COURT FILE NO. 1703-12327

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

FILED
AUG 09 2019
JUDICIAL CENTRE OF EDMONTON
Clerk of the Court

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 ARRANGEMENT OF 667402 ALBERTA LTD., 18512398 ALBERTA LTD., 816956 ALBERTA LTD., 1371047 ALBERTA LTD., 1919209 ALBERTA LTD. and CANADA NORTH GROUP LP HOLDINGS LTD.

DOCUMENT **BOOK OF AUTHORITIES OF CANADIAN WESTERN BANK**

FOR APPLICATION BEFORE MR. JUSTICE S. D. HILLIER AUGUST 22-23, 2019 WITH RESPECT TO MUNICIPAL TAX LIABILITY

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McLennan Ross LLP #600 McLennan Ross Building 12220 Stony Plain Road Edmonton, AB T5N 3Y4	Lawyer: Charles P. Russell, Q.C. Telephone: (780) 482-9115 Fax: (780) 733-9757 Email: crussell@mross.com File No.: 165813

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PART 1 INTRODUCTION

1. This Brief is filed on behalf of Canadian Western Bank ("CWB") in response to the Brief of Athabasca County ("Athabasca") and the Municipal District of Opportunity No. 17 ("Opportunity") with respect to the Wandering River Limited Partnership camp ("Wandering River") and the Wabasca camps ("Wabasca").

2. CWB's security is comprised of General Security Agreements charging assets of the Applicants in the *Companies' Creditors Arrangement Act* ("CCAA") proceedings, including the corporation previously known as Canada North Camps Inc. (collectively, "CNC").

3. CWB and other affected lenders have entered into a settlement agreement with the Town of Bonnyville ("Bonnyville") which will be the subject of an application for approval to be heard on August 22, 2019, and as such this Brief does not address issues with Bonnyville.

4. Issues with respect to the claims of lenders who hold leases, are not relevant to CWB, and those issues will not be addressed in this brief.

PART 2 ISSUES

A. *Are the municipalities entitled to recover penalties accruing post CCAA, when the municipalities and all lenders to CNC were aware of the direction of this Honourable Court that the tax issues the subject of the August 22 – 23, 2019 Application (the "August Application") were not to be pursued pending issuance by the Court of Appeal of Alberta of its decision in the case of Bank of Nova Scotia v. Virginia Hills Oil Corp. et al ("Virginia Hills")?*

B. *Is municipal tax otherwise accruing due and payable under the provisions of the Municipal Government Act of Alberta (the "MGA"): (a) payable by the Monitor or by the lenders holding security interests in those assets, prior to the sale of the assets upon which the taxes are levied, or must the municipalities wait until the subject assets are sold to enforce their lien; and (b) can penalties and interest be accrued and be paid while a stay of proceedings is in place?*

C. *Given the terms of the Initial Order in the CCAA and the first charge given to the Monitor for professional fees thereunder, are the municipalities subject to a cost allocation where the Monitor has incurred costs in managing and attempting to dispose of the subject assets?*

D. *Is the apportionment of liability proposed by the municipalities under principles of marshaling, appropriate, and if so how should such apportionment be applied, given that many of the assets so charged have not been sold and may never be sold?*

E. *In the event tax is payable as assets upon which the tax has been levied are sold, should the Monitor be directed to pay those taxes in advance of the cost allocation? Should the municipalities be stayed in enforcement of any lien under the MGA until the estate has further certainty with respect to the sale of assets and the rendering of a decision on cost allocation in the estate?*

PART 3 ARGUMENT

A. Are the municipalities entitled to recover penalties accruing post CCAA, when the municipalities and all lenders to CNC were aware of the direction of this Honourable Court that the tax issues the subject of the August 22 – 23, 2019 Application were not to be pursued pending issuance by the Court of Appeal of Alberta of its decision in the case of Bank of Nova Scotia v. Virginia Hills Oil Corp. et al?

5. The sale of the Simonette and Berland assets occurred by Order granted April 20, 2018. The closing of the sale occurred on May 3, 2018, when the Monitor filed its Certificate of Completion of the transaction with this Honourable Court.

6. The Receiver in the *Virginia Hills* receivership proceedings, sought an order on June 20, 2017 determining the question of priority of certain taxes on that file. The Honourable Mr. Justice Yamauchi rendered an oral decision that day.

Bank of Nova Scotia and Alberta Treasury Branches vs. Virginia Hills Oil Corp. and Dolomite Energy Inc., Order of the Honourable Mr. Justice Yamauchi of June 20, 2017 **TAB 1**

7. The Honourable Mr. Justice Yamauchi's decision was appealed, and that appeal was heard June 12, 2018. The Alberta Court of Appeal rendered its decision on *Virginia Hills* February 12, 2019.

Northern Sunrise County v. Virginia Hills Oil Corp, 2019 ABCA 61 **TAB 2**

8. At a September 6, 2018 Court application, which had been made on notice to the municipalities, all parties present at the application agreed, at the suggestion of the MD of Greenview ("Greenview") that it was prudent to await the Court of Appeal decision on *Virginia Hills* before arguing the priority of municipal taxes, the expectation being that the Alberta Court of Appeal would render a decision on section 348 of the MGA which would provide guidance to the parties in the CNC CCAA.

Transcript of Proceedings before the Honourable Mr. Justice Hiller on September 6, 2018 at pages 2-3. **Appendix "A"** to the CWB Brief.

9. No municipalities that did not attend the September 6, 2018 application brought an application to lift the stay of proceedings, in order to enable them to enforce their tax lien, nor did they object to the decision to await the decision of the Court of Appeal on *Virginia Hills* before arguing priority and immediate payment of taxes.

10. Instead, we find ourselves in a scenario where this priority dispute was deferred to allow *Virginia Hills* to be decided, while the municipalities continued to charge penalties to the detriment of CNC's other creditors, in effect creating a windfall for the municipalities.

11. In the case of Athabasca, a further $78,459.41 penalty was charged after September 6, 2018.

Affidavit of Brian Pysyk worn July 24, 2019 (the "Pysyk Affidavit") at Exhibit "J".

12. In the case of Opportunity, that municipality continued to assess taxes based on an income approach notwithstanding that the Wabasca camps were shut down. The income approach estimates what a potential purchaser would pay for the property given its expected rate of return, the theory being that income producing properties are bought and sold based on their income earning potential. This approach is typically used for such buildings as apartments or commercial rental space.

13. Given that the Wabasca camps were shut down upon the Monitor obtaining enhanced powers following the sale of Simonette and Berland, with no prospect of the camps earning any income in the foreseeable future (if ever) the continued levying of taxes and penalties by Opportunity based on potential income cannot be justified, and CWB asserts that this Honourable Court should exercise its equitable jurisdiction to prohibit the charging of such levies and penalties from the date that the camps were shut down.

14. CWB further submits that it is inequitable for the municipalities to claim penalties during the deferral period in these circumstances, and asserts that the municipalities are now estopped from assessing penalties against CNC during the nearly one year delay.

15. In the alternative, if the municipalities are not estopped from assessing penalties which arose only because of their own failure to diligently prosecute their claim, then this Court should exercise its general discretion under section 11 of the CCAA and section 8 of the *Judicature Act* to waive all penalty charges that have been accrued during the adjournment period.

Judicature Act, R.S.A. 2000, c. J-2, s. 8 **TAB 3**

Companies' Creditors Arrangement Act, s. 11 **TAB 4**

B. Is municipal tax otherwise accruing due and payable under the provisions of the Municipal Government Act of Alberta: (a) payable by the Monitor or by the lenders holding security interests in those assets, prior to the sale of the assets upon which the taxes are levied, or must the municipalities wait until the subject assets are sold to enforce their lien; and (b) can penalties and interest be accrued and be paid while a stay of proceedings is in place?

16. The lenders with security interests over Wabasca camp assets are CWB and VersaBank. CWB has been advised by the Monitor that assets of the Wabasca camps have recently been sold for $110,000, being equipment charged in favour of CWB.

17. VersaBank has chosen not to participate in the August Application, and has advised CWB that the cost of removal of the assets charged in favour of VersaBank is greater than the possible sales proceeds thereof once removed.

18. CWB has a first charge over the lands at one of the two camps. Northland Mortgage & Investment Corp. ("Northland") has a first charge over the lands at the other Wabasca camp. There is no prospect of selling those lands within the foreseeable future, if ever.

Affidavit of William Kostiw sworn July 24, 2019 (the "Kostiw Affidavit") at Exhibit "C" and Exhibit "D".

19. CWB has a charge over other assets comprising improvements at the Wabasca camp, but like VersaBank, is concerned that it is uneconomic to remove the remaining assets to attempt to sell them.

20. With regard to Wandering River, the lands are charged by Jeffrey Hadfield and Jackie Hadfield (collectively, the "Hadfields").

21. Like Wabasca, there is no market for camps in the Wandering River area.

22. The Monitor reports that it has been able to sell some $483,170 of equipment at the Wandering River camp, of which $250,000 is attributable to assets charged by ECN Capital Corp. ("ECN") and the balance to assets charged by CWB.

23. CNC has a charge over the Wandering River camp equipment, by virtue of the General Security Agreement given by Wandering River Limited Partnership to CNC in March 2018, but the amount recoverable thereunder is limited to some $159,000 as determined by Mr. Justice Hillier in his May 14, 2019 decision on the 726 Remote Accommodation ("726") security.

Canada North Group Inc. (Companies' Creditors Arrangement Act), Re
2019 ABQB 307, and executed Order of the Honourable Mr. Justice Hillier dated May 14, 2019 **TAB 5**

24. The Monitor reports that 726 has an interest in other assets at the Wandering River camp which could theoretically be sold for more than the $159,000 payable to CNC.

25. CNC owns other equipment at that camp which is charged by CNC to CWB. This subset of equipment is distinct from the equipment over which 726 had claimed priority.

26. While theoretically this equipment may be of value, at present there are no offers for the equipment, and the potential for realization is uncertain at best.

27. In addition, 726 advises that an entity known as Black Diamond had equipment at the Wandering River camp until in or about 2016 which gave rise to part of the tax levies now owed to Athabasca. While the Monitor has advised it has no information with respect thereto, Athabasca has confirmed that the level of improvements at Wandering River diminished significantly between 2016 and 2018, which lends support for the allegation that Black Diamond had equipment at Wandering River which it removed.

28. Specifically, between 2016 and 2018, a significant number of dorms were removed from Wandering River, including the removal of two 38 man dorms. A comparison of the 2016 and 2018 Tax Assessments summaries shows the total square footage of improvements declined from 104,880 square feet to 64,400 square feet. CWB had no charge over the Black Diamond dorms and property, and should bear no responsibility for the taxes allocated to those improvements.

Athabasca County Assessment Summary
for 2016 and 2018.
Appendix "B" to the CWB Brief.

29. In summary, the remaining assets upon which Athabasca and Opportunity have levied taxes, are illiquid and may never be realized upon.

30. The objective of the CCAA is to assist insolvent companies in developing and seeking approval of compromises and arrangements with their creditors. The CCAA has a broad and remedial purpose which maintains the status quo to permit an orderly administration of the debtor's affairs and to permit a balancing of stakeholder interests in the debtor company. This can include a winding-up or liquidation of a debtor company.

Re Anvil Range Mining Corp. (2002), 34
C.B.R. (4th) 157, 2002 CarswellOnt 2254
(Ont. C.A.)., at para 32 **TAB 6**

Re Blue Range Resource Corp. (2000), 192 D.L.R. (4th) 281, 2000 ABCA 239, at para 6 **TAB 7**

31. As set out by the Supreme Court of Canada in *Re Ted Leroy Trucking Ltd.*, the CCAA offers more flexibility and greater judicial discretion than the rules-based procedures dictated by the *Bankruptcy and Insolvency Act ("BIA").*

Re Ted Leroy Trucking Ltd. ("*Ted Leroy*"), 2010 SCC 60, at paras 13-15 **TAB 8**

32. There is authority for suspending payment of property taxes during a CCAA where, on balance, immediate payment of municipal taxes defeats the purpose of the CCAA and where the municipality's security is not at risk.

33. Essar Steel Algoma Inc. ("Essar") obtained creditor protection under the CCAA on November 9, 2015, by Order of the Ontario Superior Court of Justice. The Initial Order had similar language vis-à-vis municipal taxation as does the Initial Order in this case. It provided that the debtor companies shall remit any amount payable to any taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind, entitled to be paid at law in priority to claims of secured creditors. Although the municipality had temporarily accepted late payment on property taxes as long as the interest was paid as a result of a liquidity crisis at Essar, the situation for Essar only worsened over time and eventually the municipality filed a motion requiring Essar to comply with the Initial Order and pay all retrospective and prospective post-filing property tax obligations.

Essar Steel Algoma Inc. Re, Initial Order. **Appendix "C"** to the CWB Brief.

Essar Steel Algoma Inc. Re ("*Re Essar*"), 2017 ONSC 3031, at para 4 **TAB 9**

34. The Honourable Mr. Justice Newbould of the Ontario Supreme Court concluded that the Initial Order did not require payment of property taxes in circumstances where others were not receiving post-filing payments and the city's special lien for unpaid taxes was

not at risk. It was also found that the city's special lien fell behind the interim financing facility.

Endorsements of the Honourable Mr. Justice Newbould dated June 15, 2016 **TAB 10**

Re Essar, at para 4 **TAB 9**

35. The City of Sault Ste. Marie again brought a motion in May 2017 to require Essar to pay all outstanding and future post-filing property tax obligations. Essar filed a cross application relieving it from paying property taxes post-filing during CCAA proceedings. The Honourable Mr. Justice Newbould concluded that while it was no small matter that municipal taxes were not being paid, it was prudent for Essar to preserve liquidity and therefore it was not appropriate for the post-filing payment of back taxes to be paid. Essar agreed to pay certain taxes on a go-forward basis in that particular case but the door was left open for Essar to come back to court to reduce or suspend tax payments.

Re Essar, at paras 13-15 **TAB 9**

36. Further support for the suspension of payments is found in the case of *U.S. Steel Canada Inc. (Re)* ("US Steel"), in which Justice Wilton-Siegel stated that "the Court has the authority under section 11 of the CCAA to order the suspension of ... municipal realty taxes..." In US Steel, an order suspending the payment of post-filing property taxes was granted even though the Initial Order contained a paragraph requiring payment of municipal taxes similar to the CNC and Essar Initial Orders. In determining whether to approve the suspension of property tax payments, the Court undertook a balancing exercise examining the prejudices resulting from the suspension and concluded that conserving cash by suspending payments on account of property taxes "further[ed] the prospects of a future restructuring plan and, as such, further[ed] the purposes of the CCAA."

U.S. Steel Canada Inc. (Re), 2015 ONSC 6331, at paras 126 and 130 **TAB 11**

37. Section 11.02 of the CCAA gives the Court jurisdiction to stay "all proceedings" that may be taken in respect of the debtor company and section 11 of the CCAA also grants the Court jurisdiction to "make any order that it considers appropriate in the circumstances."

Companies' Creditors Arrangement Act,
s. 11, 11.02 **TAB 4**

38. The Court's inherent jurisdiction to maintain the status quo in respect of a debtor company has long been recognized. In Lehndorff General Partner Ltd., Re, the Honourable Mr. Justice Farley stated:

> In the interim, a judge has great discretion under the CCAA to make any order so as to effectively maintain the status quo in respect of an insolvent company while it attempts to gain the approval of its creditors for the proposed compromise or arrangement which will be to the benefit of both the company and its creditors.

Lehndorff General Partner Ltd., Re, 1993
CarswellOnt 183, at para 5 **TAB 12**

39. While a restructuring plan will not occur in this case, CWB submits the courts should undertake a balancing exercise when examining prejudices resulting from the suspension of payment of municipal taxes, particularly when payment thereof would have to be funded out of monies generated by liquidation of assets entirely unrelated to the properties giving rise to the municipal taxes.

40. The municipalities will not suffer any more prejudice than the other secured lenders if they are not to receive payment of outstanding taxes until the improvements and lands have sold. In the ordinary course, absent insolvency, the municipality would be required to take enforcement steps against the improvements and lands in the courts and would not be paid until the improvements and lands have sold. There is no basis to suggest that the municipalities should obtain a greater remedy during CCAA than they otherwise would absent insolvency.

41. In the case of Athabasca, according to Athabasca County Bylaw 010-2019, the total amount to be raised by general municipal taxation is $19,512,673. The total amount owed by CNC, inclusive of penalties is $750,508.90, representing about 3.8% of all taxes. In the case of Opportunity, some $90,000 is outstanding and the total to be collected by general municipal taxation in 2018 was $52,155,827, which is only 0.002% of total tax revenue. Failure to pay CNC's taxes now is not a hardship to these municipalities.

Pysyk Affidavit at Exhibit "E".

Kostiw Affidavit at Exhibit "A".

42. CWB submits that the municipalities must wait to collect any taxes on the unsold assets, until those assets are sold by the Monitor or the stay is lifted to enable the municipalities to conduct their own tax sales. There is no basis upon which the lenders who hold security over unsold assets, can themselves be compelled to indirectly pay the tax levies and penalties on the unsold assets, by the Monitor being required to pay such taxes out of the proceeds of sale of unrelated assets held by the Monitor.

43. With respect to the suggestion by Northland that the tax liability attributable lands, must be paid by the Monitor, the fact is the Monitor is holding no monies which were not derived from the disposition of assets charged in favour of various lenders including CWB, which are completely unrelated to the tax levies attributable to the lands. To accede to the suggestion of Northland that these taxes be paid, would require lenders such as CWB to dissipate recoveries on unrelated assets in the payment of tax levies on lands which may never be sold.

44. In the event these lands are never sold, yet the taxes are paid and Northland generates no recovery on its mortgage financing, creditors such as CWB will have no recourse to recover those amounts from Northland in a cost allocation process or otherwise.

C. ***Given the terms of the Initial Order in the CCAA and the first charge given to the Monitor for professional fees thereunder, are the municipalities subject to a cost allocation where the Monitor has incurred costs in managing and attempting to dispose of the subject assets?***

45. The municipalities are subject to the cost allocation for the Monitor's professional fees under the Initial Order and have obtained a benefit from the process undertaken by the Monitor to market the lands (and more importantly the improvements on the lands) which the municipalities have taxed. Any suggestion otherwise would lead to a windfall for the municipalities at the expense of other creditors.

46. In the decision of *Edmonton (City) v Alvarez & Marsal Canada Inc.* (application for leave to appeal to Supreme Court of Canada filed), the Alberta Court of Appeal was asked whether the chambers judge properly exercised his discretion under s. 243(6) of the *Bankruptcy and Insolvency Act* ("BIA") in refusing to prioritize the Receiver's fees and disbursements over Edmonton's claim for unpaid property taxes under s. 348 of the MGA. In that case, Edmonton claimed against the debtor as a secured creditor by nature of the special lien provisions of s. 348.

Edmonton (City) v Alvarez & Marsal Canada Inc. ("*Edmonton (City)*"), 2019 ABCA 109, at paras 6-8 **TAB 13**

47. It must be pointed out that in the decision of *Edmonton (City)* our Court of Appeal stated that in the normal course of a tax auction, the municipality would run individual tax auctions for each property and impliedly, Edmonton would not collect payment until after the lands had sold. Within the Reid-Built Homes Ltd. ("Reid-Built") receivership, the Court of Appeal accepted that Edmonton would not be paid its outstanding taxes until the lands were sold in an orderly fashion. Given that our case is now a liquidating CCAA and CNC is not generating going-concern income to satisfy whatever the outstanding and current tax liability, the municipalities should be treated similarly to Edmonton in Reid-Built and paid out in due course when the lands are eventually sold.

Edmonton (City), at para 24 **TAB 13**

48. Upon review of the record, the Court of Appeal determined there was nothing to suggest Edmonton would receive no benefit from the process undertaken by the Receiver on behalf of all creditors. The municipalities have received a similar benefit in these CCAA liquidation proceedings. There is no principled reason why the municipalities should be exempt from the cost allocation in these CCAA proceedings. The Monitor was granted enhanced powers in May 2018 similar to a receiver, in order to liquidate assets of CNC for the benefit of creditors. The Monitor has been responsible for such things as creating a sales process and carrying insurance on the properties, which would include the improvements upon which the municipalities have levied taxes. To suggest that those costs should be uniquely bourne by CNC's other creditors, who are already significantly underwater and who have no responsibility to pay CNC's taxes, would be unfair and fly in the face of established precedent that creditors who derive a benefit from the professional fees incurred by an insolvency professional in court-ordered proceedings should share the burden of those professional fees.

Edmonton (City), at para 25 **TAB 13**

49. The decision reached in *Edmonton (City)* is consistent with other findings of our Court of Appeal which hold that expenses incurred by a junior creditor enforcing against collateral that is subject to a charge by a senior secured creditor, equity dictates that the subordinate creditor be compensated for its efforts to realize on the collateral. This is especially true where the expenses incurred by the subordinate creditor arose from execution of a court order. Here the Monitor was directed by Court order to liquidate CNC for the benefit of all its creditors.

Fast Labour Solutions (Edmonton) Ltd. v Kramer's Technical Services Inc., 2016 ABCA 266, at paras 23-26 **TAB 14**

50. The municipalities have at no time brought an application to lift the stay of proceedings to commence tax foreclosure proceedings on the lands but instead have participated in these CCAA proceedings and have allowed the Monitor and by extension, the broader community of CNC creditors to incur these expenses. The only conclusion to be drawn is that the municipalities are subject to a future cost allocation.

D. Is the apportionment of liability proposed by the municipalities under principles of marshaling, appropriate, and if so how should such apportionment be applied, given that many of the assets so charged have not been sold and may never be sold?

51. Pursuant to section 348 of the MGA, municipalities have a special lien on land and any improvements to the lands with respect to taxes due to a municipality. As with other statutory or common law liens, the municipalities' lien is a remedy against specific property. In *Regent Resources Ltd. (Re)* ("*Regent*"), the Court held that section 348 only applies to the property within the geographical boundaries of the municipality and not beyond. If the lands secured by the special lien are insufficient for the municipality to satisfy the tax debt, the municipality has the ability, subject to the stay of proceedings, to seek judgment for the unsecured portion of unpaid taxes and enforce on that unsecured judgment in the normal course.

52. Any suggestion that the Monitor must use assets obtained from the sale of land or personal property not located within the geographical boundaries of the taxing municipality (or having any connection to that municipality) is unfounded and would create, as the Receiver suggested in *Regent*, an invisible superpriority charge unsupported by the language of the MGA. Again, this Court has already determined that a municipality's special lien is limited to its own boundaries.

Regent Resources Ltd. (Re), 2018 ABQB 669, at paras 22-26 **TAB 15**

53. CWB asserts that the tax levied on improvements is a claim in debt owed by the party against whom the tax has been levied, and if that party (in this case CNC) had sufficient assets, the entirety of the tax levy would be payable. In this case, CNC has insufficient assets to meet these liabilities.

54. As a result, the municipalities are in effect asserting claims as against the lenders who hold charges on various of the improvements being taxed. CWB agrees with Athabasca that marshaling is required in order to ensure that one lender with a charge over one asset, is not paying out of the proceeds of sale of that asset, the tax levied on another asset over

which it has no charge. To do otherwise, would in effect be an expropriation without compensation.

55. In the case of the municipal tax levied on Wandering River, the lion's share of the tax levy is attributable to improvements which are secured in favour of different lenders including CWB and ECN. In the case of ECN, assets charged in its favour have been sold for $250,000. In the case of CWB, assets charged in its favour have been sold for some $223,000.

56. CWB submits that the proceeds of the sale of the improvements charged in favour of CWB, are only exposed to the tax levy attributable to those assets so sold, and not to any other tax levy that is attributable to other assets whether charged in favour of CWB or any other lender.

57. CWB submits that there is no principled basis on which tax levies on assets charged in favour of CWB which have not been sold, and may never be sold, attach to the proceeds of the sale of those assets which have been sold.

E. In the event tax is payable as assets upon which the tax has been levied are sold, should the Monitor be directed to pay those taxes in advance of the cost allocation? Should the municipalities be stayed in enforcement of any lien under the MGA until the estate has further certainty with respect to the sale of assets and the rendering of a decision on cost allocation in the estate?

58. CWB submits that to the extent tax is payable on a given asset that is sold by the Monitor, that tax should be paid by the Monitor out of the proceeds of sale of that asset, subject to a holdback for a cost allocation or suitable covenants to repay the cost allocation.

59. That said, to the extent that the accounting exercise for making interim distributions of small amounts to municipalities as proceeds of sale dribble into the estate, will be overly onerous, CWB submits that the proper approach would be to make payment of the municipal tax that is found to be owing, following the issuance of a decision on cost

allocation. This approach would avoid unnecessary professional fees on a file that has already experienced extraordinary professional costs.

PART 4 REMEDY SOUGHT

60. CWB seeks:

(a) A declaration that no penalties may be charged by the municipalities from September 6, 2018 (the date of determination by this Court that the issue of tax liability would be deferred until the *Virginia Hills* decision was rendered) until July 4, 2019 (the establishment of the process for determining the tax issue in the August Application);

(b) A declaration that no tax shall be payable until the underlying asset is sold by the Monitor;

(c) A declaration that from the sale of individual improvements charged in favour of a given lender, only the tax levy payable in connection with that particular asset, be paid from the proceeds of sale of that particular asset, again subject to a cost allocation holdback;

(d) A declaration that any payment of tax liability to a municipality is subject to a cost allocation to be determined in due course;

(e) An order directing that no distribution be made to Athabasca or Opportunity until the cost allocation decision is rendered; and

(f) Costs of this application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at the City of Edmonton, in the Province of Alberta, this 9th day of August, 2019.

MCLENNAN ROSS LLP

Per: ______________________________
Charles P. Russell, Q.C. / Ryan Trainer
Solicitors for Canadian Western Bank

APPENDIX A

Appendix A

Action No: 1703-12327
E-file Name: EVQ18667402ALBERTA
Appeal No: ________________

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF EDMONTON

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 ARRANGEMENT OF
667402 ALBERTA LTD., 18592318 ALBERTA LTD., 816956 ALBERTA LTD.,
1370147 ALBERTA LTD., 1919209 ALBERTA LTD., AND
CANADA NORTH GROUP HOLDINGS LTD.

P R O C E E D I N G S

September 6, 2018
Edmonton, Alberta

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A. Steen	For Northland Managers Investment Corp.
R.J. Wasylyshyn	For the Receiver for Income Growth Fund Ltd.
D. McAllister	For 726 Modular Financing Canada Ltd.
D. McAllister	For 726 Remote Accommodations Ltd.
B. Lawrence	For the Town of Bonnyville
B. Lawrence	For Athabasca County
C.P. Russell, Q.C.	For Canadian Western Bank
S. Rohatyn	For Aurora Lodging
R. Quinlan (by telephone)	For the Monitor, Ernst & Young
J. Oliver	For BDC
R. Flewelling	For Great White Sand Tiger Lodging Ltd.
T.M. Warner	For National Leasing Group & ECN Capital Corp.
N. Valji	Court Clerk

THE COURT: Good morning, everyone. Please be seated.

Ms. Finlay.

Submissions by Ms. Finlay

MS. FINLAY: Thank you, Sir. Thank you for hearing us this morning. The -- the reason that we're before you is set out in our brief that we forwarded to your office. I don't know if you've had a change to review that.

THE COURT: I have your letter, and, yes, I do have the brief itself as well.

MS. FINLAY: Okay. If you've had a chance to read it, I won't go through that, but perhaps I can just summarize briefly. We understood that an application had been set by the monitor for September 21st, and that the correspondence setting that date indicated that there would be municipal tax issues that would be dealt with at that hearing. In a subsequent email from Mr. Quinlan, he advised the parties as to what those municipal tax issues would -- would be, which, in summary, was that -- and this dealt with the town of Bonnyville, whether or not the town of Bonnyville, especially for tax arrears applied in respect of the dorms and similar items located on the Bonnyville camps on which there were outstanding property taxes.

That same issue arose in respect of our client's outstanding -- taxes that are outstanding to my client upon some other camps that were buildings that were leased from a number of other parties. In those proceedings dealing with the MD of Greenview, the parties had agreed to put aside funds with respect to those taxes pending a determination in an -- in an appeal that was recently heard on June 12th, entitled the *Virginia Hills* case, but in this matter dealing with the MD of Bonnyville, the parties, I understand, wanted to bring that -- an issue forward with respect to the effect of special maintenance priority on the 21st.

So two issues with that, one, it is a fairly significant matter, and we would suggest that if that issue is going to be determined that all parties be required to bring their applications and the matter be heard in a fulsome way, but primarily our position is that the *Virginia Hills* matter does have the potential to impact matters in these proceedings, and, therefore, our suggestion was that any municipal tax issues dealing with priority and the existence of a special lien be adjourned until the -- an outcome -- a final outcome in the *Virginia Hills* appeal.

I wanted to just discuss very briefly -- I wanted to highlight what the *Virginia Hills* appeal deals with. Obviously I won't go into that in any detail, but the *Virginia Hills* appeal involves an appeal of an order for advice and direction and distribution of funds, funds that were held resulting from the sale of property, including easements, leases, and wells and a number of other pieces of property that would be characterized as linear property. The court declared in that case -- there was no written reasons. It was simply an order -- that -- as part of the order that the pre-receivership linear tax claims of the municipality were -- were only unsecured claims and did not form a secured claim, and so the municipalities had no further claims to funds held by the receiver.

There were two arguments that were advanced in the -- in the appeal of that order by the -- the receiver, or, sorry, there were three arguments that were advanced in that appeal that it's my submission could touch on the issues arising in these matters. One, it was argued that the municipalities are agents of the Crown, and, therefore, any priority or realization on those special liens were subject to the rules that relate to statutory Crown liens.

Secondly, they suggested that the removal of language in the -- the -- the acts that used to apply to municipal taxes and special liens was called the *Municipal Taxation Act,* and in the section that granted a security interest in that legislation had some additional language, and the -- or the receiver argued in the *Virginia Hills* case that the removal of that language made the special lien provision in the current *MGA,* section 348, ambiguous with respect to what lands and improvements are being referred to. Thirdly, they argued that a special lien only relates to taxes in respect of a parcel of land, and a parcel of land under the *MGA* does not include improvements.

So those are the three issues that we suggest -- if the Court of Appeal is -- accepts those arguments, those arguments would have an impact on determinations in these proceedings on the scope and status and the existence of a special lien on the improvements in this case.

THE COURT: Let me try and cut to the chase on all of this. In your discussion with colleagues, including the monitor in respect of the Bonnyville issue, what discord has there been as to the wisdom of your request for deferral to *Virginia Hills* and the determination by the Court of Appeal that would inform the issues as crystallized?

MS. FINLAY: I do not -- I do not -- I have had discussions with my friends in Palliser and Mr. Hakanen (sic) --

MR. ROHATYN: Mr. Rohatyn from Parlee.

THE COURT: Thank you.

MS. FINLAY: And we've had discussions, and my understanding is that they understand the issues that arise in *Virginia Hills,* but I don't have a firm position from them on this adjournment today -- this adjournment request today.

Discussion

THE COURT: Okay. Let me just alert you that if you're going to be speaking principally on behalf of those who are opposed to the concern about litigating a matter that's already been dealt with at Queen's Bench once largely, and I recognize there may be distinctions, but I don't know the full import of those, then I want to know what's the most efficient use of our time. If, having the players here together, there's a way in which this can be dealt with, because there's some wisdom in not simply rerunning the issues that overlap at cost to however many parties feel impacted by this, then I am going to be very interested to know what those are, but I don't intend to spend a whole lot of time here today with that, and I'm wondering if it doesn't make some sense just to give you an opportunity to talk amongst yourselves, because I'm rather predisposed to adjourn so that this matter is dealt with more effectively, once we've got *Virginia Hills*.

MR. ROHATYN: Sir, if I could address that, there have been some discussions, less so with Ms. Finlay, more so with counsel for the town of Bonnyville, of Aurora Lodgings claimed ownership of dorms located on the Bonnyville lands, so our discussions have been -- been mainly focussed with counsel for the town of Bonnyville, and we've indicated to the town that in principle we don't -- we don't oppose what is being sought today, which is an order setting aside these issues until *Virginia Hills* can be determined, subject to some directions regarding scheduling once that occurs.

THE COURT: Okay. So is there anybody that is objecting to what Ms. Finlay is proposing here? Oh, my -- yes, Mr. Russell.

Submissions by Mr. Russell

MR. RUSSELL Thank you, My Lord. I'm -- I'm not -- CWB isn't objecting to this.

THE COURT: Okay.

MR. RUSSELL: It -- it makes sense, I think, to have the issue put over until we've seen what the Court of Appeal has to say. The only thing I would suggest is that the creditors who have different security interests over property that are on these various parcels of land, they have different kinds of problems. Some of them may well be considered to be fixtures. Many of them would be serial-numbered goods, manufactured homes. Some of them is rolling stock.

To the extent that the *Virginia Hills* Court of Appeal decision is -- is not going to determine all of the issues in kind of a blanket way, for example, if the Court of Appeal simply said, The municipalities have no charge over any personal property on -- on the premises, if that was what the decision was, then it wouldn't be necessary for these various creditors to be showing the Court or getting ready to show the Court what the nature of their collateral is, but to the extent -- and -- and my friends are -- are in a much better position to advise on this than I am, but to the extent that there is going to be some factual premise that each of these creditors are going to have to deal with sooner or later, I'd prefer that some direction be given by the Court that the -- the various creditors put in affidavits giving a description of what their collateral is so that we know whose collateral is purely rolling stock, whose collateral is something that may be more problematic for -- for the creditor.

THE COURT: And you're proposing that that would be as part of today's order, if the Court grants the adjournment on the Bonnyville issue as it relates to the 21st of September, pending *Virginia Hills*, that in all events creditors impacted be obliged by a date specified to itemize or to particularize the nature of their claims.

MR. RUSSELL: Assuming that the *Virginia Hills* Court of Appeal decision might not simply make all of that irrelevant, and -- and my friends would be better off -- would be better able to answer that.

THE COURT: Well, I'm not so sure it's such a hardship for that to be characterized, even in the absence. What I'm worried about is that if *Virginia Hills* takes seven weeks to issue, just a hypothetical but not an unrealistic anticipated timeframe, given that it was argued in June, and then after that all of those affidavits being prepared, and I don't know how many there are, frankly, but then everybody's got to bring themselves up to speed, whereas if they know if those were prepared within the next three -- or whatever number seemed reasonable to those impacted by the Court's direction -- weeks, then everybody would have at least some sense of what the landscape was.

No, they don't know what the answer is in *Virginia Hills*, but they can then apply *Virginia Hills*. If it eliminates most of the issues that would distinguish between some of the natures of the claims, fine. There's no real hardship in having at least declared what your interest is based on. That would be my first inclination.

MR. RUSSELL: And as -- yeah, and -- and, My Lord, that -- that makes perfect sense to me. I suspect that most of the creditors are going to be able to put in affidavits which simply append their proofs of claim that they have filed, which will presumably have their security interests, append a PPR registration, which shows their registration, either by serial number or not, and to the extent that it's not patently evident that this is a motor vehicle, as opposed to something else, some explanation of that.

There are -- there are other issues, though, and I know Mr. Quinlan is intending to briefly address this as well. For example, 726, Mr. McAllister's client, has an ownership claim with regard to various assets that were at three of the limited partnership projects, and this came as a surprise, I guess for lack of a better word, to CWB, as we had understood that the McCracken's (phonetic) affidavits had indicated that -- assuming we're talking about the same collateral, that that collateral was actually available for CNC, and if it wasn't, then we need to know. You know, if there's a viable argument that it -- that it wasn't, that it belongs to 726, then I think we also need to see what 726's claim is so that we can assess the -- what arguments might have to be addressed in due course with regard to that, and -- and, My Lord, I remind you that we also have October 23rd booked.

THE COURT: I had forgotten that because I know that Ms. Hinz had been looking at a calendar date and a special assignment for me to sit commercial in early December, which seemed like a more realistic date at which we may be able to deal with at least outcome of *Virginia Hills*. We may not. We're beholden by whatever is a fair timeline off of a decision issued from the Court of Appeal, but we were trying to be as proactive as we could. What is on the October date?

MR. RUSSELL: Mr. Quinlan will be able to advice on that, but I have anticipated that some of the creditors who are owners -- purported owners who want to take their equipment back off site --

THE COURT: Right.

MR. RUSSELL: -- are going to want to be able to do so, so there would be a question with regard to a cost -- you know, cost allocation, potential exposure to the property taxes, and that -- those sorts of issues, totally aside from the legitimacy of the ownership issues. So it -- so it seems to me that the first step is for all known creditors who have collateral out there to be putting in their evidence with regard to their collateral, and that those who have ownership claims doing the same, because then at least we've -- we've got some matrix to build on, and we may or may not be able to get things substantively dealt with on October 23rd, but I know there will be issues aside from the municipality issues that do have to be dealt with.

THE COURT: Do you know, or Mr. Quinlan may be in a better position, but do you know -- I believe that that's probably in front of Justice Nielsen because I am away in that period of time.

MR. RUSSELL: I -- I don't know.

THE COURT: So you may --

MR. RUSSELL: -- My Lord.

THE COURT: Okay. Okay.

MR. QUINLAN: Sorry, My Lord, the -- Mr. Quinlan --

THE COURT: Hi.

MR. QUINLAN: -- for the monitor. Yeah, that -- that date is before Justice Nielsen.

THE COURT: Okay. That's why I'm not familiar with it. Okay, fair enough.

Is there anything else from your perspective? I hear you on both the ownership and the -- the nature of claim, security clarifications or what your request would be for affidavits to assert those on a timely basis. Anything else from your perspective?

MR. RUSSELL: No, My Lord. Once we've seen certainly the property ownership claims --

THE COURT: Right.

MR. RUSSELL: -- once we've seen the evidence of that, we can determine whether CWB sees an argument that they have a challenge to that. We may want to have some questioning, but I suggest that we can, through counsel, try to get that rolling, as long as we get the first step of the affidavits tabled.

THE COURT: Which is why I was saying that I don't think that that should be held up by time in relation to *Virginia Hills* at all. I think we should be moving ahead. Your point about questioning is something that I'm not going to speculate on. I'm going to leave it to counsel. If you need directions, of course we'll give it to you, but I rather anticipate you can get that done in an orderly fashion as well.

MR. RUSSELL: Yes.

THE COURT: Okay.
Mr. Quinlan, I think I'm going to turn to you as it relates to the lay of the land. Is there anything further that you want to say on Ms. Finlay's request for adjournment on Bonnyville and the taxation issue?

Submissions by Mr. Quinlan

MR. QUINLAN: No, My Lord. The monitor didn't object to that adjournment. I mean, the monitor certainly booked the court application for the 21st. We had a number of matters we thought might come before it, some of which won't be proceeding due to events that have occurred since the booking, but we were -- all of you are applying for advice and direction. We anticipated that both Sand Tiger and Aurora would be bringing substantive applications to have those issues determined, so they were really driving the bus. We were just getting it set on course.

With your -- the monitor's not opposed to that, in terms of what Mr. Russell's indicated. I believe that the only party that these (INDISCERNIBLE) issues apply to are Aurora and Tiger and 726. Aurora has dorms, which were sold and were the subject of a vesting -- prior vesting order by Mr. Justice Nielsen, so those dorms are already off site, and there's money to be in the monitor's trust account pending determination of some of these issues.

As for Sand Tiger and 726, their dorms remain on site. I don't believe -- I believe all those parties just had dorms. The monitor had received documentation form each of those parties. I don't believe there's any rolling stock or any -- any other assets of that nature that are subject of those ownership claims.

THE COURT: But you would agree with Mr. Russell as a matter of due diligence it would make sense for the Court to make direction and timeframes within which all of these claims, not just the notice of claims but the nature of them, is itemized in affidavit form?

MR. QUINLAN: The monitor has no issue with that here. I -- I can advise the Court that each party has been cooperative in providing the monitor with their documentation, so we seen them, but I don't think it would be a problem or nor do I think it would be a bad thing for the Court to have -- to direct that that evidence -- that those documents be put in affidavit form and circulated to all the various creditors involved in this matter through our server clubs.

THE COURT: I'm not sure. I understand that you are volunteering to do that collectively. I might have thought that the nature of those claims and the not posturing but the position being asserted was better in the hands of counsel in respect of those claimants than for the monitor to act as a collective voice as to what it interprets or understands from what's been received.

MR. QUINLAN: Sir, no, in the interests of adjudication I agree with you. I believe it's those parties who'd be better served by putting their own affidavits forward.

THE COURT: Okay.

MR. QUINLAN: I was just simply trying to advise that they have provided the monitor with their documents already.

THE COURT: Sure, this is not a criticism --

MR. QUINLAN: (INDISCERNIBLE)

THE COURT: Sure, this Court's not criticizing anything that's transpired to date. It is a matter of due diligence for the Court to have proper lay of the land, to flesh out what it is that's going to be problematic, perhaps out of *Virginia Hills,* but, in any event, it's an appropriate caution, and it may give rise to questioning if a party takes a position that impacts some other claims or wasn't anticipated to be the position taken by that party. Then others could initiate questioning and get that scheduled.

All right, is there any reason, since you have the Court's attention for the moment, Mr. Quinlan, why there ought not to be a deadline set at the end of the first week of October for those claims to be placed in affidavit form?

MR. QUINLAN: No, Sir. I think that would be an appropriate date, given that -- well, the court hearing we have already scheduled for October 23rd.

THE COURT: Right.

MR. QUINLAN: Just so that if all affidavit evidence is in by the first week of October, I think that would give the parties sufficient time so that whatever other issues that are separate and apart from the fact issues can be considered and determined on the 23rd, if that's the hearing.

Decision

THE COURT: All right. Then unless there's any other objection, I'll make an almost imperceptible pause before I then declare that October the 5th will be the date for all filings to address claims by creditors, and I believe that Mr. Russell makes a useful distinction. Those claims of ownership, to the extent that that's a distinction with a difference, and I believe it is, are similarly to place their position in affidavit form by the October 5th date as well.

MR. QUINLAN: My Lord, Mr. Quinlan here, just to clarify, is October the 5th the date for any monitor's report as well for that October 23rd -- that --

THE COURT: No, I believe that the monitor, because of your function, should have some delay period within which to prepare the monitor's report. Given that this is for the 23rd, it would make some sense for your report to be in by the -- just give me a second to get back to that calendar -- by the 10th of October. Well, maybe I need to give you the 11th since it looks like the 8th is a holiday. So the monitor's report will be in by October the 11th, and you would follow the practice note in respect of filing of briefs. I don't really want to try and case-manage Justice Nielsen's issues. Did he provide directions as to timing for submissions for this October 23rd date?

MR. QUINLAN: No, Sir, he did not.

THE COURT: Well, then it seems to me, not knowing what the full breadth of that is, that those applicants should have their materials in by October -- is it October 23 that Justice Nielsen's hearing this?

MR. QUINLAN: Correct.

THE COURT: That the applications then would be in by the 12th and responses by the 17th of October. That's not exactly compliant with the practice note, but it seems to me it gives Justice Nielsen a reasonable period of time within which to make assessments.

Ms. Finlay.

MS. FINLAY: Thank you, Sir. Might I simply ask that the order with respect to the filing of the affidavits also provide a direction that those affidavits identify the municipality in which the property or assets are located?

THE COURT: I think that's a good caution, an appropriate piece of due diligence, to alert those likely impacted by it.

MS. FINLAY: Thank you.

THE COURT: Mr. Russell.

MR. RUSSELL: My Lord, might I also ask that the affidavits in the case of the creditors show the debt levels that they are claiming?

THE COURT: Quite so.

MR. RUSSELL: Okay.

THE COURT: That also makes complete sense.

Mr. Quinlan, are there any other matters that the direction for the 5th of October should itemize?

MR. QUINLAN: No, Sir, I think -- I think Ms. Finlay and Mr. Russell have sufficiently articulated the -- the two additional points beyond the identification of the assets on the terms of the assets.

THE COURT: All right. Is there any feedback with respect to the Court's proposed dates, recognizing that I'm really affecting the schedule for the hearing contemplated in front of Justice Nielsen, as opposed to myself? Nothing else? All right, then I will leave those dates. Who is preparing this order? Mr. Quinlan, will you prepare it?

MR. QUINLAN: I think for the sake of brevity, My Lord, it should be someone who is currently in town. I'm -- I'm in the mountains right now. I won't be back until about Monday. Perhaps I can impose upon Ms. Finlay or Mr. Russell to take the lead in drafting it.

THE COURT: Their body language tells me they're trying to sort that out.

MS. FINLAY: Very subtle.

MR. RUSSELL: I'm pushing off the --

THE COURT: I can see that, Mr. Russell.

Ms. Finlay, how are you responding to this push?

MS. FINLAY: I'm happy to prepare the orders and circulate them to counsel so that they make sure that I get it right. I was just saying to my friend, Mr. Russell, that I propose to prepare two orders, one with respect to the -- unless you direct otherwise -- one with respect to the October 23rd hearing and the filings that are required with respect to that and then one with respect to the adjournment of simply the municipal tax issues on the 12th of -- 21st, sorry, of September, so that if that date is -- is necessary for any other matters, it stays open, but just adjourning those matters, subject to a final determination in the *Virginia Hills* matter.

THE COURT: That makes complete sense, but it isn't just the deadlines in respect of briefs by applicants. It's also the October 5 dates in respect of ownership --

MS. FINLAY: Yes.

THE COURT: -- as well as creditor claims.

MS. FINLAY: Yes, I simply meant that --

THE COURT: Okay.

MS. FINLAY: -- there -- there --

THE COURT: Your own adjournment is a separate issue. I quite agree.

MS. FINLAY: Yes, thank you, Sir.

THE COURT: A second order will be appropriate.

MS. FINLAY: Yes.

MR. RUSSELL: And -- and, My Lord, Mr. McCullough had just suggested to me that it -- it might be helpful for creditors to describe not only what their collateral is but where -- in which municipality it is -- the collateral is located to the best of their knowledge. That will probably help the municipalities figure out whether there's a fight with Wild Aven (phonetic) or not.

THE COURT: Quite so.

MS. FINLAY: Yes.

THE COURT: You understand that will be incorporated, please, Ms. Finlay?

MS. FINLAY: Yes, and I will -- I will circulate those draft orders to all counsel.

Discussion

THE COURT: Okay. Okay. Is there anything further, then, in respect of the adjournment on *Virginia Hills* or the matter as to clarification of claims as may impact -- well, and it wouldn't just be restricted by what Justice Nielsen may be dealing with. I think it's a useful tool and backdrop moving forward for other matters. It isn't just going to inform the October 23rd proceedings.

If not, then it seems to me that what I would like, Mr. Quinlan, is at least some verbal update as to what September 21 looks like, and, indeed, I might suggest that the Court has read the materials for First Aven (phonetic) Financial and Xenex (phonetic) that Ms. Ferris (phonetic) has provided. I don't know that there is any dispute with respect to either the appraisal or the proposed language of an order that would list. I don't know how controversial all of that is and whether an order would be contemplated. I want to know how we can make best use of the September 21st date, so I will invite you, Mr. Quinlan, to speak to that.

MR. QUINLAN: Well, the -- the good part, My Lord, with -- with those issues being moved off that date to the October date, I -- I certainly don't think we need the full day that was scheduled. The -- the two primary matters that I think would be for Your Lordship on that day are Ms. Ferris's application for approval of the sale of the farm. I think what might be a contentious issues is the amount that the monitor will be asking for as a holdback from those (INDISCERNIBLE). The two dates that Your Lordship were to bring the approval of that sale, so that issue, I think, will be live before Your Lordship on that day.

I do -- I do not believe it's been filed yet, but I -- I understand from speaking to their counsel yesterday that Staley Construction (phonetic), who was the first mortgagee in respect of the Winterburn yard that's already been sold, is going to be bringing an application for interim distribution of those sale proceeds, which are currently being held by the monitor. Again, there would be that issue before the Court, and should Your Lordship grant the interim distribution, there may be a contested issue with respect to, again, how much the monitor will have as a holdback for those sales proceeds or any final cost out they should -- which obviously will not be determined until the end of these proceedings.

So with -- with those two things being heard, I think that everything else being moved off, those are likely going to be the only issues before Your Lordship on that day. There may -- they may (INDISCERNIBLE) be a sale going through as well. The monitors have some ongoing negotiations with that, but I don't know if that will be concluded in time to be heard on September 21.

THE COURT: I'm sorry, sale on what?

MR. QUINLAN: Oh, the sale of some assets on what we call the Monea (phonetic) camp.

THE COURT: Okay, just --

MR. QUINLAN: So those negotiations are still ongoing, and I'm not sure we'll be completed in time.

THE COURT: Okay.

MR. QUINLAN: But that may be added to the list last minute.

THE COURT: Okay, I'm not opposed to last-minute attendance in court where matters are basically sorted out and therefore need Court approval or fine-tuning in respect of an amount or a date or things of that sort. If there's a substantive dispute, then I need to know what point of time that matter is intended to be crystallized and presented to the Court so that the parties have materials that the Court can review and effectively address on a prepared or informed basis.

So we've got Ms. Ferris's application. I don't have anything from your office in respect of the issue of the holdback, if that's the only point in contention there, so that needs to be addressed shortly. On the Staley Construction on Winterburn, once again, that needs to be crystallized to know what the basis is for a proposed holdback and what the pushback on that would be by Staley.

MR. QUINLAN: Yes, My Lord. I -- I -- can advise that it's our intention to have our application document our monitor's report, confidential supplemental monitor's report and our brief, all filed on Monday, within our normal commercial list filing deadline.

THE COURT: Okay.

Mr. Russell.

MR. RUSSELL: And, My Lord, Mr. McCullough had also just mentioned to me that there might be a few other cleanup issues that may be in the application that haven't been mentioned here, but he had anticipated anything overly contentious.

THE COURT: Okay. Okay, well, you've got my overview of things. I don't mind dealing with matters in the nature of housekeeping. Let's make sure that we are moving forward and have court direction for those things that the parties have sorted out, but particularly where it's quite obvious and it has been throughout the past 15 months that no one judge is able to give you a seamless audience on issues, it's really important that the difference between housekeeping or let's remain current items and contentious issues needs to be well-planned and addressed on a timely basis.

So in that I haven't made any direction of course for questioning in respect of the October 5 affidavits, you're going to need to do that on a prompt and timely basis, all right?

Ms. Finlay?

MS. FINLAY: Sir, it occurred to me that -- so we're going to have affidavits prepared by creditors that disclose the nature of their claim and then any ownership issues. Those will identify the municipalities in which those items are located. Will you be looking for -- will it assist the Court then to have municipalities, after the October 5th date, then particularize their claims based on the affidavits that they receive, because I think the whole purpose was to be able to try to bring at least to a head people's various interests that they're claiming in these items.

Now, municipalities would only be claiming an interest or a special lien on items that fall within the definition of obviously the lands but also the improvements. For that, we will need to rely on the affidavits. Now, maybe we don't need to deal with that in such a formal way. We may be able to deal with that by discussion, but if we're going to have a time where all -- all of the property is going to be identified and people's claims identified, does it make sense to set a date by which the municipalities would review those things and identify the items that they -- they assert a special lien on.

THE COURT: I think that again makes eminent sense in crystallizing people's thought processes. I have alerted you and it's not anything that's going to get formalized in today's directions, but we have set up a special commercial sitting that isn't just accommodating Canada North, of course, but for the week of December the 5th, so with that in mind, it seems to me that impacted municipalities, in reviewing the October 5 affidavits that identify property within their jurisdictions, should be responding and placing evidence that would support their entitlement, irrespective of or setting aside what the Court may interpret of section -- is it 341? I've forgotten now.

MS. FINLAY: Section -- section 348.

THE COURT: Eight.

MS. FINLAY: Yes.

THE COURT: 348, thank you, of the *MGA* that there be a date set for those to be expressed, and I might suggest that that be not later than October the 26th. Is there any pushback against that date? It will be right after Justice Nielsen's, so everybody will have had at least a couple of breakfasts post that process to finalize positions.

Ms. Finlay, any reaction to 26th?

MS. FINLAY: No, Sir, that date is fine for us.

THE COURT: Okay. I will have you, if you would, capture that in that same order.

MS. FINLAY: Yes, I will, Sir.

THE COURT: All right, superb.

MR. RUSSELL: My Lord, would it be appropriate for us to book a day in the week of December 5th so we have something for whatever falls out of the October 23rd?

THE COURT: I believe that that's prudent.

MR. RUSSELL: All right.

THE COURT: Bearing in mind that, of course, Ms. Hinz should be alerted that in the event the *Virginia Hills* isn't decide, then we're going to have to adjourn because that's a central piece as to not only whether the matter can be argued, because we're awaiting that decision, but the scope or time allotment to it. You should get a full day, I believe, unless counsel think it should be even longer. I don't know. I don't know how many municipalities there are, how similar or dissimilar their positions may be.

You people will assess that. It is a fresh commercial sitting, so she will give you that amount of time that you collectively determine would be needed for this, on the basis that in the event you don't have *Virginia Hills* that you may not be able to make use of it, and that's unfortunate.

MR. RUSSELL: My Lord, perhaps what we could do after -- after we -- you've adjourned, we could have counsel stay on the phone and just collectively discuss what -- what might work then.

THE COURT: I think that makes complete sense.

Ms. Finlay, anything further?

MS. FINLAY: No, is -- the courtroom available?

THE COURT CLERK: Yeah, it is.

MS. FINLAY: Okay.

THE COURT: Oh, you're so good, dear, then.

MS. FINLAY: Okay.

THE COURT: All right. Is there anything else? Do I have Ms. Ferris on the phone or Ms. Ferris's office? All right, then I will just leave it with you, Mr. Quinlan, to have due diligent discussions with Ms. Ferris as to holdback. That seems to be the only live issue on her application and to alert the Court about the best use of the September 21st date, all right?

MR. QUINLAN: Understood, My Lord.

THE COURT: Okay. Anything else this morning?

MS. FINLAY: Nothing, Sir.

THE COURT: Thanks, everyone, for attending. We are adjourned.

PROCEEDINGS CONCLUDED

Certificate of Record

I, Nelin Valji, certify that this recording is the record made of the evidence in the proceedings in Court of Queen's Bench, held in courtroom 611, at Edmonton, on the 6th day of September, 2018, and I, Nelin Valji, was the court official in charge of the sound-recording machine during the proceedings.

Certificate of Transcript

I, Kaye Garner, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability, and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

Kaye Garner, Transcriber
Order Number: AL-JO-1002-1178
Dated: December 11, 2018

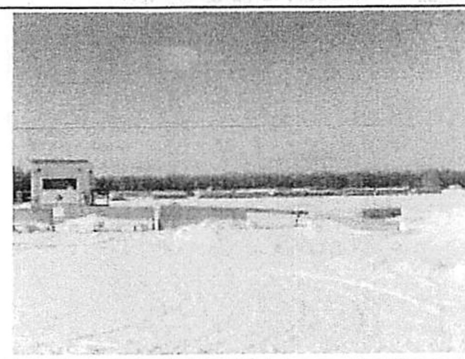
APPENDIX B

Appendix B

Assessment Summary

Year of General Assessment: 2018

Roll: 371351000
Legal: NE-35-71-17-4
Address:



Land Area: 158.95 Acres
Subdivision: COUNTY ALL AREAS
Zoning: Rural Use District

Actual Use: Farmland / Non-Intensive

Market Land Valuation

Site Area: 40.00 Acres

Asmt	Code	Value
510	100%	95,510

Farmland Valuation

Agroclimatic Zone: 18 3H-N

Soil Group	Area	Rating
52 DGL	37.00 Acres	50.5%
62 GL	37.00 Acres	37.5%
80 Pasture	40.95 Acres	6.5%
90 Waste	4.00 Acres	0.0%

Total Area: **118.95 Acres**

Asmt	Code	Value
301	100%	10,360

Marshall & Swift

		Area (Ft2)	Built	Asmt	Code	Value
Main Level Structure	10-38 Man Bed Dorms	64,400 Sq Feet	2014	510	100%	224,970
Main Level Structure	Gym & Rec Centre West Camp	7,200 Sq Feet	2014	510	100%	82,290
Main Level Structure	Kitchen/Cafeteria's West Camp	15,840 Sq Feet	2014	510	100%	135,870
Main Level Structure	Laundry West Camp	840 Sq Feet	2014	510	100%	7,850
Main Level Structure	Medical Office West Camp	840 Sq Feet	2014	510	100%	12,180
Main Level Structure	3 - Command Centre Offices West Camp	2,016 Sq Feet	2014	510	100%	28,390
Main Level Structure	8 - Offices North Camp	5,760 Sq Feet	2014	510	100%	73,370
Main Level Structure	14 - Offices North Camp	10,080 Sq Feet	2014	510	100%	122,190
Main Level Structure	4 - Ledcor Offices West	2,688 Sq Feet	2014	510	100%	36,020
Main Level Structure	Security Shack	288 Sq Feet	2014	510	100%	38,350
Main Level & Conc. Slab	Admin/Warehouse Bldg. NW Site	4,800 Sq Feet	1985	510	100%	104,280
Main Level & Conc. Slab	Warehouse (Metal Clad) NW Site	1,600 Sq Feet	1992	510	100%	17,520
Main Level & Conc. Slab	3-Sided Warehouse (Metal Clad) NW Site	800 Sq Feet	1995	510	100%	7,090
Main Level & Conc. Slab	Warehouse (Metal Clad) NW Site	952 Sq Feet	1977	510	100%	22,810
Hand Calculated	96' Tower	96 Sq Feet	2014	510	100%	24,220

Assessment Totals

Tax Status	Code Description	Assessment
T	301 Vacant Farmland	10,360
	510 Improved Commercial	1,032,910
	Totals For 2018 Taxable	**1,043,270**
	Grand Totals For 2018	**1,043,270**

Athabasca County

Assessment Summary

Year of General Assessment: 2016

Roll: 371351000
Legal: NE-35-71-17-4
Address:

Land Area: 158.95 Acres
Subdivision: COUNTY ALL AREAS
Zoning: Rural Use District

Market Land Valuation

Site Area: 40.00 Acres

Asmt	Code	Assessment
510	100%	88,460

Farmland Valuation

Agroclimatic Zone: 18 3H-N

Soil Group	Area	Rating	Asmt	Code	Assessment
			301	100%	10,360
52 DGL	37.00 Acres	50.5%			
62 GL	37.00 Acres	37.5%			
80 Pasture	40.95 Acres	6.5%			
90 Waste	4.00 Acres	0.0%			

Total Area: **118.95 Acres**

Marshall & Swift

		Area (Ft2)	Built	Asmt	Code	Assessment
Main Level Structure	12-38 Man Bed Dorms West Camp	104,880 Sq Feet	2014	510	100%	2,990,640
Main Level Structure	Gym & Rec Centre West Camp	7,200 Sq Feet	2014	510	100%	847,090
Main Level Structure	Kitchen/Cafeteria's West Camp	15,840 Sq Feet	2014	510	100%	1,395,030
Main Level Structure	Laundry West Camp	840 Sq Feet	2014	510	100%	80,880
Main Level Structure	Medical Office West Camp	840 Sq Feet	2014	510	100%	125,510
Main Level Structure	3 - Command Centre Offices West Camp	2,016 Sq Feet	2014	510	100%	292,260
Main Level Structure	8 - Offices North Camp	5,760 Sq Feet	2014	510	100%	755,210
Main Level Structure	14 - Offices North Camp	10,080 Sq Feet	2014	510	100%	1,257,690
Main Level Structure	4 - Ledcor Offices West	2,688 Sq Feet	2014	510	100%	370,710
Main Level Structure	Security Shack	288 Sq Feet	2014	510	100%	39,490
Main Level & Conc. Slab	Admin/Warehouse Bldg. NW Site	4,800 Sq Feet	1985	510	100%	107,650
Main Level & Conc. Slab	Warehouse (Metal Clad) NW Site	1,600 Sq Feet	1992	510	100%	17,810
Main Level & Conc. Slab	3-Sided Warehouse (Metal Clad) NW Site	800 Sq Feet	1995	510	100%	7,190
Main Level & Conc. Slab	Warehouse (Metal Clad) NW Site	952 Sq Feet	1977	510	100%	23,490
Hand Calculated	96' Tower	96 Sq Feet	2014	510	100%	24,480

Assessment Totals

Tax Status	Code	Description	Assessment
T	T2 2 F0	301 Vacant Farmland	10,360
	T1 1 C0	510 Improved Commercial	8,423,590
		Totals For 2016 Taxable	**8,433,950**
		Grand Totals For 2016	**8,433,950**

APPENDIX C

Appendix C

Court File No. CV-15-000011169-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	MONDAY, THE 9TH
	)	
JUSTICE NEWBOULD	)	DAY OF NOVEMBER, 2015

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 ESSAR STEEL ALGOMA INC., ESSAR TECH ALGOMA INC., ESSAR STEEL ALGOMA (ALBERTA) ULC, CANNELTON IRON ORE COMPANY AND ESSAR STEEL ALGOMA INC. USA

Applicants

INITIAL ORDER

THIS APPLICATION, made by Essar Steel Algoma Inc. ("ESAI"), Essar Tech Algoma Inc., Essar Steel Algoma (Alberta) ULC, Cannelton Iron Ore Company and Essar Steel Algoma Inc. USA (together, the "Applicants" or "Algoma"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Rajat Marwah sworn November 9, 2015, and the Exhibits attached thereto (the "Marwah Affidavit"), the Pre-filing Report of Ernst & Young Inc., as proposed monitor, and on being advised that those parties listed in Schedule "A" hereto were given notice of this application, and on hearing the submissions of counsel for the Applicants, Ernst & Young Inc. and the DIP Agent (as defined below) and on reading the consent of Ernst & Young Inc. to act as Monitor (the "Monitor").

THIS IS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE

LA PRÉSENT ATTEST QUE CE DOCUMENT, DONT CHACUNE DES PAGES EST REVÊTUE DU SCEAU DE LA COUR SUPÉRIEURE DE JUSTICE À TORONTO, EST UNE COPIE CONFORME DU DOCUMENT CONSERVÉ DANS CE BUREAU

DATED AT TORONTO THIS 9 DAY OF November 20 15
FAIT À TORONTO LE JOUR DE

REGISTRAR

Tara Stead
Registrar, Superior Court of Justice

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that any one or more of the Applicants 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

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "Property"). For greater certainty, "Property" includes all raw materials, inventory and other assets of the Applicants currently, or in the future, located at the cargo port facility (the "Port") leased by Algoma to Port of Algoma Inc. ("PortCo") pursuant to the Port Lease between ESAI (as landlord) and PortCo (as tenant) dated November 14, 2014, as amended, restated, supplemented and/or modified from time to time, and the Applicants shall be entitled to continued unimpeded access to all Property located at the Port and use of all equipment used in connection with the operation of the Port. Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and the Property.

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REGISTRAR

Tara Stead
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Registrar, Superior Court of Justice

6473413 v17

5. THIS COURT ORDERS that the Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, the "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicants shall be entitled to continue to utilize the central cash management system currently in place, as described in the Marwah Affidavit, or, subject to the terms of the DIP Agreement (as defined below) and the Definitive Documents (as defined below), replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that, in accordance with the DIP Agreement, the Definitive Documents and the Budget (as defined in the DIP Agreement), the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, bonuses, employee and pension benefits (including, without limitation, employee and retiree medical, dental and similar benefit plans or arrangements, employee assistance programs, and other retirement benefits and related contributions), vacation pay and

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DATED AT TORONTO THIS 9 DAY OF November 20 15
FAIT À TORONTO LE JOUR DE

Tara Stead
REGISTRAR
Registrar, Superior Court of Justice

expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations; and

(c) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

8. THIS COURT ORDERS that, in accordance with the DIP Agreement, the Definitive Documents and the Budget, and except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course prior to, on or after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably 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; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order,

provided that, to the extent such expenses were incurred prior to the date of this Order, the Applicants shall only be entitled to pay such amounts if they are determined by the Applicants, in consultation with the Monitor, to be necessary to the continued operation of the Business or preservation of the Property and such payments are approved in advance by the Monitor or by further Order of the Court.

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Registrar, Superior Court of Justice

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9. **THIS COURT ORDERS** that the Applicants shall 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 employees' wages, including, without limitation, amounts in respect of (a) employment insurance, (b) Canada Pension Plan, and (c) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Applicants.

10. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicants 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 to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each 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 the date of this Order shall also be paid.

9 November 15

Tara Stead
Registrar, Superior Court of Justice

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11. THIS COURT ORDERS that, except as specifically permitted herein and in accordance with the DIP Agreement, the Definitive Documents and the Budget, the Applicants are 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 Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Agreement, Definitive Documents, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations;

(b) dispose of redundant or non-material assets not exceeding $5 million in any one transaction or $10 million in the aggregate, and otherwise with the consent of the Monitor and the DIP Agent and the Requisite Lenders (as defined in the DIP Agreement) or further Order of the Court;

(c) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

(d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

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

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DATED AT TORONTO THIS 9 DAY OF November 20 15

Tara Stead

Registrar, Superior Court of Justice

13. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (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 Applicants' claim to the fixtures in dispute.

14. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice 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 Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

15. THIS COURT ORDERS that until and including December 9, 2015, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and

9 November 15
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Registrar, Superior Court of Justice

any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that 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 Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended, including the right of any Person who has entered into a consignment arrangement with the Applicants to repossess or remove any property delivered to the Applicants or located on the property owned by the Applicant, except with the written consent of the Applicants and the Monitor or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

17. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any Person, against or in respect of PortCo and Essar Power Canada Ltd. ("EPC"), or affecting the business, assets, undertakings or properties of PortCo or EPC that could alter, interfere with or otherwise impede the Business or Property are hereby stayed and suspended except with the written consent of the Monitor or leave of this Court, provided that ESAI continues to perform its contractual obligations to PortCo and EPC.

NO INTERFERENCE WITH RIGHTS

18. **THIS COURT ORDERS** that 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 Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

9 November 2015

Tara Stead
Registrar, Superior Court of Justice

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CONTINUATION OF SERVICES

19. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates 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, electricity, steam, raw materials, equipment, customs clearing, logistics, port services, cargo handling services, warehouse services, outside processors, or other services to the Business or the Applicants (including for greater certainty PortCo and EPC), 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 Applicants, and that the Applicants shall be entitled to the continued use of their 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 date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. THIS COURT ORDERS that, notwithstanding anything else in this Order, but subject to paragraphs 21 to 23 below, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

DATED AT TORONTO THIS 9 DAY OF November 20 15

Tara Stead
Registrar, Superior Court of Justice

CRITICAL SUPPLIERS

21. THIS COURT ORDERS AND DECLARES that each of the entities listed in Schedule "B" hereto is a critical supplier of the Applicants as contemplated by Section 11.4 of the CCAA (each, a "Critical Supplier").

22. THIS COURT ORDERS that each Critical Supplier shall continue to supply the Applicants with goods and/or services in accordance with the terms and conditions of their existing agreement or arrangements, as set out in Schedule "B" hereto. No Critical Supplier may require the payment of a further deposit or the posting of any additional security in connection with the supply of goods and/or services to the Applicants after the date of this Order.

23. THIS COURT ORDERS that each Critical Supplier shall be entitled to the benefit of and is hereby granted a charge (together, the "Critical Supplier Charge") on the Property in an amount equal to the value of the goods and services supplied by such Critical Supplier and received by the Applicants after the date of this Order less all amounts paid to such Critical Supplier in respect of such goods and services; provided that such charge shall not exceed an aggregate amount of $15 million. The value of the goods and services supplied shall be determined in accordance with the terms of the existing agreement or arrangements between the Applicants and the Critical Supplier or, in the event of any dispute, by the Court. The Critical Supplier Charge shall have the priority set out in paragraphs 47 and 49 hereof.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

24. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants 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 Applicants, if one is

9 November 15

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Registrar, Superior Court of Justice

filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

25. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors and officers of the Applicants 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.

26. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "D&O Charge") on the Property, which charge shall not exceed an aggregate amount of $30 million, as security for the indemnity provided to their directors and officers in paragraph 25 of this Order. The D&O Charge shall have the priority set out in paragraphs 47 and 49 hereof.

27. THIS COURT ORDERS that, 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 D&O Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the D&O 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 25 of this Order.

ENGAGEMENT OF FINANCIAL ADVISOR

28. THIS COURT ORDERS that the agreement dated as of October 14, 2015, engaging Evercore Group L.L.C. (the "Financial Advisor") as financial advisor to the Applicants, a copy of which is attached as Exhibit "[E]" to the Marwah Affidavit (the "Evercore Engagement Letter"), and the retention of the Financial Advisor under the terms thereof are hereby approved, including, without limitation, the payment of the Monthly Fee and reasonable expenses, the Success Fee and the Financing Fee (as those terms are defined in the Evercore Engagement Letter). The Financial Advisor shall be

9 November 15

Tara Stead
Registrar, Superior Court

entitled to the benefit of and is hereby granted a charge (the "Financial Advisor's Charge") on the Property, which charge shall not exceed an aggregate amount of $8 million, as security for the Success Fee. The Financial Advisor's Charge shall have the priority set out in paragraphs 47 and 49 hereof. The Monthly Fee and reasonable expenses shall be entitled to the benefit of the Administration Charge (as defined below).

APPOINTMENT OF MONITOR

29. THIS COURT ORDERS that Ernst & Young 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 Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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.

30. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' 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 Applicants, to the extent required by the Applicants, in their dissemination to the DIP Agent and the DIP Lenders and their respective counsel and financial advisors of financial and other information as contemplated to be provided to the DIP Agent and the DIP Lenders pursuant to the DIP Agreement and the Definitive Documents, and the Court orders that such information may be used in these proceedings;

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Tara Sisard
Registrar, Superior Court of Justice

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(d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Agreement and the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP Agent and the DIP Lenders and their respective counsel and financial advisors in accordance with the DIP Agreement and the Definitive Documents;

(e) advise the Applicants in their development of the Plan and any amendments to the Plan;

(f) assist the Applicants, to the extent required by the Applicants, 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 Applicants, to the extent that is necessary to adequately assess the Applicants' 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.

31. THIS COURT ORDERS that 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, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. THIS COURT ORDERS that nothing herein contained shall require 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

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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 Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety 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. 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.

33. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants and the DIP Agent with information provided by the Applicants 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 Applicants 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 Applicants may agree.

34. THIS COURT ORDERS that, 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 protections afforded the Monitor by the CCAA or any applicable legislation.

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35. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicants and counsel to the Board of Directors of ESAI shall be paid their reasonable fees and disbursements, whether incurred before or after the date of this Order, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings, all subject to assessment by order of the Court. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Applicants and counsel to the Board of Directors on a weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Applicants and counsel to the Board of Directors, retainers in amounts satisfactory to the Monitor or this Court, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. THIS COURT ORDERS that 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 Commercial List of the Ontario Superior Court of Justice.

37. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicants, counsel to the Board of Directors of ESAI, the Financial Advisor (in respect of its monthly fees and expenses, but not in respect of the Success Fee or the Financing Fee, as those terms are defined in the Marwah Affidavit) 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 $5 million, as security for the professional fees and disbursements of the Monitor, counsel to the Monitor, counsel to the Applicants, and counsel to the Board of Directors of ESAI (incurred at their standard rates and charges) and the monthly fees and expenses of the Financial Advisor (in accordance with the Evercore Engagement Letter), both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 47 and 49 hereof.

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DIP FINANCING

38. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under the Senior Secured, Priming and Super-Priority Debtor-in-Possession Revolving Credit Agreement, including as amended by the DIP Term Sheet annexed thereto (the "DIP Agreement"), attached to the Marwah Affidavit as Exhibit "[G]", among the Applicants and Deutsche Bank AG New York Branch (the "DIP Agent") and the Lenders party thereto (the "DIP Lenders") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Budget, provided that borrowings under the DIP Agreement shall not exceed the principal amount of US$50 million unless permitted by further Order of this Court.

39. THIS COURT ORDERS that such credit facility shall be on the terms and subject to the conditions set forth in the DIP Agreement and the Definitive Documents (defined below).

40. THIS COURT ORDERS that the Applicants are 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 Agreement or as may be reasonably required by the DIP Agent and the DIP Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Agent and the DIP Lenders under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. THIS COURT ORDERS that the DIP Agent and the DIP Lenders shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lenders' Charge") on the Property. The DIP Lenders' Charge shall secure all amounts owing by the Borrower to the

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DIP Agent and the DIP Lenders under the DIP Agreement and the Definitive Documents. The DIP Lenders' Charge shall have the priority set out in paragraphs 47 and 49 hereof.

42. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

(a) the DIP Agent and the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lenders' Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the DIP Agreement, the Definitive Documents or the DIP Lenders' Charge, the DIP Agent and the DIP Lenders may cease making advances to the Applicants, set off and/or consolidate any amounts owing by the DIP Agent and the DIP Lenders to the Applicants against the obligations of the Applicants to the DIP Agent and the DIP Lenders under the DIP Agreement, the Definitive Documents or the DIP Lenders' Charge, make demand, accelerate payment, terminate any unutilized commitments under the DIP Agreement, the Definitive Documents or the DIP Lenders' Charge and give other notices, and upon four (4) days written notice to the Applicants and the Monitor, and with leave of the Court, may exercise any and all of its other rights and remedies against the Applicants or the Property under or pursuant to the DIP Agreement, the Definitive Documents and the DIP Lenders' Charge, including without limitation, the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants;

(c) in connection with the exercise of any and all of their rights and remedies under paragraph 42(b), the DIP Agent and the DIP Lenders and any receiver, receiver and manager or interim receiver of the Applicants appointed by the Court on the application of the DIP Agent and the DIP Lenders shall be entitled to enter the cargo port facility located at the Port on notice to PortCo and repossess, disable or remove all or any portion of the DIP Collateral located at the Port; and

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(d) the foregoing rights and remedies of the DIP Agent and the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants, the Property or PortCo and its property.

43. THIS COURT ORDERS that the DIP Agent is authorized and directed to make any and all payments required to be made by the DIP Agent under the DIP Agreement, the Definitive Documents and this Order, in each case in accordance with the Budget.

44. THIS COURT ORDERS AND DECLARES that notwithstanding paragraph 3 but subject to paragraph 42, the DIP Agent and the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-2, as amended (the "BIA"), with respect to any advances made under the DIP Agreement and the Definitive Documents.

45. THIS COURT ORDERS that prior to the hearing of the Comeback Motion (defined below), the Applicants, in consultation with the Monitor, shall prepare such protocols and procedures regarding intercompany transactions, claims and cash transfer (including, without limitation, such protocols regarding transactions with PortCo and EPC), which shall be reasonably acceptable to the DIP Agent and which protocol and procedures shall form part of the Cash Management System.

46. THIS COURT ORDERS AND DECLARES that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Agreement, the Definitive Documents or the DIP Lenders' Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "Variation") whether by subsequent order of this Court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the protections, rights or remedies of the DIP Agent and the DIP Lenders, whether under this Order (as made prior to the Variation), under the DIP Agreement or under any of the documentation delivered hereto or thereto (including the Definitive Documents, if any), with respect to any advances made prior to the DIP Agent and the DIP Lenders being given notice of the

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Variation and the DIP Agent and the DIP Lenders shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lenders' Charge) for all advances so made.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

47. THIS COURT ORDERS that the priorities of the Administration Charge, the Critical Supplier Charge, the DIP Lenders' Charge and the D&O Charge, as among them, shall be as follows:

First - Administration Charge (to the maximum amount of $5 million);

Second - Critical Suppliers' Charge (to the maximum amount of $15 million);

Third - DIP Lenders' Charge;

Fourth - D&O Charge (to the maximum amount of $30 million); and

Fifth - Financial Advisor's Charge (to the maximum amount of $8 million).

48. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, the Critical Suppliers' Charge, the DIP Lenders' Charge, the D&O Charge and the Financial Advisor's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

49. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and, subject to the charge over real property pursuant to section 11.8(8) of the CCAA (which, for greater certainty, shall not include any personal property of the Applicants or any property or equipment of the Applicants that is now or hereafter on or affixed to any real property of the Applicants, including any property of the Applicants that is or becomes a fixture), and subject to the requirements of s. 11.2 of the CCAA, such Charges shall rank in priority to all other security interests, trusts (including constructive

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trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including any deemed trust created under the Ontario *Pension Benefits Act*) (collectively, the "Encumbrances") other than (a) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of the application for this Order; and (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions.

50. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor, the DIP Agent and the DIP Lenders and the other beneficiaries of the Charges, or further Order of this Court.

51. THIS COURT ORDERS that the Charges and the DIP Agreement and the Definitive Documents 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") thereunder 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, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, 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 Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

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(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 Applicants entering into the DIP Agreement or the Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the DIP Agreement and the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order or the DIP Agreement, 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.

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

CHAPTER 15 PROCEEDINGS

53. THIS COURT ORDERS that ESAI is hereby authorized and empowered, but not required, to act as the foreign representative (the "Foreign Representative") in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside of Canada, including, if deemed advisable by the Applicants, to apply for recognition of these proceedings in the United States pursuant to chapter 15 of title 11 of the *United States Code*, 11 U.S.C. §§ 101- 1532.

SERVICE AND NOTICE

54. THIS COURT ORDERS that the Monitor shall (a) without delay, publish in the national edition of *The Globe and Mail* and the *Sault Star*, a notice containing the information prescribed under the CCAA, (b) within five (5) days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1000 (excluding individual employees, former employees with pension and/or retirement savings plan entitlements, and retirees and other beneficiaries

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who have entitlements under any pension or retirement savings plans), and (iii) 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, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available.

55. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "Service List"). The Monitor shall post the Service List, as may be updated from time to time, on the Website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

56. THIS COURT ORDERS the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-serviceprotocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/essaralgoma (the "Website").

57. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute 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 facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the

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Applicant and that any such service or distribution by courier, personal delivery or facsimile 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.

58. THIS COURT ORDERS that the Applicants and the Monitor be 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 Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants 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.

COMEBACK MOTION

59. THIS COURT ORDERS that the Applicants are otherwise authorized to serve their motion materials with respect to a motion at which the Applicants intend to seek, *inter alia*, priority of the Charges over all Encumbrances, an order permitting Algoma to suspend special payments required to be made to its defined benefit pension plans, an extension of the Stay Period and approval of a key employee retention plan (the "Comeback Motion") by forwarding a copy of this Order and any additional materials to be filed with respect to the Comeback Motion by electronic transmission, where available, or by courier to the parties likely to be affected by the relief to be sought at such parties' respective addresses as last shown on the records of the Applicants as soon as practicable.

60. THIS COURT ORDERS that the Comeback Motion shall be heard on November 16, 2015.

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SEALING

61. THIS COURT ORDERS that Confidential Exhibits "H", "I", and "J" to the Marwah Affidavit are hereby sealed and shall not form part of the public record until further order of the Court.

GENERAL

62. THIS COURT ORDERS that the Applicants and the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

63. THIS COURT ORDERS that 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 Applicants, the Business or the Property.

64. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

65. THIS COURT ORDERS that each of the Applicants 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.

66. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice 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.

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67. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

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SCHEDULE "A"

Osler, Hoskin & Harcourt LLP, counsel to Deutsche Bank AG (Canada Branch)

White & Case LLP, counsel to Deutsche Bank AG (New York Branch)

Davis Polk Wardwell LLP, counsel for a Term Lender Group

Goodmans LLP, counsel to an Ad Hoc Group of Senior Noteholders

Cassels Brock & Blackwell LLP, counsel to an Ad Hoc Group of Junior Noteholders

Wilmington Trust, National Association

Essar Power Canada Ltd.

ICICI Bank Canada

BNY Trust Company of Canada

Port of Algoma Inc.

GIP Primus LP

Torys LLP, counsel to Essar Capital Americas Limited and Essar Capital Mauritius Limited

Ministry of Finance (Ontario)

Ministry of the Environment and Climate Change (Ontario)

Independent Electricity System Operator

Department of Justice

Financial Services Commission of Ontario

Paliare Roland Rosenberg Rothstein LLP, counsel to The United Steel Workers, National

USW District 6

USW Local 2251

USW Local 2724

SOAR Chapter 17

SOAR Chapter 7

Group 1009

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SCHEDULE "B"

CRITICAL SUPPLIER	SUPPLY TERMS
Shell Energy North America (Canada) Inc.	In accordance with the master natural gas purchase and/or sale contract dated June 1, 2011 between Essar Steel Algoma Inc. and Shell Energy North America (Canada) Inc. (as amended) and the transaction confirmations issued thereunder dated March 16, 2015, June 24, 2015 and August 18, 2015
Noble Americas Gas & Power Corp.	In accordance with the master agreement dated December 3, 2010 between Noble Americas Gas & Power Corp. and Essar Steel Algoma and the physical deal confirmations issued thereunder dated March 3, 2015, April 14, 2015 and August 24, 2015
Praxair, Inc.	In accordance with the agreement dated March 1, 1996 (as amended and extended by an amending agreement dated October 28, 2009) and the agreement March 3, 1999, all among Praxair, Inc. and Essar Steel Algoma Inc.
Southern Coal Sales Corporation	In accordance with the coal supply agreement dated November 1, 2015 between Southern Coal Sales Corporation and Essar Steel Algoma Inc.
Canadian National Railway Company	In accordance with terms and conditions that are consistent with the supply relationship between Canadian National Railway Company and Essar Steel Algoma Inc.

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

Court File No: CV-15-00001116?

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ESSAR STEEL ALGOMA INC., ESSAR TECH ALGOMA INC., ESSAR STEEL ALGOMA (ALBERTA) ULC, CANNELTON IRON ORE COMPANY AND ESSAR STEEL ALGOMA INC. USA

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

INITIAL ORDER

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Registrar, Superior Court of Justice

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