Court File No. CV-23-00707394-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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 OR ARRANGEMENT OF TACORA RESOURCES INC.

(Applicant)

FACTUM OF THE APPLICANT
(Re: AHG Cross-Motion)
(Returnable October 24, 2023)

October 22, 2023

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TO: SERVICE LIST

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PART I - OVERVIEW[1]

1. This factum is filed in connection with a cross-motion (the "**AHG Cross-Motion**") brought by the ad hoc group of senior secured noteholders (the "**Ad Hoc Group**") seeking approval of its own form of ARIO and the DIP facility proposed by the Ad Hoc Group (the "**AHG DIP Proposal**"), or, in the alternative, the imposition of certain terms on the relief sought by the Applicant at the Comeback Motion.

2. The context in which the Ad Hoc Group seeks this relief follows a competitive DIP process in which both the Ad Hoc Group and Cargill (defined below) had an equal opportunity to put forward their best DIP proposal. Following that process, the Board of the Company, with the benefit of advice from the Company's professional advisors and the Monitor, determined that the DIP facility (the "**Cargill DIP Facility**") provided by Cargill, Incorporated ("**Cargill**", and in capacity as DIP lender, the "**DIP Lender**") was (a) superior to the AHG DIP Proposal, (b) the best interim financing available in the circumstances; and (c) in the best interests of the Company and its stakeholders.

3. The Cargill DIP Facility is clearly superior to the AHG DIP Proposal, in that:

[1] Capitalized terms used and not defined herein have the meanings ascribed to them in the Affidavit of Joe Broking sworn October 9, 2023 (the "**First Broking Affidavit**") and the Affidavit of Chetan Bhandari sworn October 9, 2023 (the "**First Bhandari Affidavit**"), Application Record of Tacora Resources Inc. dated October 9, 2023 ("**Initial Application Record**") at Tabs 2 and 3.

(a) The Cargill DIP Facility results in the Company saving $7 million in financing costs over the period covered by the DIP;

(b) The AHG DIP Proposal requires an additional $30 million of funding due to the loss of the Stockpile Agreement, resulting in existing creditors being primed by an additional $30 million;

(c) The Cargill DIP Facility provides sufficient funding to permit the Company to purchase important replacement mining equipment, which is necessary for ongoing efficient operation of the Scully Mine, and the AHG DIP Proposal does not;

(d) The Cargill DIP Facility provides more funding to cover for mark-to-market payments compared to the AHG DIP Proposal to protect the Company in the event of falling iron ore prices;

(e) The AHG DIP Proposal contains restrictive covenants which create significant risk of default for the Company;

(f) The Cargill DIP Facility preserves various operational agreement, whereas the AHG DIP Proposal could cause various operational disruptions to the Company as a result of Tacora losing these arrangements with Cargill; and

(g) The AHG DIP Proposal requires a solicitation process which could have a "chilling effect" on potential bidders interested in acquiring or investing in Tacora as part of the CCAA Proceedings.

4. The Cargill DIP Facility is the superior DIP financing proposal in that it provides the Company with the most stability during these CCAA Proceedings and allows the Company to fully explore value-maximizing alternatives through the proposed Solicitation Process. The Ad

Hoc Group's complaints that the Cargill DIP Facility limits potential options for the Company are unfounded.

5. The Ad Hoc Group has also provided no evidence from any member of the group in support of its motion. Rather, the only evidence filed is a solicitor's affidavit that attaches certain documents but provides no support for the allegations set out in the grounds of the Ad Hoc Group's Notice of Motion. There is simply no evidentiary foundation for the AHG DIP Proposal or its alleged advantages over the Cargill DIP Facility. The Ad Hoc Group's request for various alternative relief is likewise inappropriate, and completely unsupported by evidence.

PART II - FACTS

6. The facts with respect to this motion are more fully set out in the First Broking Affidavit, the Affidavit of Joe Broking sworn October 15, 2023 (the "**Second Broking Affidavit**"), the First Bhandari Affidavit and the Affidavit of Chetan Bhandari sworn October 15, 2023 (the "**Second Bhandari Affidavit**").

A. DIP Process

7. In light of the Company's challenging liquidity situation and upcoming debt maturities, Greenhill, in consultation with management and the Company's other advisors, as well as the Monitor, designed the First DIP Process. The process commended on August 14, 2023 and contemplated a possible CCAA filing in early September.[2]

8. Greenhill contacted fourteen (14) parties, including existing stakeholders of the Company and potential third party lenders, and provided them with materials summarizing the Company's funding requirements during possible a CCAA Proceeding and other information regarding the Company.[3] In response to the outreach, the Company received four (4) DIP

[2] First Bhandari Affidavit at para. 4.
[3] First Bhandari Affidavit at para. 5.

financing proposals, including a proposal from the Ad Hoc Group and a proposal from Cargill. The proposals received from the other parties were determined not to be viable.

9. On September 3, 2023, in connection with the First DIP Process, Stikeman communicated to the Ad Hoc Group and Cargill that the Company was anticipating a CCAA application on September 7, 2023, and requested that the parties submit committed, final and best proposals by September 5, 2023 (the "**First DIP Proposal Deadline**").[4] At the First DIP Proposal Deadline, the Company received a DIP proposal from the Ad Hoc Group, but did not receive a proposal from Cargill.[5]

10. Importantly, throughout this entire period, discussions were ongoing between the Company, Cargill, the Ad Hoc Group and another party regarding a consensual restructuring and recapitalization transaction (the "**Consensual Recapitalization Transaction**") to address Tacora's liquidity issues, over-leveraged capital structure, and need for additional investment to ramp up production and achieve nameplate capacity of 6.0 Mtpa.[6] If agreement was reached on a Consensual Recapitalization Transaction, the Company would have been able to avoid CCAA protection. As a result of progress in these discussions, the originally scheduled CCAA application date of September 7, 2023 was adjourned to September 12, 2023.[7]

11. In anticipation of a CCAA application on September 12, 2023, the Company entered into a DIP agreement with the Ad Hoc Group on September 11, 2023 (the "**AHG DIP Agreement**").The AHG DIP Agreement was the Company's sole option for DIP financing at the time and DIP financing was necessary for the stability of the business during the contemplated

[4] First Bhandari Affidavit at para. 8; Cross-Examination Transcript of Joe Broking taken October 19, 2023 ("**Broking Transcript**"), response to Q124, p. 40, line 19.
[5] First Bhandari Affidavit at paras. 11-12.
[6] First Broking Affidavit at para. 129; Broking Transcript, response to Q105, p. 34, lines 3-10.
[7] Broking Transcript, response to Q115, p. 37, lines 9-13.

CCAA Proceedings. Despite having some concerns about the AHG DIP Agreement,[8] the Company, in consultation with its advisors, determined that the AHG DIP Agreement was better than having no DIP financing at all.[9] At the time the AHG DIP Agreement was executed, counsel to the Ad Hoc Group communicated that "there are ongoing discussions between executive management of Cargill and the AHG and that there is a possibility that the DIP may not be required."[10]

12. In fact, on September 12, 2023, just minutes before the anticipated CCAA Proceedings, the Company was informed that Cargill, the Ad Hoc Group and another party did reach an agreement in principle on a Consensual Recapitalization Transaction.[11] Further, Cargill provided additional liquidity to the Company to support the out-of-court discussions by making additional payments pursuant to the Wetcon Agreement.[12] As a result, the Company did not need to file for CCAA protection or draw upon the AHG DIP Agreement, which remained subject to Court approval.[13]

13. Over the next three weeks, the Company focused its efforts on attempting to advance a binding agreement between on the parties on the Consensual Recapitalization Transaction.[14] The Company had indicated to the parties previously that it believed a Consensual Recapitalization Transaction remained the best path for maximizing value for stakeholders, including the Senior Noteholders.[15]

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[8] Bhandari Transcript, response to Q171-173, pp. 46-47, lines 19-25 (at 46) and 1-10 (at 47); Cross-Examination Transcript of Leon Davies taken October 18, 2023 ("**Davies Transcript**"), response to Q342, p. 94, lines 8-24; Davies Transcript, response to Q278, p. 78 at lines 17-22.
[9] Broking Transcript, response to Q115, p. 37 at lines 15-18; Davies Transcript, response to Q276, p. 78, lines 2-3.
[10] Affidavit of Philip Yang sworn October 15, 2023 at Exhibit "F", Supplementary Application Record of the Applicant dated October 15, 2023 ("**Supplementary Application Record**") at Tab 3.
[11] First Broking Affidavit at para. 129.
[12] First Broking Affidavit at para. 126.
[13] Broking Transcript, response to Q238, p. 85, line 15; First Bhandari Affidavit at para. 8.
[14] First Broking Affidavit at para. 129.

14. On September 28, 2023, while discussions on the Consensual Recapitalization Transaction were ongoing, counsel to the Ad Hoc Group delivered a revised DIP agreement to Stikeman in anticipation of a potential new CCAA filing.[16] The revised DIP agreement reflected the fact that the original AHG DIP Agreement was no longer viable or actionable for the Company.[17] The revised DIP agreement from the Ad Hoc Group reflected that the lender composition of the Ad Hoc Group had changed, the funding needs to the Company had changed and the milestones contemplated by the AHG DIP Agreement were not viable, among other things.[18]

15. In discussions among the Company's advisors and the Monitor during this period, it was also determined that the Company's advisors should contact Cargill to determine if it had any renewed interest in providing the Company with a DIP if discussions regarding the Consensual Recapitalization Transaction failed.[19] The parties could have changed their position given the significant passage of time. The decision was made in good faith in an attempt to obtain the best DIP proposal available to the Company for the benefit of Tacora and its stakeholders.[20]

16. On September 29, 2023, Greenhill contacted representatives of Cargill regarding the possibility of Cargill providing a new DIP proposal for the Company's consideration.[21] In response to the outreach by Greenhill, Cargill indicated that it remained focused on the

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[16] Broking Transcript, Q. 234, p. 84, Response of Heng Vuong to Undertaking No. 4.
[17] Affidavit of Chetan Bhandari sworn October 15, 2023 ("**Second Bhandari Affidavit**") at para. 5, Supplementary Application Record at Tab 2.
[18] Second Bhandari Affidavit at para. 5.
[19] Written Interrogatories of FTI Consulting Canada Inc. ("**FTI Written Interrogatories**"), response to Q4.
[20] Second Bhandari Affidavit at para. 4(d). The Court should be aware that the Second Bhandari Affidavit was corrected on the record by deleting "and was not provided with copies of any DIP proposal in the First DIP Process prior to the First DIP Proposal Deadline." Management was provided with certain version of the DIP proposals during the First DIP Process but was not involved in the negotiations.
[21] Cross-Examination Transcript of Chetan Bhandari taken October 18, 2023 ("**Bhandari Transcript**"), response to Q262, p. 71 lines 7-13; Cross-Examination Transcript of Paul Carrelo taken October 19, 2023 ("**Carrelo Transcript**"), response to Q169, p. 64, lines 13-24.

Consensual Recapitalization Transaction and the upcoming meetings in New York between the parties scheduled for October 3 and 4, 2023.[22]

17. On October 4, 2023, discussions between the parties in respect of the Consensual Recapitalization Transaction broke down and the parties were unable reach a binding agreement. The absence of an agreement on a Consensual Recapitalization Transaction necessitated a CCAA filing and court time was secured for October 6, 2023.[23]

18. On October 5, 2023, Cargill indicated that it was interested in providing DIP financing and submitted a DIP financing proposal to the Company.[24] As a condition for considering the Cargill proposal and delaying the scheduled CCAA application, the Company required Cargill pay an outstanding invoice for seven (7) train deliveries of iron ore. The effect of the payment was to improve the Company's cash position on filing to the benefit of all stakeholders.[25] That same day, the Company informed the Ad Hoc Group of the competing DIP proposal and engaged in negotiations with both parties in an effort to secure the best DIP proposal available in the circumstances.[26] Negotiations with the Ad Hoc Group and Cargill on their DIP proposals were handled by Greenhill and Stikeman. Management was not involved in the negotiations.[27]

19. On the evening of October 5, 2023, Stikeman communicated to both the Ad Hoc Group and Cargill that the Company was requesting committed, final, and best proposals by 5:00 p.m. on October 7, 2023 (the "**Second DIP Proposal Deadline**").[28]

20. On the Second DIP Proposal Deadline, the Company received an executed DIP term sheet from Cargill. The Ad Hoc Group stated that they were committed to provide DIP financing

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[22] Carrelo Transcript, response to Q232, pp. 87-88, lines 21-25 (at 87) and lines 1-9 (at 88); FTI Written Interrogatories, response to Q4.
[23] First Broking Affidavit at para. 129; Affidavit of Thomas Gray sworn October 16, 2023 ("**Gray Affidavit**") at para. 13, Motion Record of the Ad Hoc Group of Noteholders dated October 16, 2023 ("**AHG Motion Record**") at Tab 2.
[24] Broking Transcript, response to Q137, p. 45, lines 16-23; First Bhandari Affidavit at para. 16.
[25] Broking Transcript, response to Q137, pp. 45-46, lines 24-25 (at 45) and 1-10 (at 46).
[26] Second Bhandari Affidavit at para. 16.
[27] Second Bhandari Affidavit at para. 4(a).
[28] First Bhandari Affidavit at para. 16.

to the Company on the terms of the original AHG DIP Agreement, with necessary amendments to accommodate the delay in filing resulting from the negotiations toward a Consensual Recapitalization Transaction and certain other minor amendments.[29] On October 8, 2023, the Ad Hoc Group submitted a revised DIP proposal reflecting the amendments it was willing to make to the AHG DIP Agreement.[30]

B. Selection of DIP Lender

21. Throughout the Second DIP Process, Stikeman and Greenhill, in consultation with the Monitor, communicated key issues to each party regarding their respective DIP proposals and negotiated with both parties to secure the best possible DIP for the Company.[31] Following these negotiations, final DIP proposals from each of Cargill and the Ad Hoc Group were provided to the Board and management.[32] At a board meeting held on October 8, 2023, the Board determined, with the assistance of advice from the Monitor, Greenhill and Stikeman, that the Cargill proposal represented the superior DIP proposal.[33] The Cargill nominee on the Board did not vote on the resolution to approve the Cargill DIP proposal.[34] The other two members of the Board, including the director recommended to the Company by the Ad Hoc Group, voted to approve the Cargill DIP Facility. The Cargill nominee was not required to recuse himself from the meeting pursuant to Section 132(5) of the *Business Corporations Act (Ontario)* (the "**OBCA**") as he was not a party to the proposed transaction, not a director or officer of the DIP Lender, and did not have a material interest in the DIP Lender.[35]

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[29] First Bhandari Affidavit at paras. 17-18.
[30] First Bhandari Affidavit at para. 18.
[31] First Bhandari Affidavit at para. 18.
[32] First Bhandari Affidavit at para. 19.
[33] First Bhandari Affidavit at para. 19.
[34] Broking Transcript, response to Q95, p. 31, lines 19-21; Davies Transcript, response to Q318, p. 88, lines 20-22.
[35] Business Corporations Act, RSO 1990, c B 16, s. 132; Davies Transcript, response to Q410-412, p. 120 at lines 14-21.

22. On October 9, 2023, Tacora, as borrower, and Cargill Inc., as the DIP Lender, entered into the DIP Agreement with Cargill for the Cargill DIP Facility.[36]

23. The Cargill DIP Facility and AHG DIP Proposal were markedly different in a number of ways which are set out in the side-by-side analysis attached as Exhibit "A" to the First Bhandari Affidavit, and summarized below:

	Cargill DIP Proposal	Ad Hoc Group DIP Proposal
Availability	▪ $95.0 million commitment size – $75.0 million commitment for working capital (the "**New Money**") – Stockpile Agreement and operational support from Cargill stay in place – $20.0 million of incremental capacity under Post-Filing Credit Extension (i.e. market-to-market payments under the Offtake Agreement)	▪ $119.0 million commitment sized to replace the OPA and senior secured hedging facility – $105.2 million for operations – $13.9 million for market-to-market payments under the Offtake Agreement
Interest	▪ 10.0% cash interest rate for the New Money – Interest paid monthly in arrears ($1.7 million total cash interest for DIP budget period) ▪ No interest on Post-Filing Credit Extensions	▪ <u>Tranche 1 ($65.2 million):</u> 10% cash interest rate / 3% PIK interest rate ▪ <u>Tranches 2 and 3 ($53.9 million):</u> 8.25% cash interest rate ▪ Interest paid monthly in arrears ($3.6 million total cash interest / $0.6 million total PIK interest for DIP budget period
Fees	▪ 3.0% Exit Fee on New Money – $2.3 million based on $75.0 million commitment – Lender professional fees of $600,000	▪ 2.0% Backstop Fee on all tranches – $2.4 million Backstop Fee including accrued and cash interest – Lender professional fees of $5 million
Variance to Budget	▪ 15% Permitted Cash Flow Variance with respect to aggregate disbursements on a cumulative	▪ 10% Permitted Cash Flow Variance with respect to line item

[36] First Bhandari Affidavit at para 22.

	basis	disbursements ▪ 15% Permitted Variance with respect to iron ore deliveries for each two-week period
Maturity	▪ October 2024	▪ October 2024
Events of Default	▪ Termination, suspension or disclaimer of the Advance Payments Facility Agreement, Offtake Agreement, Stockpile Agreement and Wetcon PSA	▪ Failure to satisfy the solicitation milestones
KERP	▪ Agreed to Company proposed KERP of $3.035 million	▪ $5 million KERP with undisclosed allocations, triggers and other terms
Corporate Governance	▪ N/A	▪ Appointment of up to two (2) independent directors with restructuring experience acceptable to the Ad Hoc Group

C. AHG Cross-Motion Relief

24. As an alternative to the imposition of the AHG DIP Proposal, the AHG Cross-Motion seeks four heads of alternative relief (collectively, the "**Alternative Relief**"):

(a) The appointment of a Chief Restructuring Officer ("**CRO**");

(b) Providing an approval right to the Ad Hoc Group in respect of the terms of any key employee retention plan ("**KERP**");

(c) Providing a consent right to the Ad hoc Group over any Ancillary Post-Filing Credit Extensions under the DIP Agreement; and

(d) Changing the ranking of the Transaction Fee Charge so that it would rank senior to the Senior Priority Notes only to the extent of GLC's fees and pari passu with the Senior Priority Notes.

25. No evidence has been filed on behalf of the Ad Hoc Group in support of the Alternative Relief or why this Honourable Court should consider it to be appropriate or necessary in the

circumstances. As addressed in more detail below, the Ad Hoc Group has not provided any rationale or evidentiary support in respect of why a CRO is necessary, who would act as CRO or what would be the scope of the CRO's mandate.[37] Additionally, notwithstanding multiple requests from Tacora's advisors and from the Monitor, the Ad Hoc Group has not provided any outline as to what would constitute an acceptable KERP.[38]

PART III - ISSUES

26. The issues in respect of the AHG Cross-Motion are whether the Court should approve the Cargill DIP Facility or replace it with the AHG DIP Proposal; and, in the alternative, whether the Alternative Relief should be imposed.

PART IV - LAW AND ANALYSIS

A. The Court Should Approve the Cargill DIP Facility

1. *The Court has jurisdiction to approve the Cargill DIP Facility*

27. DIP financing is specifically authorized under section 11.2 of the CCAA. Subsection 11.2(4) sets out the following factors that the Court may consider in determining whether to make an order approving DIP financing:

(a) The period during which the company is expected to be subject to proceedings under this Act;

(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;

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[37] First Report of the Monitor dated October 20, 2023 (the "**First Report**") at para. 94.
[38] First Report at para. 87.

(f) Whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) The monitor's report.[39]

28. Courts have recognized that while the factors set out in subsection 11.2(4) of the CCAA are typically addressed in the context of whether a particular interim financing proposal will be approved, these factors are "equally applicable in deciding who shall be the DIP lender and on what terms the DIP financing is to be provided."[40] In selecting a DIP proposal, the Court must also make an "independent determination" having regard to the factors in subsection 11.2(4).[41] The Company's selection of the DIP facility and the business judgement of the Board is not determinative but is a factor that should be weighed by the Court. [42]

2. *The Cargill DIP Facility represents the best available financing*

29. As set out above, the Company's advisors engaged in a competitive DIP solicitation process to achieve the best DIP proposal available in the circumstances. The decision to resolicit proposals for a scenario where negotiations regarding a Consensual Recapitalization Transaction were potentially breaking down, was made by the Company's advisors, in consultation with the Monitor, and was a good faith attempt to secure the best possible DIP financing available for the Company and its stakeholders. It is clear that the decision to resolicit DIP proposals did result in a significant improvement to the terms of financing available to the Company as the clear evidence before the Court is that the Cargill DIP Facility is in fact superior to the AHG DIP Proposal.

30. In *Great Basin*, the Court considered pricing and fees, milestones and other covenants of the DIP proposals in deciding which DIP proposal should be approved. The Court acknowledged that "the financial terms of each proposal, [and] factors such as timing, prejudice,

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[39] CCAA, s. 11.2(4).
[40] *Great Basin Gold Ltd (Re)*, 2012 BCSC 1459 ("***Great Basin***") at para. 14.
[41] *Crystallex (Re)*, 2012 ONCA 404 ("***Crystallex***") at para. 85.
[42] *Crystallex, supra* at para. 84.

risk and uncertainty play a central role in assessing each proposal."[43] On all of the above metrics, the Cargill DIP Facility is superior to the AHG DIP Proposal:

(a) Cost. The Cargill DIP Facility has a significantly lower cost than the AHG DIP Proposal when considering interest, fees and related expenses, and is expected to result in approximately $7 million in cost savings for the Company relative to the AHG DIP Proposal;[44]

(b) Sizing. The Cargill DIP Facility contemplates the extension of the Stockpile Agreement, which results in the size of the DIP facility being approximately $30 million less than the AHG DIP Proposal for working capital financing. As set out further below, the reduced size of the Cargill DIP Facility results in less prejudice to existing creditors compared to the AHG DIP Proposal.[45] Additionally, though the Cargill DIP Facility provides for less financing in aggregate due to the benefits of the Stockpile Agreement, the Cargill DIP Facility provides for additional funding relative to the AHG DIP Proposal for necessary and important mining equipment to support the Company's operations and additional funding for mark-to-market payments due under the Offtake Agreement in the event of falling iron ore prices.[46]

(c) Covenants. The Cargill DIP Facility contains fewer restrictive covenants on the operations of the Company's business. The primary covenant related to the cash flow forecast in the Cargill DIP Facility allows for a permitted variance on aggregate disbursements of up to 15%. This permits much greater flexibility than the AHG DIP Proposal, which provides for permitted variances of only 10%

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[43] *Great Basin, supra* at paras. 10, 14.
[44] First Bhandari Affidavit at paras. 20(a), 26 and Exhibit "A"; Pre-Filing Report of the Proposed Monitor dated October 9, 2023 (the "**Pre-Filing Report**") at para. 65(a).
[45] Pre-Filing Report at para. 65(a).
[46] Second Bhandari Affidavit at para. 7(a).

on a line-by-line basis and also requires the Company to deliver at least 85% of the iron ore contemplated in the forecast to the port. These covenants create a significant risk that the Company could default under the AHG DIP Proposal.[47]

(d) Benefit of existing arrangements. The Cargill DIP Facility contemplates the extension of certain arrangements between Cargill and Tacora during the CCAA Proceedings, including the Stockpile Agreement, on-site support and various hedges, which is expected to result in less operational disruption for the business during the CCAA Proceedings;[48]

(e) KERP Certainty. The Cargill DIP Facility provides funding certainty for the Company's proposed KERP, which the Company believes is necessary to maintain key employees during the CCAA Proceedings.[49] Despite numerous attempts by the Company and its advisors, and the Monitor, to obtain feedback on a proposed KERP from the Ad Hoc Group (and despite the Ad Hoc Group's assertion that it supports a larger KERP than that proposed by the Company), the Ad Hoc Group has refused to engage or provide details about what it would consider to be an acceptable KERP under the AHG DIP Proposal.[50]

31. The Cargill DIP Facility is clearly superior to the AHG DIP Proposal. For these reasons, among others, the Board determined, following advice and recommendations from the Company's advisors, that the Cargill DIP Facility should be implemented.[51] The Monitor has noted that in making the decision to proceed with the Cargill DIP Facility, the Company "carefully considered" the competing DIP proposals. The Monitor has also opined that "there is

[47] Second Bhandari Affidavit at para. 7(b).
[48] First Bhandari Affidavit at para. 20(b).
[49] Pre-Filing Report at para. 65(e).
[50] First Report at para. 87.
[51] Second Bhandari Affidavit at para. 7.

no better alternative to the [Cargill] DIP Financing Agreement at this time"[52] and the Monitor does not recommend the approval of the AHG DIP Proposal.[53]

3. *The Cargill DIP Facility does not limit restructuring alternatives available to the Company*

32. In *Great Basin,* the Court noted that when approving DIP financing it "must determine which proposal is most appropriate and most importantly, which will best serve the interests of the stakeholders of the [Applicants] as a whole by enhancing the prospects of a successful restructuring."[54] The Ad Hoc Group has taken issue, in particular, with an event of default provision in the Cargill DIP Facility (the "**Offtake EOD**"), which provides that the following is an event of default:

> The termination, suspension or disclaimer of the Existing Arrangements, or the taking of any steps to terminate, suspend or disclaim (if permitted under the CCAA) any of the Existing Arrangements (which, for greater certainty, shall not include (i) the commencement and prosecution of the SISP, including the solicitation of an Alternative Offtake or Service Agreement, or (ii) taking any step or related action pursuant to a binding agreement entered into in respect of a Restructuring Transaction at or after the Bid Deadline, including executing such agreement, seeking court approval of such binding agreement or taking any steps in connection with consummating the Restructuring Transaction pursuant to such binding agreement, in each case at or after the Bid Deadline), without prejudice to any rights that CITPL may have pursuant to section 32 (including subsection 32(9)(c)) of the CCAA or otherwise;

33. However, the Ad Hoc Group's complaints misinterpret the effect of the Offtake EOD. The Offtake EOD does not limit the Company's ability to explore any value-maximizing alternatives, including restructuring transactions that involve either a new offtake agreement, or no offtake agreement.[55] In fact, the solicitation process agreed to in the Cargill DIP Facility expressly contemplates that the Company shall solicit "Alternative Offtake or Services Agreements" as

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[52] Pre-Filing Report at para. 66.
[53] First Report at para. 72.
[54] *Great Basin Gold Ltd (Re)*, 2012 BCSC 1459 at para. 15.
[55] First Bhandari Affidavit at para. 21; First Report at para. 92.

part of the Solicitation Process[56] and the Solicitation Process put forward by the Company for Court approval contemplates soliciting interest in the "Offtake Opportunity" as part of binding bids.[57] Permitting the full exploration of all alternatives available to the Company during the CCAA Proceedings was of critical importance in evaluating the DIP proposals.[58]

34. The carve-out imbedded in the Offtake EOD provides that it is not an event of default if the Company takes steps or actions related to termination, suspension or disclaimer of the Offtake Agreement or other existing arrangements in connection with a binding agreement entered into at or after the bid deadline. In practice, that is likely to be the only time Tacora would seek to take such steps or actions.[59] Currently, Tacora sells 100% of the iron ore concentrate produced at the Scully Mine to Cargill and it does not have any other purchasers of iron ore concentrate.[60] Accordingly, while it is important that the Company be able to explore alternatives during the CCAA Proceedings, it will not be practical to terminate, suspend or disclaim the Offtake Agreement before the Company has the means to sell its iron ore concentrate to one or more alternative customers.

35. The only practical restriction created by the Offtake EOD is that the Company will not be able to enter a stalking horse agreement that contemplates the termination, suspension or disclaimer of the Offtake Agreement without either refinancing the Cargill DIP Facility or obtaining the DIP Lender's consent. The Company understood this risk when evaluating the Cargill DIP Facility. The Company knew that the Ad Hoc Group was potentially interested in acting as a stalking horse, but given there have not been any advanced discussions regarding a stalking horse agreement, all parties will be able to participate fully in the solicitation process, and the Company maintains the flexibility to refinance the Cargill DIP Facility at any time, the

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[56] First Broking Affidavit, Exhibit "K", DIP Agreement dated October 9, 2023 (without schedules), s. 29.
[57] First Report at paras. 39(a) and 91.
[58] First Bhandari Affidavit at para. 21; Broking Transcript, response to Q172, pp. 60-61 at lines 12-25 (at 60) and 1-3 (at 61).
[59] First Report at para. 92.
[60] First Broking Affidavit at paras. 34 and 39.

Company, in consultation with its advisors and the Monitor, determined that the benefits provided by the Cargill DIP Facility are outweighed by this potential negative.[61]

36. For the foregoing reasons, the Company believes that the Cargill DIP Facility does not limit any potential alternatives to be explored by the Company during the CCAA Proceedings and, in fact, the Cargill DIP Facility will enhance the prospects of a value-maximizing restructuring. The Cargill DIP Facility should be approved on this basis.

37. Furthermore, the AHG DIP Proposal contains restrictions which are contrary to the interests of the Company and its ability to run a full and open process. The AHG DIP Proposal contains certain provisions which would provide the Ad Hoc Group with an advantage during the Solicitation Process.

38. First, the AHG DIP Proposal requires solicitation procedures to be approved by the Court during the CCAA Proceedings subject to the following provision:

> Notwithstanding anything else herein, to the extent a secured creditor will not be paid in full in cash as a result of any Bids received in the Solicitation Process, such secured creditor shall then be entitled to submit a Protective Credit Bid in an amount that exceeds the highest Bid received.[62]

This provision permits the Ad Hoc Group to submit a "topping credit bid" (up to the amount of their total debt) after the completion of the solicitation process if the successful bid does not result in full payment of the Ad Hoc Group's pre-filing secured debt. In other words, the Ad Hoc Group would have a "last look" following the final bid deadline even if the Ad Hoc Group did not participate in the solicitation process.[63] The Company has significant process concerns with the inclusion of such a provision in the solicitation process as it could cause a chilling effect on potential bidders interested in acquiring or investing in Tacora.[64] In addition, the clause would

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[61] First Bhandari Affidavit para. 21.
[62] Gray Affidavit, Exhibit "I" at para. 41, AHG Motion Record, p. 191.
[63] Second Bhandari Affidavit at para. 7(c).
[64] Second Bhandari Affidavit at para. 7(c).

cause in any interested bidder to have discussions with the Ad Hoc Group regarding a transaction rather than the Company and its advisors and the Monitor, which could result in a loss of control and fairness in the process.[65]

39. Second, the AHG DIP Proposal would require the Company to appoint two (2) new directors from a slate of five (5) directors put forward by the Ad Hoc Group, if requested. In *Quest University*, the Court recognized that a creditor's attempt to seek control through board appointments in connection with DIP financing was "unreasonable and inappropriate in the circumstances and it may significantly disadvantage other interests in this proceeding."[66] Like the present situation, the creditor in *Quest University* had indicated an interest in purchasing the debtor's property. As in *Quest University*, it would be inappropriate for the Ad Hoc Group to achieve control over the Company's Board through the AHG DIP Proposal.

4. *The Cargill DIP Facility causes less prejudice to existing secured creditors than the AHG DIP Proposal*

40. The Ad Hoc Group has asserted that a Cargill DIP Facility is far more prejudicial than the AHG DIP Proposal because the Senior Noteholders hold seven times more secured debt than Cargill. The Ad Hoc Group's argument is simply that because the Senior Noteholders are the Company's largest creditor group, the Company should be obligated to proceed with the AHG DIP Proposal. However, the argument fundamentally misinterprets what material prejudice means in the context of Section 11.2(4) of the CCAA.

41. Material prejudice in the context of Section 11.2(4) requires consideration of how much the creditors are being primed by a priority DIP charge, not who is the priming creditor. On an objective test it is clear that the Cargill DIP Facility is far less prejudicial to creditors generally as the Company requires significantly less financing due to the operational agreements already in place between the Company and Cargill. As noted by the Monitor, "[u]nder the Ad Hoc Group

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[65] Second Bhandari Affidavit at para. 7(c).
[66] *Quest University Canada (Re)*, 2020 BCSC 318 at paras. 99 – 100.

DIP proposal, the DIP facility would have been substantially larger" and, as a result, "[a]ny prejudice to the secured creditors that may result from the granting of a DIP charge is therefore reduced under the [Cargill] DIP Financing Agreement as compared to the alternative Ad Hoc Group DIP Proposal."

42. Additionally, the Ad Hoc Group's argument ignores Tacora's other creditors, including Senior Noteholders who are not part of the Ad Hoc Group[67], trade creditors, employees, lessors and other unsecured creditors. Under the AHG DIP Proposal, the Company will need to realize approximately $30 million more in connection with a restructuring transaction for these creditors to have the same recovery as under the Cargill DIP Facility due to the additional financing that will be required with the AHG DIP Proposal. Accordingly, it is clear that creditors broadly will be far less prejudiced with the Cargill DIP Facility.

B. The Alternative Relief is inappropriate and the Court should deny the AHG Cross-Motion

1. *Appointment of a CRO is not Justified or Necessary*

43. The motion filed by the Ad Hoc Group seeks, in the alternative, the appointment of a CRO, as an officer of the Court, on terms acceptable to the Ad Hoc Group and the Applicant, or as may otherwise be ordered by the Court. The sole justification for this relief contained in the Ad Hoc Group's motion record, are two statements contained in its Notice of Motion. No evidence supporting this relief whatsoever has been filed by the Ad Hoc Group, not even in the solicitor's affidavit filed by the Ad Hoc Group.[68]

44. The AHG DIP Proposal contains a requirement to appoint up to two new directors to the Company's board of directors, and it appears that the request for the appointment of a CRO is a direct response to the Company to the potential of losing this ability. It also appears their

[67] The Ad Hoc Group has never disclosed their holdings of Senior Notes and Senior Priority Notes.
[68] Notice of Cross-Motion (AHG ARIO) dated October 13, 2023 at paras 10 and 13, AHG Motion Record at Tab 1.

attempt to appoint new management is a result of the Company choosing the Cargill DIP Facility over the AHG DIP Proposal.

45. As stated by the Monitor in its response to written interrogatories:

> In drafting the Pre-Filing Report, FTI considered the fact that the Ad Hoc Group had not expressed any intention of replacing management, a key factor in considering stakeholder confidence. This was reflected in the fact the Ad Hoc Group September DIP did not include any restraints on management that might typically be sought in such situations of expressed lack of confidence. FTI was also told by the Ad Hoc Group's counsel that they had not heard anything that suggested that the Ad Hoc Group wished to replace the Company's management.[69]

46. As support for the Court's authority to appoint a CRO, the Ad Hoc Group relies upon the Court's general powers under section 11 of the CCAA to "make any order that it considers appropriate in the circumstances".[70] However, the relief sought by the Ad Hoc Group appears to be a proxy for the ability to appoint two new directors and would have the same practical effect.

47. The Court's ability to remove directors of a debtor company is set forth in subsection 11.5(1) of the CCAA:

> The court may, on the application of any person interested in the matter, make an order removing from office any director of a debtor company in respect of which an order has been made under this Act if the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the company or is acting or is likely to act inappropriately as a director in the circumstances.[71] [Emphasis added]

48. The Ad Hoc Group cannot avoid the specific statutory provisions for removing directors of a debtor company by relying upon section 11 of the CCAA or the inherent jurisdiction of this Court. In *Stelco*, the Court of Appeal for Ontario concluded that the Court's inherent jurisdiction under section 11 "is not open-ended and unfettered", but rather, "must be guided by the scheme

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[69] FTI Written Interrogatories, response to Q9.
[70] CCAA, s. 11.
[71] CCAA, s. 11.5(1).

and object of the [CCAA] and by the legal principles that govern corporate law issues."[72] Moreover, the Court of Appeal specifically stated that "the court is not entitled to usurp the role of the directors and management in conducting what are in substance the company's restructuring efforts."[73]

49. Seeking to appoint a CRO over the objection of the Company is an analogous remedy to removal of directors from the board and must face similar scrutiny. The Court has recognized that "removing and replacing directors of a corporation, even a debtor corporation, subject to the CCAA, is an extreme form of judicial intervention in the business and affairs of the corporation."[74] The Company is not aware of any case which involved the appointment of the CRO without the consent of the debtor.

50. The Ad Hoc Group have not adduced any evidence that either Tacora's management or its Board is unreasonably impairing, or are likely to unreasonably impair, the possibility of a viable compromise or arrangement, nor has it advanced any evidence to justify the appointment of a CRO.[75] It appears the Ad Hoc Group's primarily complaint is that the Company ultimately selected the Cargill DIP Facility as the superior DIP financing. Further, the Ad Hoc Group has not even disclosed or described what the acceptable scope or terms of any appointment of a CRO would be. As such, the Ad Hoc Group cannot meet any objective test for the appointment of a CRO, let along the test under subsection 11.5(1) of the CCAA for analogous relief.

51. In the circumstances of this case, the imposition of a CRO as an Officer of the Court is unnecessary, would be of no benefit to the restructuring process in this case and would result in unwarranted additional costs. The restructuring path, being the implementation of the Solicitation Process, has already been determined and is not in dispute. The Solicitation

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[72] *Stelco Inc, Re*, 2005 CanLII 40140 ("***Stelco***") at para. 26.
[73] *Stelco, supra* at para. 26.
[74] *Quest University Canada (Re)*, 2020 BCSC 318 at para. 61.
[75] First Report at para. 94.

Process, if approved by the Court, will be undertaken by the Company and its experienced advisors, being Greenhill under the supervision of the Monitor, an independent officer of this Court.[76] The Monitor will also similarly be involved in supervising management with respect to cash disbursements and other significant issues that may arise during the CCAA Proceedings with respect to the business. The Monitor has noted that the Company is "acting, in good and with due diligence" and the Monitor does not support the appointment of a CRO at this time.[77]

2. *The KERP Should not Require the Ad Hoc Group's Approval*

52. As part of the Alternative Relief, the Ad Hoc Group seeks a declaration or direction that any ARIO granted in respect of Tacora provide that the terms of any KERP be acceptable to the Ad Hoc Group, or as may otherwise be ordered by the Court. The Ad Hoc Group does not dispute that a KERP is necessary. The only concern noted by the Ad Hoc Group with respect to the proposed KERP is that "a significant portion of the KERP to be proposed by Tacora will go to executive management resident in Grand Rapids, Minnesota, rather than the non-executive and operation employees (primarily located in Wabush, Newfoundland) whose contributions will be crucial to keeping Tacora operating during the CCAA process and who should receive the benefit of such a KERP."[78] However, despite the bald statement in their Notice of Motion, the Ad Hoc Group has not adduced any evidence with respect to the KERP, its appropriateness or their concerns, and it is clear why – the Ad Hoc Group's concerns lack foundation in fact.

53. Approximately 80% of the Key Employees (27 of 34) covered by the KERP work directly at the Scully Mine in Wabush, Newfoundland, and senior management frequently travels to be on-site at the Scully Mine, as demonstrated by their being on-site in connection with the CCAA filing to deliver communications to Tacora's employees, suppliers and key governmental

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[76] First Report at para. 94.
[77] First Report at paras. 58, 94 and 101.
[78] Notice of Cross-Motion at para. 14, AHG Motion Record at Tab 1, p. 11.

authorities.[79] Additionally, the Key Employees performing corporate functions for Tacora are equally important to the efficient and ongoing operation of the Scully Mine and Tacora's business. As stated by the Monitor, employees in senior management, the Company's treasury and finance functions, supplier management and reporting, "are critical to the ongoing operation of the business and the restructuring process and the CCAA Proceeding[s] imposes significant additional responsibilities on those individuals."[80]

54. The lack of specific feedback or issues on the KERP is also part of a pattern by the Ad Hoc Group. The Monitor has noted that "notwithstanding multiple requests from Tacora, its advisors and the Monitor, the Ad Hoc Group have neither provided any meaningful feedback on the KERP, nor provided specific details on what would, in their view, constitute an acceptable KERP.[81] In the absence of specific feedback, the Company worked with the Monitor on the design of the KERP, including its scope and implementation of the KERP[82] and followed the advice and recommendations provided by the Monitor.[83]

55. For the reasons outlined in the Applicant's Comeback Motion factum, the KERP is necessary in the circumstances. If the KERP is not approved, it is likely that the Key Employees, who will be critical to ensuring the continued operation of the Scully Mine and advancing the proposed Solicitation Process and the Company's restructuring outcome, would pursue other employment opportunities.[84] Delay in approval of the KERP is also untenantable in the circumstances and increases the risk of loss of the Key Employees which would be detrimental to all stakeholders.[85] As noted by Mr. Leon Davies, a director of Tacora, on his examination:

> I believe that the operational stability of Tacora is highly dependent on the – on people that work there. That one of the

[79] Second Broking Affidavit at Exhibit "C" and paras. 11 – 12.
[80] First Report at para. 48.
[81] Broking Transcript, response to Q270, p. 94 at lines 5-12.
[82] Broking Transcript, response to Q185, pp. 64-65 at lines 22-25 (at 64) and 1-3 (at 65).
[83] Broking Transcript, response to Q187, pp. 65-66 at lines 10-25 (at 65) and 1-14 (at 66).
[84] Second Broking Affidavit at para. 22; First Report at para. 45.
[85] First Report at para. 96.

> biggest challenges that Tacora has faced over the last few years is its inability to bring in sufficient skilled operational leadership in key roles. I'm a firm believer that a CCAA process creates material risk and that we will lose -- and that Tacora will lose key workers. And that even the loss of a handful of these key workers could result in the operation being forced to shut down, as was the case once before in a CCAA process.[86]

3. *The Ancillary Post-Filing Credit Extension should not Require the Ad Hoc Group's Approval or Court Approval*

56. The Ad Hoc Group seeks a declaration providing that any "Ancillary Post-Filing Credit Extensions" require the consent of the Ad Hoc Group or further Order of this Court. The Ancillary Post-Filing Credit Extensions under the Cargill DIP Facility are the cost of any Additional Services. Additional Services are services (including consulting or advisory services or technical support) whether provided through third parties or by employees of Cargill that may be agreed by the Company and the DIP Lender from time to time, with the consent of the Monitor. The cost of any such Additional Services is also subject to the consent of the Monitor.[87]

57. It is not known whether any such services will be required in the future. If they are, they will be subject to the approval of the Monitor, including as to price. Accordingly, a declaration that any Ancillary Post-Filing Credit Extensions be subject to the approval of the Ad Hoc Group or further Order of the Court is unnecessary and unjustified in the circumstances.

4. *The Priority of the Transaction Fee Charge should not be Subordinated*

58. The Ad Hoc Group seeks a declaration providing that the Transaction Fee Charge rank above the Senior Priority Notes only to the maximum amount of the GLC Fees (each as defined in the AHG Cross-Motion), with such other amounts ranking *pari passu* with the Senior Priority Notes. Again, the Ad Hoc Group has not adduced any evidence on why the relief is appropriate and the topic was not explored in connection with any cross-examination of the Company's affiants and witnesses.

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[86] Davies Transcript, response to Q387, p. 111, lines 3-15.
[87] First Report at paras. 33(b) and 98.

59. The effect of the proposed declaration regarding the ranking of the Transaction Fee Charge would mean that any amount of the Greenhill's transaction fees, if they are approved by the Court, in excess of the amounts that would be earned by GLC under the GLC Engagement Letter, would only be paid in full if the ultimate restructuring transaction is at a value high enough to repay DIP obligations and the Senior Priority Notes. The fees payable under the GLC Engagement Letter have not been disclosed to this Court.[88]

60. It is entirely inappropriate that the fees earned by the Greenhill for work approved by the Court and done for the benefit of the Company and its stakeholders, including the Senior Noteholders, to remain at risk. The Monitor is also of the view that the Ad Hoc Group's request in this respect is not necessary, appropriate or justified in the circumstances.[89]

PART V - ORDER SOUGHT

61. Tacora respectfully requests that this Court deny the approval of the AHG Cross-Motion, including the Alternative Relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of October, 2023.

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Counsel for the Applicant

[88] First Report at para. 80.
[89] First Report at para. 101.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Crystallex (Re)*, 2012 ONCA 404.
2. *Great Basin Gold Ltd (Re)*, 2012 BCSC 1459.
3. *Quest University Canada (Re)*, 2020 BCSC 318.
4. *Stelco Inc, Re*, 2005 CanLII 40140.

SCHEDULE "B"
RELEVANT STATUTES

***Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36**

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, 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.

Interim financing

Factors to be considered

11.2(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(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 report referred to in paragraph 23(1)(b), if any.

Removal of directors

11.5 (1) The court may, on the application of any person interested in the matter, make an order removing from office any director of a debtor company in respect of which an order has been made under this Act if the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the company or is acting or is likely to act inappropriately as a director in the circumstances.

Business Corporations Act, R.S.O. 1990, c. B.16

Disclosure: conflict of interest

132 (1) A director or officer of a corporation who,

(a) is a party to a material contract or transaction or proposed material contract or transaction with the corporation; or

(b) is a director or an officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the corporation,

shall disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his or her interest. R.S.O. 1990, c. B.16, s. 132 (1).

by director

(2) The disclosure required by subsection (1) shall be made, in the case of a director,

(a) at the meeting at which a proposed contract or transaction is first considered;

(b) if the director was not then interested in a proposed contract or transaction, at the first meeting after he or she becomes so interested;

(c) if the director becomes interested after a contract is made or a transaction is entered into, at the first meeting after he or she becomes so interested; or

(d) if a person who is interested in a contract or transaction later becomes a director, at the first meeting after he or she becomes a director. R.S.O. 1990, c. B.16, s. 132 (2).

by officer

(3) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a director,

(a) forthwith after the officer becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of directors;

(b) if the officer becomes interested after a contract is made or a transaction is entered into, forthwith after he or she becomes so interested; or

(c) if a person who is interested in a contract or transaction later becomes an officer, forthwith after he or she becomes an officer. R.S.O. 1990, c. B.16, s. 132 (3).

Where contract or transaction does not require approval

(4) Despite subsections (2) and (3), where subsection (1) applies to a director or officer in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the corporation's business, would not require approval by the directors or shareholders, the director or officer shall disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his or her interest forthwith after the director or officer becomes aware of the contract or transaction or proposed contract or transaction. R.S.O. 1990, c. B.16, s. 132 (4).

Director not to vote

(5) A director referred to in subsection (1) shall not attend any part of a meeting of directors during which the contract or transaction is discussed and shall not vote on any resolution to approve the contract or transaction unless the contract or transaction is,

(a) one relating primarily to his or her remuneration as a director of the corporation or an affiliate;

(b) one for indemnity or insurance under section 136; or

(c) one with an affiliate. 2006, c. 34, Sched. B, s. 23 (1).

Remaining directors deemed quorum

(5.1) If no quorum exists for the purpose of voting on a resolution to approve a contract or transaction only because a director is not permitted to be present at the meeting by reason of subsection (5), the remaining directors shall be deemed to constitute a quorum for the purposes of voting on the resolution. 2006, c. 34, Sched. B, s. 23 (2).

Shareholder approval

(5.2) Where all of the directors are required to make disclosure under subsection (1), the contract or transaction may be approved only by the shareholders. 2006, c. 34, Sched. B, s. 23 (2).

Continuing disclosure

(6) For the purposes of this section, a general notice to the directors by a director or officer disclosing that he or she is a director or officer of or has a material interest in a person, or that there has been a material change in the director's or officer's interest in the person, and is to be regarded as interested in any contract made or any transaction entered into with that person, is sufficient disclosure of interest in relation to any such contract or transaction. 2006, c. 34, Sched. B, s. 23 (3).

Effect of disclosure

(7) Where a material contract is made or a material transaction is entered into between a corporation and a director or officer of the corporation, or between a corporation and another person of which a director or officer of the corporation is a director or officer or in which he or she has a material interest,

(a) the director or officer is not accountable to the corporation or its shareholders for any profit or gain realized from the contract or transaction; and

(b) the contract or transaction is neither void nor voidable,

by reason only of that relationship or by reason only that the director is present at or is counted to determine the presence of a quorum at the meeting of directors that authorized the contract or transaction, if the director or officer disclosed his or her interest in accordance

with subsection (2), (3), (4) or (6), as the case may be, and the contract or transaction was reasonable and fair to the corporation at the time it was so approved. R.S.O. 1990, c. B.16, s. 132 (7).

Confirmation by shareholders

(8) Despite anything in this section, a director or officer, acting honestly and in good faith, is not accountable to the corporation or to its shareholders for any profit or gain realized from any such contract or transaction by reason only of his or her holding the office of director or officer, and the contract or transaction, if it was reasonable and fair to the corporation at the time it was approved, is not by reason only of the director's or officer's interest therein void or voidable, where,

(a) the contract or transaction is confirmed or approved by special resolution at a meeting of the shareholders duly called for that purpose; and

(b) the nature and extent of the director's or officer's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in the information circular required by section 112. R.S.O. 1990, c. B.16, s. 132 (8).

Court setting aside contract

(9) Subject to subsections (7) and (8), where a director or officer of a corporation fails to disclose his or her interest in a material contract or transaction in accordance with this section or otherwise fails to comply with this section, the corporation or a shareholder of the corporation, or, in the case of an offering corporation, the Commission may apply to the court for an order setting aside the contract or transaction and directing that the director or officer account to the corporation for any profit or gain realized and upon such application the court may so order or make such other order as it thinks fit. R.S.O. 1990, c. B.16, s. 132 (9).

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

Court File No. CV-23-00707394-00CL

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

(Applicant)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

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