TAB F
Exhibit F - February 6, 2023 Adrianza Objection

This is Exhibit "F" referred to in the Affidavit of Robert Fung sworn August 9, 2023.

Commissioner for Taking Affidavits (or as may be)

Alexander Gregory Barnes, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 28, 2024.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re	Chapter 15
CRYSTALLEX INTERNATIONAL CORP.	**Case No. 11-14074 (LSS)**
Debtor in a Foreign Proceeding.	Hearing Date: February 15, 2023, at 10:00 a.m. (ET) Objection Deadline: February 8, 2023, at 4:00 p.m. (ET) Re: Docket No. 379

OBJECTION TO THE FOREIGN REPRESENTATIVE'S MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE CONTINUED SEALING OF CERTAIN CONFIDENTIAL INFORMATION

Adelso Adrianza, the Movant, a shareholder of the Debtor, Pro Se and on behalf of similarly situated U.S. Shareholders respectfully submits this objection (the "Objection") to the Foreign Representative's request for relief in the *Motion For Entry Of An Order Authorizing The Continued Sealing Of Certain Confidential Information* (D.I. No. 392, the "Motion For Relief II ").[1] In support of the Objection, the Movant respectfully represents as follows.

PRELIMINARY STATEMENT

1. The Debtor's BOD/DIP has pursued and achieved litigation advantage by means of prolific use of secrecy through court document sealing and redaction. This has been justified on the risk that the release of such information could hinder the Debtor's efforts to pursue and obtain, first, compensation for the expropriation by the Venezuelan government, and second, its judgement collection. This "legal" strategy has had other intended consequences: unabated control over the CCAA bankruptcy proceeding to implement a loan-to-own scheme in collusion with the DIP Lender

[1] All capitalized terms used but not defined herein have the meaning given to them in the D.I. Nos. 328, 340, 357, 361 and 364).

(the Colluding Parties). The self-enrichment objective of the scheme has come at a great cost to the Estate and its Shareholders, its residual owners, through the misappropriation, misuse, waste and hiding of Estate property.

2. The Foreign Representative's Motion For Relief II is a rehash of previous attempts to execute an end run around controlling law. The resilience and the approach are noteworthy. The approach was a sort of theater of the absurd in three acts. First act: the DE District Court declined to approve a motion seeking approval on the wholesale sealing and redaction approved by the CCAA Court up to then. Second act: when the CCAA Court declined to approved continued sealing and redaction, the decision was appealed to the ONCA, which affirmed it. Third Act: A new judge presiding over the case re-approved the case document sealing and redaction; reversing the same court and the appellate court based on the same facts and law.

3. The much-hyped risks of endangering the arbitration award and its collection without the prolific sealing and redaction turned out to be whimpers, not bangs, as the Debtor was required to make sealed and redacted case documents public. One notable example here is the DIP financing agreement (D.I. No. 97), which was unsealed years later, after the harm to the Estate and the Shareholders had been caused. Other documents through which the Colluding Parties effectuated the creeping expropriation of the Estate's 65% share of the NAP down to 9%, such as the NAP Transfer Agreement between the Colluding Parties (D.I. No.161), the Additional Financing Orders and other related documents (D.I. No. 131, 141, 168, 169), remain sealed to this day despite their intent and effect being public information. For example, the NAP Transfer Agreement between the Colluding Parties provides $100 million in compensation to two legacy BOD members after they agreed to approve the additional financing transactions that resulted in the Estate's share of the NAP being diluted from 65% to 9%.

4. The orders issued by the DE District Court and the ONCA regarding documents

sealing, and redaction are controlling decisions as long as they are not reversed by the same court after a hearing to consider the merits of a request to seal specific case documents. Therefore, since the law and the bases for the current motion to seal and redact case documents remain the same, there are no grounds for this Court to approve it.

JURISDICTION

5. This Court has authority to consider the Objection pursuant to 28 U.S.C. § 157(b) and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding under 28 U.S.C. § 157(b), and a non-core proceeding pursuant to 28 U.S.C. § 157(c). The Court may enter a final order consistent with Article III of the United States Constitution in core proceedings under 28 U.S.C. § 157(b) and may also do so in non-core proceedings under § 157(c) with consent of the parties. The Movant has respectfully withheld such consent. Venue is proper in this District and Court pursuant to 28 U.S.C. § 1410. The statutory predicates for the relief requested herein are the Bankruptcy Code (the Code) §§ 105(a), 107, 1501, 1506, 1507 and 1522), and Rule 9014 of the Federal Rules of Bankruptcy Procedure.

LEGAL AND FACTUAL GROUNDS FOR OPPOSITION

The Delaware District Court Decision

6. The Delaware District Court (the "DEDC") denied the motion by the Foreign Representative to seal and redact documents in the Arbitration Award Judgement Collection case in no uncertain terms:

> The Court further believes that the public should have access to all information in the Proposed Order and Report. Crystallex brought its dispute with the Republic in a court of law, which is funded by the public and operates for the public's benefit. Maintaining the Court's integrity in the eyes of the public is of paramount importance. See, e.g. , Littlejohn v. BIC Corp. , 851 F.2d 673,678 (3d Cir. 1988) ("The public's exercise of its common law access right in civil cases promotes public confidence in the judicial system by enhancing testimonial trustworthiness and the quality of justice dispensed by the court."); see also Leucadia, Inc. v.

> Applied Extrusion Techs., Inc., 998 F.2d 157, 161 (3d Cir. 1993) ("[T]he very openness of the process should provide the public with a more complete understanding of the judicial system and a better perception of its fairness.") (internal quotation marks omitted). Accordingly, the strong presumption is that court filings - especially those necessary to and affecting the Court's exercise of judicial power - will be available to the public. See, e.g., LEAP Sys., Inc. v. 8 Case 1:17-mc-00151-LPS Document 337 Filed 09/08/21 Page 9 of 11 PageID #: 8852 MoneyTrax, Inc., 638 F.3d 216, 220 (3d Cir. 2011) ("[A] strong presumption in favor of accessibility attaches to almost all documents created in the course of civil proceedings.") (internal quotation marks omitted).
>
> Crystallex seeks to use the Court's mechanisms to collect a judgment of the U.S. courts. Yet Crystallex attempts to hide relevant information, on the purported bases that disclosure will cause Crystallex competitive harm (vis-a-vis other creditors of the Venezuela Parties), that disclosure may harm certain third parties, and that disclosure will offend "principles of comity and respect for parallel foreign judicial proceedings" (because Canadian bankruptcy courts have sealed the information at issue). (See D.I. 312 at 4 & n.4) The Court does not find those countervailing interests to be "compelling" or sufficient to justify the sealing Crystallex seeks. See In re Avandia Mktg. , Sales Pracs. & Prods. Liab. Litig. , 924 F.3d 662,672 (3d Cir. 2019). Ultimately, Crystallex has not met its burden to "overcome the presumption of access to show that the interest in secrecy outweighs the presumption." Bank of Am. Nat'! Tr. & Sav. Ass 'n v. Hotel Rittenhouse Assocs., 800 F.2d 339, 344 (3d Cir. 1986). The public's interest in disclosure of information that directly relates to a component of the Special Master's role far outweighs Crystallex's private interests.
>
> Accordingly, IT IS HEREBY ORDERED that: (i) the Venezuela Parties' motion to maintain portions of the Proposed Order and Report under seal (D.I. 313) is DENIED, and (ii) Crystallex's request to maintain redactions to paragraphs 49 and 50 of the Report (D.I. 312) is REJECTED.[2]
>
> [Emphasis Added.]

The Ontario Court of Appeal Decision

7. When Crystallex sought an extension of its initial order and requested that certain financial information in the Monitor's Thirty-Third Report be sealed, the Trustee for the Noteholders opposed the sealing order sought by the Debtor. The Monitor did not support the Debtor's request and the Court held that the *Sierra Club* test was not satisfied.[3] The Court concluded that the request did "not provide detailed or compelling reasons about how this information, if disclosed, could be used to

[2] Crystallex International Corporation v Bolivarian Republic of Venezuela, dedce-17-00151 0337.0.
[3] Sierra Club of Canada v. Canada (Ministry of Finance), 2002 SCC 41, [2002] 2 S.CR. 522.

the detriment of Crystallex or any details whatsoever as to the feared consequences of its disclosure to the public". And that the evidence was "highly speculative and [did] not specify any incremental risk that Crystallex may suffer from the disclosure of this information over and above the risk it is already exposed to."

8. The Debtor and the DIP Lender sough leave to appeal argumenting that the Court had made a number of errors, including a) erring in interpreting and applying the *Sierra Club* test, b) in failing to apply s. 10(3) of the CCAA, and c) in relying on the Monitor's submissions as to whether the test for a sealing order had been met. In their submission, the motion judge's order is inconsistent with prior sealing orders in this proceeding, as well as established practice in Ontario. Section 10(3) states:

> 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.

9. The ONCA affirmed the CCAA Court's decision to deny the continued sealing and redaction of case documents based on the controlling precedent set by the SCC in *Sierra Club* and its standard for granting leave to appeal as follows:

> [11] Having reviewed the extensive materials filed on this leave motion, we are not satisfied that the proposed appeal is prima facie meritorious or that the case is of significance to the practice. Crystallex and Tenor seek to challenge a discretionary order of the motion judge, who as the supervising judge is intimately familiar with this CCAA proceeding. The motion judge applied the well-established Sierra Club test in light of the evidence before him. In our view, he did not give improper consideration or weight to the Monitor's views. Nor do we see any other basis on which to interfere with the motion judge's order.
>
> [12] In light of our view that the first two prongs of the leave test are not satisfied, we refuse leave. Costs, to be shared equally by Crystallex and Tenor, are fixed at $1,000.

[Emphasis Added.]

10. Following the passing of the presiding judge and the appointment of his replacement, the Debtor and the DIP Lender sought and obtained an order to reinstate the sealing, redaction and access to the purported confidential financial information. In granting the order, the Court concluded as follows:

> 6. The Monitor makes no recommendations about the requested sealing order as it is a legal matter for me to determine. However, it notes that the Noteholders have been actively participating in the company's CCAA proceedings even with the sealing that has been in place over the years. It also notes that the Committee's counsel has signed a non-disclosure agreement and can obtain any of this information from the company. The Committee can also have access to this information if it signs an NDA.
>
> 16. I have considered the test for sealing in Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 and Sherman Estate v. Donovan, 2021 SCC 25. In my view, the sealing of this information meets the test. There is serious risk to an important public interest if this information is publicly disclosed. Crystallex is engaged in intensive protracted enforcement efforts to seek enforcement of a huge award, all for the benefit of its stakeholders in this CCAA proceeding. The information in question is commercially sensitive, is related directly to these enforcement efforts, and could seriously compromise Crystallex's position in the pursuit of those efforts. As noted by Chief Justice Morawetz in Cash Store Financial Services Inc., 2021 ONSC 7143, at para. 19 and 25, there is a public interest in not placing a CCAA debtor at a tactical disadvantage in its litigation. That applies with equal force here.
>
> 17. I have considered the probability and magnitude of the potential harm. This is the one avenue of recovery for Crystallex's stakeholders. The harm in jeopardizing that recovery effort is self-evident.
>
> 22. Finally, I am not prepared to unseal the CVR information with respect to Messrs. Fung and Oppenheimer. This information has been sealed for years. There is no compelling reason to unseal them now and far more compelling evidence that their lives could be in danger should the amounts now become public. That would in turn obviously disadvantage the company. The Committee's cross-motion is dismissed. [4]
>
> [Emphasis Added.]

The CCAA Court Decision and Cognitive Dissonance

[4] See E&Y Case Docket: The endorsement of the Honourable Justice Conway - 18 Nov 2021. (https://documentcentre.ey.com/#/detail-engmt?eid=166).

11. As indicated herein above, the bases for the latter CCAA Court decision were the same as those considered by the previous presiding judge and the ONCA; and on which they reached an opposite decision. There is a latent cognitive dissonance issue involved here. According to Wikipedia,

> In the field of psychology, cognitive dissonance is the perception of contradictory information, and the mental toll of it. Relevant items of information include a person's actions, feelings, ideas, beliefs, values, and things in the environment. Cognitive dissonance is typically experienced as psychological stress when persons participate in an action that goes against one or more of those things.[1] According to this theory, when two actions or ideas are not psychologically consistent with each other, people do all in their power to change them until they become consistent.

The dissonance is triggered by statements such as:

I. "There is serious risk to an important public interest if this information is publicly disclosed".

- The Monitor, the judge that had presided over the case for years and the ONCA adjudged the opposite based on the same facts and law.

II. "The harm in jeopardizing that recovery effort is self-evident".

- Is it? If so, how come it was not to the previous judge and the ONCA?

III. "There is no compelling reason to unseal them now and far more compelling evidence that their lives could be in danger should the amounts now become public."

- First, With U.S. citizens on the BOD and the Tenor, an American Company that controls the Debtor, dealing directly with the Venezuelan government and officials listed on the OFAC Sanctions List, to negotiate a settlement would breach the law. As a matter of fact, the BOD/DIP paid Venezuelan counsel $30 million to pursue the two failed settlement agreements, which resulted in a $450 million payment of which over $300 million are untradable Venezuelan bonds. Notably, the BOD/DIP incurred the expense without the previous knowledge of and authorization by the Court. Nonetheless, the Monitor and the court approved it on Mr. Fung's certification it was reasonable. Is still unclear what the payment was for and who received it, since no written agreement or other documentation supported it. Second, it would be grossly irresponsible and negligent to travel to

Venezuela under the circumstances. Messrs. Fung's and Mr. Oppenheimer's $100 million compensation is contingent upon the full collection and distribution of the arbitration award. And it is unlikely that Venezuelan kidnappers would accept IOUs. Cash is king in the kidnapping business.

12. No, the earth was not flat and inquisitive minds knew it, but nevertheless acquiesced to the dictum from an all-powerful institution that had a strong interest in believing it. And although the institution later on stopped saying the earth was flat, it avoided acknowledging it was round for as long as it could. The euphemism is not incidental. It connotes the essence of the secrecy in the instant case from its very outset and has a strong parallel to Goebel's proposition: repeat a lie often enough and people will believe it.

BASES OF THE OBJECTION

13. The Movant respectfully puts forward the following objections to the Foreign Representatives' Motion for Relief II:

I. The underlying reasons do not rise to the level required by binding precedent and constitutional precept and do not meet the burden to "overcome the presumption of access to show that the interest in secrecy outweighs the presumption",

II. If history is any guide, the relief requested is intended to delay and hinder the disclosure of actions and omissions that advance the interests of the Colluding parties at the expense of the Estate and the Shareholders.

I. The Bases For The Relief Requested Do Not Clear The High Bar Set By Binding Precedent

13. In *Avandia*, the 3rd. Circuit established that the applicant bears the burden of proving a "good cause" for the sealing order to issue, where good cause stands for specific proof "that disclosure will work a clearly defined and serious injury to the party seeking closure". Bad business practices, in the absence of other circumstances, do not overcome the presumption of the First Amendment Right

of Access mandate.[5] The Court set forth the statutory, precedential and constitutional predicates and limitations for this extra-ordinary relief:

> The proponent of the protective order shoulders "[t]he burden of justifying the confidentiality of each and every document sought to be" sealed.[5] (Id. [*Pansy*], 23 F.3d at 786-87). The District Court "must balance the requesting party's need for information against the injury that might result if uncontrolled disclosure is compelled." Id. at 787. The party seeking a protective order "over discovery material must demonstrate that 'good cause' exists for the order." Id. at 786 (quoting Fed. R. Civ. P. 26(c)); see also *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 37 (1984) (holding that the good cause requirement for protective orders does not violate the First Amendment). Good cause means "that disclosure will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity." *Pansy*, 23 F.3d at 786 (quoting *Publicker Indus.*, 733 F.2d at 1071). To that end, "[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not support a good cause showing." Id. (internal quotation marks omitted).[6]
>
> … The District Court "is best situated to determine what factors are relevant to" any given dispute.7 Id. The Court's analysis, however, "should always reflect a balancing of private versus public interests." Id. The District Court "should articulate on the record findings supporting its" decision to grant or deny a protective order. *Pansy*, 23 F.3d at 789.[7]
>
> Analytically distinct from the District Court's ability to protect discovery materials under Rule 26(c), the common law presumes that the public has a right of access to judicial materials. In both criminal and civil cases, a common law right of access attaches "to judicial proceedings and records." *In re Cendant Corp.*, 260 F.3d at 192. The common law right of access "antedates the Constitution." *Bank of Am.*, 800 F.2d at 343. The right of access "promotes public confidence in the judicial system by enhancing testimonial trustworthiness and the quality of justice dispensed by the court." *Littlejohn v. BJC Corp.*, 851 F.2d 673, 678 (3d Cir. 1988). Public observation facilitated by the right of access "diminishes possibilities for injustice, incompetence, perjury, and fraud." Id. Moreover, "the very openness of the process should provide the public with a more complete understanding of the judicial system and a better perception of its fairness.,, Id.[8]

II. The Motion For Relief Embodies The Continued Abuse Of The Bankruptcy Process In Pursuit Of Partisan Private Interests

14. The Motion and subsequent filings in this case (see D.I. Nos. 326, 340, 357, 361 and

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[5] *In Re: Avandia Marketing, Sales Practices and Products Liability Litigation*, Nos. 18-2259 & 18-2656.
[6] *Id.* Pp. 8-9.
[7] *Id.* Pp. 10-11
[8] *Id.* P. 11

364) enumerated with particularity several actions and omissions by the Colluding Parties undertaken under the prolific secrecy authorized by the CCAA Court to advance their self-interest at the expense of the Estate and the Shareholders. The following are a select few instances of the misdeed:

a. The filing of the CCAA petition to execute a loan-to-own scheme (*see* D.I. No. 328, para. 23-29),

b. The use of a structured dismissal / sub-rosa plan to distribute the Estate' s property (*see* para. 13-14 of the Movant's Opposition to the Foreign Representative's motion requesting additional relief, D.I. No. 379),

c. The BOD/DIP's inadequate representation of the Shareholders' rights and interests (*see* D.I. No. 328, para. 49-51 and No. 364 para. 35-36),

d. The limitations and the efforts by the BOD/DIP to negate the Shareholders the right to protect their interests (*see* D.I. No. 364 para. 28-34),

e. The lack of the adequate notice to the Shareholders (*see* para. 22(d) of the Movant's Opposition to the Foreign Representative's motion requesting additional relief, D.I. No. 379 and D.I. 20, para. 8),

f. The abandonment of the Nomura notes (*see* D.I. No. 328, para. 43-46),

g. The misappropriation, misuse, waste and hiding of Estate Property (*see* D.I. No. 328 para. 30-38).

CONCLUSION

For all the reasons set forth herein, the Movant respectfully requests that the Court deny the Motion for Relief II and grant such other and further relief as it deems just and proper.

Respectfully submitted,

Dated: February 4, 2023.
Newton, Massachusetts

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CERTIFICATE OF SERVICE

I, Adelso Adrianza, hereby certify that on this 4th. Day of February 2023, I caused copies of the Objection to *The Foreign Representatives' For Entry Of An Order Authorizing The Continued Sealing Of Certain Confidential Information* pursuant to 11 U.S.C. §§ 105(a), 1501, 1506, 1507, 1522, respectively, to be served on the parties listed below by courier or otherwise indicated:

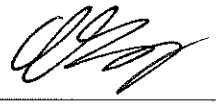
Via UPS Delivery:

Matthew Barry Lunn, Esq. Young, Conaway, Stargatt & Taylor
1000 West Street, Fl. 17, P.O. Box 391
Wilmington, DE 19899

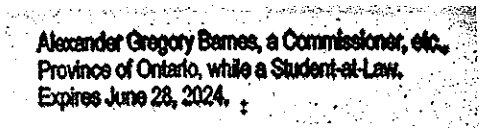
Adelso A. Adrianza

TAB G
Exhibit G - June 26, 2023 Chapter 15 Disclosure Order

This is Exhibit "G" referred to in the Affidavit of Robert Fung sworn August 9, 2023.



Commissioner for Taking Affidavits (or as may be)



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
Crystallex International Corporation	Case No. 11-14074 (LSS)
Debtor in a Foreign Proceeding.	**Re: Docket No. 392**

ORDER ON MOTION OF FOREIGN REPRESENTATIVE FOR ENTRY OF AN ORDER AUTHORIZING THE CONTINUED SEALING OF CERTAIN CONFIDENTIAL INFORMATION

For the reasons set forth on the record at the hearing held on February 15, 2023 and in my letter of even date, **IT IS HEREBY ORDERED THAT**:

1. The Motion of the Foreign Representative for Entry of an Order Authorizing the Continued Sealing of Certain Confidential Information (Dkt. No. 392) ("Motion") is granted in part and denied in part as set forth herein.

2. The Motion is GRANTED with respect to: (i) information that is the litigation strategy of the Debtor with respect to its pursuit of its judgment against Venezuela ("Strategic Information") and (ii) the amount of the contingent value rights that have been transferred from the DIP Lender to Mr. Fung and Mr. Oppenheimer ("CVR Information").

3. The Motion is DENIED as to any information that is not Strategic Information or CVR Information.

4. The Foreign Representative shall review each of the following filings: Docket Nos. 128-2, 132-1, 264, 264-5, 284-5, 299-5, 316-5, 383, 385, 387, 388 and 390 to ensure that the only information redacted in these documents is either CVR Information or Strategic Information. To the extent the redactions are broader than those categories, the Foreign

Representative must file revised versions of those documents containing only the permitted redactions.

5. The effectiveness of the above Paragraph 4 shall be suspended for 90 days for the reasons set forth in my letter of even date.

6. Consistent with my oral ruling, this Order is without prejudice to any further request that the CVR Information and/or the Strategic Information be unsealed at a further date.

7. This Court shall retain jurisdiction with respect to all matters relating to the interpretation and implementation of this Order.

Dated: June 26, 2023

Laurie Selber Silverstein
United States Bankruptcy Judge

TAB H
Exhibit H - June 26, 2023 Chapter 15 Disclosure Ruling

This is Exhibit "H" referred to in the Affidavit of Robert Fung sworn August 9, 2023.

Commissioner for Taking Affidavits (or as may be)

Alexander Gregory Barnes, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 28, 2024.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

Laurie Selber Silverstein
Chief Judge

824 N. Market Street
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June 26, 2023

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In re: Crystallex International Corporation – Case No. 11-14074 (Dkt. Nos. 379, 392)

Gentlemen,

As the parties know, on February 23, 2023, I heard argument on two motions filed by the Foreign Representative.: (i) Motion for Entry of an Order Recognizing and Enforcing Specified Provisions of the CCAA Thirteenth Extension and Seventeenth Amendment Order (Dkt. No. 379) ("Recognition Motion") and (ii) Motion of Foreign Representative for Entry of an Order Authorizing the Continued Sealing of Certain Confidential Information (Dkt. No. 392) ("Sealing Motion"). At the conclusion of the hearing, I ruled on both motions, but for the reasons stated on the record, orders were not entered immediately following the hearing. This letter addresses certain remaining issues.

I. Recognition Motion

Consistent with my previous order on similar requests, I granted the Recognition Motion to a limited extent with respect to the extension of the loan maturity date and the waiver of defaults. An appropriate order is being filed today to memorialize that ruling.

II. Sealing Motion

(i) The Hearing

At the conclusion of the February 15, 2023 hearing, I ruled that two categories of information could remain sealed at this time: (i) information regarding the amount of the contingent value rights that were transferred from the DIP Lender to the Mr. Fung and Mr. Oppenheimer ("CVR Information") and (ii) information that is the litigation strategy of the Debtor with respect to its pursuit of its judgment against Venezuela ("Strategic Information") (collectively, the "Approved Categories").

At the hearing, counsel for the Foreign Representatives acknowledged that some redactions went beyond the Approved Categories and could even include what is now public information (Feb. 23, 2023 Hr'g Tr. 29:13-31:6). Counsel explained that the redacted information was subject to certain orders entered in the CCAA proceedings (some as far back as 2012) and that, therefore, the Foreign Representative could be faced with competing and conflicting orders if I were to require that information to be made public. Further, the Foreign Representative argued that comity requires me to defer to the Canadian Court with respect to sealing documents that have been filed in this court. On the other hand, Mr. Adrianza argued that Judge Stark's decision in the *Crystallex* collection action leads to the conclusion that no information beyond the CVR information should be sealed.[1]

(ii) The Documents and the Law

I have spent significant time reviewing the Sealing Motion as well as considering the arguments made at the hearing. As I understand it, through the Sealing Motion, the Foreign Representative seeks permission to keep certain documents sealed, subject to the redacted versions now on file. There are two groups of redacted documents referenced in the Motion: those simultaneously filed in redacted form (i.e. Dkt. Nos. 383, 385, 387, 388 and 390) and previously redacted documents (Dkt. Nos. 128-2, 132-1, 264, 264-5, 284-5, 299-5 and 316-5) (collectively, the "Redacted Documents"). I attempted, with more of less success, to review and compare the Redacted Documents with the original, unredacted documents in order to determine whether the proposed redactions fell into the Approved Categories. It is clear to me after a review of the documents submitted in the hearing binders, considered in light of the arguments made at the hearing, that some of the redactions are not limited to the Approved Categories.[2]

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[1] Based on the safety concerns that the Foreign Representative identified, Mr. Adrianza agreed that the CVR Information could currently remain sealed. He argued, however, that all other information, including the Strategic Information, should be unsealed.

[2] It was not possible to determine if all of the redactions fell into the Approved Categories because even the sealed versions of certain documents were redacted. More generally, however, it appears that not all relevant documents were submitted to the court in order to do a comparison and I had trouble following the organization of the binders.

The two cases that the Foreign Representative relies on to support the requested redactions are both distinguishable. In *Accent Delight Intern. Ltd v. Sotheby's*, 394 F.Supp.3d 399 (S.D.N.Y. 2019), the district court ruled that because the matter was under advisement in a Swiss court, as a matter of international comity the Swiss court should have an opportunity to rule on the issue of sealing first. The district court permitted the document to be filed under seal temporarily in order to provide time for the Swiss court to rule. But, there is no indication of whether the district court would honor the Swiss court's determination if it permitted the document to be sealed. The district court also noted that its determination to permit the Swiss court to rule first was not without controversy as another court in the district had expressly rejected a comity argument.

In re Fairfield Sentry Ltd., No. 10 Civ 7311 (GBD) 2011 WL 4357421 (S.D.N.Y. Sept. 16, 2011) involved a recognition of a foreign main proceeding in the British Virgin Islands and a determination of Fairfield Sentry's center of main interest. Certain parties argued that the bankruptcy court should not recognize the BVI proceeding because the liquidator's applications and certain court orders were "cloaked in secrecy." On appeal, the district court rejected that argument, which was based on section 1506 of the Bankruptcy Code. The district court states that the BVI Court sealed certain applications and orders because they revealed litigation strategy and or information protected by the attorney/client privilege. The district court concluded that the sealing itself did not run afoul of a United States statutory or constitutional right even if the sealing might be broader than a United States court would permit, because "the mere fact of conflict between foreign law and U.S. law, absent other considerations, is insufficient to support the invocation of the public policy exception." *Id.* at * 9 (*citing Micron Tech. v. Qimonda AG*, 433 B.R. 547, 570 (E.D. Va. 2010)). Accordingly, the district court declined to use section 1506 as a basis to deny recognition of the BVI proceeding. This decision does not address the situation before this court, which is whether to require certain documents in a chapter 15 case to be filed on the public record.

Judge Stark's decision in *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, Misc. No. 17-151-LPS (D. Del. Sept. 8, 2021) appears more on point.[3] There, the court resolved multiple requests to file documents or information under seal. Judge Stark starts from the premise that court proceedings are public proceedings, therefore there is a strong presumption that court filings will be available to the public. He then addresses an argument that information which causes competitive harm should be redacted. Judge Stark writes:

> Crystallex seeks to use the Court's mechanisms to collect a judgment of the U.S. courts. Yet Crystallex attempts to hide relevant information, on the purported bases that disclosure will cause Crystallex competitive harm (vis-à-vis other creditors of the Venezuela Parties), that disclosure may harm certain third parties, and that disclosure will offend "principles of comity and respect for parallel foreign judicial proceedings" (because Canadian bankruptcy courts have sealed the information at issue). (*See* D.I. 312 at 4 & n.4) The Court does not find those countervailing

[3] I say "appears" because I was unable to access certain documents on the district court docket because they were filed under seal.

> interests to be "compelling" or sufficient to justify the sealing Crystallex seeks. *See In re Avandia Mktg., Sales Pracs. & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019). Ultimately, Crystallex has not met its burden to "overcome the presumption of access to show that the interest in secrecy outweighs the presumption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 344 (3d Cir. 1986). The public's interest in disclosure of information that directly relates to a component of the Special Master's role far outweighs Crystallex's private interests.

Of particular note, Judge Stark references Crystallex's arguments regarding comity and the fact that "Canadian bankruptcy courts have sealed the information at issue."

As applied here, I conclude that all information that is not within the Approved Categories should be available to the public. As in Crystallex's district court proceedings, there is not enough to justify sealing here. Crystallex has filed documents in this court seeking relief and so Crystallex must provide countervailing interests that warrant the sealing of information in its filings. As to the Approved Categories, I have determined that, at this time, there are such compelling reasons. But, as to anything beyond that, Crystallex has not met its burden. The only reason that the Foreign Representative maintains it must seal information not within the Applicable Categories is because he is subject to Canadian Court order. Consistent with Judge Stark's ruling, I conclude that is not enough.[4] The public interest (and the shareholders' interests) in matters before this court and that impact on their recoveries outweigh the Foreign Representative's private interests as to information other than that in the Approved Categories.

Nonetheless, I am not insensitive to the concern that my ruling will put the Foreign Representative in the position of determining how to respond to potentially conflicting orders. Accordingly, the effectiveness of my ruling will be held in abeyance for 90 days so that the Foreign Representative may have the opportunity to take any actions it believes are necessary before the Canadian Court. An order is being filed today to memorialize this ruling.

Very truly yours,

Laurie Selber Silverstein

LSS/cmb

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[4] I also note that certain of the orders entered in the CCAA proceedings are quite old (e.g. April 16, 2012, April 14, 2014) and the Canadian Court might determine that it is no longer necessary for the information in those documents to be sealed. My review of certain of the documents under seal revealed that much of the information is now in the public domain.

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

Crystallex International Corporation Applicant

Commercial List File No: CV-11-9532-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

AFFIDAVIT OF ROBERT FUNG
(Sworn August 9, 2023)

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TAB 3
Draft Order

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM JUSTICE CONWAY	**)** **)** **)**	THURSDAY, THE 17TH DAY OF AUGUST, 2023

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

ORDER

THIS MOTION, made by the Applicant, Crystallex International Corporation ("**Crystallex**" or the "**Company**"), proceeded by way of judicial videoconference via Zoom at Toronto, Ontario.

ON READING the Motion Record of Crystallex dated August 10, 2023 and the factum of Crystallex,

AND ON HEARING the submissions of counsel,

1. **THIS COURT ORDERS** that the documents listed in Schedule A to the Affidavit of Robert Fung sworn August 9, 2023 (the "**Fung Affidavit**"), which were previously sealed by Orders of this Court, shall be partially unsealed in accordance with the descriptions set out in Schedule A to the Fung Affidavit.

2. **THIS COURT ORDERS** that the Company shall prepare further copies of the documents referred to in paragraph 1 reflecting the partial unsealing detailed in Schedule A to the Fung Affidavit, which documents shall be filed with the Court and updated on the website maintained by the monitor, Ernst & Young Inc., in its capacity as monitor of the Company, for access by the public.

3. **THIS COURT ORDERS** that subject to the endorsement of this Court dated June 7, 2016, any party may apply to the Court on proper notice to all parties in interest to seek to vary the provisions of this Order and nothing in this Order shall be deemed to prejudice their rights to bring a motion to seek such variation, provided that for certainty, a moving party shall have the onus on such motion(s) to justify any variation(s) sought.

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, Tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make orders and to provide such assistance to the Applicant and to the Monitor, as an Officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

5. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including the Bankruptcy Court, for the recognition of this Order and for assistance in carrying out the terms of this Order.

_____

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER

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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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

MOTION RECORD
OF CRYSTALLEX INTERNATIONAL CORPORATION
(AUGUST 17, 2023)

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