

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C.
1985, c. C-36 as amended

AND IN THE MATTER OF a Plan of Compromise or Arrangement of
Crystallex International Corporation

CRYSTALLEX INTERNATIONAL CORPORATION

Applicant

**FACTUM OF THE APPLICANT
CRYSTALLEX INTERNATIONAL CORPORATION
Re: Stay Extension and Sealing of Information
Returnable November 18, 2021**

November 10, 2021

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PART 1 – OVERVIEW¹

1. In this unique liquidating CCAA proceeding, Crystallex has been locked in battle for more than a decade with the government of Venezuela, seeking compensation on behalf of its stakeholders for Venezuela's expropriation of the Company's mining rights to the Las Cristinas gold mine. It is winning. The Company's sole objective for the past five years has been to maximize recovery on its only asset: an approximately U.S.\$1.4 billion arbitral award against Venezuela, rendered on April 4, 2016 in respect of the expropriation (the "**Award**"), and any proceeds therefrom.² Crystallex entered into CCAA protection in 2011 and spent five years in arbitration pursuing the Award.³

2. At their core, the motions currently before this Court are: (i) the Company's motion for a 12-month extension of the Stay Period (as defined in the Initial Order), along with approval of the associated 16th DIP Credit Agreement Amendment; (ii) the Company's motion to seal its strategic information (which is unopposed) [REDACTED] in respect of the Award; and (iii) a Cross-Motion by the Ad Hoc Committee of beneficial holders of the \$100 million principal amount of 9.375% notes due December 2011 (the "**Notes**") (the "**Ad Hoc Committee**") in which the only remaining issue is a request to vary a prior Order of this Court in order to require the Company to disclose publicly the retention amounts transferred to its two and only key management personnel (the "**Cross-Motion**").

¹ Capitalized terms used throughout this Factum but not defined herein have the meanings ascribed to them in the Affidavit of Robert Fung sworn October 25, 2021. For ease of reference, an Index of Defined Terms, used both in this Factum and in the Affidavit of Robert Fung sworn October 25, 2021, is attached as **Schedule "C"**.

² Affidavit of Robert Fung sworn October 25, 2021 ("**October Fung Affidavit**"), para. 13, Motion Record of Crystallex International Corporation dated October 25, 2021 ("**Oct. CMR**"), Tab 2, p.15.

³ October Fung Affidavit, paras. 12-13, Oct. CMR, Tab 2, pp. 14-15.

3. The Company's primary objective in these motions is to maximize its focus on US-based enforcement efforts, and to safeguard its U.S. litigation strategy (and its key personnel) by keeping certain information about that strategy confidential. By contrast, the Ad Hoc Committee seeks to force the Company to increase its litigation spend by doubling the current frequency of its stay extension motions, and to put into the public domain information that the Ad Hoc Committee members could receive today on a confidential basis. Their purported basis for seeking this relief is not only at odds with the conduct of and public statements made by Mr. Scott Reid (President and Chief Investment Officer of Ad Hoc Committee member Stornoway Portfolio Management Inc., and the Ad Hoc Committee's sole affiant on these motions) to the unitholders of the publicly traded Ravensource Fund ("**Ravensource**", of which Stornoway is Investment Manager) over the course of 5+ years, but is also internally inconsistent and illogical.

4. The Company is willing to engage with the Ad Hoc Committee regarding disclosure issues. For that reason, virtually all of the information initially sought in the Cross-Motion has now been disclosed by the Company, and the scope of the information that the Company initially asked to seal has significantly narrowed,⁴ including in response to material developments in the U.S. litigation. However, despite Crystallex's recent disclosures, the Ad Hoc Committee remains dissatisfied and insists that Crystallex disclose even more granular information to allow it to "understand, evaluate and participate in these proceedings"⁵ and to provide input into how much and on which

⁴ October Fung Affidavit, paras. 21-23, Oct. CMR, Tab 2, pp. 17-19.

⁵ Affidavit of Scott Reid sworn October 29, 2021 ("**October Reid Affidavit**"), para. 12(b), Responding Motion Record of the Ad Hoc Committee dated October 29, 2021 ("Oct. AHMR"), Tab 1, p. 8.

advisors Crystallex is spending money.⁶ However, the Ad Hoc Committee has no ability to credibly do so given that it does not have nor want any of the strategic information, nor does it possess any relevant experience in pursuing international arbitral awards against foreign sovereigns. Notably, while Crystallex receives extensive advice and guidance from Gibson, Dunn & Crutcher LLP ("**Gibson Dunn**") and other legal and non-legal advisors, the Ad Hoc Committee has not retained U.S. enforcement counsel,⁷ OFAC (defined below) counsel,⁸ or any advisors to provide advice concerning the Venezuelan and U.S. political situation and its impact on Crystallex's enforcement efforts.⁹

5. Crystallex respectfully asks this Court to protect, to the greatest extent possible, the Company's efforts to maximize the value of the Award by granting Crystallex's request for a 12-month stay extension and its limited sealing request, and by denying relief with respect to the single remaining issue on the Cross-Motion.

PART 2 – FACTS

A. The CCAA and U.S. Enforcement Proceedings

6. This is a unique liquidating CCAA proceeding, in which the only asset is the approximately USD \$1.4 billion Award against the government of Venezuela and the proceeds Crystallex has received in respect of the Award to date.¹⁰ In the six years since the Award was granted, Crystallex has been engaged in complex legal and geopolitical

⁶ Cross-Examination of Scott Reid held November 4, 2021 ("**Reid November Cross-Exam**"), pp. 86-90, qq. 329-341, Brief of Scott Reid's November Transcript ("**Nov. Transcript Brief**"), Tab A, p. 86-90.

⁷ Cross-Examination of Scott Reid held August 6, 2021 ("**Reid August Cross-Exam**"), pp. 167-168, qq. 625-627 Supplementary Motion Record of Crystallex International Corporation dated September 3, 2021 ("**Supp. CMR**"), Tab 1, p. 177; Reid November Cross-Exam, p. 94, q. 367, Nov. Transcript Brief, Tab A, p. 94.

⁸ Reid August Cross-Exam, pp. 168-169, qq. 628-635, Supp. CMR, Tab 1, pp. 178-179.

⁹ Reid August Cross-Exam, pp. 169-170, qq. 636-637, Supp. CMR, Tab 1, pp. 179-180.

¹⁰ October Fung Affidavit, para. 13, Oct. CMR, Tab 2, p.15.

proceedings aimed at enforcing on or otherwise realizing the value of the Award, in the face of opposition from large, well-funded adversaries (competing creditors of Venezuela), two competing government regimes in Venezuela (being the Nicolas Maduro-led government and the opposition government led by Juan Guaido), as well as obstacles to enforcement created by the U.S. government.¹¹

7. These proceedings have involved, among other efforts: (i) seeking recognition of the Award in United States courts, resulting in a judgment issued by the United States Federal Court (the “**Judgment**”);¹² (ii) obtaining a writ of attachment for the Judgment against key assets of Venezuela situated in the United States (the “**Writ**”);¹³ (iii) negotiations directly with Venezuela (complicated by questions concerning who constitutes the legitimate government of Venezuela);¹⁴ and (iv) addressing the impact of certain sanctions that have been imposed in respect of Venezuela by the United States Department of Treasury’s Office of Foreign Assets Control (“**OFAC**”) (the “**Sanctions**”).¹⁵

8. The only way for Crystallex to pay its stakeholders is to successfully enforce the Award; if it cannot, the claims of all creditors will be materially compromised. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] If Crystallex fails on either of these two fronts, its long-time CEO (one of the two key remaining management personnel) believes

¹¹ October Fung Affidavit, para. 14, Oct. CMR, Tab 2, p. 15.

¹² October Fung Affidavit, para. 34, Oct. CMR, Tab 2, p. 23.

¹³ October Fung Affidavit, paras. 35-37, Oct. CMR, Tab 2, pp. 23-24.

¹⁴ October Fung Affidavit, para. 33, Oct. CMR, Tab 2, pp. 23-24.

¹⁵ October Fung Affidavit, paras. 55-57, Oct. CMR, Tab 2, pp. 31-32.

¹⁶ October Fung Affidavit at para. 18, Oct. CMR, Tab 2, p. 17.

that there will be no recoveries for its stakeholders.¹⁷

B. Treatment of Financial Information in the CCAA Proceeding

9. Based on more than a decade of experience in proceedings against Venezuela, Crystallex has serious concerns about the impact on its enforcement efforts of disclosing details regarding [REDACTED]. Accordingly, based on advice from the Company's U.S. litigation and enforcement counsel, Gibson Dunn, since December 2014 Crystallex has sought to redact the details of the Company's financial position, including its cash balance, from the public record.¹⁸ Sealing of the Company's cash flow information was granted on every occasion since it was first sought in December 2014. In May 2020 the Honourable Mr. Justice Hainey granted sealing only in part of the financial information from the Monitor's 33rd Report, on the basis that the Company's evidence in support of sealing "does not provide detailed or compelling reasons about how the information, if disclosed, could be used to the detriment of Crystallex or any details whatsoever as to the feared consequences of its disclosure to the public".¹⁹

10. When Crystallex first brought the current motion to seal financial information in the Monitor's 35th and 36th Reports, it sought to seal the same categories of information that had been sealed on 13 prior occasions, but with the benefit of more detailed evidence

¹⁷ October Fung Affidavit at para. 18, Oct. CMR, Tab 2, p. 17.

¹⁸ Reid August Cross-Exam, pp. 91-93, qq. 326-332, Supp. CMR, Tab 1, pp. 101-103. Notably, when the Company first requested that its financial information be redacted, Crystallex and the Ad Hoc Committee were subject to a standstill order, negotiated by counsel and issued on consent, and the Notes were earning entitlements that ultimately amounted to more than \$37.6 million within a period of 2.5 years: see Reid August Cross-Exam, pp. 85-91, qq. 293-325, Supp. CMR, Tab 1, pp. 95-101; Stay Extension and Standstill Order dated June 5, 2013, Exhibit 8 to Reid August Cross-Exam, at para. 7, Supp. CMR, Tab 9, p. 366.

¹⁹ *Crystallex International Corporate, Re*, 2020 ONSC 3434, Exhibit "A" to the Affidavit of Robert Fung sworn May 21, 2021, Motion Record of Crystallex International Corporation dated May 21, 2021, Tab 2A, pp. 58-61. See also Justice Hainey's Supplementary Reasons, *Crystallex International Corp., Re*, 2020 CarswellOnt 19896 (CL), Brief of Authorities of Crystallex International Corporation ("CBOA"), Tab 4.

concerning the harm that the Company believed would flow from disclosure.²⁰

11. However, on September 8, Judge Stark of the Delaware Court issued an Order (the “**US Disclosure Order**”) in the CITGO Litigation that led to the disclosure of the Proposed Sales Process Order and the Special Master’s Report. In so doing, Judge Stark refused the all-encompassing sealing requests of Venezuela (which sought to redact 180.5 out of 183 pages), but also refused to seal two paragraphs that Crystallex sought to seal, which detailed recoveries that the Company has received from Venezuela to date, including details regarding certain securities that Crystallex received from Venezuela as part of a prior settlement agreement that was breached by Venezuela (the “**Initial Payment Securities**”).²¹ The information at issue in the US Disclosure Order was not the same as the confidential information that Crystallex still seeks to seal in this CCAA proceeding.²²

12. However, following the disclosures necessitated by the US Disclosure Order, Crystallex examined carefully the information that it was seeking to seal in these CCAA proceedings, and narrowed significantly the scope of its sealing request in the Protective Motion originally scheduled to be heard on June 23, 2021 (the “**June 23 Sealing Motion**”). Rather than seeking to seal all financial information indefinitely, Crystallex is now willing to disclose publicly its current cash balance every six months, and to disclose its aggregated cash flows [REDACTED] on a delayed basis. The information that the Company is still seeking to seal in this stay

²⁰ Affidavit of Robert Fung sworn July 9, 2021, para. 11, Responding Motion Record of Crystallex International Corporation (“July Responding MR”), Tab 1, p. 6; October Fung Affidavit, paras. 95-96, Oct. CMR, Tab 2, p. 47

²¹ October Fung Affidavit, paras. 19(a), 41, 99(b), 103-107, Oct. CMR, Tab 2, pp. 17, 26, 50-53.

²² October Fung Affidavit, paras. 93, 99(b), 103-108, 112-114, Oct. CMR, Tab 2, pp. 46, 50-53, 55-56.

extension motion (the “**November Stay Extension Motion**”) is as follows:²³

- (a) The line item details in the Company’s cash flow projections for the period from April 2021 to November 2021 (Confidential Appendix C to the 36th Report) and the forecasts of future cash flows for the period October 1, 2021 to November 30, 2022 (Confidential Appendix E to the Monitor’s 38th Report) (the “**Cash Flow Forecasts**”);
- (b) The Company’s statements of actual receipts and disbursements compared to forecasted amounts for the period April 1, 2021 to September 30, 2021 (Confidential Appendix D to the Monitor’s 38th Report) (the “**Cash Flow Variances**”), until March 31, 2022;
- (c) Explanatory notes to the cash flows in the Monitor’s Reports (with related text in the body of the Reports) [REDACTED]
[REDACTED] (the “**Confidential Explanatory Notes**”), as enumerated in [REDACTED] and
- (d) Crystallex’s strategic information concerning, among other things, its monetization and enforcement strategy, found in the Affidavits of Robert Fung, Monitor’s Reports, Transcripts of Cross-Examination and Facta filed in respect of the motions before the Court (the “**Strategic Information**”). Crystallex understands that the Ad Hoc Committee does not oppose sealing of the Company’s Strategic Information.

13. Given Crystallex’s disclosure, the only remaining live issue in the Cross-Motion is

²³ October Fung Affidavit, paras. 21-23, 93, Oct. CMR, Tab 2, pp. 17-19, 46.

the Ad Hoc Committee's request for public disclosure of the CVR Amounts. Crystallex has already agreed that the CVR Amounts can be disclosed to the Ad Hoc Committee by their counsel on a confidential basis (but without a confidentiality agreement), provided that the disclosure is made through a secure data room that prevents the information from being downloaded or printed. Crystallex has also advised that it will not take the position that the CVR Amounts constitute material non-public information.²⁴

PART 3 – ISSUES

14. In light of the US Disclosure Order and the various categories of documents requested in the Cross-Motion that were resolved by the Company on consent, the only remaining issues to be resolved by this Honourable Court are:

- (a) The approval of the 16th DIP Credit Agreement Amendment;
- (b) The extension of the Stay Period (as defined in the Initial Order) until November 18, 2022;
- (c) The redaction of the Cash Flow Variances and the Cash Flow Forecasts;
- (d) The redaction of the Confidential Explanatory Notes;
- (e) The redaction of the Strategic Information; and
- (f) The Ad Hoc Committee's request to disclose the CVR Amounts.

15. The Company respectfully submits that the Cash Flow Variances, Cash Flow Forecasts, Confidential Explanatory Notes and Strategic Information should be redacted in order to preserve the value of Crystallex's assets; that, in the circumstances, it is appropriate for the Court to approve both the extension of the Stay Period until November

²⁴ Exhibit "B" to the October Reid Affidavit, Oct. AHMR, Tab 1B, p. 59.

18, 2022 and the 16th DIP Credit Agreement Amendment; and that the Cross-Motion should be denied.

PART 4 – LAW AND ARGUMENT

A. The 16th DIP Credit Agreement Amendment Should Be Approved

16. On November 5, 2021, the Maturity Date under the Company's debtor-in-possession agreement (the "**DIP Credit Agreement**") was set to expire. On October 18, the DIP Lender advised that the September 10, 2021 decision by OFAC to deny Crystallex's license application had resulted in an Event of Default under section 8.1(y) of the DIP Credit Agreement (the "**OFAC Decision Default**").²⁵

17. Crystallex and the DIP Lender have agreed to enter into an agreement, subject to Court approval, to a further extension and amendment to the DIP Credit Agreement (the "**16th DIP Credit Agreement Amendment**").²⁶ The 16th DIP Credit Agreement Amendment provides for, among other things: (i) the extension of the Maturity Date until November 18, 2022 or the expiry of the Stay Period, if earlier; and (ii) the waiver of the OFAC Decision Default and related default interest, conditional on the Stay Period being extended for 12 months.²⁷ The Ad Hoc Committee agrees that, in the circumstances, the waiver of default and related default interest is a good outcome for the Company.²⁸

18. The Monitor supports the extension of the Maturity Date and the approval of the 16th DIP Credit Agreement Amendment. The Company submits that the terms of the 16th DIP Credit Agreement Amendment are fair, reasonable, and appropriate and will allow

²⁵ Supplementary Affidavit of Robert Fung sworn October 28, 2021 ("**Supp. October Fung Affidavit**"), para. 5.

²⁶ Supp. October Fung Affidavit, para. 6.

²⁷ Supp. October Fung Affidavit, para. 6.

²⁸ Reid November Cross-Exam, p. 195, q. 865, Nov. Transcript Brief, Tab A, p. 195.

Crystallex, with the support of the DIP Lender, to continue to monetize the Award for the benefit of all of Crystallex's stakeholders.²⁹

B. A 12-Month Stay Period is Appropriate in the Circumstances

19. Crystallex seeks to extend the Stay Period, which expires on November 18, 2021, to November 18, 2022 (the "**Stay Extension**") to permit Crystallex to focus its monetary and professional resources on pursuing enforcement of the Award.³⁰ The Ad Hoc Committee does not oppose the extension of the Stay Period, but asks that such extension be for only three months.³¹

(i) The Stay Extension is Appropriate

20. Pursuant to section 11.02 of the CCAA, the Court may grant an extension of the stay of proceedings for any period that the Court considers necessary if the Court is satisfied that: (i) circumstances exist that make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence.³² Each of these criteria is clearly met in this case.

21. With respect to the first prong of the test under section 11.02, the Stay Extension is necessary and appropriate in the circumstances including because:³³

- (a) no material steps are expected to occur in the U.S. enforcement proceedings until later in 2022;
- (b) the Company is not currently in a position to make distributions to

²⁹ The 38th Report of the Monitor dated November 9, 2021, para. 43; Supp. October Fung Affidavit, para. 9.

³⁰ October Fung Affidavit, para. 86, Oct. CMR, Tab 2, p. 42.

³¹ October Reid Affidavit, para. 12(a), Oct. AHMR, Tab 1, p. 7.

³² *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, ss. 11.02(2) to 11.02(3).

³³ October Fung Affidavit, paras. 11, 86-88(a)-(e), 92, Oct. CMR, Tab 2, pp. 14, 42-46.

stakeholders;

- (c) stay extension motions have become a "litigation battleground", and the Company needs to focus its attention on its enforcement efforts, all of which are taking place outside of Canada. A 12-month stay extension will reduce the costs to the Company and allow it to focus its financial and professional resources on enforcement; and
- (d) the Company has sufficient funds to meet its projected liquidity requirements throughout the requested Stay Extension.

22. Contrary to Mr. Reid's affidavit evidence, Crystallex's stakeholders will not be prejudiced by the granting of the requested 12-month Stay Extension, including because:

- (a) The Monitor has oversight over all of the Company's activities, attends every Board meeting, will continue to report on the Company's finances (including by reporting publicly its cash and DIP balance on a current basis) and its enforcement activities every six months in the CCAA Proceeding (or more frequently if something material does occur);
- (b) Crystallex is working with the Monitor to come to a resolution with CRA in order to clear the hurdles for distributions to creditors and is keeping the DIP Lender and the Ad Hoc Committee apprised of its ongoing discussions with the CRA;³⁴
- (c) the Company's US enforcement proceedings are its single most important activity, and stakeholders already have access to information filed in the US

³⁴ Fung October Affidavit, paras. 75-77, Oct. CMR, Tab 2, pp. 38-39.

proceedings. Indeed, Mr. Reid's affidavit evidence is that he "closely monitor[s] public filings in the US enforcement process",³⁵ and

- (d) the Company has offered to share all of its financial information at any time with any stakeholder on a confidential basis.³⁶

23. With respect to the second prong of the test, as outlined in detail in Mr. Fung's October Affidavit and supported by the Monitor's 38th Report, Crystallex has acted, and continues to act, in good faith and with due diligence.³⁷ Contrary to Mr. Reid's assertions, Crystallex is not acting in bad faith by not pursuing a CCAA plan. Ontario Courts, including in the *Nortel* proceeding referenced at para. 55 of Mr. Reid's affidavit, have made clear that the CCAA may appropriately be used in "liquidating" proceedings involving a sale of substantially all of the debtors' assets and a distribution of the proceeds to the creditors of the business.³⁸ In this case, Crystallex is seeking to monetize its only asset – the Award. Until further amounts are collected in respect of the Award, distributions to stakeholders are not feasible or appropriate, and any such distributions are already governed by the terms of the Court-approved DIP Credit Agreement waterfall.

(ii) An Extension of 12 Months Is Appropriate

24. There is no "standard" length of time for which the Stay Period should or must be extended. Rather, the length of a stay extension depends on this Honourable Court's view

³⁵ October Reid Affidavit, para. 66, Oct. AHMR, Tab 1, p. 28.

³⁶ October Fung Affidavit, paras. 27(a)-(e), 88(c), 92, Oct. CMR, Tab 2, pp. 20-21, 43-44, 45-46.

³⁷ October Fung Affidavit, para. 90, Oct. CMR, Tab 2, p. 45; 38th Report of the Monitor dated November 9, 2021, para. 50.

³⁸ October Reid Affidavit, paras. 17(b), 55, Oct. AHMR, Tab 1, pp. 10, 25; *Re Nortel Networks Corporation*, 2009 CanLII 39492 (Ont. S.C.J. [CL]) at para. 47, CBOA, Tab 15; *Re Nortel Networks Corporation et al*, 2014 ONSC 4777 (CL) at para. 23, CBOA, Tab 16, *affirmed on appeal*, 2015 ONCA 681 (CBOA, Tab 16A), *leave to appeal refused*, 2016 CarswellOnt 7202 (S.C.C.), CBOA Tab 16B).

of what is most appropriate in the circumstances, and is thus highly fact-specific.³⁹

25. In addition to the reasons outlined above in para. 21 concerning why a 12-month Stay Extension is appropriate, the 16th DIP Credit Agreement Amendment, which waives the September 2021 OFAC Decision Default and related default interest, is conditional on the entry of an order extending the Stay Period to November 18, 2022.⁴⁰ Given that the Ad Hoc Committee agrees that, in the circumstances, the 16th DIP Credit Agreement Amendment is a good outcome for the Company,⁴¹ it is illogical that it opposes a key condition on its implementation.

26. Stay extensions in this matter have most typically been granted for six-month periods.⁴² However, the Ad Hoc Committee accepted a much longer stay extension of 18 months (which was consensually extended by a further 12 months),⁴³ without enhanced reporting, where Crystallex agreed to pay a premium rate of interest on the Noteholders' claims.⁴⁴ Crystallex is concerned that the Ad Hoc Committee's opposition to the relief currently sought by the Company represents an attempt to extract a similar premium.

C. The Cash Flow Variances and Cash Flow Forecasts Should Be Redacted

27. Crystallex's request to seal both the Cash Flow Variances and Cash Flow Forecasts should be granted on the basis that, among other things: (i) section 10(3) of the CCAA specifically permits cash flow information to be redacted in the context of a

³⁹ October Reid Affidavit, para. 12(a), Oct. AHMR, Tab 1, p. 7; *Sunrise/Saskatoon Apartments Limited Partnership*, Re, 2017 BCSC 808 at para. 21, CBOA, Tab 21; *Tepper Holdings Inc.*, Re, 2011 NBQB 211 at para. 54, CBOA, Tab 23; *U.S. Steel Canada Inc.*, Re, 2016 ONSC 3106 at para. 15, CBOA, Tab 26.

⁴⁰ Supp. October Fung Affidavit, paras. 7-8.

⁴¹ Reid November Cross-Exam, p. 195, q. 865, Nov. Transcript Brief, Tab A, p. 195.

⁴² Reid November Cross-Exam, p. 189, q. 831, Nov. Transcript Brief, Tab A, p. 189.

⁴³ October Reid Affidavit, para. 63, Oct. AHMR, Tab 1, p. 27.

⁴⁴ Endorsement of Justice Newbould dated June 5, 2013, Exhibit 8 to the Reid August Cross-Exam, Supp. CMR, Tab 9, p. 363.

CCAA proceeding; and (ii) in any event, the Cash Flow Forecasts and Cash Flow readily satisfy the test established by the Supreme Court of Canada for the sealing of information.

(I) The Cash Flow Variances and Cash Flow Forecasts Should be Redacted Under Section 10(3) of the CCAA

28. As a preliminary matter, the Cash Flow Forecasts and the Cash Flow Variances (which shows the Company's actual and forecasted cash flows, as well as the difference between the figures) should be redacted pursuant to section 10(3) of the CCAA, which establishes a less onerous test than the common law *Sierra Club* and *Sherman Estate* framework. Section 10(3) provides for a court-ordered publication ban specifically directed at cash flow information in the context of a CCAA proceeding.

(a) The Applicable Test

29. On its face, section 10(3) requires a balancing of private interests, and not the more onerous balancing of public interests mandated by *Sierra Club*. While section 10(3) has received virtually no judicial attention,⁴⁵ a textual comparison of section 10(3) to the *Sierra Club* test highlights their clear differences:⁴⁶

Section 10(3) of CCAA	<i>Sierra Club</i> at para. 53
"The court may make an order prohibiting the release to the public of any cash-flow statement, or any part of a cash-flow statement, if it is satisfied that the release would unduly prejudice the debtor company and the making of the order	"A confidentiality order [...] should only be granted when: a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of

⁴⁵ Of the two cases that cite it (both of which are Québec Superior Court cases), one mentions it only in passing, and the other suggests – without supporting analysis – that the provision is merely a codification of *Sierra Club*. See *Groupe Dynamite inc. c. Deloitte Restructuring inc.*, 2020 QCCS 3086 at paras. 23, 33, CBOA, Tab 6; *White Birch Paper Holding Company (Arrangement relatif à)*, 2010 QCCS 764 at paras. 77, 84, CBOA, Tab 27.

⁴⁶ Although the Supreme Court of Canada has recently re-framed the test in *Sierra Club* in its decision in *Sherman Estate*, the *Sierra Club* comparison is most apposite for the statutory interpretation exercise because: (i) it remains, in substance, the basis for the common law test (see *Sherman Estate v Donovan*, 2021 SCC 25 at para. 38, CBOA, Tab 20: "Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant..." [emphasis added]); and (ii) it reflected the state of the common law when s. 10(3) was enacted.

<p>would not unduly prejudice the company's creditors, but the court may, in the order, direct that the cash-flow statement or any part of it be made available to any person specified in the order on any terms or conditions that the court considers appropriate". [emphasis added]</p>	<p>litigation because reasonably alternative measures will not prevent the risk; and b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings." [emphasis added]</p>
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30. Notably, whereas the test prescribed by *Sierra Club* is focused on the public interests put at risk by sealing the information at issue, and on balancing public interests for and against sealing, section 10(3) does not invoke public interest considerations. Rather, the balancing exercise it requires is between undue prejudices: (i) to the debtor company, on the one hand; and (ii) to the company's creditors, on the other.⁴⁷

31. Section 10(3) was proclaimed into force more than seven years after the Supreme Court of Canada released its seminal 2002 decision in *Sierra Club*.⁴⁸ While CCAA judges had no trouble applying *Sierra Club* in CCAA proceedings in the wake of its 2002 release,⁴⁹ Parliament still chose to proceed with the enactment of section 10(3).⁵⁰

⁴⁷ Commentary on the issue, including by leading members of the insolvency bar, has recognized these differences between s. 10(3) and the *Sierra Club* test: See Lloyd W Houlden, Geoffrey B Morawetz & Dr. Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed (Toronto: Thomson Reuters Canada, 2009, loose-leaf), Companies' Creditors Arrangement Act at N\$59 and N\$62, CBOA, Tab 28; Denis Ferland, "The Evolving Role of the Monitor, Confidential Information and the Monitor's Cross-examination, a Quebec Perspective" (2011) Annual Rev of Insolvency Law 17 at 2-3, CBOA, Tab 29.

⁴⁸ Canada, Parliament, *Debates of the Senate*, 38th Parl, 1st Sess, Vol 142, No 100 (25 November 2005) at 2239, CBOA, Tab 32; *Order Fixing September 18, 2009 as the Date of the Coming into Force of Certain Sections of the Acts*, Proclamation, 19 August 2009, SI/2009-68, (2009) C Gaz II, 1711, 1712, CBOA, Tab 33. Canadian courts have endorsed, on numerous occasions, Professor Driedger's statement that "Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see, for example, *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at para. 21, CBOA, Tab 17. As a result, the context for the enactment of s. 10(3) plays an important role in the interpretive exercise.

⁴⁹ See, by way of example only, *Re Stelco Inc.*, [2006] O.J. No. 275 (S.C.J.), CBOA, Tab 18.

⁵⁰ Notably, the 2009 CCAA reforms that first enacted s. 10(3) also expanded and prescribed requirements for cash flow disclosure as part of the materials that must accompany an initial application under the CCAA. In the circumstances, a reasonable inference can be drawn that the intention of Parliament in enacting s. 10(3) was to counter-balance the new cash flow disclosure requirements against a greater ability to prevent such information from becoming public, to the detriment of the debtor company.

32. Several statutory interpretation principles suggest that section 10(3) represents a deliberate Parliamentary intention to change the test applicable to the sealing of cash flow information in a CCAA proceeding: (i) Parliament is presumed to know the law, and is thus presumed to have been fully aware of *Sierra Club* and its applicability in a CCAA context;⁵¹ (ii) Parliament is presumed to legislate for a purpose,⁵² and (iii) legislation is paramount, meaning that, where both the common law and legislation govern a particular subject matter, the legislation will prevail to the extent of any conflict.⁵³ Although it is generally presumed that Parliament does not intend to change the common law, that presumption may be rebutted through an analysis of the legislative provision itself.⁵⁴

33. In this case, on a plain reading of section 10(3), there can be no doubt that the narrow, focused test in section 10(3) of the CCAA was intended to prevail over the broad test in *Sierra Club* when cash flow information is sought to be redacted in a CCAA

⁵¹ Parliament is presumed to have "knowledge of whatever information or data is relevant to the law it enacts", including the common law: Ruth Sullivan, *Statutory Interpretation*, 3rd ed (Irwin Law, 2016) at p. 42, CBOA, Tab 30; See also Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Lexis, 2014) at §8.27, CBOA, Tab 31; and *Chrysler Canada Ltd. v. Canada (Competition Tribunal)*, 1992 CarswellNat 4 at paras. 23, 26 (S.C.C.), CBOA, Tab 3.

⁵² As explained by Professor Sullivan, "statutes are obviously enacted for a reason, and the language in which they are drafted reflects deliberate and careful choices by the legislature": Ruth Sullivan, *Statutory Interpretation*, 3rd ed (Irwin Law, 2016) at p. 32, CBOA, Tab 30. A purposive analysis of legislation is based on the proposition that, among other things, "all legislation is presumed to have a purpose": Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Lexis, 2014) at §9.3, CBOA, Tab 31.

⁵³ *Belo-Alves v. Canada (A.G.)*, 2014 FC 1100 at para. 66, CBOA, Tab 1, citing Ruth Sullivan, *Statutory Interpretation*, 2d ed. (Toronto: Irwin Law Inc., 2007) at 313-14. See also *Jackson v. Canadian National Railway*, 2013 ABCA 440 at para. 38, CBOA, Tab 8, where the Alberta Court of Appeal explains that legislation "is paramount, so that if it clearly expresses an intention to override or displace the common law, this effect must be given to the statute".

⁵⁴ For instance, a majority of the Supreme Court of Canada in *Friesen v. Canada* held that, based on the plain wording of section 10(1) of the Income Tax Act, previous common law limits could not be imposed on the provision, and that purporting to do so would be "a usurpation of the legislative function of Parliament". See *Friesen v. Canada*, 1995 CanLII 62 at para. 53 (S.C.C.), CBOA, Tab 5; *Prebushewski v. Dodge City Auto (1984) Ltd.*, 2005 SCC 28 at para. 25, CBOA, Tab 11; and *Belo-Alves v. Canada (A.G.)*, 2014 FC 1100 at para. 67, CBOA, Tab 1. See also Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Lexis, 2014) at §17.18, CBOA, Tab 31 and *Prebushewski* at para. 25, CBOA, Tab 11. Citing *Prebushewski* with approval, the Federal Court in *Belo-Alves* at para. 67, CBOA, Tab 1, put the principle succinctly: "The Supreme Court of Canada has held that there is no basis for imputing common law tests into statutory provisions where the legislature has clearly designed the provisions so as to replace the common law."

proceeding. Notably, the Supreme Court of Canada's recent re-framing of the *Sierra Club* test in *Sherman Estate* expressly adverted to the possibility of legislated exceptions to its application, stating: "This test applies to all discretionary limits on court openness, subject only to valid legislative enactments".⁵⁵

(b) Balancing of Undue Prejudice Between Crystallex and Its Stakeholders Favours the Protection of the Cash Flow Variances and Cash Flow Forecasts

34. Section 10(3) permits this Court to make an order prohibiting the release of the Cash Flow Variances and Cash Flow Forecasts "if it is satisfied that the release would unduly prejudice the debtor company and the making of the order would not unduly prejudice the company's creditors". In this case, the Company's evidence is clear that the release of the Cash Flow Variances and Cash Flow Forecasts risks jeopardizing Crystallex's decade-long effort to realize on its only asset.⁵⁶

35. In contrast, the evidence of the Ad Hoc Committee reveals that it is not prejudiced in any way by the requested Order. The lack of prejudice is particularly clear in light of Crystallex's voluntary agreement to: (i) publicly disclose the Cash Flow Forecast and Cash Flow Variance information with only a short delay; and (ii) publicly disclose the Company's current cash and DIP balance every six months.

36. **The Ad Hoc Committee's Resistance to Sealing Is Not Grounded in the Facts:** While Mr. Reid asks this Court to allow the Ad Hoc Committee to make a "judgment call" concerning disclosure of the information that Crystallex seeks to seal,⁵⁷ his perspective

⁵⁵ *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38, CBOA, Tab 20.

⁵⁶ October Fung Affidavit, paras. 24-25, 122-128, Oct. CMR, Tab 2, pp. 19-20, 59-62; Cross-Examination of Robert Fung held November 4, 2021, pp. 93-103, qq. 443-479.

⁵⁷ Affidavit of Scott Reid sworn May 28, 2021 ("**May Reid Affidavit**"), para. 87, Motion Record of the Ad Hoc Committee dated May 28, 2021 ("May AHMR"), Tab 2, pp. 38-39; October Reid Affidavit, para. 54, Oct. AHMR, Tab 1, p. 24.

should be placed in its proper context. Although the Company's enforcement proceedings are centred in the U.S., the Ad Hoc Committee has not retained U.S. enforcement counsel.⁵⁸ They have not retained OFAC counsel to advise on the impact of the Sanctions on Crystallex's enforcement activity.⁵⁹ They have not retained advisors concerning the Venezuelan political situation and its impact on Crystallex's enforcement efforts.⁶⁰ Mr. Reid has never been involved in the enforcement of a significant judgment against a foreign sovereign.⁶¹ Moreover, no member of the Ad Hoc Committee has so much as reviewed an unredacted version of Mr. Fung's detailed explanations of why Crystallex believes that disclosure of this information could imperil its enforcement efforts.⁶²

37. The Ad Hoc Committee Has Unfettered Access to a Wealth of Financial Information and Understands Its Investment in Crystallex: Over 90% of the Notes are held by four "highly sophisticated" investors.⁶³ These investors are more than capable of making informed decisions using the significant information at their disposal, which now includes: (i) the details of all payments received by Crystallex to date; (ii) the Company's cash balance as at March 31, 2020, September 30, 2020, March 31, 2021 and September 30, 2021;⁶⁴ (iii) the Company's actual receipts and disbursements for October 2019 to

⁵⁸ Reid August Cross-Exam, p. 167, qq. 625-627, Supp. CMR, Tab 1, p. 177; Reid November Cross-Exam, p. 94, q. 367, Nov. Transcript Brief, Tab A, p. 94.

⁵⁹ Reid August Cross-Exam, pp. 168-169, qq. 628-635, Supp. CMR, Tab 1, pp. 178-179. Indeed, Mr. Reid was not even aware that Crystallex is a US person for the purposes of the Sanctions: see Reid November Cross-Exam, pp. 56-58, qq. 214-222, Nov. Transcript Brief, Tab A, pp. 56-58.

⁶⁰ Reid August Cross-Exam, pp. 169-170, qq. 636-637, Supp. CMR, Tab 1, pp. 179-180.

⁶¹ Reid August Cross-Exam, pp. 40-42, qq. 156-164, Supp. CMR, Tab 1, pp. 50-52.

⁶² Reid August Cross-Exam, p. 170, q. 638, Supp. CMR, Tab 1, p. 180; Reid November Cross-Exam, p. 67, qq. 256-258, Nov. Transcript Brief, Tab A, p. 67.

⁶³ Reid August Cross-Exam, pp. 152-153, qq. 568-573, Supp. CMR, Tab 1, pp. 162-163. Figure provided as of December 31, 2020.

⁶⁴ Monitor's 33rd Report dated April 30, 2020, p. 19 (Confidential Appendix "B"); Revised Monitor's 35th Report dated September 24, 2021, p. 16 (Confidential Appendix "B"); Revised Monitor's 36th Report dated September 24, 2021, p. 22 (Confidential Appendix "B"); Monitor's 38th Report dated November 9, 2021 (Confidential Appendix "D").

March 2020, April 2020 to September 2020, and October 2021 to November 2021;⁶⁵ and (iv) the Company's aggregate forecasts for April 2020 to November 2020, October 2020 to May 2021 and April 2021 to November 2021.⁶⁶

38. Taken together, the information outlined above provides the Ad Hoc Committee with 18 continuous months of Crystallex's financial information. Moreover, the Ad Hoc Committee has access to the DIP balance as at September 2021,⁶⁷ how much Crystallex has recovered to date on account of the Award,⁶⁸ as well as the face and market value of the Initial Payment Securities.⁶⁹

39. Indeed, Mr. Reid conceded that he now has more information about Crystallex's finances now than he did throughout the period between December 2014 to February 2021 (when all financial information of the Company was sealed).⁷⁰ During this period, Mr. Reid's company Stornoway Portfolio Management continued to purchase additional Notes, increasing the amount of Ravensource's face value holdings by approximately 18%⁷¹ – from 9.42% of Ravensource's net assets to 26.75% of net assets.⁷² At no point did Mr. Reid disclose to Ravensource's unitholders that he is unable to assess the status

⁶⁵ Monitor's 33rd Report dated April 30, 2020, p. 21 (Confidential Appendix "B"); Revised Monitor's 35th Report dated September 24, 2021, p. 16 (Confidential Appendix "B"); Revised Monitor's 36th Report dated September 24, 2021, p. 22 (Confidential Appendix "B").

⁶⁶ Monitor's 33rd Report dated April 30, 2020, p. 21 (Confidential Appendix "C"); Revised Monitor's 35th Report dated September 24, 2021, p. 18 (Confidential Appendix "C"); Revised Monitor's 36th Report dated September 24, 2021, p. 24 (Confidential Appendix "C").

⁶⁷ Email from Counsel to Crystallex to Counsel to the Ad Hoc Committee dated November 3, 2021, Exhibit 2 to Reid November Cross-Exam, Nov. Transcript Brief, Tab 2, p. 255.

⁶⁸ See paragraphs 49 and 50 of the Special Master's Report, attached as Exhibit "E" to October Fung Affidavit, Oct. CMR, Tab 2E, pp. 256-257.

⁶⁹ October Reid Affidavit, para. 21, Oct. AHMR, Tab 1, p. 13; Reid November Cross-Exam, pp. 51-52, qq. 195-198, Nov. Transcript Brief, Tab A, pp. 51-52.

⁷⁰ Reid November Cross-Exam, p. 22, q. 71, Nov. Transcript Brief, Tab A, p. 22.

⁷¹ Reid August Transcript, pp. 132-141, qq. 490-526, Supp. CMR, Tab 1, pp. 142-151.

⁷² Reid August Cross-Exam, pp. 32, 34-39, qq. 117-119, 127-148, Supp. CMR, Tab 1, pp. 42, 44-49.

of Ravensource's investment in Crystallex,⁷³ or unable to accurately assess Crystallex's situation.⁷⁴ Rather, Mr. Reid has advised Ravensource's unitholders repeatedly that Stornoway's strategy as investment manager is to "concentrate capital in positions we know the best and where we hold the strongest convictions".⁷⁵

40. **The Ad Hoc Committee Does Not Require Financial Forecasts:** Mr. Reid asserts in his affidavit that disclosure of the Cash Flow Forecasts is necessary for him to understand his investment in Crystallex,⁷⁶ notwithstanding that investments in public companies are necessarily made without the benefit of financial forecasts.⁷⁷ Tellingly, the Ad Hoc Committee applied to lift the OSC's order cease-trading the Notes after the Company began to seal its financial information, in order to permit themselves to trade.⁷⁸

41. **The Ad Hoc Committee Participates Fully in the CCAA:** Notwithstanding his statements that "Crystallex's failure to make routine public disclosure to its stakeholders has impaired Stornoway's ability to fully participate in the CCAA proceedings in order to protect and advance its rights and interests",⁷⁹ at no point has Mr. Reid disclosed to Ravensource's unitholders that Crystallex's disclosure practices have impeded his ability to participate in the CCAA proceeding.⁸⁰ To the contrary, Mr. Reid described his active involvement in the CCAA proceeding to Ravensource's unitholders in letters dated

⁷³ Reid August Cross-Exam, pp. 147-149, qq. 554-557, Supp. CMR, Tab 1, pp. 157-159.

⁷⁴ Reid August Cross-Exam, pp. 147-149, qq. 554-557, Supp. CMR, Tab 1, pp. 157-159.

⁷⁵ Reid August Cross-Exam, pp. 143-147, qq. 534-553, Supp. CMR, Tab 1, pp. 153-157.

⁷⁶ October Reid Affidavit, paras. 12(b), 52, Oct. AHMR, Tab 1, pp. 8, 24.

⁷⁷ See sections 4.1 and 4.3 of National Instrument 51-102 (Continuous Disclosure Obligations), Exhibit "G" to the Affidavit of Robert Fung sworn July 9, 2021, Reply Motion Record of Crystallex International Corporation, Tab 1, p. 104.

⁷⁸ Reid August Cross-Exam, pp. 92-96, qq. 327-345, Supp. CMR, Tab 1, pp. 102-106.

⁷⁹ May Reid Affidavit, paras. 43, May AHMR, Tab 2, p. 28; October Reid Affidavit, para. 16, Oct. AHMR, Tab 1, p. 9.

⁸⁰ Reid November Cross-Exam, pp. 50-51, qq. 189-194, Nov. Transcript Brief, Tab A, pp. 50-51.

December 31, 2018, December 31, 2019, and December 31, 2020, during a period of time when Crystallex's financial information had been redacted consistently for years.⁸¹

42. If the Company is wrong concerning the harm to its enforcement efforts, the worst-case scenario is that it will have acted conservatively. If the Company is right, however, the worst-case scenario is that its stakeholders receive no recoveries. Mr. Reid has confirmed on behalf of the Ad Hoc Committee that "the last thing we want to do is harm the ability of the company to realize on its award".⁸² There can be no doubt that the balancing of interests required by section 10(3) here militates against disclosure.

(ii) **The Test Prescribed by *Sierra Club* and *Sherman Estate* Requires that the Cash Flow Variances and Cash Flow Forecasts be Protected From Disclosure**

43. For all of the reasons set out above, if this Court accepts that the redaction of the Cash Flow Variances and Cash Flow Forecasts is appropriate under section 10(3) of the CCAA, Crystallex submits that there is no need to analyze whether the Company has also satisfied the burden under *Sierra Club*. In any event, however, Crystallex submits that its evidence in respect of the Cash Flow Forecasts and Cash Flow Variances easily satisfies the *Sierra Club* test, as recently re-framed by the Supreme Court of Canada in *Sherman Estate*, since: (i) the disclosure of this information poses a serious risk to an important public interest; (ii) the order sought is necessary to prevent this serious risk (and reasonably alternative measures will not prevent it); and (iii) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁸³ Crystallex repeats and relies on the submissions of the DIP Lender in this regard.

⁸¹ Reid August Cross-Exam, pp. 161-165, qq. 605-620, Supp. CMR, Tab 1, pp. 171-175.

⁸² Reid November Cross-Exam, pp. 25-26, qq. 90-91, Nov. Transcript Brief, Tab A, p. 25-26.

⁸³ *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38, CBOA, Tab 20.

D. The Strategic Information and the Confidential Explanatory Notes Should be Sealed

44. The Ad Hoc Committee has given no indication that it intends to oppose Crystallex's request to seal either the Strategic Information or the Confidential Explanatory Notes. To the extent required by this Honourable Court, Crystallex would be pleased to provide supplementary written submissions to justify their sealing, which Crystallex submits is appropriate pursuant to the test in *Sierra Club/Sherman Estate*.

E. The Ad Hoc Committee's Request for Disclosure of the CVR Amounts Should Be Rejected

45. The CVR Amounts were sealed by an Order of this Court on December 18, 2014 (the "**2014 CCAA Order**").⁸⁴ Crystallex has proposed that the CVR Amounts be disclosed confidentially to the Ad Hoc Committee (without a confidentiality agreement), provided that the disclosure is made through a secure data room that prevents the information from being downloaded or printed. Crystallex has confirmed that it will not take the position that the CVR Amounts constitute material non-public information. However, the Ad Hoc Committee insists that the CVR Amounts be publicly disclosed.

(i) The Ad Hoc Committee Has Failed to Show a Material Change Justifying a Variance

46. Since the Ad Hoc Committee seeks to vary the 2014 CCAA Order and unseal the CVR Amounts, it is the Ad Hoc Committee that bears the burden of justifying such relief. In *Canadian Broadcasting Corp. v. Manitoba*, the Supreme Court recently reiterated that sealing orders may only be varied where: (i) an affected party, who was not given notice of the sealing order, brings a timely motion to vary or set aside the order;⁸⁵ or (ii) there

⁸⁴ Net Arbitration Proceeds Transfer Agreement Order of Justice Newbould dated December 18, 2014, Exhibit 6 to Reid November Cross-Exam, Nov. Transcript Brief, Tab 6, p. 341.

⁸⁵ This ground is clearly not available to the Ad Hoc Committee, which was provided notice of Crystallex's intention to seek an order sealing the CVR Amounts and participated fully in the resulting hearing,

has been a material change in circumstances since the order was granted.⁸⁶ The burden of establishing a change in circumstance is on the party seeking to vary the Order,⁸⁷ and requires the Ad Hoc Committee to show a material change relating to a matter that justified the making of the order,⁸⁸ and that if known at the time, would likely have resulted in an order *on different terms*.⁸⁹ The correctness of the initial order is presumed.⁹⁰

47. Here, the Ad Hoc Committee has failed to establish that there has been a material change in circumstances that would justify varying the 2014 CCAA Order. Although Mr. Reid asserts that such CVRs improperly give rise to a conflict of interest,⁹¹ the 2014 CCAA Order approving the agreement that gave rise to the transfer of the CVR Amounts (which was granted at a time when the current capital structure was *already in place*) stated explicitly that all "all transactions contemplated [under the Net Arbitration Proceeds Transfer Agreement] are fair reasonable and appropriate and are hereby approved and authorized in their entirety".⁹² [emphasis added]

48. Parties to litigation in Canada cannot re-litigate issues that have been finally determined. As the Supreme Court stated nearly two decades ago: "a party should not be twice vexed in the same cause, that is, the party should not be burdened with having

including by making submissions with respect to why a sealing order would not be appropriate in the circumstances. Despite the Ad Hoc Committee's submissions, the Honourable Justice Newbould concluded that it was appropriate to grant the 2014 CCAA Order in the circumstances.

⁸⁶ *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33 at para. 42, CBOA, Tab 2.

⁸⁷ *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33 at para. 55, CBOA, Tab 2.

⁸⁸ *R v. Adams*, 1995 CarswellAlta 733 (S.C.C.) at para. 31, CBOA, Tab 12.

⁸⁹ *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33 at para. 55, CBOA, Tab 2; *L.M.P. v. L.S.*, 2011 SCC 64 at para. 32, CBOA, Tab 9.

⁹⁰ *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33 at paras. 55, 72, CBOA, Tab 2; *L.M.P. v. L.S.*, 2011 SCC 64 at para. 33, CBOA, Tab 9.

⁹¹ October Reid Affidavit, para. 17(c), Oct. AHMR, Tab 1, pp. 10-11.

⁹² Net Arbitration Proceeds Transfer Agreement Order of Justice Newbould dated December 18, 2014 at para. 4, Exhibit 6 to Reid November Cross-Exam, Nov. Transcript Brief, Tab 6, p. 341.

to relitigate the same issue".⁹³ The 2014 CCAA Order is now final and binding, and the Ad Hoc Committee should not be permitted to use the Court's process to do indirectly what it is prohibited from doing directly.⁹⁴ Its newfound desire to attack the transfer of CVRs cannot justify its request to vary the 2014 CCAA Order.

(ii) The CVR Amounts Satisfy the *Sierra Club/Sherman Estates* Test

49. In any event, the CVR Amounts continue to satisfy the test for sealing established by the Supreme Court of Canada in *Sherman Estate*, as set out above in paragraph 43. Justice Newbould approved the transfer of the CVR Amounts to Mr. Fung and Mr. Oppenheimer on the express basis that these men were "critical" to the pursuit of the Award. The CVR Amounts thus played the role of a key employee retention plan (a "KERP"). Details of KERPs have frequently been the subject of sealing orders in CCAA proceedings, including in *Re Danier Leather*,⁹⁵ *Re Canwest Global Communications Corp.*⁹⁶ and most recently in *Ontario Securities Commission v. Bridging Finance Inc.*⁹⁷

50. Notably, in none of those cases did the disclosure of KERP information involve a further risk to an employee's safety. Here, Mr. Fung's uncontroverted evidence is that disclosure of the CVR Amounts would increase the risk of him being "targeted for kidnapping-for-ransom in Venezuela", and that, given the risk to his personal safety that

⁹³ *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at paras. 50, 52, CBOA, Tab 24; *The Catalyst Capital Group Inc. v. VimpelCom Ltd.*, 2019 ONCA 354 at para. 61, CBOA, Tab 25, *leave to appeal refused*, 2019 CarswellOnt 18743 (S.C.C.), CBOA, Tab 25A.

⁹⁴ *Hoque v. Montreal Trust Co. of Canada*, 1997 NSCA 153 at paras. 68, 78, CBOA, Tab 7, *leave to appeal refused*, 1998 CarswellNS 653 (S.C.C.), CBOA, Tab 7A; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at paras. 34 and 36, CBOA, Tab 24; *Tan-Jen Ltd. v. Di Pede*, 2017 ONSC 6800 at para. 44, CBOA, Tab 22.

⁹⁵ *Re Danier Leather Inc.*, 2016 ONSC 1044 at para. 83, CBOA, Tab 14. Justice Penny also noted that "There is a public interest in maximizing recovery in an insolvency that goes beyond each individual case" (*Ibid* at para. 84).

⁹⁶ *Re Canwest Global Communications Corp.*, 2009 CarswellOnt 6184 at paras. 49-52 (S.C.J.), CBOA, Tab 13.

⁹⁷ *Ontario Securities Commission v. Bridging Finance*, 2021 ONSC 4347 at paras. 23-27, CBOA, Tab 10.

disclosure poses, he “would be unwilling to attend any in-person negotiations with Venezuela if this information is made public”.⁹⁸ In the Monitor’s 37th and 38th Reports, the Monitor agreed that “it may be beneficial to Crystallex’s collection strategy for Mr. Fung and Mr. Oppenheimer to be able to travel to Venezuela at some point in the future to negotiate a settlement or continued payment under existing settlements in person”.⁹⁹ The requested disclosure therefore clearly engages the “important public interest” of “a risk to physical safety” recognized by the Supreme Court of Canada in *Sherman Estate*.¹⁰⁰

PART 5 – ORDER REQUESTED

51. Crystallex respectfully requests an Order: (i) approving the 16th DIP Credit Agreement Amendment; (ii) extending the Stay Period until November 18, 2022 (with provisions requiring interim financial reporting, timely disclosure of any developments in the CCAA or US enforcement proceedings or other material matters, and confirmation that any stakeholder may come back to the Court in the interim to address any issues that arise during the Stay Period); (iii) sealing the Cash Flow Forecasts; (iv) sealing the Cash Flow Variances for a period of six months; and (v) sealing the Confidential Explanatory Notes and the Strategic Information.

⁹⁸ July Affidavit of Robert Fung sworn, para. 16(b), *July Responding MR*, Tab 1, pp. 8-9.

⁹⁹ 37th Report of the Monitor dated September 3, 2021 at para. 79; 38th Report of the Monitor dated November 8, 2021 at para. 57.

¹⁰⁰ *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 86, *CBOA*, Tab 20.

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



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SCHEDULE "A" LIST OF AUTHORITIES

CASE LAW

1. *Belo-Alves v. Canada (A.G.)*, 2014 FC 1100
2. *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33
3. *Chrysler Canada Ltd. v. Canada (Competition Tribunal)*, 1992 CarswellNat 4 (S.C.C.)
4. *Crystallex International Corp., Re*, 2020 CarswellOnt 19896 (S.C.J.)
5. *Friesen v. Canada*, 1995 CanLII 62 (S.C.C.)
6. *Groupe Dynamite inc. c. Deloitte Restructuring inc.*, 2020 QCCS 3086
7. *Hogue v. Montreal Trust Co. of Canada*, 1997 NSCA 153, *leave to appeal refused*, 1998 CarswellNS 653 (S.C.C.)
8. *Jackson v. Canadian National Railway*, 2013 ABCA 440
9. *L.M.P. v. L.S.*, 2011 SCC 64
10. *Ontario Securities Commission v. Bridging Finance*, 2021 ONSC 4347
11. *Prebushewski v. Dodge City Auto (1984) Ltd.*, 2005 SCC 28
12. *R v. Adams*, 1995 CarswellAlta 733 (S.C.C.)
13. *Re Canwest Global Communications Corp.*, 2009 CarswellOnt 6184 (S.C.J.)
14. *Re Danier Leather Inc.*, 2016 ONSC 1044
15. *Re Nortel Networks*, [2009] O.J. No. 3169 (S.C.J.)
16. *Re Nortel Networks Corporation et al*, 2014 ONSC 4777, *affirmed on appeal*, 2015 ONCA 681, *leave to appeal refused*, 2016 CarswellOnt 7202 (S.C.C.)
17. *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27
18. *Re Stelco Inc.*, [2006] O.J. No. 275 (S.C.J.)
19. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41
20. *Sherman Estate v. Donovan*, 2021 SCC 25
21. *Sunrise/Saskatoon Apartments Limited Partnership, Re*, 2017 BCSC
22. *Tan-Jen Ltd. v. Di Pede*, 2017 ONSC 6800
23. *Tepper Holdings Inc., Re*, 2011 NBQB 211
24. *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63

25. *The Catalyst Capital Group Inc. v. VimpelCom Ltd.*, 2019 ONCA 354, leave to appeal refused, 2019 CarswellOnt 18743 (S.C.C.)
26. *U.S. Steel Canada Inc, Re*, 2016 ONSC 3106
27. *White Birch Paper Holding Company (Arrangement relatif à)*, 2010 QCCS 764

SECONDARY SOURCES

28. Lloyd W Houlden, Geoffrey B Morawetz & Dr Janis P Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed (Toronto: Thomson Reuters Canada, 2009, loose-leaf), Companies' Creditors Arrangement Act
29. Denis Ferland, "The Evolving Role of the Monitor, Confidential Information and the Monitor's Cross-examination, a Quebec Perspective" (2011) Annual Rev of Insolvency Law 17
30. Ruth Sullivan, *Statutory Interpretation*, 3rd ed (Irwin Law, 2016)
31. Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Lexis, 2014)
32. Canada, Parliament, Debates of the Senate, 38th Parl, 1st Sess, Vol 142, No 100 (25 November 2005)
33. Order Fixing September 18, 2009 as the Date of the Coming into Force of Certain Sections of the Acts, Proclamation, 19 August 2009, SI/2009-68, (2009) C Gaz II, 1711, 1712

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY-LAWS

1. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 10(3)

Form of applications

10 (1) Applications under this Act shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.

Documents that must accompany initial application

- (2) An initial application must be accompanied by
- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
 - (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
 - (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

Publication ban

(3) The court may make an order prohibiting the release to the public of any cash-flow statement, or any part of a cash-flow statement, if it is satisfied that the release would unduly prejudice the debtor company and the making of the order would not unduly prejudice the company's creditors, but the court may, in the order, direct that the cash-flow statement or any part of it be made available to any person specified in the order on any terms or conditions that the court considers appropriate.

2. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 11.02

Stays, etc. – initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Schedule "C"

Defined Terms Index

Defined Term	Definition
16th DIP Credit Agreement Amendment	Agreement between Crystallex and the DIP Lender providing for a further extension and amendment of the DIP Credit Agreement
2014 CCAA Order	Order of Mr. Justice Newbould approving the Net Arbitration Proceeds Transfer Agreement and sealing the CVR Amounts transferred pursuant thereto
2020 Bonds	PDVSA bonds due in 2020 that are secured by a 50.1% interest in PDVSA's CITGO Holding shares
2020 Bondholders	Holders of the 2020 Bonds, who are in competition with Crystallex for CITGO
Ad Hoc Committee	Ad hoc committee of the holders of the Company's 9.37% Unsecured Notes
Amended Settlement Agreement	Amended and Restated Settlement Agreement dated September 10, 2018 and approved by an Order of Justice Hainey on September 17, 2018
Award	The award of USD \$1.202 billion, plus interest, rendered on April 4, 2016 by the World Bank's International Centre for the Settlement of Investment Disputes against the government of Venezuela in connection with Venezuela's expropriation from Crystallex of its rights in respect of the Las Cristinas gold mine
Cash Flow Forecasts	The Company's forecasts of future cash flows
Cash Flow Variances	The Company's statements of actual receipts and disbursements compared to forecasted amounts
CCAA Proceeding	The <i>Companies' Creditors Arrangement Act</i> proceedings in respect of Crystallex, bearing Court File No. CV-11-9532-00CL
CITGO	CITGO Petroleum Corp., an American oil company and Venezuela's largest overseas asset, valued at billions of dollars
CITGO Litigation	Enforcement proceedings, including the Sale Process for the PDVH Shares, taking place in the Delaware Court
Company	Crystallex International Corporation
Confidential Explanatory Notes	Explanatory notes to the cash flows in the Monitor's Reports concerning deferred fees owed to the Company's Venezuelan advisors
CRA	Canada Revenue Agency
Cross-Motion	Cross-Motion brought by the Ad Hoc Committee requesting disclosure of certain of Crystallex's confidential financial information and the unsealing of the CVR Amounts

Defined Term	Definition
Crystallex	Crystallex International Corporation
CVR	Contingent Value Rights, also referred to as "lender additional compensation", which are prescribed by the Company's DIP Credit Agreement and Court approved. The CVRs entitle the holders to a percentage share in the proceeds of the Award payable after the proven claims of the Company's unsecured creditors, including the Ad Hoc Committee
CVR Amounts	The amounts of the CVRs transferred to Mr. Fung and Mr. Oppenheimer pursuant to the Net Arbitration Proceeds Transfer Agreement
Delaware Court	United States District Court for the District of Delaware
Delaware Sales Procedures Order	Opinion and corresponding order of Judge Stark of the Delaware Court dated January 14, 2021 establishing some of the procedures that would be followed in conducting a sale of the PDVH Shares
DIP Credit Agreement	Crystallex's debtor-in-possession credit agreement
DIP Lender	Tenor Special Situation Fund I, L.P
DIP Loan	Debtor-in-possession loan to Crystallex approved pursuant to the DIP Order
DIP Order	Order of Justice Newbould dated April 16, 2012 approving a debtor-in-possession loan to the Company and: (i) a charge on the property of Crystallex to secure all principal and interest obligations under the DIP Credit Agreement and related documents; and (ii) a charge on the property of Crystallex to secure certain contingent value rights earned by the DIP Lender under the DIP Credit Agreement
Examiner Motion	Motion filed on July 26, 2021 by Mr. Adolfo Adrianza, one of the Company's shareholders, in the US Bankruptcy Court seeking the appointment of an examiner and independent counsel for the shareholders, which was heard by the US Bankruptcy Court on August 20, 2021
Gibson Dunn	Gibson, Dunn & Crutcher LLP, Crystallex's U.S. enforcement counsel
Guaido Government	The self-appointed National Assembly that recognizes Juan Guaido as the Interim President
Initial Order	Order of Justice Newbould made December 23, 2011 granting Crystallex protection from its creditors under the <i>Companies' Creditors Arrangement Act</i>
Initial Payment	Payment made by Venezuela to Crystallex pursuant to the Amended Settlement Agreement consisting of securities and cash with a combined market value equal to U.S.\$425,000,000
Initial Payment Securities	Securities paid by Venezuela to Crystallex as part of the Initial Payment

Defined Term	Definition
Judgment	Judgment of the United States Federal Court for the District of Columbia dated March 25, 2017 in the amount of U.S.\$1.4 billion, confirming the Award
June 23 Sealing Motion	Crystallex's sealing motion that was originally scheduled to be heard on June 23, 2021 seeking to seal certain of its financial and strategic information
KERP	Key Employee Retention Plan
Monitor	Ernst & Young Inc., in its capacity as Court-appointed Monitor of Crystallex
Notes	The \$100 million principal amount of unsecured 9.375% notes due December 2011, held by the Ad Hoc Committee
November Stay Extension Motion	The motion presently before this Court
OFAC	U.S. Department of Treasury's Office of Foreign Assets Control, which administers and enforces economic and trade sanctions
OFAC Decision Default	The Event of Default under section 8.1(y) of the DIP Credit Agreement arising from the OFAC September 10, 2021 decision to deny Crystallex's license application
PDVH	PDV Holding, Inc.
PDVH Shares	Shares of PDV Holding, Inc.
PDVSA	Petroleos de Venezuela, S.A., the parent company of PDVH
Proposed Sales Process Order	Proposed order submitted by the Special Master on August 9, 2021 regarding, among other things, the Sales Process
RavenSource	Publicly traded RavenSource Fund. Stornoway Portfolio Management Inc. is the Investment Manger of RavenSource
Sales Process	Sales process for the PDVH Shares
Sales Process Answering Brief	Venezuela's answering brief on the Sales Process Motion filed in July 2020
Sanctions	Sanctions imposed by the United States in respect of Venezuela
Settlement Agreement	Settlement agreement concluded between Crystallex and Venezuela in November 2017 and approved by Order of Justice Hainey on November 24, 2017
Special Master	Robert B. Pincus, special master appointed on April 14, 2021 to oversee the Sales Process
Special Master Appointment Order	Order of Judge Stark of the Delaware Court made May 27, 2021 outlining the Special Master's duties, including the requirement to oversee the execution of a protective order to ensure confidential information exchanged during the Special Master's tenure is properly

Defined Term	Definition
	protected from disclosure and to ascertain the total amount outstanding in respect of the Judgment
Special Master Confidentiality Order	Order of Justice Stark dated July 6, 2021 in connection with the Sales Process that permitted Crystallex to designate to the Special Master its most sensitive financial information as "highly confidential"
Special Master's Report	Report submitted by the Special Master on August 9, 2021 concerning the Proposed Sales Process Order
Statement of Interest	Statement of Interest filed on July 16, 2020 by the Department of Justice, on behalf of the U.S. government under the Trump Administration in the CITGO Litigation urging the Delaware Court not to authorize the sale of the PDVH Shares
Strategic Information	Crystallex's strategic information concerning, among other things, its monetization and enforcement strategy
Stay Extension	The requested extension of the Stay Period from November 18, 2021 to November 18, 2022
Tax Advisors	Leading Canadian accounting and legal tax professionals engaged by Crystallex as required pursuant to the DIP Credit Agreement
Tax Filing	The filing by Crystallex of its tax returns in respect of the fiscal year 2019 on August 7, 2021
Third Circuit Decision	Decision of the United States Court of Appeals for the Third Circuit dated July 2019, affirming the Writ Order finding that PDVSA was an alter ego of Venezuela and authorizing the Writ
US Bankruptcy Court	United States Bankruptcy Court
US Disclosure Order	Memorandum order of Judge Stark dated September 8, 2021, denying the sealing requests of the Venezuela parties and Crystallex
Venezuela's Sealing Request	Filing in the Delaware Court on August 20, 2021 made by the Venezuela parties in support of their request to seal portions of the Proposed Sales Process Order and Special Master's Report
Writ	The writ of attachment of PDVSA's shares in its U.S. subsidiary PDVH
Writ Order	Orders declaring that PDVSA is the alter ego of Venezuela

Schedule "D"

Thirty-Fifth Report of the Monitor

Location	Text
Para. 47	The balance of the Applicant's cash and cash equivalents as at September 30, 2020 was approximately \$107.3 million, which was \$0.9 million lower than forecast. The unfavourable variance is primarily due to higher than forecast Arbitration and CCAA costs. The Applicant estimates that [REDACTED] North American professional fees of approximately \$2.9 million, [REDACTED] [REDACTED] were outstanding as at September 30, 2021.
Para. 52	The Cash Flow Statement contains Management's assumption that the Applicant will not receive any payments from Venezuela during the Period. In addition, Management assumes that the Applicant will not make any payments in respect of the DIP Credit Agreement even if the DIP Credit Agreement matures during the Period. The Applicant assumes that outstanding professional fees, [REDACTED], will total approximately \$11.7 million as at May 31, 2021. The Applicant projects that it will have the ability to sustain its operations through the Proposed Stay Period to advance all necessary strategic initiatives related to asset preservation and enforcement strategies in connection with the Award.
Appendix B Explanatory Note 3	The unfavourable variance in Arbitration costs is mainly due to higher than forecast payments to US counsel to the Applicant. The Applicant estimates that accrued and outstanding accounts payable with respect to Arbitration Costs as of September 30, 2020, [REDACTED], are approximately \$1.8 million. [REDACTED] [REDACTED] [REDACTED]
Appendix C Explanatory Note 7	Arbitration Costs relate to the legal services for pursuing and enforcing the Applicant's Arbitration Award against Venezuela and engaging in settlement negotiations. The Cash flow Statement reflects a payment of \$8.0 million during the Period. Approximately \$1.8 million Arbitration Costs, [REDACTED] are projected to be outstanding at the end of the Period. [REDACTED] [REDACTED] [REDACTED]

Thirty-Sixth Report of the Monitor

Location	Text
Para. 54	The balance of the Applicant's cash and cash equivalents as at March 31, 2021 was approximately \$102.1 million, which was \$4.0 million higher than forecast.

	The favourable variance is primarily due to lower than forecast Arbitration and CCAA costs. The Applicant estimates that [REDACTED] North American professional fees of approximately \$2.6 million, [REDACTED] [REDACTED] were outstanding as at September 30, 2021.
Para. 59	The Cash Flow Statement contains Management's assumption that the Applicant will not receive any payments from Venezuela during the Period. In addition, Management assumes that the Applicant will not make any payments in respect of the DIP Credit Agreement even if the DIP Credit Agreement matures during the Period. [REDACTED] [REDACTED] The Applicant projects that it will have the ability to sustain its operations through the Proposed Stay Period to advance all necessary strategic initiatives related to asset preservation and enforcement strategies in connection with the Award.
Appendix B Explanatory Note 4	The favourable variance in Arbitration costs is mainly due to lower than forecast professional fees incurred during the period. The Applicant estimates that accrued and outstanding accounts payable with respect to Arbitration Costs as of March 31, 2021, [REDACTED] [REDACTED] are approximately \$1.9 million. [REDACTED] [REDACTED]
Appendix C Explanatory Note 7	Arbitration Costs relate to the legal services for pursuing and enforcing the Applicant's Arbitration Award against Venezuela and engaging in settlement negotiations. [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Thirty-Eighth Report of the Monitor

Location	Text
Para. 18	The balance of the Applicant's cash and cash equivalents as at September 30, 2021 was approximately \$ 95.2 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Para. 21	The 2021-2022 Cash Flow Projection contains Management's Assumption that the Applicant will not receive any payments from Venezuela during the Period.

	<p>In addition, Management assumes that the Applicant will not make any payments in respect of the DIP Credit Agreement even if the DIP Credit Agreement matures during the Period. [REDACTED]</p> <p>[REDACTED]</p> <p>The Applicant projects that it will have the ability to sustain its operations through the Proposed Stay Period to advance all necessary strategic initiatives related to asset preservation and enforcement strategies in connection with the Award.</p>
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**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 CRYSTALLEX INTERNATIONAL CORPORATION**
Applicant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANT
CRYSTALLEX INTERNATIONAL CORPORATION
RE: STAY EXTENSION AND SEALING OF
INFORMATION**

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