

S E 2 3 8 5 7 2

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

PETITIONER

PETITION TO THE COURT

This proceeding has been started by the petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must:

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

TIME FOR RESPONSE TO PETITION

A response to petition must be filed and served on the petitioner,

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,

- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or
- (d) if the time for response has been set by order of the court, within that time.

The address of the registry is:
The Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

The ADDRESS FOR SERVICE of the Petitioner is:

Jonathan B. Ross
Gowling WLG (Canada) LLP
Suite 2300, 550 Burrard Street
Vancouver, BC V6C 2B5

Fax number for delivery: N/A

E-mail address for service of the Petitioner: jonathan.ross@ca.gowlingwlg.com /
virginie.gauthier@ca.gowlingwlg.com / michele.hay@ca.gowlingwlg.com

The Name and Office Address of the Petitioner's solicitor is as set out in the address for service above.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR
SERVICE OUTSIDE BRITISH COLUMBIA**

The Petitioner claims the right to serve this Petition on any affected person outside British Columbia on the grounds provided for in the following paragraphs of section 10 of the *Court Jurisdiction and Proceedings Transfer Act*:

- (a) concerns a business carried on in British Columbia,
- (b) is a claim for an injunction ordering a party to do or refrain from doing anything
 - (i) in British Columbia, or
 - (ii) in relation to property in British Columbia that is immovable or movable property.

CLAIM OF THE PETITIONER

PART 1: ORDERS SOUGHT

1. The Petitioner, Myra Falls Mine Ltd., seeks an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") substantially in the form attached hereto as **Schedule "A"** (the "**Initial Order**") granting certain relief, *inter alia*:
 - (a) abridging the time for service of the application of the Initial Order;
 - (b) a declaration that the Petitioner is a company to which the CCAA applies;
 - (c) an order appointing FTI Consulting Canada Inc. ("**FTI**") as an officer of this Court (in its capacity as proposed monitor, the "**Proposed Monitor**" and, if appointed, the "**Monitor**") to monitor the assets, business, and affairs of the Petitioner;
 - (d) an order until December 28, 2028 (the "**Stay Period**"), staying all proceedings and remedies taken or that might be taken in respect of the Petitioner, the Monitor, the Petitioner's director and officers, or affecting the Petitioner's business or current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "**Property**"), except as otherwise set forth in the Initial Order or as otherwise permitted by law;
 - (e) an order setting the hearing of the Petitioner's application for an extension of the Stay Period and for any ancillary relief for 9:30 a.m. on December 28, 2023 or such other date as this Court may order (the "**Comeback Hearing**");
 - (f) ordering that, until further Order of this Honourable Court, the Petitioner's operations be carried out in accordance with the express terms of the Initial Order with liberty to seek to extend the terms of such Initial Order at hearings subsequent to the hearing of the Petition;
 - (g) an order approving the Petitioner's ability to borrow under a debtor-in-possession credit facility (the "**DIP Facility**") pursuant to the DIP Term Sheet established by the DIP Lender (each as defined below);

- (h) an order granting the following limited priority charges over the Property of the Petitioner as security for the obligations of the Petitioner to the beneficiaries of such charges, in each case as set out in the Initial Order, listed in order of proposed priority:
- (i) first, a charge in favour of the Monitor, counsel to the Monitor, and counsel to the Petitioner, in the maximum amount of \$350,000 (the “**Administration Charge**”);
 - (ii) second, a charge in favour of the directors and officers of the Petitioner, in the maximum amount of \$650,000 (the “**D&O Charge**”); and
 - (iii) third, a charge in favour of the DIP Lender, in the maximum amount of \$4,000,000 (the “**DIP Lender’s Charge**”); and
- (i) such further and other Orders as this Honourable Court may deem appropriate.

PART 2: FACTUAL BASIS

Capitalized Terms and Currency References

1. The facts with respect to this application are briefly recited herein and are more fully set out in the Affidavit #1 of Hein Frey made December 17, 2023 (the “**Frey Affidavit**”). Capitalized terms used but not otherwise defined in this Petition have the meanings given to them in the Frey Affidavit.
2. All references to monetary amounts in this Petition are in Canadian dollars, unless otherwise stated.

The Petitioner

3. The Petitioner was originally a federal corporation under the *Canada Business Corporations Act*. In 2013, the Petitioner was continued into British Columbia under the name “Nyrstar Myra Falls Ltd.” (“**Nystar**”). In 2021, the Petitioner underwent a name change to “Myra Falls Mine Ltd.”
4. The Petitioner is indirectly owned by Trafigura Pte Ltd. (“**TPTE**”), a Singaporean corporation, which is a member of the Trafigura group of companies (the “**Trafigura Group**”). The Trafigura Group is a global supplier of commodities and trader.

5. The Petitioner's sole source of financing since 2019 has been through the Trafigura Group, which has provided the Mine (as defined below) shareholder loans in excess of \$100 since 2019.

The Business and the Mine

6. The Petitioner is a mining company and its principal asset is the Myra Falls Mine (the "**Mine**") located in Strathcona Provincial Park ("**Strathcona Park**") approximately 90 kilometers southwest of Campbell River on Vancouver Island, British Columbia. The Mine occupies approximately 3901 hectares of land in Strathcona Park, is primarily a zinc mine, and also produces copper concentrate, lead concentrate, and a minimal amount of gold concentrate.
7. The Mine has been in operation since approximately 1966, with intermittent periods where the Mine was closed or placed in care and maintenance. Mining began at the Mine site in open pit form and shortly thereafter transitioned to underground mining.
8. The Mine was coming out of a prolonged period of care and maintenance that had begun in June 2015, at the time TPTE became an indirect majority shareholder of Nystar. The care and maintenance period resulted from low commodity prices and site infrastructure issues. In 2019, the Mine, with the support of the Trafigura Group, restarted operations.
9. Infrastructure used as part of the Mine includes an administration building, a surface crusher, a concentrator circuit, a flotation circuit, a processing plant, a building for the surface operations team, a concentrate storage facility, a tailings storage facility, two (2) hydro-electric power plants (along with a complimentary back-up diesel powerhouse), an accommodations camp, a changing facility, and a port facility at Campbell River (the "**Discovery Terminal**").
10. Due to the Mine's location, the Petitioner self-generates power and transmits it for distribution to its underground operations and surface facilities.
11. The Mine produces concentrates of zinc, and to a lesser extent lead, copper, and gold. Approximately 78% of the Mine's concentrate production by weight is zinc concentrate.
12. Since 2019, the Petitioner, with the support of the Trafigura Group, has made significant efforts to attempt to bring economic stability to the Mine and make it profitable. During this period, among other things, the Petitioner:

- (a) Oversaw the construction of a tailings dam wall raise designed to fully comply with Canadian regulations and completed it in-house using labour from the local community which resulted in a significant reduction in capital costs;
- (b) Implemented capital improvements to on-site hydro facilities to reduce reliance on diesel power generation;
- (c) Improved copper concentrate production, through increases designed around mill reliability, and mineralogical and metallurgical surveys resulting in consistent particle sizes, and stabilization of floatation circuits;
- (d) Strengthened operational discipline by focussing on efficiency and productivity through the implementation of a formal management operating system framework (MOS); and
- (e) Executed a historic impact and benefit agreement with the Wei Wai Kum First Nation and the We Wai Kai First Nation.

Indebtedness

- 13. As at September 30, 2023, the Petitioner had total assets with a net book value of approximately \$214 million, including current assets of approximately \$29 million (comprised predominately of inventory) and non-current assets of approximately \$185 million.
- 14. As at September 30, 2023, the Petitioner had total liabilities of approximately \$326 million including current liabilities of approximately \$224 million and non-current liabilities of approximately \$102 million.

Creditors of the Petitioner

The Trafigura Group

- 15. The Petitioner, as borrower, and TPTE, as lender, are party to a facility agreement dated as of November 2020, as amended by an amending agreement dated March 5, 2023 (collectively, the “**TPTE-CAD Loan Agreement**”) which established a demand loan facility in favour of the Petitioner in the principal amount of \$60 million. As at November 30, 2023 the Petitioner was indebted to TPTE under the TPTE-CAD Loan Agreement in the approximate amount of \$61,648,265 plus interest, which continues to accrue, payable on the funds advanced under the

TPTE-CAD Loan Agreement at the *per annum* rate equal to the aggregate of the CORRA rate and the short term weighted average cost of debt of the lender.

16. The Petitioner, as borrower, and TPTE, as lender, are party to a facility agreement dated as of November 10, 2020, as amended by an amending agreement dated May 5, 2021 (collectively, the “**TPTE-USD Loan Agreement**”) which established a demand loan facility in favour of the Petitioner in the principal amount of US\$30 million. As at November 30, 2023, the Petitioner was indebted to TPTE under the TPTE-USD Loan Agreement in the amount of approximately US\$36,720,020 plus interest, which continues to accrue, payable on the funds advanced under the TPTE-USD Loan Agreement at the *per annum* rate equal to the aggregate of the LIBOR rate and the short term weighted average cost of debt of the lender.
17. Breakwater Resources Ltd. (“**Breakwater**”), a subsidiary of TPTE, as lender, and the Petitioner, as borrower, are party to a loan agreement dated as of August 31, 2012, as amended by an amending agreement dated September 2021 (the “**Breakwater Loan Agreement**”). As at November 30, 2023, approximately \$76,579,371, plus interest accruing at the 12 month CDOR rate plus a margin specified in the Breakwater Loan Agreement was owing by the Petitioner to Breakwater. In addition to those amounts advanced under the Breakwater Loan Agreement, from time to time, Breakwater has advanced further unsecured interest-free loans to the Company, on an as needed basis (the “**Additional Breakwater Loans**”). As of December 1, 2023, \$4,232,000 was owing in respect of the Additional Breakwater Loans.
18. Trafigura Canada Limited (“**TCL**”) is party to off-take arrangements with the Petitioner pursuant to purchase contracts dated as of January 1, 2022, as amended, under which TCL purchases all of the zinc concentrate, all of the lead concentrate, and certain of the copper concentrate produced by the Petitioner. As part of these off-take arrangements, on an annual basis, TCL is required to notify the Petitioner of a proposed shipping schedule for the following year. The Petitioner is required to arrange transportation of purchased concentrates to the Discovery Terminal at the cost of TCL. 95% of the provisional value of any shipment of concentrate is paid upfront within 3 days of certain documents being delivered by the Petitioner to TCL, including a holding certificate and provisional invoice. Title passes to TCL at the time of the receipt of this first provisional payment. The purchase price for concentrates produced by the Mine is based on market rates that vary depending on, among other things, the pricing for the applicable concentrate on the London Metal Exchange, then in effect.

Secured Creditors

19. The Petitioner does not have a traditional bank or senior secured lender. The Petitioner has a limited number of creditors with registered financing statements under the *Personal Property Security Act* (British Columbia) that relate to the leasing or financing of equipment and motor vehicles. Those creditors are:

- (a) Versatile Leasing Incorporated;
- (b) Toyota Credit Canada Inc.;
- (c) Travelers Leasing Ltd.;
- (d) Sandvik Canada Inc. / Sandvik Financial Services Canada;
- (e) Valiant Financial Services Inc.;
- (f) Amalgamated Mining & Tunnelling Inc.;
- (g) Epiroc Canada Inc.;
- (h) Linde Canada Inc.; and
- (i) Xerox Canada Ltd.

Trade Payables

20. As at November 30, 2023 the Petitioner owed trade creditors approximately \$35,556,708. Some suppliers have recently stopped supplying goods and services to the Mine and others have removed their equipment from the Mine. Many other suppliers have threatened to take immediate action.

Employees

21. The Petitioner currently employs approximately 265 employees on an hourly basis (the “**Unionized Employees**”) and 105 salaried employees; the employees primarily reside in Campbell River or the Courtenay-Comox region.

22. The Unionized Employees are represented by Unifor Local 3019 (the “**Union**”).

23. The Unionized Employees, the Petitioner and the Union are party to a collective bargaining agreement (the “**Collective Bargaining Agreement**”). The Collective Bargaining Agreement has expired. Negotiations to renew the Collective Bargaining Agreement have begun; however, an agreement has not yet been reached.
24. As of December 6, 2023, the Petitioner is in good standing with WorkSafeBC.

Pension Plans

25. The Petitioner is the sole participating employer and legal administrator with respect to two registered pension plans (the “**DB Plan**” and the “**DC Plan**”, and collectively, the “**Pension Plans**”). The Pension Plans are registered with the BC Financial Services Authority pursuant to the *British Columbia Benefits Standards Act* and are also registered under the *Income Tax Act* (Canada).
26. Based on a September 2023 actuarial valuation report conducted by AON, the DB Plan is in an actuarial excess position from a funding standpoint and the Petitioner is not currently required to make further contributions.
27. A review of the DC Plan’s contributions determined there are certain contribution issues relating primarily to the Petitioner’s contributions and unionized employee contributions and are comprised of a mix of over and under contribution errors for both parties. The Petitioner is preparing to materially rectify the over and under contribution issues during the first and second quarters of 2024.

Stakeholders

First Nations

28. The Mine is located on the traditional territory of the Wei Wai Kum First Nation and the We Wai Kai First Nation and the Petitioner is party to an impact and benefit agreement dated as of February 27, 2023 (the “**IBA**”) with these First Nations.
29. In addition to the IBA, the Wei Wai Kum First Nation and the Petitioner are party to a lease agreement dated as of January 1, 2022, in connection with the Discovery Terminal, which is located on reserve lands (the “**Discovery Terminal Lease**”). Under the Discovery Terminal Lease, the Petitioner has certain remediation obligations relating to environmental contamination.

30. The K'ómoks First Nation and the Mowachaht/Muchalaht First Nation have asserted rights over parts of the Mine site. As of the date hereof, the Petitioner is not party to any formal agreements with either of these nations.

The Crown

31. The Petitioner maintains 6 mineral leases and 23 crown permit grants that are registered with, and administered by, the Province of British Columbia (the "Province"). The Petitioner also holds various PUPs required to provide surface access to Strathcona Park, among other licenses and permits used in connection with the Mine and the Discovery Terminal. The Petitioner's leases, permits and PUPs are currently in good standing and the Petitioner's Free Miner Certificate was recently renewed.
32. As a condition of obtaining the requisite provincial approvals for its mining operations, the Petitioner was required to post a bond in the amount of \$132,424,500 (the "Bond") with the Province to secure performance of any conditions, obligations, or requirements that are imposed under the laws of British Columbia relating to mines that, in the opinion of the Province, are related to reclamation or protection of, and mitigation or damage to, the land, watercourses or cultural heritage resources effected by the Mine. The Bond has been issued by Trisura Guarantee Insurance Company. The Petitioner, among others, is party to a general agreement of indemnity in favour of Trisura Guarantee Insurance Company, among others, in connection with the Bond. The Petitioner intends for the Bond to remain in place for the benefit of the Province.
33. In addition to its licenses, leases, and permits with the Province, the Petitioner leases from the Province, the water lot (the foreshore and seabed) contiguous with the Discovery Terminal pursuant to a lease agreement dated July 5, 2018.

Alberta Legacy Well Obligations

34. The Petitioner's assets include 11 legacy oil wells in the province of Alberta (the "Wells"). MFM is in the process of undertaking reclamation work in respect of the Wells under the oversight of the Alberta Energy Regulator. The Petitioner intends to continue such work during these CCAA Proceedings, the cost of which is contemplated under the Cash Flow Forecast (as defined below).

Circumstances Leading To This Petition

Global Decline in Commodity Prices and Rising Costs

35. Since 2019, the Petitioner, with the support of the Trafigura Group, has made significant efforts to attempt to bring economic stability to the Mine and make it profitable.
36. Profitability for the Mine in any given year is driven primarily by commodity prices and in particular the price of zinc.
37. Prices for zinc in 2023 have steeply declined and are down approximately 22% on a year over year basis. The Mine's operational costs have risen by over 20% from 2020 to 2023.
38. The current decline in zinc prices globally is largely driven by weak demand from the construction sector, which accounts for a substantial portion of zinc demand.
39. The decline in zinc prices has led to the suspension of production at a number of mines in 2023 alone, including: (a) the Islay Mine in Peru; (b) the Tara Mine in Ireland (formerly the largest zinc mine in Europe); (c) the King Vol Mine in Australia; and (d) the Mungana Mine, also in Australia.
40. Although the Mine produces a number of types of concentrates, its overall ability to achieve profitability is driven by zinc. Given the Mine's current ore-body, the Petitioner is not in a position, absent further exploration, to counter-balance weak zinc prices through increases in the volume of production of zinc-concentrate or other minerals that can be produced from the Mine. Any further exploration would require a significant financial investment.
41. With future zinc prices uncertain at this time it is unclear when the Mine might achieve profitability.

Dependence on Shareholder Loans

42. The Petitioner's operations to-date have been completely dependent on shareholder loans from the Trafigura Group.
43. In the face of the current difficult zinc price environment, in December 2023, TPTE advised the Petitioner that it was not willing to continue to fund operations at the Mine in their current form.

44. The Trafigura Group has demanded repayment of the loans it provided to the Petitioner to continue operations.
45. The Petitioner has determined that in light of its liquidity constraints and pressure from its suppliers the best course of action at this time is to commence these proceedings and place the Mine in a state of care and maintenance while it explores restructuring and operational options.

The Need for Creditor Protection and the Petitioner's Restructuring Plan

46. The Petitioner is insolvent and is in urgent need of relief under the CCAA. Additional financing is urgently required to provide the Petitioner with the liquidity it needs for transition into care and maintenance. Due to the demand issued by the Trafigura Group and increasingly strident demands by other Creditors including refusal of goods and services, the Petitioner urgently requires a stay of proceedings under the CCAA to maintain the status quo and obtain the "breathing room" required to pursue and implement a restructuring strategy.
47. To address the Petitioner's current financial difficulties and liquidity challenges, the Petitioner, in conjunction with the Proposed Monitor, is developing a restructuring plan that may include a court-supervised sales and investment solicitation process and / or filing a plan of arrangement or compromise. The Petitioner intends to immediately transition the Mine to care and maintenance, requiring only a limited number of employees to be retained to assist with this process.
48. The Petitioner, with the assistance of the Proposed Monitor, has prepared cash flow projections for the 13-week period ending March 15, 2024 (the "**Cash Flow Forecast**"). The Cash Flow Forecast assumes that, as set out above, the Mine will transition into care and maintenance immediately.
49. The Cash Flow Forecast projects that transitioning the Mine into care and maintenance will take approximately 2 months.

DIP Facility

50. In light of the Petitioner's liquidity issues, the Petitioner requires interim financing to sustain its operations, including the payment of professional fees during these CCAA proceedings.

51. Under a DIP term sheet dated December 17, 2023 (the “**DIP Term Sheet**”), Trafigura US Inc. (the “**DIP Lender**”) has agreed to establish an interim financing facility (the “**DIP Facility**”) in the maximum principal amount of \$21 million for use during these proceedings.
52. During the initial ten (10) day stay period, availability under the DIP Facility will be limited to the principal amount of \$4 million which is the amount reasonably necessary for the Petitioner’s operations until the Comeback Hearing.

PART 3: LEGAL BASIS

53. The Petitioner relies on the:
 - (a) *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”);
 - (b) *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”);
 - (c) *Business Corporations Act*, SBC 2022, c. 57 (“**BCBCA**”);
 - (d) *Supreme Court Civil Rules*, B.C. Re. 168/2009, as amended (the “**Rules**”);
 - (e) inherent and equitable jurisdiction of this Honourable Court; and
 - (f) such further and other legal basis as counsel may advise and this Honourable Court may allow.

The Petitioner is a “Debtor Company” to which the CCAA Applies

54. The *CCAA* applies to a “debtor company” whose liabilities exceed \$5 million. A “debtor company” is defined, inter alia, as a “company” that is “insolvent” or that has committed an act of bankruptcy within the meaning of the *BIA*.

CCAA at s.2.(1) definition of “debtor company” and s.3(1).

The Petitioner is a “Company” under the CCAA

55. The *CCAA* defines a “company” as:

[...] any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province and any incorporated company having assets or doing business in Canada, wherever incorporated [...]

CCAA s. 2(1) definition of "company".

56. The Petitioner is a British Columbia corporation doing business in Canada and meets the first and second part of the *CCAA* definition of "company".

The Petitioner is a "debtor company" under the CCAA

57. Under section 3(1) of the *CCAA*, the *CCAA* applies in respect of a company, as defined under the *CCAA*, if it is a "debtor company". As set out above, the *CCAA* defines a debtor company as, inter alia, a company that is "insolvent".

CCAA s. 3(1)

58. The term "insolvent" is not defined under the *CCAA*; however, it is trite law that in a *CCAA* application insolvent can be interpreted by reference to "insolvent person" in s. 2(1) of the *BIA*. The definition of "insolvent person" in the *BIA* is:

[...] a person who is not bankrupt and who resides, carries on business or has property in Canada, and whose liability to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

Cinram International Inc., Re, 2012 ONSC 3767 at paras 49-51; *Stelco Inc., Re*, 2004 CarswellOnt 1211 (Sup Ct [Comm List]) [*Stelco*], paras 21-22.

59. In *Stelco*, Farley J. applied an expanded definition of insolvent in the *CCAA* context to reflect the "rescue" emphasis of the *CCAA*. Farley J modified part (a) of the *BIA*'s definition of "insolvent person" to include a financially troubled corporation that is "reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring".

BIA s.2(1) definition of "insolvent person".

60. In the aggregate, the Petitioner has claims against it well in excess of the \$5,000,000 threshold provided for in the *CCAA*. The Petitioner is "insolvent" on a balance sheet basis as outlined in the

FY 2023 Financial Statements (as defined below). The Petitioner is also “insolvent” on a cash flow basis. Absent the commencement of *CCAA* proceedings, and in light of the demands for payment issued by the Trafigura Group, the Petitioner will not have sufficient means to meet its obligations as they generally become due.

61. For all of the foregoing reasons, the Petitioner is a “debtor company” to which the *CCAA* applies and is eligible for protection thereunder.

Compliance with Section 10(2) of the CCAA

62. In order for an initial application to be approved by this Honourable Court, the Petitioner must provide:
- (a) a statement indicating on a weekly basis its projected cash flow;
 - (b) a report containing the prescribed representations regarding the preparation of the cash-flow statement; and
 - (c) copies of its financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statements.

CCAA s.10(2).

63. The Petitioner prepared unaudited annual financial statements for the fiscal year ending September 30, 2023 (the “**FY 2023 Financial Statements**”), a copy of which is attached to the Frey Affidavit. The Petitioner prepared a projected weekly cash flow which is attached to the pre-filing report of the proposed monitor, which contains the prescribed representations. Accordingly, the requirements under section 10(2) of the *CCAA* are satisfied.

This Court is the Appropriate Forum

64. An application under the *CCAA* may be made to the court that has jurisdiction in the province within which the “head office” or “chief place of business” of the company in Canada is situated.

CCAA s. 9(1).

65. The Petitioner’s head office is in Vancouver, British Columbia, within the jurisdiction of this Honourable Court.

The Requested Stay of Proceedings is appropriate

66. Under sub-section 11.02(1) of the *CCAA*, a Court may grant an initial stay of proceedings under the *CCAA* for a period not to exceed ten (10) days.

CCAA s.11.02(1).

67. The *CCAA* is intended to be highly flexible and should be given a broad and liberal interpretation. In determining whether to grant a stay of proceedings, the Court should consider the purpose of the *CCAA*, which includes maintaining the status quo and providing a debtor with “breathing room” necessary to restructure its affairs, including by way of a sale that preserves all or a material part of its business as a going concern, to the benefit of both the debtor and its various stakeholders.

Ted Leroy Trucking Ltd, Re, 2010 SCC 60 [*Century Services*] at para 60; *Nortel Networks Corp. (Re)*, 2009 CanLII 39492 (Ont. S.C.J.) [Comm. List] at para 47; *Target Canada Co (Re)*, 2015 ONSC 303 at para 8.

68. Once the basic statutory requirements for obtaining relief under the *CCAA* are satisfied, the Petitioners have the burden of satisfying the Court that the relief is appropriate. In *Century Services*, the majority of the Supreme Court of Canada provided guidance on the principles that should guide this analysis:

However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority. Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* - avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

Century Services, at para 70.

69. In *Industrial Properties Regina Limited v. Copper Sands Land Corp.*, the Saskatchewan Court of Appeal held that the evidentiary burden in establishing appropriate circumstances for the purposes of a stay order is not exceptionally onerous and that therefore a plan does not have to be fully developed or supported by all of the creditors at the initial stage. Otherwise, such a threshold would unduly hinder the purpose of an initial order which is to provide the conditions under

which a debtor can attempt to reorganize. The debtor company must show that the initial order will usefully further its efforts towards an attempted restructuring.

Industrial Properties Regina Limited v Copper Sands Land Corp., 2018 SKCA 36 at paras 15, 17, 19 and 21.

70. In this case, the Petitioner has satisfied the requirement of developing a “germ of a plan” and there is no allegation that any party has acted in bad faith. Accordingly, it is appropriate to grant protection under the *CCAA*.

FTI Should be Appointed Monitor

71. Upon the granting of an Initial Order, sub-section 11.7(1) of the *CCAA* requires that the Court appoint a person to monitor the business and financial affairs of the company.

CCAA s. 11.7(1).

72. The Petitioner is seeking the appointment of FTI to serve as the *CCAA* Monitor in these proceedings.

73. FTI is a trustee within the meaning of sub-section 2(1) of the *BIA* and is not subject to any of the restrictions set out in sub-section 11.7(2) of the *CCAA*.

BIA s. 2(1); *CCAA* s 11.7(2).

74. It is the Petitioner’s view that it is particularly appropriate that FTI be appointed as *CCAA* Monitor. FTI has familiarity with, and knowledge of, the Petitioner’s financial records and general business model through its involvement with the Petitioner in advance of these proceedings. This familiarity and knowledge will create cost efficiencies during the course of the proposed *CCAA* proceedings, should FTI be appointed as Monitor.

75. The Petitioner accordingly submits that it is reasonable and appropriate for the Court to appoint FTI as Monitor of the Petitioner in these proceedings.

Granting the Charges Sought is Appropriate

Administration Charge

76. The Petitioner is requesting that the Administration Charge be granted against the Property in the initial maximum amount of \$350,000 to secure the fees and disbursements of the Monitor,

counsel to the Monitor, and counsel to the Petitioner during the initial ten (10) day stay period incurred at their standard rates and charges.

77. Sub-section 11.52(1) of the *CCAA* explicitly provides the Court with the jurisdiction to grant an administration charge in the form being sought by the Petitioner:

11.52(1) Court may order security or charge to cover certain costs – On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge – in an amount that the court considers appropriate – in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

CCAA s. 11.52.

78. In determining whether to grant an administration charge, a Court may consider, among other things, the following non exhaustive factors:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.

Canvest Publishing Inc, Re, 2010 ONSC 222 [*Canvest Publishing*] at para 54.

79. The Petitioner submits that in this case, the granting of the Administration Charge and the quantum of the Administration Charge are reasonable and appropriate in the circumstances, on the basis, *inter alia*, that:

- (a) a restructuring of the Petitioner will have certain complexities given the stakeholders involved;
 - (b) the CCAA proceedings will require significant participation from the proposed beneficiaries of the Administration Charge;
 - (c) there is no unwarranted duplication of roles between the proposed beneficiaries of the Administration Charge;
 - (d) FTI, in its capacity as the Proposed Monitor, is supportive of the granting of the Administration Charge; and
 - (e) the quantum of the Administration Charge being sought in the Initial Order is limited to what is reasonably necessary to cover the fees and disbursements of its beneficiaries for the initial ten (10) day stay period.
80. The Monitor, counsel for the Monitor, and the Petitioner's counsel will be essential to the Petitioner's restructuring efforts.
81. The Petitioner and the Proposed Monitor are of the view that the proposed quantum of the Administration Charge sought is reasonable and appropriate in the circumstances for the period of the initial stay.
82. If the proposed Initial Order is granted, the Petitioner intends to seek an increase of the Administration Charge to \$800,000 at the comeback hearing.

D&O Charge

83. The Petitioner seeks the D&O Charge in the amount of \$650,000 to indemnify its director and officers against obligations and liabilities that they may incur as director or officers of the Petitioner after the commencement of these proceedings.
84. Section 11.51 of the CCAA provides this Court with the jurisdiction to grant a D&O Charge in the amount the Court considers appropriate:

11.51 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge— in an amount that the court considers appropriate— in

favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

CCAA, s. 11.51.

85. A D&O charge can be granted on a priority basis under section 11.51 of the CCAA provided that priority is not granted ahead of secured creditors who have not received notice and the Court is satisfied with the amount of the charge and that the charge will not provide coverage for wilful misconduct or gross negligence.

Re Camvest Global Communications Corp., 2009 CarswellOnt 6184, at para 46; *Camvest Publishing*, at paras 56, 57.

86. The D&O Charge is vital to encouraging the continued participation of the Petitioner's director and officers in order to place the Mine under care and maintenance and to preserve enterprise value while the Petitioner works to implement and carry out a restructuring process. The D&O Charge is not intended to duplicate coverage already in place under the Petitioner's existing insurance policy.
87. The Petitioner and the Proposed Monitor believe that the D&O Charge is fair and reasonable in the circumstances, and necessary for the continued participation of the directors and officers.

The DIP Financing is Appropriate

88. The Petitioner requires urgent DIP financing during the initial ten day stay period to cover operating expenses and professional costs during that period.
89. The DIP Lender has agreed to provide the Petitioner with interim financing during the CCAA proceedings pursuant to the terms of the DIP Term Sheet.
90. The DIP Term sheet provides for a DIP Facility in the maximum principal amount of \$21 million. During the initial ten day stay period, availability under the DIP Facility will be limited to the principal amount of \$4 million.
91. It is proposed that the DIP Lender's Charge, will rank subordinate to the Administration Charge and the D&O Charge, but in priority to all other interests against the assets, property and undertakings of the Petitioner, subject to the interest of secured creditors with valid personal property security registrations against the Petitioner or its assets who have not been given notice of the immediate application.

92. Section 11.2 of the CCAA gives the Court the explicit authority to grant the DIP Lender's Charge. In turn, sub-section 11.2(4) of the CCAA provides that in determining whether to grant the DIP Lender's Charge, the Court should consider, among other things, the following factors:

- (a) the period during which the company is expected to be subject to proceedings under the CCAA;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge;
and
- (g) the monitor's pre-filing report, if any.

CCAA, s. 11.2.

93. Pursuant to sub-section 11.2(5) of the CCAA, in order for the Court to approve any advances under the DIP Term Sheet during the initial ten day stay period and to grant the DIP Lender's Charge, the Court must be satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the Petitioner in the ordinary course of business during that period.

CCAA, s. 11.2(5).

94. In this case, the Petitioner submits that the Court should approve the DIP Term Sheet (subject to limiting the initial borrowing to \$4 million) and grant the DIP Lender's Charge, on the basis, among other things, that:

- (a) the Cash Flow Forecast prepared by the Proposed Monitor demonstrates that an advance of up to \$4 million during the initial ten day stay period, is reasonably necessary to

continue operating in the ordinary course of business and to service associated professional fees during this period;

- (b) the ability to draw on the DIP Facility (both during the initial ten day stay period, and after the comeback hearing, if approved), will allow the Petitioner to fund its operations and focus on restructuring its business for the benefit of its various stakeholders during the course of these *CCAA* proceedings;
- (c) the DIP Lender's Charge will not secure any obligations that existed before the granting of the Initial Order;
- (d) a member of the Trafigura Group is providing the DIP Facility;
- (e) the DIP Facility will preserve the value of the Petitioner, allowing the Mine to transition to care and maintenance and will enhance the probability of a successful restructuring of the Petitioner; and
- (f) as set out in its pre-filing report, to be filed in connection with these proceedings, the Proposed Monitor is of the view that the DIP Term Sheet and DIP Lender's Charge are appropriate and limited to what is reasonably necessary in the circumstances.

95. When all of the foregoing factors are considered, the relief sought by the Petitioner with respect to the DIP Facility and DIP Lender's Charge is demonstrably necessary and appropriate in the circumstances.

The Hardship Payment is Appropriate

96. The Court has a broad jurisdiction under the s. 11 of the *CCAA* to make "any order that it considers appropriate in the circumstances", which has been affirmed by the Supreme Court of Canada.

Century Services Inc. v. Canada (Attorney General), 2010 SCC 60, at paras. 65-66 and 70.

97. The Order sought is appropriate and advances the policy objectives underlying the *CCAA*. It advances the remedial purposes of the *CCAA* by avoiding or alleviating the social and economic losses resulting from the insolvency.

98. This Court also has the broad inherent and equitable jurisdiction to grant the requested remedy. The court's residual source of powers may be drawn upon a necessary whenever it is just and equitable to do so.

Essar Steel Algoma Inc. (Re), 2016 ONSC 595 at para 27;
Nortel Networks Corp (Re.), 2015 ONSC 2987 at para. 206;
Marine Drive Properties Ltd., (Re), 2009 BCSC 1083, at para. 24

99. Courts have previously approved hardship payments to unsecured creditors, including employees, in appropriate circumstances.
100. In *Nortel Networks Corp. (Re.)*, Justice Morawetz recognized the severe impact of the cessation of payments to the former employees, and the importance of the timing of the distribution for the affected individuals in the circumstances in ordering that the Monitor consider a partial distribution to employees in advance of a general distribution. A hardship fund for employees was created by order of Justice Hainey in *Sears Canada Inc. (Re.)*.

Nortel Networks Corp (Re.), [2009] OJ No 2558, 55 CBR (5th) 68 at para. 87-89
In the matter of Sears Canada Inc. et. al. (August 18, 2017), Ont Sup Ct, CV-17-11846-00CL (Order (Employee Hardship Fund Order))

101. In this case, the Company's employees are being made subject to a CCAA initial application and a transition of the mine to care and maintenance together at a particularly sensitive and challenging time of the year.
102. In the circumstances, a payment of two-weeks salary, to be applied to reduce the employee's claims for termination and severance, for terminated or temporarily laid-off employees is appropriate and justified and is supported by the DIP Lender and major unsecured creditors.

Notice and Urgent Relief

103. The Initial Order is being sought with no notice to the Petitioner's stakeholders. The lack of notice with respect to this petition is necessitated by the urgency of the Petitioner's need for relief and protection under the *CCAA*.
104. Section 11 of the *CCAA* provides that:

"...if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the

restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances."

CCAA, s. 11.

105. Rule 8-5(6) of the *Supreme Court Civil Rules* provides that "the court may make an order without notice in the case of urgency".

Rule 8-5(6) of the Rules.

106. In this case, the Petitioner requires urgent relief due to their liquidity challenges and inability to pay liabilities as they come due. The Trafigura Group has demanded repayment of all loans it provided to the Petitioner. Additionally, certain of the Petitioner's suppliers have recently stopped supplying goods and services to the Mine and others have removed their equipment from the Mine. Many other suppliers have threatened to take immediate action.

Form of Order

107. In accordance with this Court's Practice Direction-47, the form of proposed Initial Order is based upon this Court's form of Model CCAA Initial Order and seeks only such relief as is necessary in the circumstances, pursuant to section 11.001 of the CCAA.

CCAA, s. 11.001.

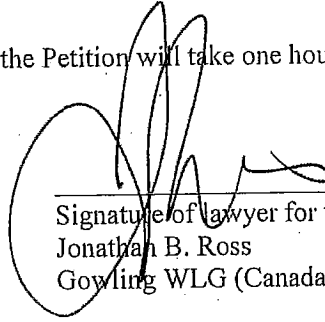
108. The relief sought in the Initial Order is appropriate in the circumstances and within this Court's jurisdiction to grant.

PART 4: MATERIAL TO BE RELIED ON

1. Affidavit of Hein Frey #1, sworn on December 17, 2023.
2. Pre-Filing Report of the Proposed Monitor dated December 17, 2023.
3. Such further materials as counsel may advise and this Honourable Court may permit.

The Petitioner estimates that the hearing of the Petition will take one hour.

Date: December 17, 2023



Signature of lawyer for the Petitioner
Jonathan B. Ross
Gowling WLG (Canada) LLP

To be completed by the court only:

Order made

- in the terms requested in paragraphs ___ of Part 1 of this petition
- with the following variations and additional terms:

Date: _____

Signature of Judge Master

Schedule "A"

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

PETITIONER

ORDER MADE AFTER APPLICATION

(Initial Order)

BEFORE THE HONOURABLE)
JUSTICE FITZPATRICK) 18/12/2023

THE APPLICATION of the Petitioner coming on for hearing before me at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 18th day of December, 2023 (the "Order Date"); AND ON HEARING Jonathan B. Ross, Virginie Gauthier and Manuel Dominguez, counsel for the Petitioner and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the Affidavit #1 of Hein Frey, sworn December 17, 2023 (the "Frey Affidavit") and the consent of FTI Consulting Canada Inc. to act as Monitor; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "CCAA"), the British Columbia *Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

JURISDICTION

1. The Petitioner is a company to which the CCAA applies.

DEFINED TERMS

2. Capitalized terms that are used in this Order shall have the meaning ascribed to them in the Frey Affidavit if they are not otherwise defined herein.

SUBSEQUENT HEARING DATE

3. The hearing of the Petitioner's application for an extension of the Stay Period (as defined in paragraph 15 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at 10:00 a.m. on Thursday, the 28th day of December, 2023 or such other date as this Court may order.

PLAN OF ARRANGEMENT

4. The Petitioner shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

5. Subject to this Order and any further Order of this Court, the Petitioner shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"), and continue to carry on its business (the "Business") in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioner shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order including, without limitation, taking such action as is required to place the Mine in care and maintenance.

6. The Petitioner shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "Wages"); and
- (b) the fees and disbursements of any Assistants retained or employed by the Petitioner which are related to the Petitioner's restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioner, whenever and wherever incurred, in respect of:
 - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioner or any subsidiaries or affiliated companies of the Petitioner are domiciled;
 - (ii) any litigation in which the Petitioner is named as a party or is otherwise involved, whether commenced before or after the Order Date; and
 - (iii) any related corporate matters.
- (c) with the consent of the Monitor, amounts owing for goods or services supplied to the Petitioner prior to the date of this Order by third-party suppliers or service providers, if, in the opinion of the Petitioner, following consultation with the Monitor, that the payment to such supplier or service provider is critical to the continued operation of the Petitioner, will enhance the value of the Property or Business, or is required to address environmental concerns; and
- (d) two additional weeks of wages or salaries to terminated or temporary laid off employees, on the next pay cycle following their termination or temporary layoff.

7. Except as otherwise provided herein, the Petitioner shall be entitled to pay all expenses reasonably incurred by the Petitioner in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and

security services, provided that any capital expenditure exceeding \$100,000 shall be approved by the Monitor;

- (b) all obligations incurred by the Petitioner after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioner following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioner's obligations incurred prior to the Order Date); and
- (c) fees and disbursements of the kind referred to in paragraph 6(b) which may be incurred after the Order Date.

8. The Petitioner is authorized to remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Petitioner in connection with the sale of goods and services by the Petitioner, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

9. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioner shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioner and the landlord from time to time ("Rent"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth

day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

10. Except as specifically permitted herein, the Petitioner is hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioner to any of its creditors as of the Order Date except as authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of its Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to its customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioner to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business, including, without limitation, liabilities incurred as is required to place the Mine in care and maintenance.

RESTRUCTURING

11. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioner shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of its Business or operations and commence marketing efforts in respect of any of its redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$2,000,000 in the aggregate;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing for its Business or Property, in whole or part;

all of the foregoing to permit the Petitioner to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. The Petitioner shall provide each of the relevant landlords with notice of the Petitioner's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioner's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioner, or by further Order of this Court upon application by the Petitioner, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioner disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioner's claim to the fixtures in dispute.

13. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioner and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioner, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioner of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the

Petitioner, in the course of these proceedings, is permitted to, and hereby shall, disclose personal information of identifiable individuals in its possession or control to stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, “**Third Parties**”), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioner or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

15. Until and including December 28, 2023, or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioner and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

16. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioner and the Monitor or leave of this Court.

17. Nothing in this Order, including paragraphs 15 and 16, shall: (i) empower the Petitioner to carry on any business which the Petitioner is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii)

prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioner.

NO INTERFERENCE WITH RIGHTS

18. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioner and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

19. During the Stay Period, all Persons having oral or written agreements with the Petitioner or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioner, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioner in accordance with normal payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance

any monies or otherwise extend any credit to the Petitioner on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioner with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioner whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioner, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioner or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioner that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE

22. The Petitioner shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioner after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. The directors and officers of the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$650,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 42 herein.

24. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioner's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

APPOINTMENT OF MONITOR

25. FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioner with the powers and obligations set out in the CCAA or set forth herein, and the Petitioner and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioner pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Petitioner's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Petitioner, to the extent required by the Petitioner, in its dissemination, to the Interim Lender, as and when required or permitted under the DIP Term Sheet or the Definitive Documents or as otherwise reasonably required by the Interim Lender, of financial and other information as agreed to between the Petitioner and the Interim Lender which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;
- (d) advise the Petitioner in its preparation of the Petitioner's cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender as and when required under the DIP Term Sheet and the Definitive Documents or as otherwise agreed to by the Interim Lender;
- (e) advise the Petitioner in its development of the Plan and any amendments to the Plan;

- (f) assist the Petitioner, to the extent required by the Petitioner, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioner, to the extent that is necessary to adequately assess the Petitioner's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

27. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

28. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. The Monitor shall provide any creditor of the Petitioner and the Interim Lender with information provided by the Petitioner in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioner is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioner may agree.

30. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

31. The Monitor, counsel to the Monitor, and counsel to the Petitioner shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioner as part of the cost of these proceedings. The Petitioner is hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioner on a periodic basis and, in addition, the Petitioner is hereby authorized to pay to the Monitor and, counsel to the Monitor retainers in the amounts of \$75,000 and \$50,000 respectively to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

32. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

33. The Monitor, counsel to the Monitor, and counsel to the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$350,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this

Order which are related to the Petitioner's restructuring. The Administration Charge shall have the priority set out in paragraphs 40 and 42 hereof.

INTERIM FINANCING

34. The Petitioner is hereby authorized and empowered to obtain and borrow under a credit facility (the "**DIP Facility**") from Trafigura US Inc. (the "**Interim Lender**") in order to finance the continuation of the Business and preservation of the Property, all in accordance with the DIP Term Sheet and the Definitive Documents, provided that borrowings under such credit facility shall not exceed the aggregate principal amount of \$4,000,000 unless permitted by further Order of this Court.

35. The DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Petitioner and the Interim Lender dated as of December 17, 2023 (the "**DIP Term Sheet**"), filed.

36. The Petitioner is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Petitioner is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

37. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property up to the maximum amount of \$4,000,000 (plus accrued and unpaid interest, fees and expenses) to secure amounts advanced under the DIP Facility. The Interim Lender's Charge shall not secure an obligation that exists before this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 40 and 42 hereof.

38. Notwithstanding any other provision of this Order:

- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;

- (b) upon the occurrence and during the continuance of an Event of Default (as defined in the DIP Term Sheet), whether or not there is availability under the DIP Facility and notwithstanding any stay imposed under this Order: (i) without any notice to the Petitioner, the Petitioner shall have no right to receive any additional advances thereunder or other accommodation of credit from the Interim Lender except in the sole discretion of the Interim Lender; and (ii) the Interim Lender may immediately terminate the DIP Facility and demand immediate payment of all obligations owing thereunder by providing such notice and demand to the Petitioner, with a copy to the Monitor; and
- (c) with leave of this Court, sought on not less than three (3) business days' notice to the Petitioner and the Monitor after the occurrence and during the continuance of an Event of Default, the Interim Lender shall have the right to enforce the Interim Lender's Charge and to exercise all other rights and remedies in respect of the obligations owing under the DIP Facility and the Interim Lender's Charge.

39. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioner under the CCAA, or any proposal filed by the Petitioner under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. The priorities of the Administration Charge, the Directors' Charge and the Interim Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$350,000);

Second – Directors' Charge (to the maximum amount of \$650,000); and

Third – Interim Lender's Charge (to the maximum amount of \$4,000,000, plus accrued and unpaid interest, fees and expenses).

41. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Interim Lender's Charge and the Directors' Charge (collectively, the "Charges") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or

perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

42. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "Encumbrances"), in favour of any Person, save and except for (a) any secured creditor with a perfected security interest against the Petitioner or any its Property that was not served with the Petition for this Order; and (b) those claims contemplated by section 11.8(8) of the CCAA.

43. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioner obtains the prior written consent of the Monitor, the Interim Lender and the beneficiaries of the Administration Charge and the Director's Charge.

44. The Administration Charge, the Director's Charge, the DIP Term Sheet, the Definitive Documents and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the Interim Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) 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, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Petitioner; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Petitioner of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioner entering into the DIP

Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (c) the payments made by the Petitioner pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

45. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioner's interest in such real property leases.

SERVICE AND NOTICE

46. The Monitor shall (i) without delay, publish in the *Globe and Mail* and the *Northern Miner* a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioner of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

47. The Petitioner and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioner's creditors or other interested parties at their respective addresses as last shown on the records of the Petitioner and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

48. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "Service List") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: <http://cfcanada.fticonsulting.com/myrafalls/>.

49. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: <http://cfcanada.fticonsulting.com/myrafalls/>.

50. Notwithstanding paragraphs 47 and 49 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

51. The Petitioner or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

52. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioner, the Business or the Property.

53. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

54. Each of the Petitioner and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioner to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

55. The Petitioner may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioner determines that such a filing is appropriate.

56. The Petitioner is hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

57. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

58. Any interested party (including the Petitioner and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

59. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

60. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Jonathan B. Ross
Lawyer for the Petitioner

BY THE COURT

REGISTRAR

Schedule "A"

COUNSEL NAME	PARTY REPRESENTED
Claire Hildebrand	Proposed Monitor – FTI Consulting Canada Ltd.

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND
ARRANGEMENT OF MYRA FALLS MINE LTD.

PETITIONER

ORDER
(Initial Order)

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
Bentall 5, Suite 2300,
550 Burrard Street
Vancouver, BC V6C 2B5
Attention: Jonathan B. Ross

Tel: 604.683.6498 Fax: 604.683.3558

File No. A172589

MD/SPK

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND
ARRANGEMENT OF MYRA FALLS MINE LTD.

PETITIONER

PETITION TO THE COURT

GOWLING WLG (CANADA) LLP

Barristers & Solicitors

Bentall 5, Suite 2300,

550 Burrard Street

Vancouver, BC V6C 2B5

Attention : Jonathan B. Ross

Tel: 604.683.6498

Fax: 604.683.3558

File No. A172589

MD/msh