

**ENTERED**

602090



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

\$50  
COM  
June 16, 2021  
Justice Romaine

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

DOCUMENT **APPLICATION**  
**(Restricted Court Access Order and RBC Cash Collateral)**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**OSLER, HOSKIN & HARCOURT LLP**  
Barristers & Solicitors  
Brookfield Place, Suite 2700  
225 6 Ave SW  
Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Emily Paplawski  
Telephone: (403) 260-7000  
Facsimile: (403) 260-7024  
Email: [RVandemosselaer@osler.com](mailto:RVandemosselaer@osler.com) / [EPaplawski@osler.com](mailto:EPaplawski@osler.com)  
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: June 16, 2021  
Time: 2:00 p.m.  
Where: Calgary Courts Centre  
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**”), seeks Orders substantially in the forms attached hereto as **Schedule “A”** and **Schedule “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) authorizing the Applicant to provide cash collateral to Royal Bank of Canada (“**RBC**”) in the amount of \$200,000 (or such other amount as may be required by the Royal Bank of Canada and as may be approved by the Monitor) (the “**Authorized Cash Collateral**”), and to grant RBC a security interest in such Authorized Cash Collateral, and, with the Monitor’s consent, to execute such documents as may be required in connection therewith, with respect to obligations incurred after the date of the Order under various corporate credit cards to be provided by RBC to the Applicants for use by the Applicants in the normal course of business;
  - (c) sealing the Confidential Affidavit of Donald S. Swartz II, sworn June 8, 2021 (the “**Confidential Swartz Affidavit**”), as well as the transcript of any cross-examination thereon, any exhibit thereto, or any answer given or document produced in response to a cross-examination question or undertaking where such information or documentation is subject to third party confidentiality obligations or which is, or contains confidential financial, business strategy or other commercially sensitive information or proprietary information not otherwise known or available to the public (collectively, the “**Confidential Evidence**”), on the Court file and granting the other relief set out in the form of Restricted Court Access Order set out in Schedule “B” hereto; and
  - (d) such further and other relief as the Applicant may request and this Honourable Court may grant.

**Basis for this claim:**

***Background***

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 an Amended and Restated Initial Order was granted on May 6, 2021 (the “**ARIO**”).

3. The ARIO, among other things, extended the Stay Period (as defined in the ARIO) until and including July 23, 2021.

***Authorized Cash Collateral to RBC***

4. Prior to the Filing Date, U.S. Bank National Association through its Canadian branch (“**U.S. Bank**”) provided corporate credit card services to Coalspur in accordance with the terms of a Commercial Credit Application, dated January 14, 2011 between Coalspur and U.S. Bank (the “**Credit Card Agreement**”). All obligations of Coalspur under the Credit Card Agreement were secured by a letter of credit posted in favour of U.S. Bank in the amount of US \$210,000.
5. By notice dated May 14, 2021, U.S. Bank terminated the Credit Card Agreement.
6. RBC has proposed to provide Coalspur with replacement corporate credit cards having an aggregate limit of \$200,000, but requires, similar to U.S. Bank, that Coalspur post cash collateral, and grant RBC a security interest in such cash collateral, equal in value to the aggregate credit card limits.
7. Coalspur requires corporate credits to conduct business in the normal course. It is not administratively expedient for Coalspur to request that its employees incur all necessary costs and expenses in the first instance on Coalspur’s behalf, and seek reimbursement for such amounts. In addition, administration of such increased employee reimbursement processes would be administratively onerous.
8. There is no prejudice to any of Coalspur’s stakeholders as a result of its posting of the requested Authorized Cash Collateral. In the normal course of business prior to the Filing Date, Coalspur posted the same amount of cash collateral with the Toronto-Dominion Bank in order to have a letter of credit issued to U.S. Bank to be held as collateral under the Credit Card Agreement. Coalspur is working with U.S. Bank to obtain a release of the

undrawn portion of such letter of credit as a result of the termination of the Credit Card Agreement, which would result in a release of the remaining cash collateral held by the Toronto-Dominion Bank.

***Sealing Order***

9. In support of an application filed by the Applicant on May 25, 2021, and in response to an application filed by Ridley Terminals Inc. on May 21, 2021 (collectively, the “**Pending Applications**”), Coalspur has prepared the Confidential Swartz Affidavit which contains highly confidential, commercially sensitive information that is subject to third party confidentiality obligations, and which could materially harm the interests of both Coalspur and the third parties if disclosed. There are no reasonable alternatives to a Restricted Court Access Order that will prevent such risk.
10. The counterparties to the contracts with Coalspur containing the confidentiality obligations that are binding on Coalspur (the “**Confidential Agreements**”) have required the granting of a Restricted Court Access Order as a condition of agreeing to permit limited disclosure by Coalspur of the Confidential Evidence in connection with the Pending Applications. A Restricted Court Access Order is necessary to prevent the Confidential Evidence 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.
11. 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:**

12. The Affidavit of Michael Beyer, sworn June 10, 2021.
13. The Affidavits of Michael Beyer, sworn April 19, April 23, and April 30, 2021.
14. Second Report of the Monitor, dated June 11, 2021.

**Applicable Acts and regulations:**

15. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.
16. *Judicature Act*, RSA 2000, c J-2.
17. *Rules of Court*, Alta Reg 124/2010.
18. 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 (RBC Cash Collateral)**  
CONTACT INFORMATION **OSLER, HOSKIN & HARCOURT LLP**  
OF PARTY FILING THIS Barristers & Solicitors  
DOCUMENT: Brookfield Place, Suite 2700  
225 6 Ave SW  
Calgary, AB T2P 1N2  
  
Solicitors: Randal Van de Mosselaer / Emily Paplawski  
Telephone: (403) 260-7000  
Facsimile: (403) 260-7024  
Email: [RVandemosselaer@osler.com](mailto:RVandemosselaer@osler.com) / [EPaplawski@osler.com](mailto:EPaplawski@osler.com)  
File Number: 1217428

**DATE ON WHICH ORDER WAS PRONOUNCED:** June 16, 2021  
**NAME OF JUSTICE WHO MADE THIS ORDER:** The Honourable Madam Justice Romaine  
**LOCATION OF HEARING:** Calgary Courts Centre  
601 – 5<sup>th</sup> Street SW  
Calgary, AB

**UPON** the application of **COALSPUR MINES (OPERATIONS) LTD.** (the “**Applicant**”); **AND UPON** having read the Third Affidavit of Michael Beyer, sworn June 10, 2021; **AND UPON** having read the Second Report of FTI Consulting Canada Inc. in its role as Court-appointed Monitor of the Applicant (the “**Monitor**”), dated June 11, 2021 (the “**Second**

**Report”); 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, counsel for the Monitor, and any other counsel present; AND UPON reviewing the Affidavit of Service of Elena Pratt, sworn June \_\_\_\_, 2021; 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.

### **AUTHORIZED COLLATERAL**

2. The Applicant is hereby authorized to provide cash collateral to Royal Bank of Canada (“**RBC**”) in the amount of \$200,000 (or such other amount as may be required by the Royal Bank of Canada and as may be approved by the Monitor) (the “**Authorized Cash Collateral**”), to grant RBC a security interest in such Authorized Cash Collateral, and, with the Monitor’s consent, to execute such documents as may be required in connection therewith, with respect to obligations incurred after the date of this Order under various corporate credit cards that may be provided by RBC to the Applicants for use by the Applicants in the normal course of business.
3. Paragraphs 32 and 33 of the Amended Initial Order shall apply (with such changes as may be necessary) to the security interest to be granted to RBC (the “**RBC Lien**”) in the Authorized Cash Collateral.
4. The RBC Lien shall not be rendered invalid or unenforceable and the rights and remedies of RBC in respect thereof shall not otherwise be limited or impaired in any way by:
  - (a) the pendency of and the declarations of insolvency made in these proceedings;
  - (b) any bankruptcy orders against the Applicant or the filing of any assignments for the general benefit of creditors made pursuant to made pursuant to the *Bankruptcy & Insolvency Act*;
  - (c) the provisions of any federal or provincial statutes; or

- (d) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:
    - (i) neither the creation of the RBC Lien nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a new breach by the Applicant of any Agreement to which it is a party;
    - (ii) RBC shall have no any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the RBC Lien, or the Applicant entering into any agreements in respect thereof; and
    - (iii) the granting of the RBC Lien does not and will not constitute a preference, fraudulent conveyance, transfer at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.
5. The Interim Lenders’ Charge (as defined in the Amended Initial Order) shall rank junior in priority to the RBC Lien, and shall attach to the Authorized Cash Collateral only to the extent of any rights of the Applicant to the return of such Authorized Cash Collateral.



**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 **RESTRICTED COURT ACCESS ORDER**

CONTACT INFORMATION **OSLER, HOSKIN & HARCOURT LLP**  
OF PARTY FILING THIS Barristers & Solicitors  
DOCUMENT: Brookfield Place, Suite 2700  
225 6 Ave SW  
Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Emily Paplawski  
Telephone: (403) 260-7000  
Facsimile: (403) 260-7024  
Email: [RVandemosselaer@osler.com](mailto:RVandemosselaer@osler.com) / [EPaplawski@osler.com](mailto:EPaplawski@osler.com)  
File Number: 1217428

**DATE ON WHICH ORDER WAS PRONOUNCED:** June 16, 2021

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

**LOCATION OF HEARING:** Calgary Courts Centre  
601 – 5<sup>th</sup> Street SW  
Calgary, AB

UPON the application of **COALSPUR MINES (OPERATIONS) LTD.** (the “**Applicant**”); AND UPON having read the Third Affidavit of Michael Beyer, sworn June 10, 2021 and the Confidential Affidavit of Donald S. Swartz II, sworn June 8, 2021 (the “**Confidential Swartz Affidavit**”); AND UPON having read the Second Report of FTI Consulting Canada Inc. in its role as Court-appointed Monitor of the Applicant (the “**Monitor**”), dated June 11, 2021 (the

“**Second Report**”); **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, counsel for the Monitor, and any other counsel present; **AND UPON** reviewing the Affidavit of Service of Elena Pratt, sworn June \_\_\_\_, 2021; **IT IS HEREBY ORDERED AND DECLARED THAT:**

1. Subject to further Order of this Honourable Court, the Confidential Swartz Affidavit and the transcript of any cross-examination thereon together with any exhibits thereto and any answer given or document produced in response to a cross-examination question or undertaking where such information or documentation is subject to third party confidentiality obligations or which is, or contains confidential financial, business strategy or other commercially sensitive information or proprietary information not otherwise known or available to the public (collectively, the “**Confidential Evidence**”), 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 Evidence 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 JUNE 16, 2021.
3. The Applicant is empowered and authorized, but not required, to provide the Confidential Evidence (or any portion thereof, or any information contained therein) to any interested party, entity or person that the Applicant considers reasonable in the circumstances subject to confidentiality arrangements agreeable to the Applicant, Westshore Terminals Limited Partnership, and Canadian National Railway Company.
4. Every person who is provided with or who has access to a copy of the Confidential Evidence shall keep the information contained therein confidential and such information:

- (a) Shall be used only for the purposes of this proceeding and not for any business or other purpose whatsoever;
  - (b) Shall not be given, shown, made available or communicated in any way to anyone other than for the purpose of retaining and instructing counsel with respect to these proceedings only, who shall be bound by the terms of this Order;
  - (c) Shall not be copied or reproduced, including in materials to be submitted to this Court, except by counsel for the purposes of prosecuting or responding to the application filed in these proceedings by Ridley Terminals Inc. on May 21, 2021, and the application filed in these proceedings by the Applicant on May 25, 2021, and subject to the party intending to use the information for such purposes ensuring that the materials are sealed in the manner required by paragraph 2 of this Order (with necessary changes in the notice therein referred to), whereupon such material will be subject to this Order in the same manner as Confidential Evidence.
5. 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, Westshore Terminals Limited Partnership, and Canadian National Railway Company.

---

J.C.Q.B.A.