



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-23-00707394-00CL

HEARING DATE: 18<sup>th</sup> of March, 2024

NO. ON LIST: 1

**TITLE OF PROCEEDING:**

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

**BEFORE: MADAM JUSTICE KIMMEL**

**PARTICIPANT INFORMATION**

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**ENDORSEMENT OF JUSTICE KIMMEL (as Read orally in court, with minor amendments before written release):**

[1] The company is seeking three things by its motion returnable March 18, 2024:

- a. An extension of the Stay to May 19, 2024;
- b. Approval of a Replacement DIP Agreement that has been offered by the consortium behind the RVO transaction for which the court's approval is being sought in mid-April, and related relief associated with the repayment of the existing Cargill DIP Facility; and
- c. The approval of the A&L Premium Finance Agreement between Tacora and Marsh Canada Limited.

[2] The extension of the Stay and the approval of the A&L Premium Finance Agreement are not opposed and, for reasons indicated in previous endorsements when similar relief was sought, those approvals are granted today. With respect to the Stay extension, it is subject to what I am about to say regarding the DIP financing, as all acknowledge that the company requires additional DIP financing as early as this week and pending the outcome of the motions/cross motion returnable on April 10-12, 2024 (the "April Motions").

[3] Cargill seeks an adjournment of the company's request for the approval of the Replacement DIP Agreement. Various concerns were raised about the fairness of the Replacement DIP Agreement and implications it might have in the context of the upcoming April Motions regarding the contested approval of the RVO transaction.

[4] Cargill complains about the process by which the company has secured the Replacement DIP Agreement and lack of engagement with it. Cargill notes that even as recently as today, as a result of concerns it raised when it responded to this motion last Thursday and requested the adjournment of today's motion, new terms have been offered by the consortium for the Replacement DIP Agreement, including they have now agreed to waive all exit and extension fees that had previously been part of the Replacement DIP Agreement. These new terms are not in evidence but have been summarized in an updated comparison chart and confirmed by counsel. Cargill seeks to explore the process and terms and their full implications by way of cross examination of the company's affiant.

[5] Cargill also complains that further terms that it might have offered under its proposed interim DIP facility, such as its willingness to waive exit fees, its willingness to defer interest and its willingness to defer payment of future professional fees, have not been fully explored and its counsel have not had the chance to seek instructions on any of those points because they were not approached about them.

[6] As noted, the terms of the Replacement DIP Facility have evolved. The terms of the Cargill interim facility have also evolved. These are moving targets to some extent, but all in the direction of improvements to the benefit of the company and its stakeholders. I am concerned that the court does not yet have the full picture regarding the Replacement DIP Facility for which approval is being sought today. The court is concerned about approving a Replacement DIP Facility that, for reasons not yet fully known or fleshed out, could have implications for the April Motions.

[7] The evolving terms may have addressed some of those concerns but I cannot be confident that they have all been addressed in the limited time that I have had to consider all of the material and submissions filed in connection with today's appearance. The updated economic comparisons of the two competing DIP Facilities are not entirely clear and it appears that there could be improved terms that are available from both prospective DIP Lenders that the company's Board of Directors and the Monitor have not had a chance to fully consider.

[8] I do not consider there to be a measurable prejudice to the company in having to defer the court's consideration of the benefits that it considers to be available to it under the Replacement Dip Facility until the hearing of the April Motions.

[9] Cargill has offered an interim facility (or what I call an extension of its existing facility but with improved terms) to ensure that the company has the funding it needs to continue to operate through to the hearing of the April Motions, and even beyond the end of the Stay extension, if necessary. The company should not be locked in beyond the end of the Stay

Period, but as I understand the terms of this Cargill interim proposal, it will remain open for repayment by the company as its original DIP Facility was and is.

[10] I am granting the adjournment of the company's motion for approval of the Replacement DIP Facility. I appreciate that I cannot order the company to enter into an extension of the Cargill DIP Facility (or new interim facility), but that is available to the company. Therefore, the primary concern from the court's perspective for the company in the adjournment of today's motion (that it has run out of money that it needs to continue to operate) can be avoided through that mechanism. I see this as similar to the situation that existed when the litigation schedule was approved on the basis of Cargill continuing to fund under the existing DIP Facility, just on now improved terms from the company's perspective.

[11] The court appreciates that the company needs stability but, for better or worse, the company is engaged in a contested litigation process that the court has expedited and is going to be heard in a few weeks. This is just another variable that will now have to be considered in that mix.

[12] I am concerned about delay and the need for certainty and stability. I am not prepared to have this motion extend beyond the existing litigation schedule that has already been set. Nor is it realistic for it to be argued and adjudicated in advance of the presently scheduled hearing dates. As counsel for the Monitor pointed out, we will be back in a few weeks and the company does not need the uncertainty of yet another appearance between now and then, but also cannot afford to have this hanging over after the April Motions.

[13] Accordingly, I am adjourning the motion for the approval of the Replacement DIP Facility to be heard at the return of the other motions on April 10-12. This motion has been mostly briefed. We will simply have to make time for it to be addressed. Any additional developments from cross examinations and/or new terms being offered by either side can be readily incorporated into short submissions, not to exceed three pages double spaced, to be filed in conjunction with the material for the April Motions.

[14] Costs of the contested issues today shall be addressed as part of the costs of the April Motions.

[15] Counsel for the company was asked to submit revised forms of orders to address the unopposed matters of today and any matters associated with the adjournment of the motion to approve the Replacement DIP Agreement that may need to be addressed. Those revised orders were submitted to the court on March 22, 2024.

[16] The revised form of order for the Stay extension now provides for an extension of the Stay only until April 26, 2024, rather than to May 19, 2024. The court was advised that this timing corresponds with the amount of additional DIP financing the parties were able to

negotiate at this time. Assuming that iron ore prices remain stable, the current cash flow forecasts that the company will need additional funding the week of May 5 2024.

[17] The revised orders may be issued in the forms signed by me today.

A handwritten signature in cursive script that reads "Kimmel J.".

KIMMEL J.  
March 25, 2024