Court File No. CV-11-9532-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION

FACTUM OF THE DIP LENDER
(Motions Returnable November 18, 2021)

November 10, 2021

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> "… [T]he redactions that have been made are appropriate to prevent the defendants from capitalizing on any tactical advantage in the litigation or during settlement discussions that would be available to them if the redacted content were to be disclosed…
>
> … **there is an important public interest in not placing [the CCAA Debtor Plaintiff] at a tactical disadvantage in the litigation**….Further there is no reasonable alternative to the proposed redactions to protect these interests and the benefits of the sealing order outweigh the harm."[1] [emphasis added]
>
> -- Morawetz, C.J., November 3, 2021

PART I - OVERVIEW[2]

1. At its core, the dispute between the parties on these motions relates to whether this Court's 10 year history of consistently sealing Crystallex's sensitive financial information should continue. The only party opposing sealing (and now seeking to *unseal* certain other sensitive information) is a group of unsecured noteholders, who demand immediate publication to assist in advancing their own pecuniary interests.

2. This opposing stakeholder group has retained no experts and has received no qualified advice as to the serious harms that immediate publication of the financial information may cause to the remaining steps in Crystallex's enforcement efforts.[3] This same group that is now seeking to force public disclosure of Crystallex's most sensitive information, includes members who hold the largest equity position in a competing creditor of Venezuela (Gold Reserve) that now controls the very mining site Crystallex had development rights to.[4] The conflicts could not be any more palpable.

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[1] *Cash Store Financial Services Inc.*, 2021 ONSC 7143 [*Cash Store*], at para. 19 and 25, Schedule "B".
[2] Capitalized terms shall have the meaning as set out in the Affidavit of Robert Fung dated October 25, 2021 (the "**Fung Affidavit**").
[3] Transcript of the Cross-Examination of Scott Reid held on August 6, 2021 ("**August Reid Transcript**") at pp. 167- 170 qq. 625- 637; Transcript of the Cross-Examination of Scott Reid held November 4, 2021 ("**November Reid Transcript**") at pp. 94 qq. 366- 367.
[4] August Reid Transcript at pp. 19-22 qq. 69-76, Management Information Circular of Gold Reserve as of July 2020.

3. All of the sensitive information Crystallex seeks to temporarily seal (or maintain sealing of) on these motions, remains fully available to any stakeholder on a confidential basis. This approach has been endorsed by this Court in this proceeding on multiple occasions. Despite this, the opposing stakeholder group rejects anything short of full, immediate and unconditional public disclosure simply because receiving confidential information *may* temporarily affect their ability to trade in Crystallex's securities.

4. In the circumstances, this is not a debate about access to information or the ability to participate in a CCAA proceeding. The motions before this Court engage a debate about whether the pecuniary interests of one stakeholder group should be preferred over the accepted CCAA objective of maximizing value for all stakeholders. Notably, the objecting stakeholder group comes to this Court claiming prejudice despite having taken the public position to their own investors that their positions have significantly increased in value and they are closer to recovering significant gains on their investment in Crystallex.[5]

5. The three issues for the Court to determine on November 18 are as follows:

a) Whether the stay of proceedings should be extended for a period of 12 months, and the Sixteenth Credit Agreement Amendment should be approved;

b) Whether certain limited information contained in Crystallex's cash flow reporting (the "**Sensitive Cash Flow Information**") should be sealed at this time and, as proposed by Crystallex, the actual-to-forecast reporting be made public six months after the end of each reporting period;[6] and

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[5] August Reid Transcript at pp. 100-103, qq. 366-376.

[6] *See* Factum of Crystallex dated November 10, 2021 for a detailed description of its proposal on the public disclosure of the Sensitive Cash Flow Information. Crystallex also seeks to maintain sealing of one of the explanatory notes to the cash flow reports, namely details of certain deferred fees due to its Venezuelan advisors.

c) Whether the December 18, 2014 order of this Court sealing the quantum of the incentive and retention payments to two key management employees of Crystallex (the "**Retention Amounts**") should be varied, such that the information is immediately made public.

(A) A 12 Month Stay Extension at this Juncture of the Proceeding Is Reasonable and Appropriate

6. This proceeding was commenced almost 10 years ago and has moved through different stages.

a. The earliest stages of the case were characterized by significant litigation with the Ad Hoc Committee over the direction of the proceeding, a plan of arrangement and DIP financing. As with most CCAA proceedings at their commencement, Court appearances were frequent at that time.

b. The next stage involved Crystallex utilizing the DIP Lender's financing to advance a highly speculative arbitration claim against Venezuela, and agreeing to a litigation standstill with the Ad Hoc Committee (in exchange for paying a premium rate of interest on their claims). Court appearances were minimal, with a stay extension in excess of 18 months.

c. Following receipt of a record Award (at the time), the proceeding shifted to enforcement litigation against Venezuela in the United States to collect on the Award. During this active stage, Crystallex achieved two settlements with Venezuela and recovered in excess of $500 million in cash and securities. The Ad Hoc Committee resumed CCAA plan litigation and Court appearances again became more frequent, but with stay extensions generally of no less than six months.

d. Crystallex's enforcement success subsequently achieved new heights, with the securing of a writ of attachment against the PDVH Shares which controls CITGO.

> Recovery to Crystallex's stakeholders depends on its ability to complete its enforcement on the writ. This should be another period of relatively few CCAA Court appearances while Crystallex's resources are focused on enforcement.

7. Based on the advice of Crystallex's experts, the Company anticipates that remaining enforcement steps could take 12 months or longer.[7] Unless and until there is further progress with the US sale process over the PDVH Shares, there are no significant events expected to occur that would necessitate Crystallex seeking relief from the CCAA Court. Accordingly, a 12-month extension of the stay period is both reasonable and appropriate.

8. The Company has more than sufficient funding to continue these critical enforcement efforts during the proposed stay extension.[8] A stay extension simply ensures that Crystallex can advance its litigation efforts without threat of enforcement by its creditors - a goal that all stakeholders should support.

9. As the Monitor has noted, stay extension motions have become flash points for litigation.[9] The DIP Lender is concerned that the Ad Hoc Committee views these motions as an opportunity to complain over and over again about the same issues: public disclosure requests; allegations of governance concerns and conflicts; and the need for a plan even though there is a Court-approved distribution mechanism. A stay extension does not preclude any party from coming to this Court to seek relief at any time, including to seek to terminate the stay, if they believe such relief is warranted.

10. The DIP Lender supports the Company's proposal that, during the stay extension, the Monitor continue to provide regular reporting to the Court and stakeholders of the same type of

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[7] Fung Affidavit at para. 88.
[8] Monitor's Thirty- Eighthly Report dated November 9, 2021, at para. 40 ("**Thirty-Eighth Report**").
[9] Thirty-Eighth Report at para. 40.

information they would receive in connection with Crystallex's stay extension motions. The Monitor has similarity confirmed its support for a 12-month stay extension with those protections.[10]

11. There can be no dispute that Crystallex is acting in good faith and with due diligence in advancing enforcement and distribution to stakeholders. The Company has satisfied all the necessary prerequisites for an extension and has demonstrated why a 12-month period is appropriate.

12. Given all of these circumstances, the DIP Lender supports the stay extension and has agreed to the terms of the Sixteenth Credit Agreement Amendment, which will extend the Maturity Date and waive existing defaults and default interest.

(B) Sensitive Cash Flow Information Should Remain Sealed at this Time

13. The protection of Crystallex's sensitive financial and strategic information has been, and remains, a cornerstone of its successful legal strategy against Venezuela. The CCAA Court has recognized this by granting sealing orders on every occasion requested by Crystallex in this proceeding.[11]

14. The Sensitive Cash Flow Information involves Crystallex's forecasted and actual expenditures. [redacted] Venezuela will most certainly find a way to use this information to undermine the Company's enforcement strategies. They have been delaying and obstructing enforcement for years.

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[10] Thirty-Eighth Report at para. 40.

[11] On one occasion in 2020, the Court granted only part of Crystallex's sealing request, this despite Crystallex presenting only a single paragraph of evidence in its supporting affidavit which was deemed insufficient to justify the full sealing relief sought.

15. Recognizing that the harm associated with disclosure of this [redacted] information could abate over time, Crystallex (in consultation with its enforcement experts) has developed a proposal that balances the interests of all parties by agreeing to limit the period of sealing for only 6 months from the end date of the reporting period (despite its expert advisors being more comfortable with 12 months). In the face of this good faith solution by Crystallex (notwithstanding the attendant risks), the Ad Hoc Committee has refused to accept anything short of immediate public disclosure.

16. The DIP Lender submits that Crystallex has satisfied both the test for an order under section 10(3) of the CCAA pursuant to which a Court may prohibit the release of any part of the cash flow statement to the public, and the common law sealing test in *Sierra Club*[12] as clarified in the recent decision in *Sherman Estate*.[13]

17. It is important to recognize that the objecting party has been offered immediate access to the Sensitive Cash Flow Information on a confidential basis - a manner entirely consistent with the Court's prior directions in this case regarding stakeholder access to financial information. Other stakeholders of Crystallex receive information in precisely this manner. Unfortunately, the Ad Hoc Committee has refused these offers, which begs the question of how truly important the information at issue is to them.

(C) The Retention Amounts Should not be Unsealed at this Time

18. Seven years ago, this Court approved as "fair, reasonable and appropriate"[14] certain Retention Amounts for two executives deemed critical to Crystallex's enforcement efforts. The Court ordered that those amounts should be sealed from the public record. The Ad Hoc Committee was involved in the negotiation of the Retention Amounts.[15] They did not oppose the

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[12] *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 [*Sierra Club*].
[13] *Sherman Estate v. Donovan*, 2021 SCC 25 [*Sherman Estate*].
[14] Approval Order granted by Justice Newbould December 18, 2014, at para. 4. https://documentcentre.ey.com/api/Document/download?docId=15969&language=EN
[15] Affidavit of Harry Near sworn December 15, 2014 ("**Near Affidavit**") at para. 56.

transfer of the Retention Amounts but did unsuccessfully oppose the sealing of various information at that time, including the quantum of such transfers.

19. In the middle of active enforcement efforts, the Ad Hoc Committee now seeks to re-litigate this issue and unseal the Retention Amounts. It does so without providing any evidence of a material change in circumstances that would justify a modification of this Court's existing sealing order. Instead, the Ad Hoc Committee argues that the Retention Amounts should now be publicized to help them advance yet further litigation in this case – [redacted]

20. The uncontroverted evidence from Crystallex CEO Robert Fung is that unsealing the Retention Amounts at this time could jeopardize Crystallex's successful enforcement efforts. Disclosure of this information will put at risk the personal safety (and willingness to participate) of the beneficiaries who have been and must remain intimately involved in enforcement and settlement efforts, including through likely future visits to Venezuela. Venezuela has also relied on these "undisclosed amounts" in public pleadings in Delaware in its efforts to intimidate the key employees and obstruct enforcement.[16] The Ad Hoc Committee's only response to this is the opinion evidence of its affiant who, without the benefit of any experience or expert advice on the topic, and from the safety of his bleacher seats, is hardly in a position to assess the seriousness of this incremental risk on the field.[17]

21. Unsealing the Retention Amounts at this time will create unnecessary risks for the continued direct involvement of the key employees. This disincentive to participate will have the exact opposite effect to the incentive intended by the Retention Amounts. It is critical to the DIP Lender that the Retention Amounts should continue to be sealed at this time.

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[16] Responding Affidavit of Robert Fung sworn July 9, 2021 ("**Responding Fung Affidavit**") at para. 16(b).
[17] Affidavit of Scott Reid sworn October 29, 2021, Schedule "A" at page 33 ("**October Reid Affidavit**").

(D) The Relief Sought by the Ad Hoc Committee Would Expose the DIP Lender to Unreasonable Risk

22. The DIP Lender is the only party to have financed Crystallex's litigation and enforcement efforts against Venezuela. It did so at tremendous risk. Through continued extension of the DIP Maturity date, waiver of extension fees and waiver of defaults and entitlement to default interest, the DIP Lender has consistently supported Crystallex's efforts to maximize recoveries for the benefit of *all* stakeholders. It has done so with the reasonable expectation that another self-interested stakeholder group would not be permitted to undermine the Company's litigation strategy, to put key individuals at risk or to dictate the timeline for uncontroversial stay extensions so that it can maintain some leverage to litigate issues for collateral purposes.

PART II - RELEVANT BACKGROUND

23. It is important to highlight actions of the Ad Hoc Committee throughout this CCAA proceeding to appreciate that its current positions are entirely self-interested and fly in the face of many of the protections and directions previously granted and issued by this Court for the benefit of Crystallex and its stakeholders.

(A) The Competing CCAA Filings

24. While the insolvency of Crystallex was caused by the termination, by Venezuela, of its rights with respect to a gold mining property in February of 2011, the timing of the CCAA filing in December of 2011 was dictated by the maturity of the Notes on December 23, 2011. Negotiations to restructure the Notes failed because the Ad Hoc Committee "consistently insisted on taking for themselves almost all of the equity interest in Crystallex, leaving current shareholders with only a nominal, if any, interest in the company".[18]

25. The Ad Hoc Committee brought its own competing CCAA application at the same time as the Company initiated this CCAA proceeding. That application included a plan of compromise

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[18] Affidavit of Robert Fung, sworn December 22, 2011 at para. 41.

and reorganization that would cancel all the existing shares and put the Ad Hoc Committee in a position to own most of the Company.[19] The Court dismissed the application.

(B) The Contested DIP Financing

26. Shortly after the grant of the Initial Order, there was a court-ordered auction for DIP financing, the proceeds of which would be used to prosecute the arbitration claim against Venezuela.

27. After unsuccessfully disputing the requirement that it sign a non-disclosure agreement in order to participate in the auction,[20] the Ad Hoc Committee submitted a bid for the DIP financing that included a proposed plan with a similar attempt to obtain most of the equity of Crystallex. The Court ultimately rejected the Ad Hoc Committee bid and accepted the facility offered by the DIP Lender (the "**DIP Financing Decision**").[21]

28. The Ad Hoc Committee appealed the DIP Financing Decision to the Ontario Court of Appeal and that appeal was dismissed in a decision dated June 12, 2012 (the "**Appeal Decision**"). The Court of Appeal described the Ad Hoc Committee's attempts to provide a different, less favourable DIP offer, as follows:

> [81] **The Noteholders are sophisticated parties. They pursued a strategy. It ultimately proved less successful than hoped.** It appears that the supervising judge would have been prepared to approve the advance of Funds to Crystallex by the Noteholders, on the terms of the Tenor DIP Loan, notwithstanding the *Soundair* principles, had the Noteholders agreed to do so, without condition, on April 5, 2012.
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> [82] **The facts of this case are unusual: there is a single "pot of gold" asset** which, if realized, will provide significantly more than required to repay the creditors. The supervising judge was in the best position to balance the interests

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[19] Endorsement of Justice Newbould dated December 28, 2011, 2011 ONSC 7701 ("**December 2011 Endorsement**").

[20] The Ad Hoc Committee brought a cross-motion, for among other things, an order directing Crystallex to revise its DIP auction procedures, including a provision requiring the Company to receive and consider a DIP financing proposal by the Ad Hoc Committee without the necessity of such parties signing a non-disclosure agreement ("**NDA**"). The auction procedures approved by the Court required all bidders to sign an NDA to protect "extremely sensitive information regarding the arbitration and its prospects": Endorsement of Justice Newbould dated January 25, 2012, 2012 ONSC 538 at para. 3, 19, 22-26.

[21] DIP Financing Decision 2012 ONSC 2125.

> of all stakeholders. I am of the view that the supervising judge's exercise of discretion in approving the **Tenor DIP Loan was reasonable and appropriate, despite having the effect of constraining the negotiating position of the creditors**.[22] [emphasis added]

(C) Crystallex's Approved Governance Structure

29. The DIP Financing Decision confirmed the proposed governance structure for the Company, which included a five-person Board comprised of two current Crystallex directors, two nominees of the DIP Lender and an independent director, along with applicable provisions relating to their appointment, replacement and duties. The governance terms were important terms of the DIP Financing which were accepted by this Court over the objections of the Ad Hoc Committee.[23]

30. Despite the approval of the Company's governance structure almost 10 years ago, the Ad Hoc Committee continues to challenge that structure and repeatedly alleges "conflicts" within the board of directors (the "**Board**") stemming from that structure.

31. The current complaints of the Ad Hoc Committee are repeats of tired old refrains that are simply attempts to enhance its negotiating position. The Ad Hoc Committee tried a strategy to take control of the Company when it was vulnerable. That strategy was unsuccessful. The Ad Hoc Committee's influence and leverage over Crystallex have been limited and now it is looking for other ways to improve its position. The endorsement of Justice Newbould dated December 18, 2014 (the "**Confidential Newbould Endorsement**") accurately describes the Ad Hoc Committee's position then and now:

[redacted]

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[22] *Crystallex (Re)*, 2012 ONCA 404 at paras 81-82 ("**Appeal Decision**"). An application by the Ad Hoc Committee for leave to appeal to the Supreme Court of Canada was refused.
[23] DIP Financing Decision at para. 24, 63-72.
[24] Confidential endorsement of Justice Newbould dated December 17, 2014 ("**Confidential Newbould Endorsement**").

(D) The Ad Hoc Committee has Unsuccessfully Proposed 3 Different CCAA Plans [redacted]

32. As already noted, the Ad Hoc Committee attempted to put forward a CCAA plan as part of its own CCAA application which was dismissed at the commencement of this proceeding in 2011. In rejecting the Ad Hoc Committee's application, the Court stated that "if their Plan is accepted, they may well end up owning Crystallex and pursuing the arbitration for their own gain".[25]

33. The Ad Hoc Committee put forward a second restructuring plan in connection with its DIP financing proposal in April 2012. In rejecting this plan, the Court commented that the potential outcome of the proposed plan was the Noteholders owning 81% of the equity of Crystallex.[26]

34. In January of 2013, the Ad Hoc Committee again tried for a third time to force a CCAA plan on Crystallex. The Court dismissed the Ad Hoc Committee's motion because, among other reasons, the proposed plan had various provisions which were contrary to the terms of the DIP Financing and therefore could not be implemented. The Court noted:

> "In my view the motion by the Noteholders to now have a meeting to vote on its plan of arrangement **is tactical and raised to get a perceived leg up in negotiations.**"[27] [emphasis added]

35. In December of 2016, concerned about wasteful litigation over a plan, the DIP Lender agreed to extend the Maturity Date of the DIP Financing on the condition that an additional event of default be added where any person seeks to file a plan without the written consent of Crystallex. As noted by the Court, the DIP Lender was concerned that:

> "it would be a waste of time and money arguing about a plan as there is no point to a plan in light of the existing waterfall of payments. If a party wants to try to file a plan there will be an economic consequence as Tenor will require a higher default rate of interest to be paid."[28]

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[25] December 2011 Endorsement, 2011 ONSC 7701 at page 6 at para. 23.
[26] April 2012 Endorsement, 2012 ONSC 2125 at page 24, para. 77.
[27] Endorsement of Justice Newbould dated February 5, 2013, 2013 ONSC 823 pages 3-4, para. 9 and 13.
[28] Endorsement of Justice Newbould dated December 14, 2016.
https://documentcentre.ey.com/api/Document/download?docId=16001&language=EN

The Ad Hoc Committee opposed this DIP amendment. The Court disagreed and approved the amendment, subject to further order of the Court.

36. In April of 2019 (and amended in January 2020), the Ad Hoc Committee delivered a [redacted].

37. [redacted]

38. [redacted] This is based upon an allegation of "oppression" despite every significant action of the Company, including sealing confidential information, having been supervised by the Monitor and approved by this Court.

39. [redacted] Given the Ad Hoc Committee's propensity to litigate, the DIP Lender anticipates that the Ad Hoc Committee will bring that motion (or some variation) forward in the near term.

(E) The Ad Hoc Committee Refuses to Receive Confidential Disclosure

40. The Sensitive Cash Flow Information has been and continues to be available to *any* stakeholder or advisor that agrees to receive it on a confidential basis. The Ad Hoc Committee has declined to receive the information (or even review all of the Company's evidence on the motion in support of redaction) on this basis. Their reasons for refusing relate solely to their narrow and private pecuniary interests - fear of receiving confidential material non-public

[29] November Reid Transcript at pp. 169 qq. 729-730.

information ("**MNPI**") that would affect their ability to trade their Notes - and not for any reasons relevant to the open court principle or the public interests at stake.

41. On 14 prior occasions in this case since 2014, frequently in the face of opposition by the Ad Hoc Committee, this Court has granted protective relief to prevent public disclosure of specific financial information of Crystallex. In doing so, this Court accepted the serious risks and harms that public disclosure of that information would have on Crystallex's arbitration, enforcement and collection efforts against Venezuela.

42. On a single occasion in this proceeding (the 14th sealing motion filed by Crystallex in May of 2020), the Court found that the Company had provided insufficient evidence to justify granting the full scope of sealing requested. Importantly, even on that single occasion, the Court concluded that the same information which is the subject matter of this motion should be sealed and remain under a protective order.[30]

43. Contrary to the suggestions of the Ad Hoc Committee, the 2020 decision was *not* a reversal of the 13 prior sealing orders nor a direction that all confidential financial information of Crystallex should thereafter be publicly disclosed. This decision approved sealing and was a continued confirmation by the Court that sealing financial and tactical information remained important in this unique proceeding.

(F) The Use of Confidentiality Agreements is Fair and Appropriate

44. This Court has ordered on various occasions in this proceeding that a confidentiality agreement is an appropriate means to disclose sensitive information to stakeholders. In fact, at the same time the Retention Amounts were approved and sealed, the Court ordered that any

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[30] Endorsement of Justice Hainey dated August 31, 2020 (the "**Hainey Endorsement**"). https://documentcentre.ey.com/api/Document/download?docId=32332&language=EN

stakeholder that executed a confidentiality agreement was to be provided access to the Company's information and documents. [31]

45. The same requirement was also later addressed by Justice Hainey in an endorsement relating to the sealing of the Amended Settlement Agreement as follows:

> … it is reasonable that if stakeholders are not prepared to sign a confidentiality agreement (unless it is subject to a condition that all confidential information received will be made public by a date certain or the happening of specified events), they cannot receive confidential information about the Amended Settlement Agreement.[32]

46. One of the reasons that the Ad Hoc Committee has historically refused to sign a confidentiality agreement is the absence of a certain date upon which any MNPI would become public (a "**Blow-out Date**").[33] Despite the Company's proposal on this motion to publicize the Sensitive Cash Flow Information on a 6-month rolling basis (which provides for a fixed Blow-out Date), the affiant of the Ad Hoc Committee remarkably took the position on cross-examination that only current public disclosure is now acceptable to the Ad Hoc Committee.[34]

(G) Venezuela is Using Information that has been Unsealed, Against Crystallex

47. Crystallex and the DIP Lender have expressed concerns throughout this CCAA proceeding as to how Venezuela could use certain sensitive financial information against the Company in its enforcement efforts and to the detriment of stakeholders. The Ad Hoc Committee has contested this, without any evidence or expertise, suggesting that the public disclosure of financial information will not result in harm which justifies sealing.[35]

48. Contrary to the uninformed assessment of the Ad Hoc Committee, in July of 2021 Venezuela used information that was made public (under pressure from the Ad Hoc Committee)

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[31] Approval Order granted by Justice Newbould December 18, 2014, at para. 9. https://documentcentre.ey.com/api/Document/download?docId=15928&language=EN
[32] Endorsement of Justice Hainey dated January 15, 2019 at para. 6. https://documentcentre.ey.com/api/Document/download?docId=15942&language=EN
[33] October Reid Affidavit at para. 17 (i).
[34] November Reid Transcript at pp. 80-82 qq. 309-315.
[35] October Reid Affidavit at para 56.

to argue its case in Delaware against Crystallex's continued enforcement.[36] This includes submissions that Crystallex is no longer a distressed mining company but rather a vehicle for hedge funds to make significant recoveries.[37]

49. In addition, competing creditors of Venezuela, in possession of the details of the Initial Payment Securities and other payments received by Crystallex, are now asserting that Crystallex has already been paid in full, and that Crystallex and its directors should be prosecuted criminally.[38]

PART III - SUBMISSIONS

(A) The Stay Extension Requested by Crystallex Should be Granted

50. The DIP Lender adopts and relies upon the submissions of Crystallex in support of a stay extension of 12 months.

51. The current Maturity Date under the DIP Credit Agreement expired on November 5, 2021. As a result of OFAC's denial of a license to allow Crystallex to sell the PDVH Shares, an Event of Default was triggered under the DIP Credit Agreement (the "**2021 OFAC License Default**").[39] The DIP Lender and Crystallex's independent director negotiated the Sixteenth Credit Agreement Amendment which provides for an extension of the Maturity Date until November 18, 2022 or the expiry of the Stay Period, if earlier. The DIP Lender also agreed to waive the 2021 OFAC License Default and waived its entitlement to claim default interest. The effectiveness of the Sixteenth Credit Agreement Amendment is conditional upon, among other things, this Court's approval of the stay extension requested by Crystallex.

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[36] Venezuela Parties' Response to Objections to The Special Master's Proposed Order (A) Establishing Sale and Bidding Procedures, (B) Approving Special Master's Report and Recommendation Regarding Proposed Sale Procedures Order, (C) Affirming Retention of Evercore As Investment Banker By Special Master And (D) Regarding Related Matters, filed September 10, 2021 (the "**Venezuela September Pleading**").
[37] Venezuela September Pleading at page 7.
[38] Article entitled "Carta pública a Juan Guaidó, a la Comisión Delegada de la Asamblea Nacional y al Procurador Enrique Sánchez Falcón" published on El Carabobeno on September 23, 2021.
[39] Fung Affidavit at para. 82.

(B) The Sensitive Cash Flow Information Should Remain Temporarily Sealed

(i) Immediate Disclosure of Actual and Projected Expenditures will Harm Crystallex in the Enforcement Proceedings

52. There is simply no credible basis for the assertion that Crystallex should publicly disclose [redacted]

53. The position of the Ad Hoc Committee that this information should be made public in real time completely disregards the numerous orders granted by this Court to protect obviously sensitive information and the specific prior order which sealed the line-item details in the cash flow statements. In August of 2020 Justice Hainey recognized the serious harms that could arise through public disclosure of such detailed information. The Court found that:

> "…I continue to be of the view that the Monitor's proposed **redactions of the disbursement line-item detail and explanatory notes in the cash flow reports make good sense** under the circumstances and **constitute a fair and reasonable balance** between the protection of Crystallex's important commercial interest and public disclosure in keeping with the open-court principle." [emphasis added][41]

54. This ruling by Justice Hainey addresses the *exact* same issue that remains to be resolved on Crystallex's Protective Motion – redaction of certain line-item detail and notes in its cash flow reports. Since that ruling there has been no change in circumstances that would justify publicly disclosing such information on a current basis.

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[40] The Fung Affidavit at paras 121-125.
[41] Hainey Endorsement.
https://documentcentre.ey.com/api/Document/download?docId=32332&language=EN

(ii) Crystallex has Satisfied the Test for Sealing

55. The DIP Lender adopts and relies upon the submissions of Crystallex in respect of the applicability and satisfaction of the test to prohibit publication of the Sensitive Cash Flow Information pursuant to section 10(3) of the CCAA.

56. The DIP Lender also submits that Crystallex has also satisfied the common law test for sealing in respect of the Sensitive Cash Flow Information.

57. The test to determine if a sealing order should be granted, as established by the SCC in *Sierra Club*, as restated and amplified by the same court in *Sherman Estate*, requires three core findings that:

(a) Court openness poses a serious risk to an important public interest;

(b) The order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

(c) As a matter of proportionality, the benefits of the order outweigh its negative effects.[42]

a) There are Important Public Interests at Risk

58. The Courts in *Sierra Club* and *Sherman Estate* explicitly recognized that commercial interests such as preserving confidential information or avoiding a breach of a confidentiality agreement are an "important public interest" for the purposes of the sealing test.[43]

59. Further, Canadian courts have recognized repeatedly the important public interests that are served by CCAA proceedings.[44] Among these objectives are maximizing the value of a debtor's assets and creditor recoveries.[45] This Court has consistently sealed confidential information in the context of a CCAA proceeding where there was a risk that disclosure of the

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[42] *Sierra Club* at para. 53; *Sherman Estate* at paras 38 and 43.
[43] *Sierra Club* at para. 55; *Sherman Estate* at paras 41-43.
[44] *Re Nortel Networks*, [2009] O.J. No. 3169 at para. 29.
[45] *9354-9186 Québec Inc. v. Callidus Capital Corp.*, 2020 SCC 10 at para. 42; *Urbancorp*, 2020 ONSC 7920 [*Urbancorp*] at para 24.

information at issue would compromise the proceeding and undermine efforts to maximize value for stakeholders.[46] Accordingly, there can be no question that there are a number of significant public interests at risk here.

b) There is a Serious Risk and Undue Prejudice if the Sensitive Cash Flow Information is Made Public at this Time

60. In *Sherman Estate*, the SCC emphasized that both the probability of harm and the magnitude of harm must be taken into consideration:

> Further, the seriousness of the risk is also affected by the probability that the dissemination the applicant suggests will occur actually occurs. I hasten to say that **implicit in the notion of risk is that the applicant need not establish that the feared dissemination will certainly occur**. However, the risk to the privacy interest related to the protection of dignity will be more serious the more likely it is that the information will be disseminated. While decided in a different context, **this Court has held that the magnitude of risk is a product of both the gravity of the feared harm and its probability.**[47] [emphasis added]

Further, certainty is not required, and where the perceived harm is particularly serious, the probability of harm need only be more than speculative.[48]

61. A failure to enforce the Award would be catastrophic for all stakeholders. Accordingly, Crystallex has carefully followed the advice of its enforcement experts to avoid providing its sensitive financial and strategic information to Venezuela (or other competing creditors of Venezuela), as doing so could seriously harm the Company's chances of success in its enforcement on the Award to the detriment of all of its stakeholders.

62. The DIP Lender alone, as the largest secured creditor of Crystallex, has risked significant capital to support the Company's claim and enforcement efforts against Venezuela. The DIP Lender did so with the expectation that all reasonable protective measures (and particularly those

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[46] *Re Danier Leather Inc.*, 2016 ONSC 1044 at paras 82-85; *Toronto-Dominion Bank v. Hockey Academy Inc.*, 2016 ONSC 4898 at para 35; *Urbancorp*, at para 56; *Re Lydian International Limited*, 2020 ONSC 3850 at para 27; *Sherman Estate*, at para 82.
[47] *Sherman Estate*, at para. 82.
[48] *Sherman Estate*, at para. 98.

recommended by Crystallex's experts and/or approved by the Court), would be applied in this unique CCAA case.

c) There Are No Reasonable Alternatives

63. Given the risks and harms arising from the disclosure of Crystallex's sensitive financial information at this time, a complete sealing or selective redaction of the public record are the only two ways in which those risks can be avoided. Crystallex seeks the less restrictive relief of temporary redaction, rather than a complete sealing of the court file.

d) The Ad Hoc Committee Will Suffer No Undue Prejudice if the Redacted Information is Not Made Public at this Time

64. The DIP Lender takes the position that the private interests of the members of the Ad Hoc Committee are not factors to be considered in the application of the *Sierra Club/Sherman Estate* test and is only a consideration under 10(3) of the CCAA. Despite this, for the reasons set out above, it is clear the relief sought by the Company will cause no undue prejudice or other serious negative effects to the members of the Ad Hoc Committee.

65. As noted by Justice Newbould in 2014 on another sealing motion earlier in this proceeding:

[redacted]

66. Finally, the importance of protecting a CCAA debtor's interest in litigation and the concern that disclosure of certain financial information could create an unfair tactical advantage for the opposing parties was considered recently by Justice Morawetz in the *Cash Store* CCAA

[49]Confidential Newbould Endorsement.

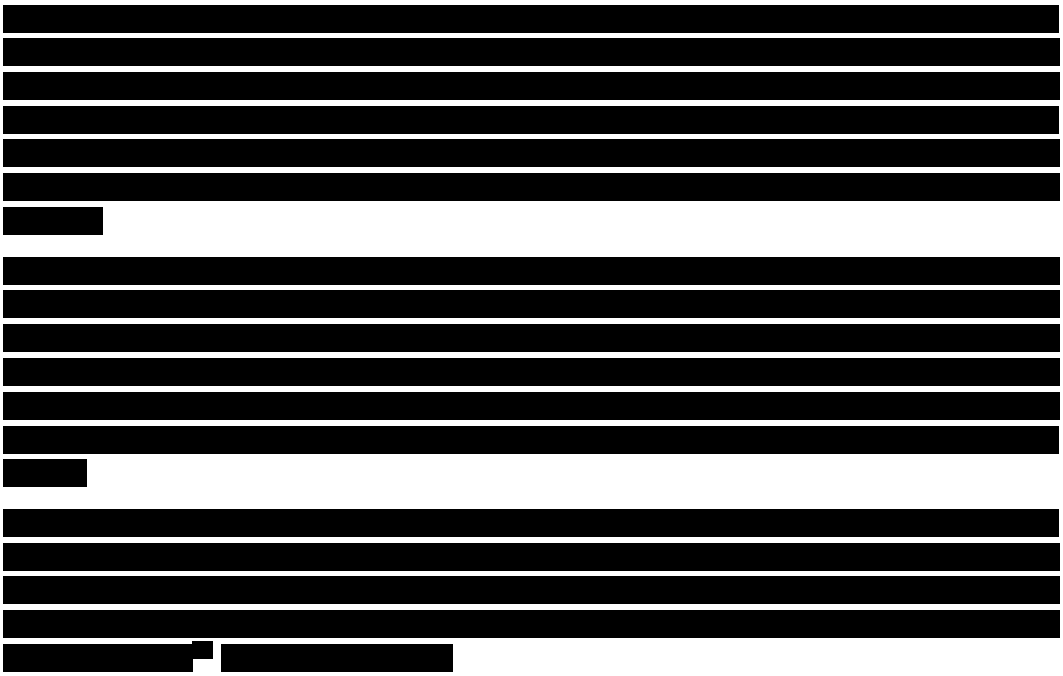
proceedings. As quoted at the outset of this factum, the Court approved the redaction of financial information to protect the ongoing litigation interests of a debtor.[50]

(C) The Retention Amounts Should Not be Unsealed

67. The Retention Amounts were approved and sealed by order of this Court in December 2014, almost seven years ago. The Ad Hoc Committee appeared at that hearing and opposed the sealing relief. Its objections were dismissed.

(i) The Retention Amounts were Transferred to Incentivize Key Employees to Assist Crystallex to Enforce and Collect

68. The circumstances surrounding the award of the Retention Amounts was set out in detail in the supporting affidavit of Harry Near, Crystallex's independent director at the time. In his affidavit, Mr. Near stated that:



69. Justice Newbould held that the individuals receiving the Retention Amounts were "critical" to the pursuit of the arbitration, that such transfer was "appropriate" and that this information

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[50] *Cash Store* at paras 19 and 25, Schedule "B".
[51] Near Affidavit at paras 45, 56 and 57.

should be sealed. Justice Newbould concluded that the *Sierra Club* test had been satisfied and stated:

[redacted]

(ii) The Ad Hoc Committee has Failed to Justify a Modification to an Existing Sealing Order

70. The Ad Hoc Committee bears the legal burden to establish a material change of circumstances that would justify a modification to this Court's sealing order. The case law on modification of a sealing order has recently been reviewed by the SCC in *Canadian Broadcast Corp. v. Manitoba*.[53] The Court held that "a court may vary or set aside a publication ban or sealing order where the circumstances relating to the making of the order have materially changed".[54] The party seeking the variation has the burden of establishing *both* that a material change of circumstances has occurred and that the change, if known at the time of the original order, would likely have resulted in an order on different terms.[55] Finally, the correctness of the initial sealing order is presumed and is not relevant to the existence of a material change of circumstances.

(iii) The Ad Hoc Committee has Failed to Demonstrate any Circumstances that would Justify a Modification

71. The Ad Hoc Committee has failed to meet its burden. The circumstances justifying sealing have not materially changed (with sealing arguably more necessary now) and there is no new evidence offered by the Ad Hoc Committee that would otherwise have resulted in the Court not making the initial sealing order. The Ad Hoc Committee has simply recycled the same arguments

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[52] Confidential Newbould Endorsement.
[53] *Canadian Broadcast Corp. v. Manitoba,* 2021 SCC 33;*Ivandaeva Total image Salon Inc. v. Hlembizky*, [2003] OJ No 949 (QL); *Robichaud v Locilento*, 2016 ONSC 2352 at para 14.
[54] *Canadian Broadcast Corp. v. Manitoba,* 2021 SCC 33 at para. 53.
[55] *Canadian Broadcast Corp. v. Manitoba,* 2021 SCC 33 at paras 55.

they made seven years ago all of which were rejected by this Court when the sealing relief was originally granted.[56]

72. Unsealing the Retention Amounts is entirely unnecessary as Crystallex has offered to disclose this information to any stakeholder on a confidential basis. The fact that the Ad Hoc Committee has refused to receive information this way for fear of affecting their ability to acquire additional Crystallex securities or to manage their funds by trading out of their positions, is not a new fact or a material change in circumstance that would justify a modification to this Court's sealing order.

(iv) The Fallacy that the Ad Hoc Committee Requires Retention Payment Information to Participate in this Proceeding

73. The Ad Hoc Committee's principal argument for modification is that they are suddenly unable to participate in the CCAA proceeding without the public disclosure of this information. This argument continues to defy logic and credibility. The Ad Hoc Committee's own affiant on this motion has openly boasted to his investors about just how effective the participation of the Ad Hoc Committee has been.[57] Sealing of the Retention Amounts since 2014 has had zero effect on their participation.

(v) The Fallacy of Governance Concerns and Alleged Conflicts

74. The Ad Hoc Committee argues that public disclosure of the Retention Amounts is necessary to help them assess the level of alleged "conflict" on the part of the director recipients of the Retention Amounts. Allegedly the recipients of the Retention Amounts are incentivized to keep the Ad Hoc Committee at an information disadvantage to try to reduce the Noteholder claim.[58]

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[56] Confidential Newbould Endorsement.
[57] August Reid Transcript at pp. 161-163 qq. 607-613; Ravensource management letter to unitholders dated December 31, 2019, Exhibit 13 to Reid Cross Examination, at pp. 5-6.
[58] Thirty-Eighth Report at para 55.

75. These allegations are based on a false premise that the directors of a CCAA debtor have the power and authority to finally adjudicate a creditor's disputed claim. It is the Court (or claims officer) that will ultimately determine the amount of any disputed claim of the Noteholders – not the Board or any director recipients of the Retention Amounts. Ironically, while complaining about other parties trying to reduce their claim, it is the Ad Hoc Committee that is openly trying to recover more than 100 cents on the dollar.[59]

76. It is also important to note in the context of these governance and conflict allegations, that the Ad Hoc Committee:

(a) fails to disclose that the only true conflict is that a member of the Ad Hoc Committee (Greywolf) has a significant economic interest in a competing creditor of Venezuela (Gold Reserve) and at the same time advocates through the instrument of the Ad Hoc Committee for public disclosure of Crystallex's sensitive and confidential information;[60]

(b) fails to acknowledge that the governance structure was approved by the Court in connection with the DIP Financing;[61]

(c) fails to mention that the Court approved the appointment of an Independent Director to deal with, among other things, the pre-filing claims of the unsecured creditors; and

(d) fails to mention that the Ad Hoc Committee did not oppose the transfer of the Retention Amounts 7 years ago which the Court determined were "appropriate".[62]

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[59] August Reid Transcript at pp. 182-183, qq. 682-687; Ravensource management letter to unitholders dated December 31, 2018, Exhibit 21 to Reid Cross Examination, p. 3.
[60] August Reid Transcript at pp. 19-22 qq. 69-76, Management Information Circular of Gold Reserve as of July 2020.
[61] CCAA Financing Order, granted by Justice Newbould on April 16, 2012 (the "**CCAA Financing Order**"). https://documentcentre.ey.com/api/Document/download?docId=15932&language=EN
[62] Confidential Newbould Endorsement.

77. [redacted] There is no basis for this. The actions of the Company authorized by the Board, have been supervised by the Monitor and approved by this Court.[63] Paradoxically, the Ad Hoc Committee has gone to great lengths to commend the remarkable decisions and success of Crystallex (led by its Board). By the Ad Hoc Committee's own admissions, the Board of Crystallex has been acting in manner that has delivered incredible results and increased the value for stakeholders.[64]

(vi) Evidence of Heightened Risks from Disclosure of the Retention Amounts

78. Crystallex (which bears no burden on the motion to unseal the Retention Amounts) has led additional evidence that highlights the heightened risks to the beneficiaries and to Crystallex's enforcement efforts if the Retention Amounts are unsealed at this time.[65] Notably, It is clear that if the Retention Amounts are publicly disclosed, Venezuela will use that information to try to prevent or obstruct Crystallex's enforcement.[66]

(vii) Public Disclosure of the Retention Amounts will Result in Prejudice the DIP Lender

79. In addition to making significant post-filing advances to the Company at great risk, the DIP Lender also agreed to forgo a portion of its own contractual CVR entitlements in order to incentivize key employees to remain involved and maximize value. It did so with the expectation that the key director recipients would remain critically involved in enforcement and collection against Venezuela. Unsealing the Retention Amounts at this stage could seriously threaten that, and the overall success of the Company's enforcement and collection efforts, thereby impacting the DIP Lender's interests and rights.

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[63]The Monitor attends all meetings of the Board of Crystallex as observer.
[64] Ravensource management letter to unitholders dated December 31, 2020, Exhibit 11 to Reid Cross Examination, at pp. 5-6.
[65] Responding Fung Affidavit of Robert Fung at para 16(b).
[66] Venezuela September Pleading at Footnote 7.

PART IV - CONCLUSION

80. The Company has provided compelling reasons and evidence that unequivocally justify the Court: (i) approving the Sixteenth Credit Agreement Amendment, (ii) granting a 12-month extension of the stay of proceedings, (iii) sealing the Sensitive Cash Flow Information, (iv) approving public disclosure of the actual-to-forecast reporting on the 6-month timeline proposed by Crystallex, and (v) maintaining sealing of the Retention Amounts and dismissing the Cross-Motion. All of this relief is supported by the DIP Lender.

ALL OF WHICH IS RESPECTFULLY SUBMTTED this 10th day of November, 2021.

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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Cash Store Financial Services Inc.*, 2021 ONSC 7143
2. *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41
3. *Sherman Estate v. Donovan*, 2021 SCC 25
4. *Crystallex (Re)*, 2012 ONCA 404
5. *Re Nortel Networks*, [2009] O.J. No. 3169
6. *9354-9186 Québec Inc. v. Callidus Capital Corp.*, 2020 SCC 10
7. *Urbancorp*, 2020 ONSC 7920
8. *Re Danier Leather Inc.*, 2016 ONSC 1044
9. *Toronto-Dominion Bank v. Hockey Academy Inc.*, 2016 ONSC 4898
10. *Re Lydian International Limited*, 2020 ONSC 3850
11. *Canadian Broadcast Corp. v. Manitoba,* 2021 SCC 33
12. *Ivandaeva Total image Salon Inc. v. Hlembizky*, [2003] OJ No 949 (QL)
13. *Robichaud v Locilento*, 2016 ONSC 2352

SCHEDULE “B”

CITATION: Cash Store Financial Services Inc., 2021 ONSC 7143
COURT FILE NO.: Court File No. CV-14-10518-00CL
DATE: 2021-11-03

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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 1511419 ONTARIO INC., FORMERLY KNOWN AS THE CASH STORE FINANCIAL SERVICES INC., 1545688 ALBERTA INC., FORMERLY KNOWN AS THE CASH STORE INC., 986301 ALBERTA INC., FORMERLY KNOWN AS TCS CASH STORE INC., 1152919 ALBERTA INC., FORMERLY KNOWN AS INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., AND 1693926 ALBERTA LTD DOING BUSINESS AS "THE TITLE STORE"

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *John L. Finnigan, Jessica DeFilippis*, *Megan Keenberg*, and *Mike Woollcombe*, for Cash Store

Brendan O'Neil, for the Ad Hoc Committee

Patrick Flaherty, for Canaccord Genuity Inc.

Geoff R. Hall, for FTI Consulting Canada Inc., Monitor

Allie Allison, for Canaccord Genuity Corp.

Dylan Chochla, for KPMG LLP

Dan Murdoch, for Cassels Brock

Andrew Hatnay, for the Borrowers

HEARD and DETERMINED: October 28, 2021

REASONS RELEASED: November 3, 2021

ENDORSEMENT

[1] This motion was heard on October 28, 2021 and at the conclusion of submissions, I granted the requested relief, with reasons to follow. These are the reasons.

[2] 1511419 Ontario Inc., formerly known as The Cash Store Financial Services Inc. ("Cash Store") brought this motion for an order approving the litigation funding agreement between Cash Store and Augusta Pool 4 Canada Limited (the "Augusta Funder"), dated September 8, 2021 (the "LFA"). Cash Store also sought an order: (i) authorizing certain consequential amendments to the retainer agreements for counsel and the litigation trustee and a prior funding agreement, all previously approved by the court; (ii) approving the distribution of approximately $3.8 million, net of fees, held in the estate's restricted bank account to the estate's creditors; and (iii) sealing the unredacted copy of the LFA in the Motion Record filed confidentially with the court.

[3] The motion was not opposed.

[4] Cash Store, through its court appointed Litigation Trustee is pursuing three professional negligence actions (the "Actions") against its former auditor, financial advisor, and legal counsel. The Actions are the only remaining material assets of the Cash Store estate and, without financing, Cash Store contends it does not have the means to finance the Actions or provide security for costs.

[5] The Litigation Trustee was given a mandate to secure litigation funding for the prosecution of the Actions and has entered into the LFA with the Augusta Funder to:

(i) finance the disbursements required to prosecute the Actions; and

(ii) satisfy adverse costs or security for costs orders made against Cash Store to a maximum of $8.5 million.

[6] The LFA leaves control of the litigation with the Litigation Trustee and recognizes the primacy of counsel's professional obligations to Cash Store.

[7] The Augusta Funder is an affiliate of and has secured funding commitments for the Actions from the Augusta Group, the United Kingdom's largest litigation funding firm.

[8] The LFA has the support of the Ad Hoc Committee of Noteholders (the "Noteholders") who have the largest economic stake in Cash Store's estate.

[9] The Litigation Trustee has kept the CCAA Monitor, informed of the negotiations of the LFA. The Monitor is a signatory to the LFA and supports this motion for approval of the LFA.

[10] Cash Store submits that the LFA is fair and appropriate in all the circumstances and satisfies the test for approval as an interim financing arrangement under s. 11.2 of the *Companies' Creditors Arrangement Act* ("CCAA").

[11] Cash Store submits that approval of a third-party litigation funding agreement as interim financing is a case specific inquiry and will be approved when it is determined that it is fair and appropriate, having regard to all of the circumstances and objectives of the CCAA. (See: *9354-9186 Québec Inc. v. Callidus Capital Corp.*, ("Callidus") 2020 SCC 10 at para. 97).

[12] Cash Store also submits that whether a litigation funding agreement should be approved as interim financing is a question that a supervisory judge is in the best place to answer and this is achieved by taking into consideration the factors enumerated in s. 11.2(4) of the CCAA. Cash Store and the Monitor address these factors in the affidavit of Mr. Aziz and in the Report of the Monitor.

[13] I accept the submission that the LFA in this case is interim financing as it supports the overarching purpose of interim financing; allowing Cash Store to potentially realize on the value of its litigation claims against the defendants.

[14] I have also noted that the LFA contains a settlement clause which provides that the Litigation Trustee will have the sole and exclusive right to instruct and control the conduct of the litigation.

[15] I am satisfied that it is appropriate to approve the LFA, the consequential amendments to the previously approved amounts and to also approve the $3.8 million distribution.

[16] The filed version of the LFA has certain redactions. Counsel to Cash Store submits that the reason for this is twofold. First, redactions to competitively sensitive information ensure that the financial and strategic terms and conditions of the agreement will not be disclosed and accessible on the public record for review by other competitors. Secondly, redactions to terms of the underlying financial agreement, such as financial terms, are meant to protect a debtor's interest and success in litigation as disclosure of same can create unfair tactical advantages for the defendants to the actions in question.

[17] Counsel also submits that while a litigation funding agreement is not a privileged document, courts have recognized that they contain highly sensitive information that should remain confidential. Although the trial court's decision was overturned on appeal and unredacted versions of the agreement were ordered to be provided to creditors for approval, the appellate court engaged in a balancing of rights between the rights of creditors and litigation privilege. In ordering the unredacted version to be provided to creditors but not the defendant, the court held that "litigation privilege [would] continue to apply to the defendant of the potential litigation". (See: *Arrangement Relatif à 9354 – 9186 Québec Inc. (Bluberi Gaming Technologies Inc.)* 2019 QCCA 171 at para. 64 - and - *Ernst & Young Inc.*, 2018 QCCS 1040.

[18] The LFA contains redactions to sections of the agreement including the total amount to be provided for disbursements, specified time-based adjustments to recovery scenarios and the Augusta Funder's returns.

[19] I am satisfied that the redactions that have been made are appropriate to prevent the defendants from capitalizing on any tactical advantage in the litigation or during settlement discussions that would be available to them if the redacted content were to be disclosed.

[20] I am also satisfied that the terms of the LFA contain competitively sensitive information, the disclosure of which could be harmful to the parties. Public disclosure of the information would result in competitive prejudice to the Augusta Funder and its funding affiliates. Further, I am satisfied that the time-based adjustments to various recovery scenarios should also be redacted.

[21] It should be noted that the secured noteholders who approved the LFA and stand to be the beneficiaries of any recoveries have access to the unredacted version of the LFA, as does the Monitor.

[22] In arriving at the conclusion that the unredacted LFA should be sealed, I have taken into account the test in *Sierra Club of Canada v. Canada (Minister of Finance),* 2002 SCC 41 at para. 53, as recently restated by the Supreme Court in *Sherman Estate v. Donovan*, [2021] SCC 25.

[23] In order to succeed with a request for sealing order, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

(a) court openness poses a serious risk to an important public interest;

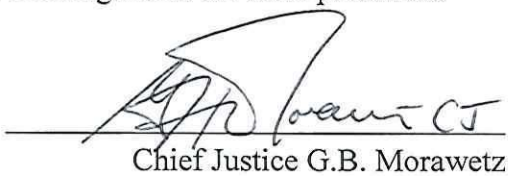
(b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[24] Only when all three of these prerequisites have been met can a sealing order be granted.

[25] In my view, Cash Store has established that there is an important public interest in not placing it at a tactical disadvantage in the litigation and in protecting the commercially sensitive information of the Augusta Funder. Further, there is no reasonable alternative to the proposed redactions to protect these interests and the benefits of the sealing order outweigh the harm. Full details with respect to the factual background have been summarized at paragraph 61 – 71 of the factum and submitted by counsel on behalf of Cash Store.

[26] In the result, the motion is granted in the order has been signed in the form presented.



Chief Justice G.B. Morawetz

Date: November 3, 2021

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, 1985, c. C-36 AS AMENDED **AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION**	Court File No. CV-11-9532-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE DIP LENDER
(Motions Returnable November 18, 2021)

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