

**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)**

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 motions scheduled for April 10-12, 2024.

THE MOTION IS FOR:

- (a) An order, sought by the Monitor, temporarily sealing in their entirety certain exhibits and documents arising out of examinations conducted during the week of March 18, 2024, including, but not limited to, the associated exhibits, transcripts and answers to undertakings listed in Schedules A, B and C, respectively, attached to this Notice of Motion until the end of the Sealed Period (as defined below); and
- (b) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

Background

- (c) In advance of examinations, the parties in the above proceeding exchanged document requests pursuant to the Litigation Schedule.¹ These documents were produced and received subject to general undertakings of confidentiality to give the parties an opportunity to seek potential sealing orders;
- (d) certain of the documents so produced were subsequently marked as confidential exhibits to the examinations that occurred during the week of March 18, 2024;
- (e) attached at Schedule A is a list of the documents marked as confidential exhibits to the examinations;
- (f) attached at Schedule B is a list of the associated transcripts;
- (g) attached at Schedule C is a list of answers to undertakings;

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

- (h) the basis on which the parties assert grounds of confidentiality over the documents contained in Schedules A, B and C fall into the following categories:
 - (i) documents containing commercially sensitive information relevant to the Solicitation Process which should not be disclosed until the conclusion of the Investor Transaction, if approved;

¹ Save as may be hereinafter expressly defined, the Monitor repeats and relies upon the defined terms as set out in its Fourth Report dated March 14, 2024.

- (ii) documents delivered to the producing parties, including documents involving or referencing third parties not party to this litigation, under non-disclosure agreements or other expectations of confidentiality, which require the producing parties to take all steps available to maintain the confidentiality thereof including in accordance with applicable legal processes. It is the producing parties' understanding that the documents contain commercially sensitive information and that the original authors of the documents believe it is against their interest to have this information divulged, and would not have otherwise delivered these documents to the producing parties without an expectation of confidentiality; and
- (iii) documents that disclose aspects of the producing parties' businesses that are commercially sensitive and disclosure would impair the parties' abilities to conduct their operations without risk of competitors, customers or other interested persons as applicable using this information to their advantage;

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

- (i) to effect the efficient conduct of the scheduled hearings, the parties believe it is most efficacious to temporarily seal the entirety of the documents and transcripts listed in Schedules A, B and C;
- (j) as such, the parties are currently requesting a sealing order over all of the confidential exhibits, transcripts and answers to undertakings until April 26, 2024, (the "**Sealed Period**");

- (k) at or before the conclusion of the Sealed Period, the parties will notify the court through the Monitor of any portions of the confidential exhibits and transcripts for which continued confidentiality is sought and will provide appropriate further justifications at that time, as the circumstances may require;

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

- (l) 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 in full at this time; and

Other Grounds

- (m) 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:

- (n) The proposed Sealing Order;
- (o) the Monitor's Fifth Report, to be filed; and
- (p) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

April 4, 2024

CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON M5H 0B4

Ryan Jacobs LSO#: 59510J
Tel: 416.860.6465
rjacobs@cassels.com

Jane Dietrich LSO#: 49302U
Tel: 416.860.5223
jdietrich@cassels.com

Alan Merskey LSO#: 41377I
Tel: 416.860.2948
amerskey@cassels.com

Monique Sassi LSO#: 63638L
Tel: 416.860.6886
msassi@cassels.com

Lawyers for the Monitor

TO: **THE SERVICE LIST**

SCHEDULE "A"

CONFIDENTIAL EXHIBITS			
No	EXHIBIT	DEPONENT (S)	DocID
1	Exhibit 4 – Confidential – "Phase 2 bids overview", dated January 24, 2024, updated January 28, 2024 (TRI 286)	Michael Nessim	TRI0000286
2	Exhibit 5 /Exhibit 25 - Confidential – Board presentation dated January 24, 2024	Michael Nessim / Joseph Andrew Broking II	
3	Exhibit 6 / Exhibit 10 - Confidential – Board presentation dated December 5, 2023 re Phase 1 bids (TRI 87)	Michael Nessim / Joseph Andrew Broking II	TRI0000087
4	Exhibit 7 / Exhibit 19 - Confidential – Greenhill board presentation dated January 4, 2024 (TRI 186)	Michael Nessim / Joseph Andrew Broking II	TRI0000186
5	Exhibit 2 - Confidential – November 26 th , 2023, e-mail from Paulo Carrelo (CAR 2824)	Matthew Lehtinen	CAR002824
6	Exhibit 3 / Exhibit 8 - Confidential – January 8, 2023 Project Caramel Deck Presentation (CAR 3614)	Matthew Lehtinen / Jeremy Matican	CAR003614
7	Exhibit 4 - Confidential – Email of January 9 th , 2024, from Mr. Lehtinen to Mr. Carrelo (CAR 3027)	Matthew Lehtinen	CAR003027
8	Exhibit 7 /Exhibit 11 - Confidential – January 19, 2024 e-mail regarding Tacora minimum equity ownership target (CAR 1249)	Matthew Lehtinen /Paul Carrelo	CAR001249
9	Exhibit 8 /Exhibit 12 - Confidential – January 30th, 2024 e-mail from Anthony Vala to Alanna Weifenbach (CAR 1316)	Matthew Lehtinen / Paul Carrelo	CAR001316
10	Exhibit 9 / Exhibit 11 - Confidential – February 9th, 2024 e-mail regarding a royalty agreement (MAT 1162)	Matthew Lehtinen / Jeremy Matican	MAT001162
11	Exhibit A / Exhibit 2 - Confidential – Untitled Document / Spring 2023 summary of four options (CAR 95)	Matthew Lehtinen /Paul Carrelo	CAR000095
12	Exhibit 11 /Exhibit 1 - Confidential – E-mail exchange dated October 2023 between Mr. Lehtinen and Mr. Matican (CAR 2764)	Matthew Lehtinen / Jeremy Matican	CAR002764
13	Exhibit 12 - Confidential – Series of e-mails dated May 13 to November 14, 2023 (CAR 568)	Matthew Lehtinen	CAR000568
14	Exhibit 13 - Confidential – Teams invitation dated January 31, 2024 from Mr. Lehtinen, re costs and Partners in Performance (CAR 1361)	Matthew Lehtinen	CAR001361
15	Exhibit 14 - Confidential – E-mail dated December 26, 2023 from Mr. Lehtinen to Partners in Performance (CAR 1013)	Matthew Lehtinen	CAR001013
16	Exhibit 15 - Confidential – Email dated January 2, 2024 from PIP to Mr. Lehtinen (CAR 2932)	Matthew Lehtinen	CAR002932
17	Exhibit 16 - Confidential – Calendar invite from Kevin Zhao dated January 4, 2024 (CAR 1110)	Matthew Lehtinen	CAR001110
18	Exhibit 17 - Confidential – Notice of Examination to Paulo Carrelo dated February 14, 2024	Matthew Lehtinen	
19	Exhibit 6 - Confidential - Board minutes, including three appendices	Leon George Jackson III	

No	EXHIBIT	DEPONENT (S)	DocID
20	Exhibit 27 - Confidential - Board materials dated January 24, 2024, updated January 28, 2024	Joseph Andrew Broking II	
21	Exhibit A – Confidential - Cargill December 21, 2022 update to credit risk committee (CAR 2612)	Paul Carrelo	CAR002612
22	Exhibit 1 – Confidential - Slide deck presenting Tacora's situation, early 2023 (CAR 68)	Paul Carrelo	CAR000068
23	Exhibit 3 – Confidential - January 11, 2023 e-mail from Mr. Mulvihill to Mr. Carrelo and others (CAR 10)	Paul Carrelo	CAR000010
24	Exhibit 6 – Confidential - Redacted copy of an e-mail from Mr. Kirk to Mr. Carrelo and Mr. Davies, June 28, 2023 (CAR 351)	Paul Carrelo	CAR000351
25	Exhibit 7 – Confidential - April 20, 2023 e-mail from Mr. Mulvihill, updating memo (CAR 1553)	Paul Carrelo	CAR001553
26	Exhibit 8 – Confidential - February 13, 2023 e-mail from Mr. Mulvihill to Cargill, regarding a board of directors meeting summary (CAR 1510)	Paul Carrelo	CAR001510
27	Exhibit 9 – Confidential - E-mail from Mr. Mulvihill, August of 2023 (CAR 411)	Paul Carrelo	CAR000411
28	Exhibit 13 – Confidential - Speaking notes from in or about April of 2023, on which Mr. Kirk and Mr. Carrelo offered marginal comments (CAR 2652)	Paul Carrelo	CAR002652
29	Exhibit 14 – Confidential - March the 27th, 2023 e-mail.	Paul Carrelo	
30	Exhibit 2 – Confidential - Series of text messages between Ms. Pacholder and Mr. Sloan (AHG 922)	Rebecca Pacholder	AHG0000922
31	Exhibit 2 - Confidential - Unsigned version of the engagement letter between Jefferies LLC and Cargill Incorporated in Wayzata, Minnesota, and Cargill International Trading Proprietary Limited in Singapore (CAR 502)	Jeremy Matican	CAR000502
32	Exhibit 9 - Confidential - E-mail dated January 6th, 2024 (MAT 772 / MAT 938)	Jeremy Matican	MAT000772
33	Exhibit 9 - Confidential - E-mail dated January 6th, 2024 (MAT 772 / MAT 938)	Jeremy Matican	MAT000938
34	Exhibit 10 - Confidential - Project Caramel Cargill Phase 2 bid overview, dated January 19, 2024 (CAR 3125)	Jeremy Matican	CAR003125
35	Exhibit 11 - Confidential (MAT 1162 / MAT 1426)	Jeremy Matican	MAT001426
36	Exhibit 12 / Exhibit 13 - Confidential -Two-page redacted version of (CAR 1077)	Jeremy Matican	CAR001077
37	Exhibit 14 – Confidential – E-mail dated October 4, 2023 from Mr. Hamou-Jennings to Mr. Naatjes and Ms. Knight (CAR 524)	Jeremy Matican	CAR000524

SCHEDULE "B"

Confidential Transcripts		
No.	Transcript	Date
1	Transcript of Cross-Examination of Michael Nessim	March 18, 2024
2	Transcript of Cross-Examination of Matthew Lehtinen	March 19, 2024
3	Transcript of Cross-Examination of Leon George (Trey) Jackson III	March 19, 2024
4	Transcript of Cross-Examination of Joseph Andrew Broking II	Mach 20, 2024
5	Transcript of Cross-Examination of Paul Carrelo	March 21, 2024
6	Transcript of Cross-Examination of Peter Bradley	March 21, 2024
7	Transcript of Cross-Examination of Martin Valdes	March 21, 2024
8	Transcript of Cross-Examination of Rebecca Pacholder	March 21, 2024
9	Transcript of Cross-Examination of Jeremy Matican	March 22, 2024

SCHEDULE "C"

Confidential Responses to Undertakings	
No.	Description
1	Undertaking Responses of Matthew Lehtinen
2	Undertaking Responses of Leon George (Trey) Jackson III
3	Undertaking Responses of Joseph Andrew Broking II
4	Undertaking Responses of Paul Carello
5	Undertaking Responses of Peter Bradley
6	Undertaking Responses of Rebecca Pacholder
7	Undertaking Responses of Jeremy Matican

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PROCEEDING COMMENCED AT TORONTO

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CASSELS BROCK & BLACKWELL LLP

Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON M5H 0B4

Ryan Jacobs LSO#: 59510J

Tel: 416.860.6465
rjacobs@cassels.com

Jane Dietrich LSO#: 49302U

Tel: 416.860.5223
jdietrich@cassels.com

Alan Merskey LSO#: 41377I

Tel: 416.860.2948
amerskey@cassels.com

Monique Sassi LSO#: 63638L

Tel: 416.860.6886
msassi@cassels.com

Lawyers for the Monitor