

COURT FILE NUMBER 2101-05019

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT 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 FOURTH REPORT OF FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR OF COALSPUR MINES
(OPERATIONS) LTD.

July 14, 2021

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
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FOURTH REPORT OF THE MONITOR

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INTRODUCTION

1. On April 26, 2021, Coalspur Mines (Operations) Ltd. (“**CMO**” or the “**Company**”) was granted an initial order (the “**Initial Order**”) to commence proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).
2. The Initial Order established a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Company until May 6, 2021 and appointed FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings (the “**Monitor**”). The Stay of Proceedings was extended until and including July 23, 2021 by a subsequent Amended and Restated Initial Order (the “**ARIO**”) granted by this Honourable Court on May 6, 2021 (the “**Comeback Hearing**”). On July 9, 2021, this Honourable Court granted an Order, among other things, extending the Stay of Proceedings until and including September 3, 2021.
3. On May 7, 2021, CMO served Ridley Terminals Inc. (“**RTI**”) with a notice to disclaim or resiliate (the “**RTI Disclaimer**”) the following agreements (collectively, the “**RTI Agreements**”):
 - a. a terminal services agreement between CMO and RTI dated January 1, 2018 (the “**Terminal Services Agreement**”) which set out the terms under which RTI provided certain shipping and other terminal services to CMO with respect to RTI’s terminal located in Prince Rupert, BC;
 - b. a settlement agreement between RTI and CMO dated July 1, 2020 regarding the settlement of disputes, including but not limited to, ‘shortfall’ payments for the 2019 contract year under the Terminal Services Agreement; and
 - c. a letter agreement between RTI and CMO dated February 13, 2021 regarding CMO agreeing to pay certain amounts that were in dispute to RTI.

4. On May 21, 2021, RTI filed an application seeking an Order requesting, among other things, the following relief:
 - a. a declaration that CMO is bound by all its contractual obligations under the RTI Agreements; and
 - b. a declaration that pursuant to section 32 of the CCAA the RTI Agreements are not to be disclaimed or resiliated.

5. On May 25, 2021, CMO filed an application seeking an Order requesting, among other things, the following relief:
 - a. a declaration that CMO is not compelled to perform its contractual obligations under the RTI Agreements or remedy any existing defaults thereunder until the RTI Agreements are disclaimed in accordance with the CCAA; and
 - b. a declaration that any amounts owing by CMO to RTI by reason of the RTI Disclaimer (and election not to perform the RTI Agreements) constitute a pre-filing, unsecured claim which is stayed, and which may be compromised, within the CCAA proceedings.

6. On June 28, 2021, the Monitor filed its Third Report (the “**Third Report**”) and provided to the Court and certain parties subject to confidentiality provisions the Confidential Supplemental Report (the “**Confidential Supplemental Report**”) with respect to each of these applications (collectively, the “**Disclaimer Applications**”).

7. On July 13, 2021, RTI, CMO and Cline Trust Company LLC (“**CTC**”), a secured lender and the interim lender to CMO, entered into a settlement agreement and mutual release (the “**Settlement Agreement**”) to resolve the various issues and claims as set out in the Disclaimer Applications. As discussed in further detail below, the Settlement Agreement provides, among other things, that if the Settlement Agreement is approved by the Court, the Disclaimer Applications would not proceed and would be withdrawn.

PURPOSE

8. The purpose of this Fourth Report of the Monitor (the “**Fourth Report**”) is to provide this Honourable Court with the Monitor’s comments and recommendations with respect to the following:
 - a. the Settlement Agreement;
 - b. the application seeking an Order sealing the confidential supplemental report to this Fourth Report (the “**Supplemental Report**”); and
 - c. the request to amend the ARIO to increase the permitted borrowings under the interim financing from \$26 million to \$56 million, and the resulting increase to the Interim Lender's Charge, as such term is defined in the ARIO.

TERMS OF REFERENCE

9. In preparing this Fourth Report, the Monitor has relied upon certain information (the “**Information**”) including CMO’s unaudited financial information, books and records and discussions with senior management (“**Management**”).
10. Except as described in this Fourth Report, 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 Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
11. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
12. Future oriented financial information reported to be relied on in preparing this report is based on Management’s assumptions regarding future events. Actual results may vary from forecast and such variations may be material.

13. Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.

14. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the prior reports of the Monitor filed as part of the CCAA Proceedings.

SETTLEMENT AGREEMENT

15. The background to the Disclaimer Applications has been summarized in the respective Court filings as well as the Monitor's Third Report and the Confidential Supplement to the Third Report. As previously reported, prior to these CCAA Proceedings, the Monitor is aware of extensive negotiations and discussions between CMO and RTI with respect to the RTI Agreements. These discussions continued after the issuance of the RTI Disclaimer and ultimately resulted in the Settlement Agreement.

16. A redacted copy of the Settlement Agreement is attached as Exhibit "A" to the affidavit of Michael Beyer sworn July 14, 2021 (the "**Beyer Affidavit**"). An unredacted copy of the Settlement Agreement is Confidential Exhibit "A" to the Beyer Affidavit. The significant terms of the Settlement Agreement include:

- a. CMO shall file an application (the "**Settlement Application**") seeking, among other things, approval of the Settlement Agreement and approval of the withdrawal of the Disclaimer Applications;
- b. upon the Court granting the Settlement Application, CMO will make a settlement payment (the "**Settlement Payment**") to RTI within five business days of Court approval of the Settlement Agreement;
- c. in order to facilitate an orderly exit by CMO from the Ridley Terminal, RTI agrees to load the approximately 10,000 mt of CMO coal inventory currently located at the Ridley Terminal on or before September 30, 2021;

- d. the parties will mutually release and discharge each other in respect of, among other things, any claims, demands and actions of any nature arising from or in any way related to the RTI Agreements, the Disclaimer Applications and/or the CCAA Proceedings; and
 - e. upon the Court granting the Settlement Application, the RTI Agreements shall terminate and the Disclaimer Applications shall be deemed withdrawn.
17. In conjunction with the Settlement Agreement, CMO is also seeking an amendment to the ARIO to increase the permitted borrowings under the interim financing from \$26 million to \$56 million. The increase is required to ensure adequate liquidity to fund the Settlement Payment while ensuring sufficient liquidity for ongoing operations. The Monitor understands that CMO intends to fund the Settlement Payment from funds on hand to the extent possible; however, CN rail service outages caused by wildfires in British Columbia have resulted in uncertainty as to when coal can be shipped to customers. Accordingly, CMO is seeking the increase in the permitted amounts it can borrow out of an abundance of caution to ensure that no issue arises with respect to the funding of the Settlement Payment.
18. The Monitor is of the view that the Settlement Agreement is reasonable and appropriate for the following reasons:
- a. the Company has the ability to fund the Settlement Payment from funds on hand and operating cash flow or from the proposed increase to the borrowings under the interim financing. CTC, as the Interim Lender (as defined in the ARIO), has agreed to advance should the increase be approved by this Honourable Court;
 - b. the Settlement Payment relative to the potential claim of RTI for the termination of the RTI Agreements is likely on the lower end of typical recoveries for unsecured creditor pools in CCAA plans;

- c. upon issuing the RTI Disclaimer, CMO commenced delivery of coal to the Westshore Terminal and did not perform under the RTI Agreements. The issue of whether performance by CMO was required was to be address in the Disclaimer Applications. If the Court ultimately concluded that CMO had a duty to perform under the RTI Agreements, RTI could have had a post-filing claim which CMO calculated at approximately \$9.3 million for the period since Filing Date up to and including July 9, 2021. The issue of whether this claim would be considered an unsecured pre-filing claim or a post-filing obligation was also to be litigated. The Settlement Agreement provides a global resolution to all issues in dispute between the parties in exchange for the Settlement Payment;
- d. the litigation relating to the RTI Disclaimer and CMO's non-performance following the issuance of the RTI Disclaimer would have been costly, time-consuming, and unpredictable. Given the limited case law relating to section 32 of the CCAA, it is possible that leave to appeal could have been sought (and granted) with respect any decision of this Court. The Settlement Agreement removes the uncertainty and protracted timeline that litigation with respect to the Disclaimer Applications would require;
- e. CMO's restructuring efforts have been effectively put on hold while the issues in the Disclaimer Applications were litigated. The Settlement Agreement addresses the uncertainty surrounding the Disclaimer Applications, which should allow for a more expedited restructuring and/or plan of arrangement and quicker exit from the CCAA Proceedings for CMO;
- f. CTC, as Interim Lender and a secured creditor of CMO, is supportive of the Settlement Agreement; and
- g. the Monitor does not believe there will be any material prejudice to CMO's creditors and other stakeholders as a result of the Settlement Agreement.

19. The Settlement Payment is proposed to be paid by CMO to RTI within five business days of this Honourable Court granting approval and will be funded by CMO should they have sufficient cash flow and sufficient cash available at that time. Alternatively, the Settlement Payment will be funded by the interim financing by way of increasing the amounts permitted to be borrowed under the ARIO.
20. The CN tracks near Lytton, British Columbia are not operational at present as a result of the wildfire in Lytton during the week ending July 2, 2021. It is unclear how long the tracks will remain out of service which has created uncertainty regarding the timing of CMO's coal shipments to customers. As a result, the Company has negotiated an increase to its interim financing to ensure it has adequate liquidity in the event it requires additional liquidity in the interim period. Mine operations continue as expected with no material issues and coal prices remain strong, accordingly CMO expects the additional operating liquidity requirement caused by the rail outage to be temporary.
21. The Interim Lender has agreed to increase its commitments under the Interim Financing Facility by \$30 million. However, only \$20 million will be available immediately. These funds will allow the Company to fund the Settlement Payment and will also allow for increased liquidity while it waits to see how long it will take CN to get its track in the lower mainland British Columbia back in service. The final \$10 million will only be available to the Company with the consent of the Interim Lender.
22. It is the Monitor's view that the increase in the amount permitted to be borrowed under the interim financing from \$26 million to \$56 million, and the resulting increase to the Interim Lender's Charge, is reasonable.

RESTRICTED COURT ACCESS ORDER

23. The Supplemental Report has been prepared in conjunction with this Fourth Report and contains confidential, commercially sensitive information in respect of the Settlement Agreement, which could materially harm the interest of both Coalspur and RTI.

24. A restricted court access order is necessary to prevent the confidential and commercially sensitive information contained in the Supplemental Report from being published and disclosed. The restricted court access order sought is the least restrictive means possible to prevent disclosure of the confidential and commercially sensitive information in the Supplemental Report.

CONCLUSIONS AND RECOMMENDATIONS

25. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant the following:

- a. an Order to approve the Settlement Agreement;
- b. a restricted court access order to seal the confidential Supplemental Report; and
- c. an amendment to the ARIO to increase the amounts permitted to be borrowed under the interim financing from \$26 million to \$56 million, and the resulting increase to the Interim Lender's Charge.

All of which is respectfully submitted this 14th day of July 2021.

FTI Consulting Canada Inc.
In its capacity as Monitor of the Company


Deryck Helkaa
Senior Managing Director


Dustin Olver
Senior Managing Director