

**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

**NOTICE OF MOTION
(SEALING ORDER – MFC ROYALTY DISPUTE)**

FTI Consulting Canada Inc. in its capacity as Monitor of the Applicant (the “**Monitor**”) will make a motion to Justice Kimmel or another judge presiding over the Commercial List.

PROPOSED METHOD OF HEARING: The motion is to be heard at the return of the motion scheduled for April 16, 2024.

THE MOTION IS FOR:

- (a) an order, sought by the Monitor, permanently sealing the following materials in connection with the MFC Royalty Dispute:¹
 - (i) certain portions of the motion materials described in Schedule A to this Notice of Motion; and
 - (ii) certain portions of the transcripts of the cross-examinations conducted April 4 and 5 (the “**Cross-Examinations**”) and certain documents (or portions

¹ Save as may be hereinafter expressly defined, the Monitor repeats and relies upon the defined terms as set out in its Fifth Report dated April 7, 2024 and set out in its report to be served in connection with this motion.

of them) marked as exhibits during the Cross-Examinations, as described in Schedule B to this Notice of Motion;

- (b) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

Background

- (c) in connection with the MFC Royalty Dispute, Tacora and 112 Ltd. (the parties to the MFC Royalty Dispute) served and received motion materials, exchanged documents in connection with the Cross-Examinations, and attended the Cross-Examinations all subject to general undertakings of confidentiality to give the parties an opportunity to seek potential sealing orders;
- (d) although Cargill is not a party to the MFC Royalty Dispute, certain confidential information related to the Cargill Offtake Agreement has been included in the parties' materials because it is of central relevance to the MFC Royalty Dispute, and Cargill was given an opportunity to review the motion materials, Cross-Examination transcripts, and exhibits to the Cross-Examinations to identify confidential information in connection with the Cargill Offtake Agreement;
- (e) Cargill, Tacora, and 112 Ltd. have identified that:
 - (i) certain portions of the parties' affidavits are confidential. Attached as Schedule A is: (i) a list identifying the confidential sections of the affidavits;
 - (ii) a list of certain exhibits to the parties' affidavits which are confidential in their entirety; and (iii) a list of certain exhibits to the parties' affidavits that are confidential in part;

- (ii) certain portions of the transcripts of the Cross-Examinations are confidential and certain documents marked as exhibits are confidential in whole or in part. Attached as Schedule B is: (i) a list identifying the confidential sections of the transcripts; (ii) a list identifying exhibits that are confidential in their entirety; and (iii) a list identifying exhibits that are confidential only in part;

The Documents May Contain Sensitive Information that If Disclosed, Pose a Serious Risk to the Parties or Their Commercial Counterparties

- (f) the parties assert grounds of confidentiality over the materials as described in Schedules A and B (the “**Confidential Material**”) on the basis that the Confidential Material contains commercially sensitive information pertaining to the terms of the Cargill Offtake Agreement;
- (g) Cargill has identified that the Confidential Material, if publicly disclosed, could be used by competitors to harm its interests, both generally and in negotiations regarding a restructuring solution for Tacora;
- (h) Cargill has also identified that the Cargill Offtake Agreement contains a confidentiality clause to protect its commercially sensitive information (subject to limited exceptions);

Alternative Measures Will Not Prevent This Risk and the Parties’ Proposal Is Reasonable in Light of the Circumstances

- (i) the Confidential Material is a limited subset of the materials filed and relied on in connection with the MFC Royalty Dispute;

- (j) the parties believe that the limited redactions proposed are reasonable and required to avoid the disclosure of commercially sensitive and confidential information in connection with the Cargill Offtake Agreement;

As a Matter of Proportionality, The Benefits of the Order Outweigh its Negative Effects

- (k) the salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances. The Monitor is not aware of any party that will be prejudiced if the information is sealed on the basis requested or any public interest that will be served if such details are disclosed; and

Other Grounds

- (l) such further and other grounds as the lawyers may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (m) the proposed Sealing Order;
- (n) a report of the Monitor to be served in connection with this motion; and
- (o) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

April 12, 2024

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TO: **THE SERVICE LIST**

SCHEDULE "A"

Motion Materials – Confidential Content	
Affidavit of Joe Broking sworn March 21, 2024 Motion Record of Tacora Resources Inc. dated March 23, 2024, Tab 2	Subparagraphs 15(c)(i)-(iii)
	Select content in paragraph 23
	Select content in paragraph 28
Affidavit of Joe Broking sworn March 28, 2024 Reply Motion Record of Tacora Resources Inc. dated April 2, 2024, Tab 1	Select content in paragraph 20
	Select content in paragraph 21
	Select content in paragraph 24
Motion Materials – Wholly Confidential Exhibits	
Affidavit of Joe Broking sworn March 21, 2024 Motion Record of Tacora Resources Inc. dated March 23, 2024, Tab 2	Exhibit "C" - Offtake Agreement as restated on November 9, 2018
	Exhibit "D" - Email correspondence dated January 20, 2017 with attachment
	Exhibit "E" - Email correspondence dated January 24, 2017 with attachment
	Exhibit "F" - Email correspondence dated January 26, 2017
	Exhibit "G" - Executed term sheet dated February 8, 2017
	Exhibit "H" - Email correspondence dated February 27, 2017 with attachment
	Exhibit "I" - Email correspondence dated March 23, 2017 with attachments
	Exhibit "J" - Email correspondence dated March 26, 2017 with attachments
	Exhibit "K" - Offtake Agreement executed on April 5, 2017
Affidavit of Samuel Morrow sworn March 26, 2024 Responding Motion Record of 1128349 B.C. Ltd. dated March 27, 2024, Tab 2	Exhibit "A" – Financial Information Letter
	Exhibit "I" - Iron Ore Sale and Purchase Contract between Tacora Resources Inc and Cargill International Trading Pte Ltd (9 November, 2018)

	Exhibit "BB" - Offtake Contract: Fixed Price Side Letter (14 September 2021)
Motion Materials – Partially Confidential Exhibits	
Affidavit of Joe Broking sworn March 28, 2024 Reply Motion Record of Tacora Resources Inc. dated April 2, 2024, Tab 1	Select content in Exhibit "A"

SCHEDULE "B"

Cross-Examination - Confidential Transcript Content	
Cross-Examination of Joseph Andrew Broking II dated Thursday, April 4, 2024, Joint Transcript Brief, Tab 1	Select content in Q. 158
	Select content in Q. 193
	Select content in Q. 194
	Select content in Q. 287
	Select content in Q. 318
	Select content in Q. 320
	Select content in Q. 321
	Select content in Q. 324
Cross-examination of David Persampieri dated Friday, April 5, 2024, Joint Transcript Brief Tab 3	Select content in Q. 213
Cross-Examination – Wholly Confidential Exhibits	
Cross-Examination of Joseph Andrew Broking II dated Thursday, April 4, 2024, Joint Transcript Brief, Tab 1F	Exhibit 6
Cross-Examination – Partially Confidential Exhibits	
Cross-Examination of Joseph Andrew Broking II dated Thursday, April 4, 2024, Joint Transcript Brief, Tab 1G	Schedule A to Exhibit 7 (pp. 179-183)

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PROCEEDING COMMENCED AT TORONTO

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