

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

Tacora Resources Inc.

**FIFTH REPORT OF FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS COURT-APPOINTED MONITOR**

April 7, 2024

TABLE OF CONTENTS

INTRODUCTION	3
TERMS OF REFERENCE AND DISCLAIMER	4
PURPOSE	5
THE MFC ROYALTY DISPUTE	5
CONCLUSION	8

**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)

**FIFTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 10, 2023, Tacora Resources Inc. (“**Tacora**” or the “**Applicant**”) was granted protection under the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**” and in reference to the proceeding, the “**CCAA Proceeding**”) and FTI Consulting Canada Inc. was appointed monitor of the Applicant (in such capacity the “**Monitor**”).
2. Pursuant to an Order granted on October 30, 2023, the Court approved a sale, investment and services solicitation process (the “**Solicitation Process**”) to solicit interest in a potential Transaction Opportunity and/or Offtake Opportunity (each as defined in the Solicitation Process).
3. On February 2, 2024, the Applicant served and filed a motion (the “**Sale Approval Motion**”) seeking *inter alia* approval of a subscription agreement (the “**Subscription Agreement**”) entered into between Tacora as issuer and a consortium consisting of the Ad Hoc Group,¹ Resource Capital Fund VII L.P. and Javelin Global Commodities (SG) Pte Ltd. and the transactions contemplated therein (the “**Investor Transaction**”) as the Successful Bid (as defined in the Solicitation Process).
4. On February 9, 2024, the Court issued an endorsement which (among other things) scheduled the hearing of the Sale Approval Motion for April 10, 11 and 12, 2024.
5. In connection with the Sale Approval Motion, 1128349 B.C. Ltd. (“**112 Ltd.**”) raised a concern regarding Tacora’s payment of a royalty (the “**MFC Royalty**”) as required by the Amendment and

¹ The “**Ad Hoc Group**” consists of Brigade Capital Management, L.P., Millstreet Capital Management LLC, MSD Partners, L.P., O’Brien-Staley Partners and Snowcat Capital Management.

Restatement of Consolidation of Mining Leases – 2017 (the “**Scully Mine Lease**”) governing Tacora’s mining operations at the Scully Mine.

6. Prior to the commencement of the CCAA Proceeding, 112 Ltd. had asserted that Tacora had not properly calculated the MFC Royalty in accordance with the Scully Mine Lease and had therefore underpaid 112 Ltd. Tacora disputed such assertion, and 112 Ltd. had commenced an arbitration proceeding that was stayed by the Initial Order.
7. The proper calculation of the MFC Royalty is relevant to the approval of the Subscription Agreement and the Scully Mine Lease is a Retained Contract as defined in the Subscription Agreement and 112 Ltd. has taken the position that the full amounts owing under the Sully Mine Lease must be paid on closing of the Investor Transaction.
8. Accordingly, on March 5, 2024, a case conference was held before Justice Kimmel regarding interpretation and quantification issues in connection with the MFC Royalty. Justice Kimmel issued an endorsement directing that the MFC Royalty Dispute be determined in the CCAA Proceeding and scheduling the MFC Royalty Dispute to be heard on April 16, 2024.
9. On March 21, 2024, Tacora served its motion record in connection with the MFC Royalty Dispute. 112 Ltd. served its responding motion record on March 27, 2024. Tacora served an additional affidavit on March 28, 2024 (the “**Broking Affidavit**”). The parties attended cross-examinations on April 4 and 5, 2024.
10. The background of the CCAA Proceeding is set out in the prior Reports to Court of the Monitor dated October 9, 2023, October 20, 2023, January 18, 2024, March 13, 2024, March 14, 2024, and March 26, 2024, (collectively, the “**Prior Reports**”). Copies of the Prior Reports, as well as other materials publicly filed and orders issued in the CCAA Proceeding, are available on the Monitor’s website at <http://cfcanada.fticonsulting.com/tacora/>.
11. All references to monetary amounts herein are in United States dollars unless otherwise noted. Any capitalized terms not defined herein have the meanings given to them in Affidavit of Joe Broking sworn March 21, 2024 or the Broking Affidavit.

TERMS OF REFERENCE AND DISCLAIMER

12. In preparing this Fifth Report, the Monitor has relied upon audited and unaudited financial information of Tacora’s books and records, and discussions and correspondence with, among

others, management of and advisors to Tacora as well as other stakeholders and their advisors (“**Information**”).

13. Except as otherwise described in this Fifth Report:
 - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Fifth Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
14. Future-oriented financial information reported in or relied on in preparing this Fifth Report is based on assumptions regarding future events. Actual results will vary from these forecasts, and such variations may be material.
15. The Monitor has prepared this Fifth Report to provide information to the Court in connection with the MFC Royalty Dispute. This Fifth Report should not be relied on for any other purpose.

PURPOSE

16. The purpose of this Fifth Report (the “**Report**”) is to summarize the parties’ position regarding the amounts claimed by 112 Ltd.
17. The Monitor has reviewed the materials served by the parties, as described above, and, through its counsel, has also attended the cross-examinations held April 4 and 5, 2024.
18. The events giving rise to the MFC Royalty Dispute took place prior to the commencement of the CCAA Proceeding and as such, the Monitor has no firsthand knowledge of those events. The Monitor has observed, however, that since the commencement of the CCAA Proceeding (i) Tacora and Cargill have often not been aligned in interest; (ii) nothing has come to the Monitor’s attention to demonstrate that Cargill controls Tacora; and (iii) the Monitor has not seen any evidence to demonstrate that Cargill and Tacora do not transact at arm’s length.

THE MFC ROYALTY DISPUTE

19. The Scully Mine Lease prescribes two methods for the calculation of the MFC Royalty. The first method is used if Tacora sells its iron ore concentrate pursuant to an arm’s length *bona fide* contract

of sale (the “**Arm’s Length Method**”). The second method is used if Tacora sells its iron ore concentrate pursuant to a non-arm’s length transaction (the “**Non-Arm’s Length Method**”).

20. The Monitor understands that Tacora has historically calculated the MFC Royalty in accordance with the Arm’s Length Method on the basis that the Cargill Offtake Agreement (pursuant to which Tacora sells its iron ore concentrate) is an arm’s length *bona fide* contract of sale.
21. Relying on the information contained in the parties’ materials, the Monitor has prepared the following summary table to illustrate and compare stayed pre-filing payments per Tacora and per 112 Ltd. and to highlight the amount in dispute (“**Amount in Dispute**”) between the parties totaling C\$7,295,254:²

	Pre-Filing (\$CAD)
Arm's Length Method (per Tacora)	\$ 15,442,191
Non-Arm's Length Method (per 112 Ltd.)	\$ 22,737,444
Amount in Dispute	\$ (7,295,254)

22. The Monitor understands that 112 Ltd. has identified within its Responding Motion Record that it “is entitled to unquantified underpaid post-filing Royalty based on Tacora’s failure to calculate the Royalty from Q4 2023 to date on the basis of” the Non-Arm’s Length Method.³ 112 Ltd. has not quantified total post-filing royalty payments it believes are owing. Since the Filing Date, and in accordance with the Arm’s Length Method, Tacora has paid all post-filing royalties due pertaining to the post-filing period for Q4 2023, totaling C\$10,287,336.⁴
23. The Monitor also understands that Tacora believes that Mr. Persampieri, in the Expert Report for 112 Ltd. fails to account for the necessary credits and deductions in his calculation of the Amount in Dispute and believes that when the appropriate credits and deductions are applied, the Amount in Dispute would be significantly reduced, as detailed in the reconciliation below:⁵

² The amount listed for the “Non-Arm’s Length Method per 112 Ltd.” is based on paragraph 4 of the Responding Motion Record of 112 Ltd. dated March 27, 2024 and represents in aggregate an amount of “at least” C\$22,737,444.52 that 112 Ltd. believes is owing and payable under the Scully Mine Lease. The Amount in Dispute does not include an estimate for Q4 2023 and therefore may understate the total Amount in Dispute being claimed by 112 Ltd.

³ Paragraphs 25 and 32 of the Responding Motion Record of 112 Ltd. address its position of post-filing royalty payments owing.

⁴ Payment made in January 2024 and includes withholding taxes totaling C\$2,057,467.

⁵ During cross-examination, Mr. Persampieri agreed that the Knoll Lake Royalty should be deducted from the Amount in Dispute.

	Pre-Filing (\$CAD)
Amount in Dispute	\$ 7,295,254
Less Missing Credits & Deductions:	
Knoll Lake Royalty	\$ (2,596,150)
Deductible Expenses	\$ (2,397,190)
Market Price Discount	\$ (1,075,934)
Winter Ice Class Premium	\$ (556,806)
Revised Amount After Application of Credits & Deductions	\$ 669,173

Tacora believes that the revised Amount in Dispute above of C\$669,173 would need to be further reduced for valid expenses pertaining to the marketing of iron ore (i.e., the commission that Tacora pays Cargill). As stated in the Broking Affidavit, Tacora’s view of a reasonable estimate of the marketing costs would be the difference between the Non-Arm’s Length Method and the Arm’s Length Method, once both are properly calculated. In summary, Tacora’s position is that the Non-Arm’s Length Method, when calculated properly, should produce roughly the same figure as under the Arm’s Length Method, as Tacora’s iron ore is sold at market price to third parties.

24. Pursuant to the Subscription Agreement, the Scully Mine Lease is a “Retained Contract” and the pre-filing amount (as calculated by Tacora) is a “Cure Cost” that is to be paid on Closing of the Investor Transaction (if approved by this Court). As such, if the Court determines that the Cargill Offtake Agreement is an arm’s length *bona fide* contract of sale, then the Subscription Agreement provides that outstanding amount owed to 112 Ltd. of C\$15,442,192 is to be paid in full on Closing of the Investor Transaction.⁶
25. The Subscription Agreement also provides for an “Administrative Expense Reserve” to cover “Disputed Litigation Costs”, which are amounts asserted against Tacora in respect of ongoing litigation matters under certain of the Retained Contracts. The portion of the Administrative Reserve calculated to cover the amounts claimed by 112 Ltd. in respect of the MFC Royalty is C\$3,727,378. Relying on the information contained in the parties’ materials, the Monitor has prepared the following summary table to illustrate total insufficient funds of C\$3,567,876 available to address the total Amount in Dispute:

	Pre-Filing (\$CAD)
Administrative Reserve	\$ 3,727,378
Amount in Dispute	\$ (7,295,253)
Insufficient Funds Available	\$ (3,567,876)

⁶ Total amount of C\$15,442,191.80 includes outstanding pre-filing amounts pertaining to Q2 2023, Q3 2023 and Q4 2023.

26. Accordingly, if the Court determines that 112 Ltd.'s assertion that the MFC Royalty should be calculated in accordance with the Non-Arm's Length Method and that the Amount in Dispute is correct and/or above the amount in the Administrative Reserve, then, the Subscription Agreement does not provide sufficient funds to pay 112 Ltd. the Amount in Dispute or unpaid MFC Royalty in full.
27. If however, calculation of the MFC Royalty Amount in Dispute is determined to be lower than the amount in the Administrative Reserve, the Subscription Agreement currently provides sufficient funds to pay 112 Ltd. the Amount in Dispute.

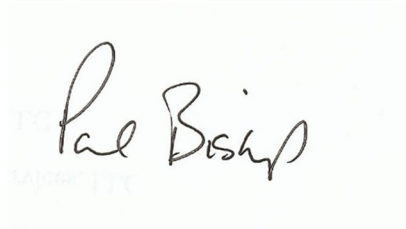
CONCLUSION

28. The Monitor delivers this Report to provide a summary of the contested payments owed in connection with the MFC Royalty dispute.

The Monitor respectfully submits this Fifth Report to the Court dated this 7th day of April, 2024.

FTI Consulting Canada Inc

in its capacity as Court-appointed Monitor of
Tacora Resources Inc. and not in its personal or
corporate capacity

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive style. The text is centered on a light green rectangular background.

By:

Paul Bishop
Senior Managing Director

A handwritten signature in black ink that reads "J. Porepa". The signature is written in a cursive style. The text is centered on a light green rectangular background.

Jodi Porepa
Senior Managing Director

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.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

FIFTH REPORT OF THE MONITOR

Cassels Brock & Blackwell LLP

Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON M5H 0B4

Ryan Jacobs LSO#59510J

Tel: 416.860.6465
rjacobs@cassels.com

Jane Dietrich LSO#49302U

Tel: 416.860.5223
jdietrich@cassels.com

Alan Merskey LSO#413771

Tel: 416.860.2948
amerskey@cassels.com

Monique Sassi LSO# 63638L

Tel: 416.860.6886
msassi@cassels.com

Lawyers for the Monitor, FTI Consulting Canada Inc.