

**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
(Motion for Recognition of Stalking Horse Order, KEIP Order and KERP Order,
returnable August 30, 2024)

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PART I – NATURE OF THE MOTION

1. Nevada Copper, Inc. is the foreign representative with respect to the Chapter 11 proceedings of itself and its affiliates: Nevada Copper Corp., 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC. On June 21, 2024, this Court recognized the Chapter 11 proceedings of these Debtors as a foreign main proceeding under Part IV of the CCAA. This is the Foreign Representative's second motion before this Court since that time.
2. In this motion, the Foreign Representative seeks two forms of relief.
3. First, the Foreign Representative seeks recognition of a U.S. Stalking Horse Order. This order was contemplated and expressly permitted by the Bidding Procedures Order that this Court previously recognized on July 24. Under the Bidding Procedures Order, the Debtors entered into a stalking horse agreement on August 9. As required under that order, the Debtors provided their stakeholders with notice of that agreement in accordance with the Bidding Procedures Order. After no stakeholders objected, the U.S. Bankruptcy Court entered the Stalking Horse Order on an unopposed basis.
4. The Stalking Horse Order approves the stalking horse bidder to serve as a stalking horse only and grants the associated bid protections; it does not approve the sale to the stalking horse bidder or force the assignment of any contracts. The stalking horse bid remains subject to overbid and the auction process set out in the Bidding Procedures Order. The Foreign Representative intends to return before this Court to seek Canadian recognition of the Bankruptcy Court's order approving a sale to the winning bidder at a later date.

5. Second, the Foreign Representative seeks recognition of two U.S. orders that approve the Debtors' key employee incentive and retention plans. Three of the Debtors' employees are located in Canada and are paid in Canadian dollars under those orders. Recognition provides certainty that the terms of those U.S. orders relating to their Canadian roles will be honoured in Canada.

PART II – THE FACTS

A. Chapter 11 Cases

6. The Debtors' businesses are mining copper and other minerals as well as operating a processing plant that refines copper ore into copper concentrate. The mining operations focus on the development of the Pumpkin Hollow project, a mining development located about 90 km southeast of Reno, Nevada. Pumpkin Hollow is an advanced-stage copper property that contains substantial reserves and resources, including not only copper, but gold, silver and iron magnetite.¹

7. In April 2022, one of the mine ramps failed, delaying critical ore delivery and impacting operations at the Debtors' mine. This, in turn, eliminated the Debtors' only source of operating income at that time. While the Debtors have worked diligently to restart their mining operations

¹ Affidavit of Gregory J. Martin sworn June 19, 2024 ("**Martin Affidavit**"), para 29, Exhibit "A" to the Affidavit of Melissa Losco sworn August 23, 2024 ("**Losco Affidavit**"), Tab 2 of the Foreign Representative's Motion Record ("**MR**"), p 23.

and pursue a sale of their business since that time, they were ultimately unable to maintain continuous processing operations necessary to declare commercial production.²

8. As a result of their strained liquidity and the unsuccessful marketing process, on June 10, 2024, the Debtors filed voluntary petitions for relief commencing cases before the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”) under Chapter 11 of the *Bankruptcy Code*³ (the “**Chapter 11 Cases**”).⁴

9. Since commencing their Chapter 11 Cases, the Debtors have sought and obtained various forms of relief from the Bankruptcy Court. Among that relief was an order that the Bankruptcy Court entered on July 22, 2024 (the “**Bidding Procedures Order**”) that authorized the Debtors to commence a sale process with the aim of achieving a going-concern sale of their business that maximizes value for their stakeholders.⁵ That sale process is currently ongoing.

B. Canadian Recognition Proceedings

10. Under Part IV of the CCAA, this Court has recognized the Chapter 11 Cases as foreign main proceedings and granted relief with respect to the recognition.

11. On June 21, 2024, Justice Penny heard the Foreign Representative’s recognition application. He granted an initial recognition order and a supplemental order that together,

² Martin Affidavit, paras 77-79, Exhibit “A” to the Losco Affidavit, MR, Tab 2, pp 38-39.

³ 11 U.S.C. 11.

⁴ Losco Affidavit, para 7, MR, Tab 2, p 9.

⁵ Losco Affidavit, para 8, MR, p 10; Bidding Procedures Order, Schedule E to Bidding Procedures Recognition Order, Exhibit B to the Losco Affidavit (“**Bidding Procedures Order**”), MR, p 56.

among other things: (i) recognized the Foreign Representative as the foreign representative of the Debtors in respect of the Chapter 11 Cases; (ii) recognized the United States as the Debtors' centre of main interest; and (iii) recognized the Chapter 11 Cases as "foreign main proceedings" (as defined in section 45 of Part IV of the CCAA); and (iv) appointed Alvarez & Marsal Canada Inc. as information officer in these proceedings.⁶

12. Since that initial recognition hearing, the Foreign Representative has brought one motion before this Court to seek an order recognizing, among other things, the Bidding Procedures Order. On July 24, Justice Cavanagh heard that motion and granted the recognition order requested by the Debtors.⁷

C. The Bidding Procedures Order Permitted a Stalking Horse Bidder

13. The Bidding Procedures Order expressly contemplated that the Debtors might enter into a stalking horse agreement in their sale process. It authorized the Debtors to exercise their reasonable business judgement and enter into a transaction agreement with a stalking horse bidder to serve as a stalking horse bid, subject to final Bankruptcy Court approval.⁸ The Bidding Procedures Order also contemplated and authorized a stalking horse agreement to include a break-up fee and expense reimbursement in favour of the stalking horse bidder of up to 3% of the agreement's purchase price, again subject to final Bankruptcy Court approval.⁹

⁶ Losco Affidavit, para 7, MR, p 9.

⁷ Losco Affidavit, para 8, MR, p 10; see Bidding Procedures Order, MR, p 56.

⁸ Bidding Procedures Order, para 15, MR, p 60.

⁹ Bidding Procedures Order, para 16 and Exhibit A (Bidding Procedures), p 14 (Stalking Horse Bid Protections), MR, pp 61 and 80.

14. Given the timelines for a potential sale, the Bidding Procedures Order established an expedited process for: (i) the Debtors to publicly file a notice with the Court attaching the proposed forms of stalking horse agreement and stalking horse approval order, thereby providing public notice to stakeholders; (ii) the Debtors' stakeholders to raise comments or objections to the proposed form of stalking horse agreement or order within 5 business days; and (iii) the Bankruptcy Court to enter an order approving the stalking horse agreement if no objections were filed by the 5-business day deadline, or to hold a hearing to consider any issues or objections raised.¹⁰

D. The Debtors Entered into the Stalking Horse Agreement

15. On August 9, in accordance with the Bidding Procedures Order, the Debtors entered into an asset purchase agreement (the "**Stalking Horse Agreement**") with Southwest Critical Materials LLC (the "**Stalking Horse Bidder**").¹¹ That same day, the Debtors also filed the notice contemplated by the Bidding Procedures Order, which included a copy of the Stalking Horse Agreement and the Debtors' proposed form of stalking horse order.¹²

16. The Debtors received informal comments from the Official Committee of Unsecured Creditors and provided a revised form of order to address such comments. The Debtors did not otherwise receive any objections to the Stalking Horse Agreement within the 5 business day

¹⁰ Bidding Procedures Order, para 16, MR, p 61.

¹¹ Stalking Horse Agreement, Exhibit 2 to Debtors' Notice of Designation of Stalking Horse Agreement, Exhibit E to the Losco Affidavit ("**Stalking Horse Agreement**"), MR, p 132.

¹² Debtors' Notice of Designation of Stalking Horse Agreement, Exhibit E to the Losco Affidavit, MR, p 112.

deadline set by the Bidding Procedures Order.¹³ Accordingly, the Bankruptcy Court entered an order on an unopposed basis on August 21, 2024 (the “**Stalking Horse Order**”).¹⁴ The Stalking Horse Order approved the Debtors’ entry into the Stalking Horse Agreement, including the stalking horse bid protections included in the agreement (described in the table below).

17. Key terms of the Stalking Horse Agreement are summarized in the following table:

Term	Description¹⁵
Stalking Horse Bidder	Southwest Critical Materials LLC, an indirect, wholly owned subsidiary of Kinterra Battery Metals Mining Fund, L.P. and an affiliate of Kinterra Capital Corp. ¹⁶
Sellers	Nevada Copper, Inc. and Nevada Copper Corp. ¹⁷
Purchase Price	US\$128,000,000, subject to certain adjustments in accordance with the Stalking Horse Agreement, plus the Stalking Horse Bidder’s assumption of certain Assumed Liabilities as set forth in the Stalking Horse Agreement. ¹⁸

¹³ Losco Affidavit, para 11, MR, p 10.

¹⁴ Losco Affidavit, para 11, MR, p 10; Stalking Horse Order, Exhibit D to the Losco Affidavit, MR, p 103.

¹⁵ Capitalized terms used in this section that are not otherwise defined have the meanings given to them in the Stalking Horse Agreement. In the event of any conflict between the descriptions provided in this table and the terms of the Stalking Horse Agreement, the terms of the Stalking Horse Agreement shall govern.

¹⁶ Stalking Horse Agreement, preamble, MR, p 137.

¹⁷ Stalking Horse Agreement, preamble, MR, p 137.

¹⁸ Stalking Horse Agreement, s 2.1, 2.6, p 162.

Term	Description¹⁵
Bid Protections	Break-Up Free equal to US\$3,840,000 (or 3% of the cash portion of the Purchase Price before any adjustments), which amount is inclusive of a US\$1,250,000 Expense Reimbursement. ¹⁹
Purchased Assets	Substantially all of the Debtors' assets. ²⁰ The Debtors are not aware of any tangible Purchased Assets that are located in Canada. ²¹
Employees	The Stalking Horse Bidder may make offers of employment to any employees of the Business to commence on the Closing Date on an "at will" basis. Any such offers of employment shall, among other things: (i) be on terms and conditions consistent with applicable Law ²² for a position having a title and duties that the Offered Employee had with the Sellers as of the Petition Date; (ii) be at the same salary that the Offered Employee had on the Petition Date; (iii) provide similar benefits for the Offered Employee as provided to similarly situated employees of the Stalking Horse Bidder; and (iv) be made not later than 10 Business Days prior to the Closing Date. ²³

18. Importantly to this motion, the Stalking Horse Agreement contains a provision that provides the Stalking Horse Bidder with a right to terminate the Stalking Horse Agreement if Canadian recognition of the Stalking Horse Order is not obtained within 10 Business Days of the

¹⁹ Stalking Horse Agreement, s 12.2.9, p 210.

²⁰ Stalking Horse Agreement, s 1.1 ("Purchased Assets" definition, "Excluded Assets" definition), pp 145 and 156.

²¹ Stalking Horse Agreement, s 3.4, MR, p 166.

²² The Stalking Horse Agreement defines "Law" inclusively of Canadian law: Stalking Horse Agreement, s 1.1 ("Laws" definition), MR, p 152.

²³ Stalking Horse Agreement, s 6.1, MR, p 199.

Stalking Horse Order's entry by the Bankruptcy Court.²⁴ That deadline expires on September 5, 2024.

E. The KEIP Order and the KERP Order

19. On July 31, 2024, the Bankruptcy Court entered two orders relating to the Debtors' employees: an order authorizing the Debtors' key employee incentive program (the "**KEIP Order**") and an order authorizing the Debtors' key employee retention program (the "**KERP Order**").²⁵

20. The KERP Order authorized the Debtors, subject to its terms and conditions, to make of up to an aggregate maximum amount of US\$1,844,100 to 70 critical non-insider employees.²⁶ Participation in the program is optional, and requires participants, among other things, to release their claims against the Debtors prior to receiving the first KERP payment and again prior to receiving the final KERP payment.²⁷

21. The KEIP Order authorized the Debtors, subject to its terms and conditions, to make payments of up to a maximum aggregate amount of US\$3,475,000 to certain of the Debtors' senior personnel and management upon the closing of one or more sale transactions in the Debtors' sale process. The precise amount of each payment is determined based on the value of

²⁴ Stalking Horse Agreement, s 12.1.5(c), MR 207.

²⁵ Losco Affidavit, para 12, MR, p 11; KERP Order, Exhibit F to the Losco Affidavit, MR, p 302; KEIP Order, Exhibit G to the Losco Affidavit, MR, p 310.

²⁶ KERP Order, Exhibit 1 (KERP Summary), Exhibit F to the Losco Affidavit, MR, p 307.

²⁷ KERP Order, Exhibit 1 (KERP Summary), p 2 (Ineligibility), Exhibit F to the Losco Affidavit, MR, p 308.

such sale transactions.²⁸ Participation in the program also requires participants, among other things, to release their claims against the Debtors prior to such participation and again prior to receiving their KEIP payment.²⁹

22. The Debtors were ultimately able to resolve all objections to the KEIP Order and the KERP Order prior to the July 29 hearing before the Bankruptcy Court to consider those orders. Accordingly, those orders were both entered on an unopposed basis.³⁰

PART III – THE ISSUES

23. The only issue to be determined in this motion is whether the Court should recognize the Stalking Horse Order, the KEIP Order and the KERP Order under section 49 of the CCAA.

PART IV – THE LAW

A. Part IV of the CCAA

24. The purpose of Part IV of the CCAA is to effect cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada. Orders under this part are intended, among other things, to promote cooperation between the courts with those of foreign jurisdictions. Such orders are also intended to promote fair and efficient

²⁸ KEIP Order, Exhibit 1 (KEIP Summary), Exhibit G to the Losco Affidavit, MR, p 316.

²⁹ KEIP Order, Exhibit 1 (KEIP Summary), Exhibit G to the Losco Affidavit, MR, p 316.

³⁰ Losco Affidavit, para 13, MR, p 11.

administration of cross-border insolvencies, which protects the interests of debtors, creditors, and other interested persons.³¹

25. In the context of Part IV, the Court has the authority to apply any legal or equitable rules necessary, provided they are not inconsistent with the provisions of the CCAA.³² Furthermore, section 52(1) of the CCAA requires that if an order recognizing a foreign proceeding is made—as it has been here—the Court “shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.”³³

B. This Court should recognize the Stalking Horse Order, the KEIP Order and the KERP Order

26. The Foreign Representative seeks this Court’s recognition of the Bankruptcy Court’s Stalking Horse Order, KEIP Order and KERP Order.

27. Section 49 of the CCAA provides that this 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 that the order is in the interests of creditors.³⁴ 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.³⁵

³¹ *Zochem Inc. (Re)*, [2016 ONSC 958](#), [para 15](#); *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“CCAA”), [s 44](#).

³² CCAA, [s 61](#).

³³ CCAA, [s 52\(1\)](#).

³⁴ CCAA, [s 49](#).

³⁵ CCAA, [s 50](#).

28. When a Canadian court considers whether it should recognize a foreign order, it should consider, among other things, (i) the principles of comity and the need to encourage cooperation between courts of various jurisdictions; (ii) the need to accord respect to foreign bankruptcy and insolvency legislation unless it diverges radically from the processes in Canada; (iii) whether stakeholders will be treated equitably regardless of the jurisdiction to which they reside; and (iv) the importance of allowing enterprise to reorganize globally, including allowing one jurisdiction to lead the principal administration of the enterprise's reorganization.³⁶

29. In cross-border insolvencies, Canadian and U.S. bankruptcy courts routinely seek to complement, coordinate and, where appropriate, accommodate the proceedings of the other court in order to enable cross-border enterprises to successfully restructure. Comity and cooperation are cornerstones of this process. Without coordination between the Canadian and U.S. courts, Debtors and their stakeholders face the risks of inconsistent decisions and general uncertainty as to the direction and effect of competing restructuring proceedings.³⁷

(i) This Court should recognize the Stalking Horse Order

30. The Stalking Horse Order was contemplated by, and is essentially an extension of, the Bidding Procedures Order. The Bidding Procedures Order provided a mechanism for the entry of the Stalking Horse Order without a hearing before the Bankruptcy Court.³⁸ This Court has

³⁶ *Babcock & Wilcox Canada Ltd., Re*, [18 CBR \(4th\) 157](#) (Ont. Sup. Ct. J. (Commercial List)), [para 21](#); *Re Xerium Technologies Inc.*, [2010 ONSC 3974](#), [paras 26-27](#).

³⁷ *Babcock & Wilcox Canada Ltd., Re*, [18 CBR \(4th\) 157](#) (Ont. Sup. Ct. J. (Commercial List)), [paras 9-10](#).

³⁸ Bidding Procedures Order, para 16, MR, p 61.

previously considered and granted recognition to the Bidding Procedures Order. There was no opposition.

31. The Bidding Procedures Order authorized the Debtors to enter into a stalking horse agreement and grant bid protections on substantially similar terms as the bid protections found in the Stalking Horse Agreement.³⁹ The Bidding Procedures Order also provided a process for stakeholders to raise comments, concerns and objections to the Debtors' stalking horse arrangements, including the proposed form of stalking horse order, in the Chapter 11 Proceedings.⁴⁰ The Debtors followed that process in accordance with the Bidding Procedures Order.⁴¹ There were no objections. The Stalking Horse Order was entered on an unopposed basis.⁴²

32. Like in plenary CCAA proceedings, the Stalking Horse Order only approves the Stalking Horse Agreement to serve as the stalking horse in the Debtors' sale process and provides certainty with respect to the related bid protections in favour of the Stalking Horse Bidder. The Foreign Representative intends to return before this Court to seek, among other potential relief, Canadian recognition of the Bankruptcy Court's order approving the winning transaction in the sale process, which may or may not be the Stalking Horse Agreement.

³⁹ Bidding Procedures Order, para 16 and Exhibit A (Bidding Procedures), p 14 (Stalking Horse Bid Protections), MR, pp 61 and 80.

⁴⁰ Bidding Procedures Order, para 16, MR, p 61.

⁴¹ Debtors' Notice of Designation of Stalking Horse Agreement, Exhibit E to the Losco Affidavit, MR, p 112.

⁴² Losco Affidavit, para 11, MR, p 10.

33. Further, under the Stalking Horse Agreement, the Debtors are required to obtain this Court's recognition of the Stalking Horse Order within ten business days of its entry by the Bankruptcy Court (*i.e.*, by September 5, 2024).⁴³ Absent such recognition, the Stalking Horse Bidder could terminate the Stalking Horse Agreement, which would potentially jeopardize the sale process. Timely recognition is therefore necessary to the restructuring itself.

34. The Stalking Horse Agreements injects certainty into the Debtors restructuring process and gives stakeholders confidence that the Debtors will achieve a going-concern solution to the various financial and operational challenges that led to their insolvency. Recognition of the Stalking Horse Order is appropriate in these circumstances.

(ii) *This Court should recognize the KEIP Order and the KERP Order*

35. The Foreign Representative also seeks Canadian recognition of the KEIP Order and the KERP Order.

36. The Debtors depend upon their workforce to perform services that are vital for the preservation of their businesses. Importantly, three of the Debtors' employees—who provide management and accounting functions jointly for all of the Debtors—are located in Canada and eligible to participate in the KERP Order or the KEIP Order, as applicable.⁴⁴ It is important for those three employees to have certainty that the terms of the KERP Order and KEIP Order relating to their Canadian roles will be honoured in Canada.

⁴³ Stalking Horse Agreement, s 12.1.5(c), MR 207.

⁴⁴ Martin Affidavit, para 23(d), Exhibit A to the Losco Affidavit, MR, p 22; Losco Affidavit, para 13, MR, p 11.

37. Participation in the key employee retention and incentive plans that the KEIP Order and the KERP Order approved is entirely optional. Eligible employees may choose to opt into the applicable plan and receive the corresponding plan benefits, or otherwise to opt out and retain their existing wage/salary and benefits with the Debtors. The releases that eligible employees must provide in favour of the Debtors to participate in the key employee retention and incentive plans are only required if such employees wish to opt into the plan.

38. The Information Officer notes in its Second Report that the KERP was designed to assist in retaining hourly and salaried employees that are considered necessary to maintain care and maintenance at the mine site and/or to assist in aspects of the Sale Process, while the KEIP was designed to incentivize certain senior employees that were previously compensated through a combination of cash incentive payments and stock awards and who have knowledge and skills that are essential to the Debtors' efforts to maximize value in the Chapter 11 Cases. The Information Officer has reviewed the KERP Order and the KEIP Order and is supportive of both programs, noting that the only three employees in Canada are each covered under one of these programs.⁴⁵

39. Nothing in the KEIP Order or the KERP Order is inconsistent with any order that may be granted under the CCAA. It is a common feature of plenary proceedings under the CCAA for Canadian courts to approve employee retention and incentive plans of substantially similar

⁴⁵ Information Officer's Second Report dated August 27, 2024, paras 6.5, 6.7 and 6.11.

natures to those found in the KEIP Order and the KERP Order.⁴⁶ Canadian courts have also exercised their jurisdiction under sections 49 and 50 of the CCAA to recognize Chapter 11 bankruptcy orders that approve key employee retention and incentive plans.⁴⁷

PART V – RELIEF REQUESTED

40. The Foreign Representative respectfully requests that this Court recognize the Stalking Horse Order, the KEIP Order and the KERP Order by granting the form of order at Tab 3 of the Foreign Representative's motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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⁴⁶ See, e.g., *Nortel Networks Corp., Re*, [2009] O.J. No. 1044, 175 A.C.W.S. (3d) 965 ([Westlaw](#)); *Grant Forest Products Inc. (Re)*, [2009] 57 CBR (5th) 128.

⁴⁷ See, e.g., [Recognition Order of Jainey, J. dated August 6, 2019](#), *In the Matter of Hollander Sleep Products, LLC et al.*, Court File No. CV-19-620484-00CL (Ontario Superior Court of Justice [Commercial List]).

SCHEDULE A – LIST OF AUTHORITIES

1. *Zochem Inc. (Re)*, [2016 ONSC 958](#)
2. *Babcock & Wilcox Canada Ltd., Re*, [18 CBR \(4th\) 157](#) (Ont. Sup. Ct. J. (Commercial List))
3. *Re Xerium Technologies Inc.*, [2010 ONSC 3974](#)
4. *Nortel Networks Corp., Re*, [2009] O.J. No. 1044, 175 A.C.W.S. (3d) 965 ([Westlaw](#))
5. *Grant Forest Products Inc. (Re)*, [\[2009\] 57 CBR \(5th\) 128](#)
6. [Recognition Order of Jainey, J. dated August 6, 2019](#), *In the Matter of Hollander Sleep Products, LLC et al.*, Court File No. CV-19-620484-00CL (Ontario Superior Court of Justice [Commercial List])

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

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

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*)

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.

Other evidence

(4) In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.

Translation

(5) The court may require a translation of any document accompanying the application.

[...]

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.

MISCELLANEOUS PROVISIONS

[...]

Court not prevented from applying certain rules

61 (1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

Public policy exception

(2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

<p>IN THE MATTER OF THE <i>COMPANIES' CREDITORS ARRANGEMENT ACT</i>, R.S.C. 1985, c. C-36, AS AMENDED</p> <p>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</p> <p>APPLICATION OF NEVADA COPPER CORP. UNDER SECTION 46 OF THE <i>COMPANIES' CREDITORS ARRANGEMENT ACT</i>, R.S.C. 1985, c. C-36, AS AMENDED</p>	<p>Court File No. CV-24-00722252-00CL</p>
	<div><div><p>ONTARIO</p><p>SUPERIOR COURT OF JUSTICE</p><p>COMMERCIAL LIST</p><p>Proceeding commenced at TORONTO</p></div><div><p>FACTUM OF THE FOREIGN REPRESENTATIVE</p><p>(Motion for Recognition of Stalking Horse Order, KEIP Order and KERP Order, returnable August 30, 2024)</p></div><div><p>Torys LLP 79 Wellington St. W., 30th Floor Box 270, TD South Tower Toronto, ON M5K 1N2</p><p>Tony DeMarinis (LSO#: 29451Q) 416.865.8162 tdemarinis@torys.com</p><p>Jeremy Opolsky (LSO#: 60813N) 416.865.8117 jopolsky@torys.com</p><p>Mike Noel (LSO#: 80130F) 416.865.7378 mnoel@torys.com</p><p>Lawyers for Nevada Copper, Inc., Nevada Copper Corp., 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC</p></div></div>