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\$50.00
Justice Romaine
JS Form 7
July 16, 2021 [Rule 3.8]

Clerk's Stamp

COURT FILE NUMBER 2101-05019

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF COALSPUR MINES (OPERATIONS) LTD.

DOCUMENT **APPLICATION**
(Approval of Settlement and Increase in Interim Facility)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **OSLER, HOSKIN & HARCOURT LLP**
Barristers & Solicitors
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File Number: 1217428

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: July 16, 2021
Time: 1:00 p.m.
Where: Calgary Courts Centre (By Webex)
Before: The Honourable Madam Justice Romaine

Go to the end of this document to see what you can do and when you must do it.

Order Sought:

1. The Applicant, Coalspur Mines (Operations) Ltd. (“**Coalspur**” or the “**Applicant**”), seek Orders substantially in the forms attached hereto as **Schedules “A” and “B”**:
 - (a) declaring that the time for service of this application is abridged and deemed good and sufficient and the application is properly returnable today;
 - (b) approving the Settlement Agreement and Mutual Release between Coalspur, Ridley Terminals Inc. (“**RTI**”) and Cline Trust Company LLC (“**CTC**”), dated July 13, 2021 (the “**Settlement Agreement**”);
 - (c) approving and directing the withdrawal of the application filed by RTI on May 21, 2021 (the “**RTI Application**”) and the application filed by Coalspur on May 25, 2021 (the “**Coalspur Application**”) in these CCAA proceedings;
 - (d) amending the Amended and Restated Initial Order granted by this Honourable Court on May 6, 2021 (the “**ARIO**”) to increase the interim financing approved thereunder from USD\$26,000,000 to USD\$56,000,000;
 - (e) sealing Confidential Exhibit “A” to the Affidavit of Michel Beyer, sworn July 14, 2021 (the “**Confidential Exhibit**”) and the Confidential Supplement (the “**Confidential Supplement**”) to the Fourth Report of the Monitor, dated July 14, 2021 (the “**Fourth Report**”) on the Court file; and
 - (f) such further and other relief as the Applicant may request and this Honourable Court may grant.

Basis for this claim:

Settlement Agreement

2. On April 26, 2021 (“**Filing Date**”), Coalspur obtained protection from its creditors under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) pursuant to an Initial Order of this Court (the “**Initial Order**”). The Initial Order was amended and restated and the ARIO was granted on May 6, 2021.

3. On May 7, 2021, Coalspur served RTI with a Notice (the “**Disclaimer Notice**”) by Debtor Company to Disclaim or Resiliate a Terminal Services Agreement between RTI and Coalspur, dated January 1, 2018 (as amended pursuant to a Settlement Agreement and Mutual Release dated July 1, 2020 and a Letter Agreement dated February 13, 2021, collectively the “**Terminal Services Agreement**”).
4. RTI objected to the Disclaimer Notice and filed the RTI Application seeking, among other things, a declaration pursuant to section 32 of the CCAA that the Terminal Services Agreement shall not be disclaimed or resiliated.
5. In response to the RTI Application and as a result of various allegations made by RTI against Coalspur, Coalspur filed the Coalspur Application seeking, among other things, a declaration that Coalspur is not compelled to perform the Terminal Services Agreement until such agreement is disclaimed.
6. Following the filing of the RTI Application and the Coalspur Application, RTI and Coalspur pursued good faith settlement discussions to settle the various issues between them, including with respect to the Disclaimer Notice. Such discussion ultimately culminated in the Settlement Agreement.
7. Pursuant to the Settlement Agreement, in exchange for payment of an agreed sum by Coalspur, RTI and Coalspur have agreed to: (a) terminate the Terminal Services Agreement consensually and without the need for further litigation; (b) execute mutual releases releasing each other (and, as discussed further below, CTC) from any and all claims, demands, causes of action or liability, including, but not limited to, any claim for damages which RTI may otherwise file within these CCAA proceedings with respect to Coalspur’s breach of the Terminal Services Agreement; and (c) withdraw the RTI Application and the Coalspur Application.
8. In support of the RTI Application, RTI filed evidence which, among other things, made certain allegations concerning the security held by CTC as secured lender to Coalspur. Both Coalspur and CTC have accordingly requested, and RTI has agreed, to release CTC from any and all claims, demands, causes of action or liability as set out in the Settlement Agreement.

9. Coalspur considers that the Settlement Agreement is in its and all stakeholders' best interests as it:
 - (a) avoids the costs and uncertainty which would otherwise be associated with litigating the RTI Application and the Coalspur Application;
 - (b) provides Coalspur with greater flexibility with respect to restructuring options and alternatives for exiting these CCAA proceedings as it eliminates a potentially significant claim which RTI may otherwise advance in these proceedings; and
 - (c) results in a termination of the Terminal Services Agreement on a consensual basis, thereby facilitating Coalspur's performance of the Amended and Restated Westshore Agreement and the realization of related savings thereunder for the benefit of all stakeholders (as discussed in greater detail in the Confidential Affidavit of Donald S. Swartz II, sworn June 8, 2020).
10. The Monitor and CTC (both in its capacity as secured lender and Interim Lender (as that term is defined in the ARIO)) support the Settlement Agreement.
11. As a result of recent wildfires in British Columbia, the rail line between the Vista Mine and the Westshore Terminal has been impacted, thereby temporarily limiting Coalspur's ability to monetize its coal production and generate revenue. Coalspur is accordingly seeking to increase the interim financing approved under the ARIO from USD\$26,000,000 to USD\$56,000,000 in order to ensure it has sufficient liquidity to (i) fund the settlement amount in accordance with the terms of the Settlement Agreement, and (ii) meet its normal course obligations until rail lines re-open and Coalspur is again able to monetize its coal production.
12. Coalspur and CTC have entered into the necessary agreements to facilitate such increase in the interim financing facility.

Restricted Court Access Order

13. The Confidential Exhibit contains confidential and commercially sensitive information that could adversely affect the commercial interests of RTI if disclosed, including its dealings with third parties and its ability to compete in the markets in which it operates. RTI has

accordingly required that the Settlement Agreement remain confidential and not be disclosed except in accordance with the limited exceptions provided therein.

14. In addition, the Monitor has prepared the Confidential Supplement which, among other things, discusses the confidential information in the Settlement Agreement and provides the Monitor's analysis of the fairness of the settlement quantum in light of Coalspur's broader anticipated restructuring efforts.
15. The Restricted Court Access Order is necessary to prevent the Confidential Exhibit and the Confidential Supplement from forming part of the public record or otherwise being published and disclosed. The benefits of the Restricted Court Access Order outweigh any deleterious effects on the rights and interests of the public.
16. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Affidavit or other evidence to be used in support of this application:

17. The Affidavit of Michael Beyer, sworn July 14, 2021.
18. The Affidavits of Michael Beyer, sworn April 19, April 23, April 30, and June 10, 2021.
19. The Confidential Affidavit of Donald S. Swartz II, sworn June 8, 2021.
20. Fourth Report of the Monitor, dated July 14, 2021, including the Confidential Supplement thereto.

Applicable Acts and regulations:

21. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.
22. *Judicature Act*, RSA 2000, c J-2.
23. *Rules of Court*, Alta Reg 124/2010.
24. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

Clerk's Stamp:



COURT FILE NUMBER 2101-05019
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANTS: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF COALSPUR MINES (OPERATIONS) LTD.

DOCUMENT **ORDER**
(Approval of Settlement and Increase in Interim Facility)

CONTACT INFORMATION **OSLER, HOSKIN & HARCOURT LLP**
OF PARTY FILING THIS Barristers & Solicitors
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Email: RVandemosselaer@osler.com / EPaplawski@osler.com
File Number: 1217428

DATE ON WHICH ORDER WAS PRONOUNCED: July 16, 2021

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Madam Justice Romaine

LOCATION OF HEARING: Calgary Courts Centre
601 – 5th Street SW
Calgary, AB

UPON the application of **COALSPUR MINES (OPERATIONS) LTD.** (the "Applicant"); AND UPON having read the Fifth Affidavit of Michael Beyer, sworn July 14, 2021 (the "Fifth Beyer Affidavit"); AND UPON having read the Fourth Report of FTI Consulting

Canada Inc. (the “**Monitor**”) in its role as Court-appointed Monitor of the Applicant, dated July 14, 2021 (the “**Fourth Report**”), including the Confidential Supplement thereto; **AND UPON** reviewing the Amended and Restated Initial Order granted by the Honourable Madam Justice Shelley on May 6, 2021 (the “**Amended Initial Order**”); **AND UPON** hearing from counsel for the Applicant, the Monitor, Ridley Terminals Inc. (“**RTI**”), Cline Trust Company LLC (“**CTC**”), and any other counsel present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPROVAL OF THE SETTLEMENT AGREEMENT

2. The settlement agreement between the Applicant, RTI and CTC, dated July 13, 2021, a redacted copy of which is attached as Exhibit “A” to the Fifth Beyer Affidavit (the “**Settlement Agreement**”) and the releases granted thereunder are hereby approved. The Applicant is hereby authorized and directed to do all things as are reasonably necessary to conduct and give effect to the Settlement Agreement and carry out its obligations thereunder, including payment of amounts due to be paid pursuant to the terms of the Settlement Agreement.
3. The applications filed by RTI on May 21, 2021 and by Coalspur on May 25, 2021 in these CCAA proceedings are hereby deemed to have been withdrawn.

INCREASE IN INTERIM FINANCING

4. The total interim financing limit of USD\$26,000,000 approved at paragraph 28 of the Amended Initial Order is hereby increased to USD\$56,000,000, and the Applicant is hereby authorized and empowered to borrow such amount in accordance with the terms of the Interim Lender Term Sheet, the Definitive Documents, and the ARIO, with such amendments as may be necessary to give effect to the terms of this Order.
5. Except as otherwise provided for in this Order, or as may be required to give effect to the terms of this Order, all terms of the Amended Initial Order shall remain in full force and effect, unamended.

Schedule “B”

Clerk’s Stamp:



COURT FILE NUMBER 2101-05019
COURT COURT OF QUEEN’S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANTS: IN THE MATTER OF THE *COMPANIES’ CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF COALSPUR MINES (OPERATIONS)
LTD.

DOCUMENT **ORDER**
(Restricted Court Access Order)

CONTACT INFORMATION **OSLER, HOSKIN & HARCOURT LLP**
OF PARTY FILING THIS Barristers & Solicitors
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Email: RVandemosselaer@osler.com / EPaplawski@osler.com
File Number: 1217428

DATE ON WHICH ORDER WAS PRONOUNCED: July 16, 2021

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Madam Justice Romaine

LOCATION OF HEARING: Calgary Courts Centre
601 – 5th Street SW
Calgary, AB

UPON the application of **COALSPUR MINES (OPERATIONS) LTD.** (the “**Applicant**”); AND UPON having read the Fifth Affidavit of Michael Beyer, sworn July 14, 2021, including Confidential Exhibit “A” thereto (the “**Confidential Exhibit**”); AND UPON having read the Fourth Report of FTI Consulting Canada Inc. (the “**Monitor**”) in its role as Court-

appointed Monitor of the Applicant, dated July 14, 2021 (the “**Fourth Report**”), including the Confidential Supplement thereto (the “**Confidential Supplement**”); **AND UPON** reviewing the Amended and Restated Initial Order granted by the Honourable Madam Justice Shelley on May 6, 2021 (the “**Amended Initial Order**”); **AND UPON** hearing from counsel for the Applicant, the Monitor, Ridley Terminals Inc. (“**RTI**”), Cline Trust Company LLC, and any other counsel present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

1. Subject to further Order of this Honourable Court, the Confidential Exhibit and the Confidential Supplement shall be sealed on the Court file and shall not form part of the public record, notwithstanding Division 4, Part 6 of the *Alberta Rules of Court*.
2. The Clerk of this Honourable Court shall file the Confidential Exhibit and the Confidential Supplement in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED
BY COALSPUR MINES (OPERATIONS) LTD. THE CONFIDENTIAL
MATERIALS ARE SEALED PURSUANT TO THE RESTRICTED
COURT ACCESS ORDER ISSUED BY MADAM JUSTICE ROMAINE
ON JULY 16, 2021.

3. Leave is hereby granted to any person, entity or party affected by this Order to apply to this Court for a further Order vacating, substituting, modifying, or varying the terms of this Order, with such application to be brought on notice to Coalspur, RTI, and the Monitor.

J.C.Q.B.A.