

**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 NEVADA COPPER, INC.,  
NEVADA COPPER CORP., 0607792 B.C. LTD., LION IRON CORP.,  
NC FARMS LLC AND NC DITCH COMPANY LLC

APPLICATION OF NEVADA COPPER, INC.  
UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*

**FACTUM OF THE FOREIGN REPRESENTATIVE**  
**(Application for Recognition of Foreign Main Proceeding,**  
**returnable June 21, 2024)**

June 20, 2024

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Company LLC

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## PART I – NATURE OF THE APPLICATION

1. This factum is filed in support of an application by Nevada Copper, Inc. (the “**Applicant**”) as the foreign representative of itself, Nevada Copper Corp. (“**NCU**”), 0607792 B.C. Ltd. (“**0607 BC**”), Lion Iron Corp. (“**Lion Iron**”), NC Farms LLC (“**NC Farms**”) and NC Ditch Company LLC (“**NC Ditch**”) (collectively, “**Nevada Copper**”, or the “**Debtors**”). On June 10, 2024, the Debtors commenced cases (the “**Chapter 11 Cases**”) pursuant to chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) before the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”).

2. The Applicant seeks orders under sections 46 to 49 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for, among other things:

- (a) An Initial Recognition Order (Foreign Main Proceeding):
  - (i) abridging and validating the time for service;
  - (ii) declaring that the Applicant is the “foreign representative” of the Debtors as defined in section 45 of the CCAA;
  - (iii) declaring that the centre of main interest for each of the Debtors is the United States of America and recognizing the Chapter 11 Cases as a “foreign main proceeding” under Part IV of the CCAA; and
  - (iv) granting a stay of proceedings in respect of the Debtors and ordering the other mandatory relief set out in section 48(1) of the CCAA.
- (b) A Supplemental Order (Foreign Main Proceeding):
  - (i) recognizing and enforcing certain First Day Orders (as defined below) entered by the Bankruptcy Court;

- (ii) granting additional stays and protections in respect of the Debtors and their directors and officers consistent with the Model Supplemental Order in Ontario;
- (iii) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as information officer (in such capacity, the “**Information Officer**”) in these proceedings; and
- (iv) granting the DIP Charge and the Administration Charge (as defined below) against the Debtors’ property in Canada.

3. The Debtors commenced the Chapter 11 Cases in response to an acute, existential liquidity crisis. During their restructuring, they seek a sustainable, long-term solution to their operational and financial challenges in a manner that maximizes value for their creditors, employees and other stakeholders. This Court’s recognition of the Chapter 11 Cases is critical to those restructuring efforts.

4. The Canadian- and U.S.-incorporated Debtors collectively operate a deeply integrated mining business out of Nevada—their centres of main interest are all the United States. It is necessary and appropriate in these circumstances that this Court recognize the Chapter 11 Cases of each of the Debtors as foreign main proceedings and grant the related relief that the Applicant seeks in this Part IV application.

## **PART II – THE FACTS**

5. Nevada Copper is in the business of mining copper and other minerals and operating a processing plant that refines copper ore into copper concentrate. The mining operations focus on

the development of the Pumpkin Hollow project (the “**Project**”), a mining development located about 90 kilometers southeast of Reno, Nevada.<sup>1</sup>

6. The Project is an advanced-stage copper property that contains substantial reserves and resources, including not only copper, but gold, silver and iron magnetite. It consists primarily of two development projects: an underground mine and a pre-feasibility open pit project.<sup>2</sup>

7. Only two of the Debtors—the Applicant and NCU—are active and operational. NCU is a publicly traded holding company whose primary assets are linked to its interest in the Applicant: its wholly owned equity interest in the Applicant and an intercompany loan owing by it.<sup>3</sup> The Applicant, in turn, is an operating company that owns, develops and operates the Project.<sup>4</sup> The other four Debtors—0607 BC, Lion Iron, NC Farms and NC Ditch—are dormant shell companies with no material assets.<sup>5</sup>

#### **A. The Debtors Faced a Liquidity Crisis**

8. In April 2022, a primary ramp to planned ore stopes failed and required re-design and additional development to complete, delaying critical ore delivery and impacting operations at the Project. This, in turn, eliminated the Debtors’ only source of operating income at that time.

9. The Debtors worked diligently to restart and ramp up operations, engaging with key financing partners to negotiate a financing package that would provide enough liquidity to support the restart of the underground mine. These efforts led to the execution of definitive

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<sup>1</sup> Affidavit of Gregory J. Martin, sworn June 19, 2024 (“**Martin Affidavit**”), para 29, Application Record of the Foreign Representative (“**AR**”), Tab 2.

<sup>2</sup> Martin Affidavit, para 29.

<sup>3</sup> Martin Affidavit, paras 9 - 10.

<sup>4</sup> Martin Affidavit, para 9.

<sup>5</sup> Martin Affidavit, para 10.

agreements with key stakeholders on October 28, 2022, to provide a financing package that enabled the Debtors to restart and ramp up operations, which was supplemented in 2023 by additional financing agreements with the Debtors' major stakeholders.<sup>6</sup>

10. While the Debtors have made significant progress with their mine restart plan since that time and were eventually able to restart ore processing operations in October 2023, the Debtors have not yet been able to maintain continuous processing operations necessary to declare commercial production. This lack of production, in turn, has deprived the Applicant of operating revenue and has created a sizeable gap with their funding needs.<sup>7</sup>

11. In late 2023, as the desire of its existing stakeholders to fund its cash needs began to wane, the Debtors decided to pursue a marketing and sale process for an investment in or sale transaction in respect of their business, which was led by Citigroup Global Capital Markets.<sup>8</sup> While that marketing process resulted in some interest in the Debtors' business, the Debtors were ultimately unable to consummate a binding transaction that would address the Debtors' diminishing liquidity.<sup>9</sup> To preserve liquidity, the Debtors suspended most mining operations, with only limited activities being undertaken to protect the Debtors' assets as the Debtors pursue a sale of their business.<sup>10</sup>

12. In the absence of a sale agreement on a viable timeline, the Debtors determined that commencing formal insolvency proceedings was the only path forward in the circumstances.

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<sup>6</sup> Martin Affidavit, para 36.

<sup>7</sup> Martin Affidavit, para 12.

<sup>8</sup> Martin Affidavit, para 13.

<sup>9</sup> Martin Affidavit, para 13.

<sup>10</sup> Martin Affidavit, para 11.

**B. The Chapter 11 Cases**

13. As a result of their strained liquidity and the unsuccessful marketing process, the Debtors commenced the Chapter 11 Cases on June 10, 2024. At the same time, the Debtors filed several first day motions (the “**First Day Motions**”), following which the Bankruptcy Court entered interim and/or final orders. These orders provided relief that authorized the Debtors to, among other things, continue to operate their business in the ordinary course and to borrow under the DIP Facility (defined below).<sup>11</sup>

14. In order to provide the Debtors with sufficient liquidity to fund their day-to-day operations and professional costs during the Chapter 11 Cases and these Part IV recognition proceedings, the Debtors entered into a debtor-in-possession financing agreement (the “**DIP Credit Agreement**”) with two affiliates of Elliott Investment Management L.P. (together, the “**DIP Lender**”) on June 9, 2024.

15. The DIP Lender and the Debtors agreed on the principal terms and conditions of a senior secured superpriority debtor-in-possession term loan in the aggregate principal amount of \$60 million (the “**DIP Facility**”), comprising an initial new money term loan in the aggregate principal amount of \$20 million, and, subject to entry of a final order approving the DIP Facility, a new money delayed-draw term loan in the aggregate principal amount of \$40 million.<sup>12</sup> The DIP Facility is secured by all of the Debtors’ assets except for (i) the APA Collateral,<sup>13</sup> provided that upon the repayment of all obligations under the Advance Payment Agreement, the DIP

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<sup>11</sup> Martin Affidavit, para 14.

<sup>12</sup> A description of the terms of the DIP Facility and the facts and circumstances leading to entry of the DIP Facility can be found in the Declaration of Zul Jamal dated June 10, 2024, Martin Affidavit, Exhibit X, para 1. (the “**DIP Declaration**”).

<sup>13</sup> All capitalized terms that are not defined, have the meaning in the Martin Affidavit.

Facility shall automatically receive a first-priority lien on all collateral that currently constitutes APA Collateral; and (ii) pending entry of a final order by the Bankruptcy Court, liens on the proceeds of avoidance actions.<sup>14</sup> In addition, the DIP Charge is subordinate to the “Carve-Out” in favour of professionals retained in the Chapter 11 Cases, as explained in the U.S. Interim DIP Order (as defined below).<sup>15</sup>

16. The Debtors require access to borrowings under the DIP Facility to fund the costs of administering these Chapter 11 Cases, near-term working capital needs, and ongoing business operations. Specifically, based on the Debtors’ forecasts, the Debtors anticipate that they will be unable to generate sufficient levels of operating cash flow in the ordinary course of business to cover the projected restructuring costs of these Chapter 11 Cases without access to the DIP Facility. The DIP Facility will also allow for the Debtors to continue a sale process and facilitate obtaining the highest and best bid.

17. The DIP Credit Agreement establishes case milestones to ensure that the Chapter 11 Cases and these Part IV proceedings proceed at an appropriate and efficient pace, culminating in the consummation of a sale of the Debtors’ assets within approximately four months. One of these milestones is a requirement that this Court recognize the Chapter 11 Cases and the U.S. Interim DIP Order within 14 days following entry of the U.S. Interim DIP Order by the Bankruptcy Court.<sup>16</sup>

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<sup>14</sup> Martin Affidavit, para 93.

<sup>15</sup> Martin Affidavit, para 94.

<sup>16</sup> Martin Affidavit, para 96.



18. The Applicant believes that Canadian recognition of the Chapter 11 Cases of each of the Debtors, along with the additional relief that the Applicant seeks from this Court for the Debtors, including recognition of the U.S. Interim DIP Order and the other First Day Orders, is necessary to protect the Debtors' assets and business in Canada and will appropriately support the Chapter 11 Cases.

**C. Nevada Copper is a U.S. Business**

19. The Debtors' copper mining business is conducted almost exclusively at the Project, located near Yerington, Nevada. NCU conducts certain minor finance functions out of Canada but these are not significant activities in the context of the business as a whole.

*The Applicant, Lion Iron, NC Farms or NC Ditch are centred in Nevada*

20. Four of the six Debtors—the Applicant, Lion Iron, NC Farms and NC Ditch—are incorporated under the laws of, and have registered offices in, Nevada. Without limitation, they: (i) have substantially all of their assets in Nevada, and (ii) are not licensed or registered to conduct business in Canada, nor do they directly carry on any business in Canada.<sup>17</sup>

*NCU and 0607 BC are entirely dependent on the other Debtors*

21. NCU and 0607 BC are entirely dependent on the other Debtors and are unable to operate independently. They both are incorporated under the *Business Corporations Act* (British Columbia), maintain head offices in Vancouver, B.C. and, in the case of NCU, are publicly listed at the Toronto Stock Exchange. However, they have only minor ancillary business activities (all

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<sup>17</sup> Martin Affidavit, para 20.

of which revolve around NCI's business in Nevada) and cannot operate independently from the mining business in Nevada.<sup>18</sup>

22. In the case of 0607 BC, the company is a dormant shell corporation. It has no assets or business in Canada or elsewhere.<sup>19</sup>

23. In the case of NCU, without limitation:

- (a) NCU's principal material asset is its wholly owned equity interest in the Applicant, a Nevada-based company whose primary business is to own and operate the Project in Nevada;
- (b) NCU's other material asset is in the form of intercompany loans payable by NCI;
- (c) NCU does not have any independent business revenue streams or sources of income;
- (d) NCU has only three employees, all of whom are located in Canada and provide management and accounting functions jointly for all the Debtors;
- (e) The Debtors do not have any physical office, assets, operations or material business activities in British Columbia;
- (f) only one member of NCU's key management team resides in Canada;
- (g) other than accounting and finance, NCU does not employ personnel for any key management functions that it would require if NCU were to operate on a standalone basis; NCU is not staffed to operate independently of NCI; and
- (h) only two of NCU's current five directors reside in Canada; of the remaining directors, two reside in the United States and one resides in South Africa.<sup>20</sup>

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<sup>18</sup> Martin Affidavit, paras 10, 25.

<sup>19</sup> Martin Affidavit, para 25.

<sup>20</sup> Martin Affidavit, para 23.

### **PART III – THE ISSUES**

24. The issues to be determined in this motion are:
- (a) Are the Chapter 11 Cases of the Debtors “foreign main proceedings” under Part IV of the CCAA?
  - (b) If so, are the Debtors entitled to the relief sought in these proceedings?
  - (c) Is Ontario the proper jurisdiction for these recognition proceedings?
25. The Applicant submits that each of these issues should be answered in the affirmative.

### **PART IV – THE LAW**

#### **A. Each of the Debtors’ Chapter 11 Cases are Foreign Main Proceedings**

26. Part IV of the CCAA addresses the administration of cross-border insolvencies.<sup>21</sup> The foundational principles are comity and cooperation between courts of various jurisdictions; Canadian courts will respect “the overall thrust of foreign bankruptcy and insolvency legislation in any analysis, unless in substance generally it is so different from the bankruptcy and insolvency law of Canada or perhaps because the legal process that generates the foreign order diverges radically from the process here in Canada.”<sup>22</sup> Cooperation between courts under Part IV promotes the “fair and efficient administration of cross-border insolvencies” and the “protection and maximization of the value of the debtors’ property.”<sup>23</sup>

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<sup>21</sup> [CCAA, s. 44.](#)

<sup>22</sup> [Babcock & Wilcox Canada Ltd., Re, \(2000\) 5 BLR \(3d\) 75 \(Ont. Sup. Ct.\) at para 21.](#)

<sup>23</sup> [MtGox Co., Ltd \(Re\), 2014 ONSC 5811 at para 12.](#)

**(a) The Requirement for Recognition of a Foreign Proceeding are Met**

27. A foreign representative may apply to the court for recognition of a foreign proceeding.<sup>24</sup>

The CCAA sets out a series of technical requirement, all of which are met here.

28. Where a foreign representative, like the Applicant, applies to the Court for the recognition of a foreign proceeding, section 46(2) requires (a) a certified copy of the instrument that commenced the foreign proceeding, (b) a certified copy of the instrument authorizing the foreign representative to act in that capacity; and (c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

29. The Applicant has provided the certified copies required in (a) and (b) and evidence that the Chapter 11 Cases are the only foreign proceedings with respect to the Debtors.<sup>25</sup>

30. Section 47 of the CCAA provides that the Court shall make an order recognizing a foreign insolvency proceeding if the following two requirements are met:

- (a) the application for recognition of a foreign proceeding relates to a “foreign proceeding” within the meaning of the CCAA, as defined in section 45(1); and
- (b) the applicant is a “foreign representative” within the meaning of the CCAA in respect of that foreign proceeding.

31. Both criteria are met here. First, Canadian courts have consistently recognized insolvency proceedings commenced under the Bankruptcy Code to be a “foreign proceeding” for purposes of the CCAA.<sup>26</sup> Second, a foreign representative includes an entity that is authorized to act as

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<sup>24</sup> [CCAA, s. 46\(1\)](#).

<sup>25</sup> Affidavit of Melissa Losco, sworn June 20, 2024, Supplementary Application Record of the Foreign Representative, Exhibits A and B; Martin Affidavit, para 17.

<sup>26</sup> [Hollander Sleep Products, LLC et al., Re, 2019 ONSC 3238 at para 27](#); [Payless Holdings LLC \(Re\), 2017 ONSC 2242 at para 22](#); [Zochem Inc. \(Re\), 2016 ONSC 958 at para 20](#).

such in the foreign proceeding; here, the Bankruptcy Court entered an order declaring the Applicant as the foreign representative for purposes of the Chapter 11 Cases.<sup>27</sup>

***(b) Each of the Debtors' Chapter 11 Cases are Foreign Main Proceedings***

32. Each of the Debtors' Chapter 11 Cases are foreign main proceedings, because the COMI of each of the Debtors is in the United States. Section 45(1) of the CCAA defines "foreign main proceeding" as a foreign proceeding in a jurisdiction where the debtor company has its COMI. A "foreign non-main proceeding" is a foreign proceeding other than a foreign main proceeding.

33. The CCAA does not define what constitutes COMI; rather, it provides a presumption under section 45(2) that, absent evidence to the contrary, a debtor's COMI is presumed to be the location of its registered office. However, the presumption is rebuttable; COMI is a substantive, not technical, determination.<sup>28</sup>

34. A determination of a debtor's COMI will necessarily depend upon the particular facts and circumstances of each case. Canadian courts have accepted the following test for determining whether the statutory presumption of a debtor company's COMI has been rebutted:

In circumstances where it is necessary to go beyond the s. 45(2) registered office presumption [...] the following principal factors, considered as a whole, will tend to indicate whether the location in which the proceeding has been filed is the debtor's centre of main interest. The factors are:

- (i) the location is readily ascertainable by creditors;
- (ii) the location is one in which the debtor's principal assets or operations are found; and
- (iii) the location is where the management of the debtor takes place.<sup>29</sup>

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<sup>27</sup> Martin Affidavit, para 5; Affidavit of Melissa Losco, sworn June 20, 2024, Supplementary Application Record of the Foreign Representative, Exhibit B.

<sup>28</sup> [\*CHC Group Ltd. \(Re\)\*, 2016 BCSC 2623 at para 9](#); [\*Lightsquared LP \(Re\)\*, 2012 ONSC 2994 at para 26](#).

<sup>29</sup> [\*Lightsquared LP \(Re\)\*, 2012 ONSC 2994 at para 25](#); [\*Zochem Inc. \(Re\)\*, 2016 ONSC 958 at para 22](#).

35. In addition to the above “principal” factors, Canadian courts have made reference to factors that include: (i) the location where corporate decisions are made; (ii) the location of employee administrations, including human resource functions; (iii) whether the enterprise is managed on a consolidated basis; (iv) the extent of integration of an enterprise’s international operations; (v) the centre of an enterprise’s corporate, banking, strategic and management functions; (vi) the existence of shared management within entities and in an organization; (vii) the location where cash management and accounting functions are overseen; and (viii) the seat of an enterprise’s treasury management functions, including management of accounts receivable and accounts payable.<sup>30</sup>

36. Each Debtors’ COMI is in the United States. First, the registered offices of four of the six Debtors—the Applicant, Lion Iron, NC Farms and NC Ditch—are located in Nevada.<sup>31</sup> Each of these Debtors’ COMI is presumed to be the United States and there is no evidence to rebut this presumption.

37. Second, while the registered offices of the remaining two Debtors—NCU and 0607 BC—are in British Columbia, this is not their COMI. Rather, their COMI is in Nevada.

38. As described above at paragraphs 18 and 19, 0607 BC is a dormant shell company with no assets or business, and it cannot exist independently of the Debtors’ Nevada operations. Its COMI is the United States.

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<sup>30</sup> [\*Massachusetts Elephant & Castle Group, Inc. \(Re\)\*, 2011 ONSC 4201 at paras 26-31; \*Angiotech Pharmaceuticals Ltd. \(Re\)\*, 2011 BCSC 115 at para 7; see also, \*Probe Resources Ltd. \(Re\)\*, 2011 BCSC 552, at paras 22-28](#) (a similar application of these principles for a BC registered parent with a U.S. based subsidiary).

<sup>31</sup> Martin Affidavit, paras 19, 26-28.

39. Additionally, all of NCU's business activities are ancillary and derivative of, and entirely dependent on, the operations and business activities conducted by NCI in Nevada. As outlined at paragraphs 18 and 20, NCU's only material assets are its interests in the Applicant, NCI, a Nevada-based company whose primary business is to own and operate the Project in Nevada. NCU does not have any revenue streams or sources of income other than in respect of those interests in the Applicant. Only one member of NCU's management team resides in Canada; the other six reside in Nevada. Similarly, only two of NCU's five directors reside in Canada; the others all reside in Nevada, and South Africa. NCU is not staffed to operate independently of the Applicant. It has only three employees who, together with the Applicant's employees, provide services to the collective debtors.

40. Simply put, NCU's business is inseverable from, and entirely dependent on, the Debtors' Nevada-based mining operations. Its COMI is the United States.

**B. The Initial Recognition Order should be granted**

41. Section 48(1) of the CCAA provides that on the making of an order recognizing a foreign proceeding that is specified by the Court to be a "foreign main proceeding", the Court shall make an order (subject to any terms and conditions it considers appropriate):

- (a) staying, until otherwise ordered by the Court, for any period that the Court considers necessary, all proceedings taken or that might be taken against the debtor 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 debtor company;
- (c) prohibiting, until otherwise ordered by the Court, the commencement of any action, suit or proceeding against the debtor company; and

- (d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

42. Furthermore, section 52(1) of the CCAA requires that if an order recognizing a foreign proceeding is made, the Court "shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding."

43. By operation of the Bankruptcy Code, the Debtors obtained the benefit of a stay of proceedings upon filing voluntary petitions with the Bankruptcy Court. A stay of proceedings in Canada will recognize and give effect to the stay of proceedings in the United States and is essential to protect the efforts of the Debtors to resolve their acute liquidity crisis within the Chapter 11 Cases and emerge from the reorganization process.

44. The Initial Recognition Order sought by the Applicant is based on the Court's Model CCAA Initial Recognition Order (Foreign Main Proceeding) and provides for all the relief required by section 48 of the CCAA. In light of the requirements of the CCAA and the Debtors' need to find a long-term solution to their financial and operational challenges, they require a stay of proceedings and other relief identified in the Initial Recognition Order in order to proceed with the Chapter 11 Cases.

**D. The Supplemental Order should be granted**

45. In addition to the mandatory relief provided for in section 48, section 49 of the CCAA grants this Court broad discretion to make any order that it considers appropriate, if it is satisfied that the order is necessary for the protection of the debtor's property or the interests of creditors.



The Court may make such orders on any terms and conditions that the Court considers appropriate in the circumstances.

***(a) The Extended Stay of Proceedings is necessary and appropriate***

46. The Supplemental Order includes the broader stay of proceedings than the mandated stay provided for in the Initial Recognition Order and is consistent with the broad stay typically granted in Part IV and other CCAA proceedings, including in favour of the Debtors' current and former directors and officers.

47. The ongoing day-to-day management of the Debtors will continue to be carried out by their respective directors and officers. For the Debtors to maintain stability and continue their operations during the Chapter 11 Cases, they require the active and committed involvement of those directors and officers. The directors and officers will be vital to the Debtors' restructuring due to their historical knowledge of the financial and operational aspects of the Debtors' complex business and mining operations. The requested stay would also prevent creditors and other potential claimants from seeking to do in Canada what is prohibited in the Chapter 11 Cases.<sup>32</sup> The directors and officers will be vital to the Debtors' restructuring due to their historical knowledge of the financial and operational aspects of the Debtors' complex business and mining operations.

48. This broader stay of proceedings is therefore appropriate in order to preserve the *status quo* while the Debtors attempt to find a sustainable solution to their financial and operational challenges that maximizes value for creditors.

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<sup>32</sup> Martin Affidavit, para 103.

*(b) Recognition of the First Day Orders, including the U.S. Interim DIP Order, is appropriate*

**i. The First Day Orders**

49. The Applicant seeks recognition orders in respect of the following orders in respect of the First Day Motions as they were entered by the Bankruptcy Court (the “**First Day Orders**”):

- (a) Order Authorizing Nevada Copper, Inc., to Act as Foreign Representative of the Debtors;
- (b) Order Authorizing Joint Administration of Chapter 11 Cases;
- (c) Interim Order Authorizing the Debtors to Continue to (I) Use Their Existing Cash Management System, (II) Use and Maintain Existing Bank Accounts, (III) Continue Intercompany Transactions and (IV) Use Their Existing Business Forms;
- (d) Interim Order (I) Authorizing the Debtors to (A) Continue their Prepetition Insurance Policies, (B) Continue their Prepetition Surety Bond Program, and (C) Enter into New Premium Financing Agreements and (II) Granting Related Relief;
- (e) Interim Order Authorizing the Debtors to (I) Pay Prepetition Employee Wages, Salaries, and Other Compensation, (II) Reimburse Prepetition Business Expenses, (III) Continue Prepetition Employee Benefits Programs, (IV) Make Payments for Which Prepetition Payroll Deductions Have Been Withheld and Pay Certain Employment-Related Taxes, (V) Pay Amounts That Were Awarded Under the Debtors’ 2023 Short Term Incentive Program, and (VI) Pay All Costs and Expenses Incident to the Foregoing; and
- (f) Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief (the “**U.S. Interim DIP Order**”).

50. As set out above, section 49 of the CCAA provides that the Court may make any order that it considers appropriate if it is satisfied that it is necessary for the protection of a debtor company's property or the interests of a creditor or creditors. Section 50 of the CCAA further provides that an order made under Part IV of the CCAA, including pursuant to section 49, may be made on any terms and conditions that the Court considers appropriate. Under section 52(1), if an order recognizing a foreign proceeding is made, the Canadian court is required to cooperate, to the maximum extent possible, with the foreign representative and the foreign court in the foreign proceedings.

51. The central principle governing Part IV of the CCAA is comity, which establishes that Canadian courts should recognize and enforce the judicial acts of other jurisdictions, provided that those other courts have assumed jurisdiction on a basis consistent with principles of order, predictability and fairness.<sup>33</sup>

52. In furtherance of the principle of comity, Canadian courts should allow a foreign court to exercise principal control over the insolvency process if that other jurisdiction has the closest connection to the proceeding. As noted above, the CCAA requires the Court to cooperate to the maximum extent possible with the foreign proceeding.

53. The granting of an order recognizing and giving effect to the First Day Orders is appropriate for the following reasons:

- (a) the Bankruptcy Court has appropriately taken jurisdiction over the Chapter 11 Cases of all the Debtors and comity will be advanced by this Court's recognition of and support for the Chapter 11 Cases already under way in the United States;

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<sup>33</sup> [\*Hollander Sleep Products, LLC et al., Re\*, 2019 ONSC 3238 at para 41.](#)

- (b) coordination of proceedings in the two jurisdictions will ensure equal and fair treatment of all stakeholders irrespective of where they are located;
- (c) given the close connection between the United States and the Debtors' business, including the business of the Applicant and 0607 BC, it is reasonable and sensible for the Bankruptcy Court to have principal control over the insolvency process; and
- (d) the First Day Orders were obtained by the Debtors to minimize the adverse effects of the Chapter 11 Cases on their business to preserve the value of the Debtors' assets for the benefit of their creditors, employees and other stakeholders.

**ii. The U.S. Interim DIP Order should be recognized**

54. Recognition of the DIP Order will fulfil a condition under the DIP Credit Agreement and facilitate the financing requirement to implement a successful restructuring. The Debtors are facing a liquidity crisis and require DIP financing to fund their operations while pursuing a restructuring. Accordingly, immediately prior to commencing the Chapter 11 Cases, the Debtors finalized the DIP Facility governed by the DIP Credit Agreement with the DIP Lender.

55. Immediate access to liquidity under the DIP Facility is critical to preserving the Debtors' ability to operate. The Debtors do not have sufficient liquidity to operate their business in the ordinary course without the financing provided by the DIP Facility. Among other things, the Debtors need such liquidity to pay vendors and other participants in the Debtors' supply chain, to execute on certain initiatives, and to pay fees and costs related to their restructuring.

56. The Debtors have determined, in the exercise of their business judgment, that the terms of the DIP Facility are reasonable and appropriate in the circumstances.

57. This Court has held that there is no impediment to granting approval of DIP financing in foreign recognition proceedings under Part IV of the CCAA. In doing so, it has emphasized the importance of comity in foreign recognition proceedings.<sup>34</sup>

58. A similar analysis applies to the present situation. The applicant is seeking that the Chapter 11 Cases be recognized as a foreign main proceeding, and the Bankruptcy Court has granted the U.S. Interim DIP Order. Consistent with the findings of the Bankruptcy Court, the relief requested is necessary for the protection of the Debtors' property and for the interests of creditors in Canada and the U.S. Moreover, it is a requirement of the DIP Credit Agreement that the DIP Order be recognized by the Court within fourteen days of its entry. The inability to do so could result in default.

59. As part of the DIP financing, the DIP Lender requires a charge over the Debtors' assets (the "**DIP Lender's Charge**" or "**DIP Charge**"). Therefore, the DIP Lender will be entitled to the benefit of a charge on the property in Canada. The DIP Lender's Charge will be consistent with the liens and charges created by the U.S. Interim DIP Order, which was granted on June 14, 2024. As such, the DIP Charge provides a superpriority charge on the Canadian assets in favor of the DIP Lender, as outlined thereunder, and subject to the ranking, priorities and other conditions of the U.S. Interim DIP Order. The DIP Charge will have the priorities as set out in the proposed draft Supplemental Recognition Order, which in turn references U.S. Interim DIP Order (Tab 4 to the Application Record).

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<sup>34</sup> [\*Hollander Sleep Products, LLC et al., Re\*, 2019 ONSC 3238 at paras 46-47.](#)

60. The DIP Facility and DIP Charge furthers the objectives of the CCAA: it is a new money facility that does not contain a roll-up component, attaches to assets that are subject to liens across all of the Debtors' property and does not materially prejudice Canadian creditors. Accordingly, the DIP Order should be recognized by this Court and the DIP Charge ordered in Canada.

*(c) A&M should be appointed Information Officer*

61. It has become common practice in Part IV proceedings for the Court to appoint an information officer, under the court's broad discretion in section 49. The Model Supplemental Order includes the appointment of the information officer. An information officer helps effect cooperation between the Canadian proceeding, the foreign representative and foreign court, as required by section 52(1) of the CCAA.<sup>35</sup>

62. The Applicant seeks to appoint A&M as the Information Officer in this proceeding on terms consistent with the Model Order and the terms on which information officers have been appointed in recent Part IV proceedings. The proposed role of A&M as Information Officer is based on the Model Order.

*(d) The Administration Charge should be granted*

63. The Applicant is requesting that this Court grant the proposed Information Officer, its legal counsel, Cassels Brock & Blackwell LLP, and the Debtors' legal counsel, Torys, an administration charge securing their fees and disbursements in the maximum amount of C\$500,000 (the "**Administration Charge**") on the Debtors' property in Canada and authorize

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<sup>35</sup> [CCAA, s. 52](#).

the Debtors' payment of reasonable retainers to the proposed Information Officer, its counsel and the Debtors' counsel.

64. Section 11.52 of the CCAA provides the court with the statutory jurisdiction to grant an Administration Charge in an amount that the court considers appropriate in respect of the fees and expenses of an information officer, its counsel and the Debtors' counsel.<sup>36</sup>

65. This Court has developed the following list of non-exhaustive factors to consider in determining whether to grant an Administration Charge:

- (a) the size and complexity of the businesses being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the court officer.<sup>37</sup>

66. The Debtors' circumstances provide for the granting of the Administration Charge. Each of the Debtors' secured creditors have, or will have, received notice of these Part IV proceedings. Moreover, the amount and priority of the Administration Charge are appropriate. The Debtors' restructuring depends on their ability to address their complex debt structure and finding a long-term solution to their and their operating subsidiaries' ongoing challenges.

67. Additionally, the beneficiaries of the Administration Charge have already engaged in pre-filing work preparing for this CCAA application, including drafting the necessary court

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<sup>36</sup> [\*Companies' Creditors Arrangement Act\*, R.S.C. 1985, c. C-36, s. 11.52.](#)

<sup>37</sup> [\*Re Canwest Publishing Inc.\*, 2010 ONSC 222 at para 54.](#)

materials.<sup>38</sup> The proposed Information Officer, its counsel and the Debtors' counsel will play a key and distinct role in advancing the Debtors' restructuring. Finally, the proposed Information Officer approves of the Administration Charge, indicating that it is fair and reasonable.<sup>39</sup>

**C. Ontario is the proper jurisdiction for these recognition proceedings**

68. Ontario is the proper jurisdiction for these recognition proceedings in Canada.

69. Subsection 9(1) of the CCAA provides that an application may be made to the court that has jurisdiction in the province where the "head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated."<sup>40</sup>

70. The NCU's shares are publicly listed on the TSX exchange and may continue to be listed on that exchange for an indefinite period of time going forward. The Applicant's longtime principal corporate counsel is the Toronto office of Torys LLP. Torys continues to be integrally involved in the Debtors' restructuring and sale activities, including the Chapter 11 Cases and these Part IV proceedings. One of NCU's two Canadian-resident directors is resident in Ontario.<sup>41</sup>

71. In addition, the Debtors' proposed Information Officer, who holds a \$100,000 retainer from the Debtors, is located in Toronto.<sup>42</sup> Torys holds a small retainer for the benefit of NCI.

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<sup>38</sup> Martin Affidavit, para 110.

<sup>39</sup> [\*Re Canwest Publishing Inc.\*, 2010 ONSC 222 at para 54.](#)

<sup>40</sup> [CCAA, s 9\(1\)](#)

<sup>41</sup> Martin Affidavit, para 100.

<sup>42</sup> Martin Affidavit, para 100.



**PART V – RELIEF REQUESTED**

72. The Applicant respectfully requests that the Court grant the Initial Recognition Order and the Supplemental Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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Jeremy Opolsky / Hanna Singer

Lawyers for Nevada Copper, Inc., Nevada Copper Corp.,  
0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and  
NC Ditch Company LLC

## **SCHEDULE A – LIST OF AUTHORITIES**

1. *Babcock & Wilcox Canada Ltd., Re*, [\(2000\) 5 BLR \(3d\) 75 \(Ont. Sup. Ct.\)](#)
1. *MtGox Co., Ltd (Re)*, [2014 ONSC 5811](#)
2. *Hollander Sleep Products, LLC et al., Re*, [2019 ONSC 3238](#)
3. *Payless Holdings LLC (Re)*, [2017 ONSC 2242](#)
4. *Zochem Inc. (Re)*, [2016 ONSC 958](#)
5. *CHC Group Ltd. (Re)*, [2016 BCSC 2623](#)
6. *Lightsquared LP (Re)*, [2012 ONSC 2994](#)
7. *Massachusetts Elephant & Castle Group, Inc. (Re)*, [2011 ONSC 4201](#)
8. *Angiotech Pharmaceuticals Ltd. (Re)*, [2011 BCSC 115](#)
9. *Probe Resources Ltd. (Re)*, [2011 BCSC 552](#)
10. *Re Canwest Publishing Inc.*, [2010 ONSC 222](#)

## **SCHEDULE B – TEXT OF STATUTES, REGULATIONS & BY-LAWS**

### **Companies' Creditors Arrangement Act, RSC 1985, c. C-36**

#### **PART II – JURISDICTION OF COURTS**

##### ***Jurisdiction of court to receive applications***

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

##### ***Single judge may exercise powers, subject to appeal***

(2) The powers conferred by this Act on a court may, subject to appeal as provided for in this Act, be exercised by a single judge thereof, and those powers may be exercised in chambers during term or in vacation.

##### ***General power of court***

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

##### ***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.

##### ***Court May Order Security or Charge to Cover Certain Costs***

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

## PART IV – CROSS-BORDER INSOLVENCIES

### PURPOSE

#### *Purpose*

**44** The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
- (d) the protection and the maximization of the value of debtor company's property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

### INTERPRETATION

#### *Definitions*

**45** (1) The following definitions apply in this Part.

[...]

***foreign main proceeding*** means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests. (*principale*)

[...]

***foreign representative*** means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

- (a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or
- (b) act as a representative in respect of the foreign proceeding. (*représentant étranger*)

#### *Centre of Debtor Company's Main Interests*

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests.

### RECOGNITION OF FOREIGN PROCEEDING

#### *Application for Recognition of a Foreign Proceeding*

**46** (1) A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

#### *Documents that must Accompany Application*

(2) Subject to subsection (3), the application must be accompanied by

- (a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;
- (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and
- (c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

***Documents May Be Considered as Proof***

(3) The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

***Order Recognizing Foreign Proceeding***

**47** (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

***Nature of Foreign Proceeding to Be Specified***

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

***Order Relating to Recognition of a Foreign Main Proceeding***

**48** (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor 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 debtor company;
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and
- (d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

***Other Orders***

**49** (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

- (a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);
- (b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and

- (c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

***Restriction***

- (2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

***Application of this and Other Acts***

- (3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

***Terms and Conditions of Orders***

**50** An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

**OBLIGATIONS**

***Cooperation — Court***

- 52** (1) If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

***Cooperation — Other Authorities in Canada***

- (2) If any proceedings under this Act have been commenced in respect of a debtor company and an order recognizing a foreign proceeding is made in respect of the debtor company, every person who exercises powers or performs duties and functions under the proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

***Forms of Cooperation***

- (3) For the purpose of this section, cooperation may be provided by any appropriate means, including
  - (a) the appointment of a person to act at the direction of the court;
  - (b) the communication of information by any means considered appropriate by the court;
  - (c) the coordination of the administration and supervision of the debtor company's assets and affairs;
  - (d) the approval or implementation by courts of agreements concerning the coordination of proceedings; and
  - (e) the coordination of concurrent proceedings regarding the same debtor company.

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

Court File No. CV-24-00722252-00CL

AND IN THE MATTER OF NEVADA COPPER CORP., NEVADA COPPER, INC., 0607792 B.C. LTD., LION  
IRON CORP., NC FARMS LLC AND NC DITCH COMPANY LLC  
APPLICATION OF NEVADA COPPER CORP. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at TORONTO

**FACTUM OF THE FOREIGN  
REPRESENTATIVE**  
**(Application for Recognition of Foreign Main  
Proceeding, returnable June 21, 2024)**

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