



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-11-9532-00CL

DATE: December 12th 2022

NO. ON LIST: 4

TITLE OF PROCEEDING:

CRYSTALLEX INTERNATIONAL
CORP

BEFORE JUSTICE: CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|--------------------------------------|----------------------|
| RENNER, NATALIE | Crystallex International Corporation | nrenner@dwpv.com |
| SCHWILL, ROBIN | Crystallex International Corporation | rschwill@dwpv.com |
| LITTLE JOHN, MAUREEN | Crystallex International Corporation | mlittlejohn@dwpv.com |
| | | |

For Defendant, Respondent, Responding Party, Defence:

| Name of Person Appearing | Name of Party | Contact Info |
|-----------------------------------|---|--|
| CHADWICK, ROB ARMSTRONG, CHRIS | Computershare Trust Company of Canada, in its capacity as Trustee for the holders of 9.375% holders of unsecured Notes of Crystallex International Corporation and the Ad Hoc Committee of holders of the Notes | rchadwick@goodmans.ca carmstrong@goodmans.ca |
| PINOS, TIM KUKULOWICZ, SHAYNE | DIP Lender DIP Lender | tpinos@cassels.com skukulowicz@cassels.com |
| HAN, FIONA DENEGA, BRIAN | Court Appointed Monitor Court Appointed Monitor | Fiona.han@ca.ey.com Brian.m.denega@ca.ey.com |
| KONYUKHOVA, MARIA | Ernst & Young Inc., in its capacity as the Monitor | mkonyukhova@stikeman.com |

ENDORSEMENT OF JUSTICE CONWAY:

All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of Crystallex International Corporation dated December 8, 2022.

Crystallex bring this motion for (i) approval of the 17th DIP Credit Agreement Amendment; (ii) a 12 month extension of the Stay Period until December 12, 2023; and (iii) sealing of the Strategic Information and the Confidential Explanatory Note.

The motion is unopposed and is supported by the Monitor and the DIP Lender. Mr. Armstrong, for the Ad Hoc Committee, advised the court that his client is not opposing the relief sought although it would like to work with Crystallex to obtain some of the sealed information in a controlled, managed way.

With respect to the 17th DIP Credit Agreement Amendment, it extends the Maturity Date to coincide with the extension of the Stay Period. With respect to the extension of the Stay Period, I am satisfied that it is necessary and appropriate to allow Crystallex to pursue the enforcement steps for the Award in the U.S. This is particularly so because the commencement of the Sale Process for the PDVH Shares has now been approved by the Delaware Court, a step that Crystallex regards as a significant victory given that the court did not require Crystallex to have a special OFAC license authorizing the sale of the shares. Further, I am satisfied that Crystallex is acting in good faith and with due diligence. Crystallex has sufficient funds to meet its projected liquidity requirements during the Stay Extension period. No stakeholder will be prejudiced by the extension. I am granting the Stay Extension and approving the corresponding 17th DIP Credit Agreement Amendment.

The sealing order, while not contested, was the focus of today's hearing. Although the order is unopposed, that is not determinative. The court must be satisfied that sealing the information in question meets the principles set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 and *Sherman Estate v. Donovan*, 2021 SCC 25. The test requires that the disclosure of the information poses a serious risk to an important public interest, that the order sought is necessary to prevent this serious risk (and reasonably alternative measures will not prevent it); and as a matter of proportionality, the benefits of the sealing outweigh any negative effects.

This matter was before me in November 2021 and I granted a sealing order that was consistent with that granted in previous years. Nonetheless, I am viewing the matter afresh. The court must be satisfied that any sealing order continues to meet the principles set out above.

Crystallex is no longer seeking a sealing order with respect to the financial information that it sought to seal last year. Recent developments in the CITGO Litigation, including the Sale Process Commencement Decision and the Sale Procedures Order, have minimized the impact that disclosure of that information would have on Crystallex's enforcement efforts.

Crystallex is only seeking a sealing order for the Strategic Information and the Confidential Explanatory Note and any references to that information in the Monitor's Report, the November Fung Affidavit, and the confidential version of Crystallex's factum.

I carefully reviewed with counsel the need for a sealing order with respect to this information. I have reviewed the unredacted materials to satisfy myself that a sealing order is warranted. Having done so, I am satisfied that the sealing order should be granted. The public interest element is met – there is a public interest in CCAA proceedings that enable a debtor to restructure and maximize the value of its assets and creditor recoveries:

see *Re Nortel Networks*, [2009] O.J. No. 3169, at para. 29; *Urbancorp Cumberland 1 GP Inc. (Re)*, 2020 ONSC 7920, at para. 24. In addition, there is a public interest in not placing a CCAA debtor at a tactical disadvantage in its litigation: *Cash Store Financial Services Inc.*, 2021 ONSC 7143, at para. 19 and 25.

The Strategic Information pertains to how Crystallex is trying to enforce the Award. This is the sole asset of the Company and the only source of recovery for its stakeholders. The Strategic Information is critical to Crystallex's enforcement and recovery efforts and any public disclosure of that information could seriously compromise those objectives. The information to be sealed is focused and limited – only specific information has been redacted. I note that Crystallex continues to make this information available to stakeholders if they sign NDAs. The benefits of sealing (and keeping this information out of the hands of those who can compromise the enforcement efforts) outweigh any negative effects.

With respect to the Confidential Explanatory Note, it also meets the *Sierra Club/Sherman Estates* test. I am satisfied that it engages a recognized public interest, the redaction is very limited, and the proportionality element is met.

I required counsel to amend the Order to clarify some of its terms. They have now done so. Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

Counsel for Crystallex is directed to file a hard copy of the unredacted version of the Monitor's report, the motion materials, and the Factum with the court office, in a sealed envelope with a copy of this Endorsement and the signed order.

A handwritten signature in blue ink, appearing to read "Conway".