliation

32(2) Within 15 days after the day on which the company gives notice under subsection (1), a party to the agreement may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement is not to be disclaimed or resiliated.

Court-ordered disclaimer or resiliation

32(3) If the monitor does not approve the proposed disclaimer or resiliation, the company may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement be disclaimed or resiliated.

Factors to be considered

32(4) In deciding whether to make the order, the court is to consider, among other things,

(a) whether the monitor approved the proposed disclaimer or resiliation;

(b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and

(c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.

Date of disclaimer or resiliation

32(5) An agreement is disclaimed or resiliated

(a) if no application is made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1);

(b) if the court dismisses the application made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1) or on any later day fixed by the court; or

(c) if the court orders that the agreement is disclaimed or resiliated under subsection (3), on the day that is 30 days after the day on which the company gives notice or on any later day fixed by the court.

Restriction on disposition of business assets

36(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

36(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

36(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

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)

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE APPLICANT

(Re: Approval and Reverse Vesting Order and Stay Extension, DIP, and Fees Approval Order)
(Returnable July 26, 2024)

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

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

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

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

Counsel for the Applicant