

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 Final Orders and Bidding Procedures Order,
returnable July 24, 2024)

July 22, 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, Justice Penny recognized the Chapter 11 proceedings of these Debtors as a foreign main proceeding under Part IV of the CCAA. On the same day, Justice Penny also recognized a series of interim and final first day orders in the Chapter 11 proceedings, including an interim order for DIP financing.

2. In this motion, the Foreign Representative seeks two forms of relief. First, the Foreign Representative seeks recognition of four final orders that correspond to the interim orders that Justice Penny recognized on June 21. These final orders relate to the Debtors' DIP financing, insurance, prepetition wages and cash management. Each of these final orders were entered by the U.S. Bankruptcy Court on July 15, following a merits hearing on July 12.

3. Second, the Foreign Representative seeks recognition of the Bidding Procedures Order, which the U.S. Bankruptcy Court entered on July 22, 2024. The Bidding Procedures Order is a central pillar of the Debtors' restructuring. The Debtors believe that the sale process authorized by the Bidding Procedures Order will result in a transaction that will allow their business to continue as a going concern and maximize the potential value of their assets for the benefit of their creditors and other stakeholders. The U.S. Bankruptcy Court has determined that the procedures set out in the Bidding Procedures Order are fair, reasonable, appropriate and reasonably designed to promote a competitive and robust bidding process.

PART II – THE FACTS

A. Chapter 11 Cases

4. 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 90km 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

5. 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 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

6. 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**”). In connection with the filing, the Debtors filed

¹ Affidavit of Gregory J. Martin sworn June 19, 2024 (“**Martin Affidavit**”), para 29, Exhibit “A” to the Affidavit of Melissa Losco sworn July 18, 2024 (“**Losco Affidavit**”), Tab 2 of the Foreign Representative’s Motion Record (“**MR**”), p 26.

² Martin Affidavit, paras 77-79, Exhibit “A” to the Losco Affidavit, MR, Tab 2, pp 41-42.

³ 11 U.S.C. 11.

several first day motions for which the Bankruptcy Court entered interim and/or final orders (the “**First Day Orders**”).⁴

7. 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 (as described below), the Debtors entered into a debtor-in-possession financing agreement (the “**DIP Credit Agreement**”).⁵

8. The DIP Credit Agreement provides for a senior secured superpriority DIP term loan in the aggregate principal amount of \$60 million⁶ (the “**DIP Facility**”). The DIP Facility is a new money term loan in the initial aggregate principal amount of \$20 million and a delayed-draw term loan in the aggregate principal amount of \$40 million.⁷ The Bankruptcy Court approved the first \$20 million tranche through its entry of an interim order on June 14, 2024 that authorized the Debtors to obtain postpetition financing (the “**U.S. Interim Dip Order**”), and the remaining \$40 million tranche through the Bankruptcy Court’s entry of the Final DIP Order (defined below) on July 15, as discussed below.

9. Importantly, 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,

⁴ Losco Affidavit, para 6, MR, Tab 2, p 11.

⁵ Martin Affidavit, para 92, Exhibit “A” to the Losco Affidavit, MR, Tab 2, p 46.

⁶ All dollar amounts in this factum are to United States Dollars unless otherwise stated.

⁷ Martin Affidavit, para 93, Exhibit “A” to the Losco Affidavit, MR, Tab 2, p 46; 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, Exhibit “C” to the Losco Affidavit, MR, Tab 2, p 106.

culminating in the consummation of a sale of the Debtors' assets within approximately four months of the Debtors' petition date. One of these milestones is a requirement that this Court recognize the Final DIP Order within 14 days following entry of the Final DIP Order by the Bankruptcy Court (*i.e.*, by July 29, 2024).⁸

B. Canadian Recognition Proceedings

10. Under Part IV of the CCAA, this Court has recognized the Chapter 11 Proceedings as foreign main proceedings and granted relief with respect to the recognition. This section summarizes that recognition to date.

11. On June 21, 2024, Justice Penny heard the Foreign Representative's recognition application. He granted an initial recognition order (the "**Initial Order**") that, among other things: (i) recognized the Foreign Representative as the foreign representative of the Debtors in respect of the Chapter 11 Cases; (ii) declared the United States as the Debtors' centre of main interest; and (iii) recognized the Debtors' Chapter 11 Cases as "foreign main proceedings" (as defined in section 45 of the CCAA).⁹

12. Justice Penny also granted a supplemental order (the "**Supplemental Order**") that, among other things, recognized and gave full force and effect to certain of the First Day Orders granted by the Bankruptcy Court and appointed Alvarez & Marsal Canada Inc. as information officer in these proceedings. Among other things, the Court considered and granted recognition

⁸ Martin Affidavit, para 96, Exhibit "A" to the Losco Affidavit, MR, Tab 2, p 47.

⁹ See, generally, Initial Order, Exhibit "D" to the Losco Affidavit, MR, Tab 2, p 117.

of the U.S. Interim DIP Order, along with other interim orders related to the Debtors' cash management, prepetition wages and insurance.¹⁰

C. The Final Orders

13. On July 12, 2024, the Bankruptcy Court heard motions with respect to final versions of the orders it had previously granted on an interim basis, including the U.S. Interim DIP Order. It entered these final orders on July 15, 2024.

In this motion, the Foreign Representative is seeking this Court's recognition in Canada of the following final orders, all of which, this Court previously recognized in interim form Supplemental Order (collectively, the "**Final Orders**"):

- (a) the "**Final DIP Order**" – Final 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; and (iv) Granting Related Relief;
- (b) the "**Final Cash Management Order**" – Final 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;

¹⁰ See, generally, Supplemental Order, Exhibit "E" to the Losco Affidavit, MR, Tab 2, p 123.

- (c) the “**Final Prepetition Wages Order**” – Final 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
- (d) the “**Final Insurance Order**” – Final 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.¹¹

14. Since June 21—when this Court recognized the interim versions of the Final Orders—the Debtors diligently negotiated with their key stakeholders to resolve feedback on, and objections to, the relief sought in the Final Orders.¹²

15. The Debtors were ultimately able to resolve almost all objections to the Final Orders. The two exceptions were objections by the United States Trustee that the Bankruptcy Court overruled during the July 12 hearing. Those objections were:

¹¹ Copies of the Final Orders are attached as Exhibits “F” to “I” of the Losco Affidavit, MR, Tab 2, pp 137, 205, 219 and 227.

¹² Losco Affidavit, para 12, MR, Tab 2, p 14.

- (a) with respect to the Final Prepetition Wages Order, an objection that certain prepetition employee benefits exceeded a statutory cap under the Bankruptcy Code. The Bankruptcy Court overruled this objection, holding that it was appropriate to override this cap and permit the Debtors to pay those prepetition benefits;¹³ and
- (b) with respect to the Cash Management Order, an objection that certain of the Debtors' accounts did not strictly comply with the provisions of the Bankruptcy Code.¹⁴

D. Bidding Procedures Order

16. The Foreign Representative is also seeking this Court's recognition of an order approving a sale and investment solicitation process in respect of the Debtors, their business and/or their assets. That order is referred to by its full name as the *Order (i) (a) Approving The Auction And Bidding Procedures, (b) Approving Stalking Horse Bid Protections, (c) Scheduling Certain Dates And Deadlines With Respect Thereto And An Auction, (d) Approving The Form And Manner Of Notice Thereof, (e) Approving The Form APA, And (ii) (a) Establishing Notice And Procedures For The Assumption And Assignment Of Contracts And Leases, (b) Authorizing The Assumption And Assignment Of Assumed Contracts, (c) Authorizing The Sale Of Assets And (iii) Granting Related Relief* (the "**Bidding Procedures Order**").

¹³ Losco Affidavit, para 12, MR, Tab 2, p 14.

¹⁴ Losco Affidavit, para 12, MR, Tab 2, p 14.

17. The Bankruptcy Court entered the Bidding Procedures Order on July 22, 2024, following a hearing held on July 19.¹⁵ The Debtors were ultimately able to resolve almost all formal and informal objections to the Bidding Procedures Order prior to that hearing. The only two objections that remained outstanding at the commencement of the hearing were:

- (a) an objection from Trisura Guarantee Insurance Company and Trisura Insurance Company that the proposed process for assuming and rejecting executory contracts was deficient. This objection was resolved consensually during the hearing based on comments from the Debtors' counsel; and
- (b) objections from the United States Trustee that: (i) the sale process constituted a *de facto* plan that circumvented the plan confirmation process; (ii) the timelines for the bidding procedures and notice provisions were too short/insufficient; (iii) stalking horse bid protections should not be approved without knowing the identity of the stalking horse bidder; and (iv) the Bidding Procedures Order needed to provide for certain consumer privacy protections. The Bankruptcy Court overruled each of those objections during the hearing.¹⁶

18. The Bidding Procedures Order authorizes the Debtors to commence a sale process with the aim of achieving a going-concern sale of their business that maximizes value for their

¹⁵ Bidding Procedures Order, Exhibit "A" to the Supplemental Affidavit of Jovana Pajovic sworn July 22, 2024 ("**Supplemental Pajovic Affidavit**"), Supplemental Motion Record of the Foreign Representative ("**Supp MP**"), Tab 1.

¹⁶ Debtors' Reply to Omnibus Objections to Bidding Procedures Motion, paras 3 and 24, Exhibit "T" to the Losco Affidavit, MR, Tab 2, pp 608 and 618; First Report of the Information Officer dated July 22, 2024, para 5.3.

stakeholders. The Bidding Procedures Order provides for the following key dates and milestones:¹⁷

Date	Deadline
<u>Monday, July 29, 2024</u> , or as soon as reasonably practicable after entry of the Bidding Procedures Order	Service of Sale Notice; ¹⁸ Publication of Sale Notice
<u>Tuesday, July 30, 2024</u> , or as soon as reasonably practicable thereafter	Serve notice of potential assumption and assignment to contract counterparties
<u>Tuesday, August 20, 2024</u> (or 21 days after service of an applicable notice of assumption and assignment)	Deadline to object to proposed cure amounts and assumption and assignment
<u>Friday, September 6, 2024</u> , at 5:00 p.m. (prevailing Pacific Time)	Bid Deadline
<u>Monday, September 9, 2024</u> , at 9:00 a.m. (prevailing Pacific Time)	Qualified Bid Designation Date
<u>Tuesday, September 10, 2024</u> , at 12:00 p.m. (prevailing Eastern Time)	Auction (if necessary) to be held at the New York offices of A&O Shearman, or such other location announced to the bidders and Consultation Parties
<u>Thursday September 12, 2024</u>	Serve Notice of Successful Bidder on Contract Counterparties
<u>Friday, September 19, 2024</u> , at 12:00 p.m. (prevailing Pacific Time)	Deadline to object to the proposed Sale; deadline to object to adequate assurance.
<u>Tuesday, September 24, 2024</u> , at 12:00 p.m. (prevailing Pacific Time)	Deadline for responses to objections.

¹⁷ Bidding Procedures Order, Exhibit “A”, “Important Dates and Deadlines,” Exhibit “A” to the Supplemental Pajovic Affidavit, Supp MR, Tab 1.

¹⁸ Capitalized terms used in this table that are not otherwise defined have the meanings given to them in the Bidding Procedures Order.

<u>Wednesday, September 25, 2024</u> , at 10:00 a.m. (prevailing Pacific Time) (subject to the Bankruptcy Court’s availability)	Sale Hearing
<u>Thursday, September 26, 2024</u>	Entry of Sale Order
On or before <u>Monday, October 8, 2024</u>	Closing

PART III – THE ISSUES

19. The only issue to be determined in this motion is whether the Court should recognize the Final Orders and the Bidding Procedures Order under section 49 of the CCAA.

PART IV – THE LAW

A. Part IV of the CCAA

20. 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 administration of cross-border insolvencies, which protects the interests of debtors, creditors, and other interested persons.¹⁹

21. 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.²⁰ Furthermore, section 52(1) of the CCAA requires that if an order recognizing a foreign proceeding is made—

¹⁹ *Zochem Inc. (Re)*, [2016 ONSC 958](#), [para 15](#); *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“CCAA”), [s 44](#).

²⁰ CCAA, [s 61](#).

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.”²¹

B. This Court should recognize the Final Orders and Bidding Procedures Order

22. The Foreign Representative seeks this Court’s recognition of the Bankruptcy Court’s Final Orders and the Bidding Procedures Order.

23. 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.²² 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.²³

24. 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.²⁴

²¹ CCAA, [s 52\(1\)](#).

²² CCAA, [s 49](#).

²³ CCAA, [s 50](#).

²⁴ *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](#).

25. 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.²⁵

(i) This Court should recognize the Final Orders

26. The Foreign Representative seeks Canadian recognition of the Final Orders, consisting of the Final DIP Order, the Final Cash Management Order, the Final Prepetition Wages Order and the Final Insurance Order.

27. Importantly, Justice Penny has already recognized interim versions of each of these final orders. When he granted his Supplemental Order, Justice Penny emphasized that recognition of those interim orders accorded with comity and helped ensure that stakeholders in Canada and the U.S. are treated fairly and equally.²⁶ He also held that the interim orders represented in substance the kinds of relief that are frequently granted in CCAA proceedings in Canada, and that nothing in those interim orders was contrary to public policy in Canada.²⁷

²⁵ *Babcock & Wilcox Canada Ltd., Re*, [18 CBR \(4th\) 157](#) (Ont. Sup. Ct. J. (Commercial List)), [paras 9-10](#).

²⁶ [Endorsement of Justice Penny dated June 21, 2024, para 23](#), *In the Matter of Nevada Copper, Inc. et al.*, Court File No. CV-24-00722252-00CL.

²⁷ [Endorsement of Justice Penny dated June 21, 2024, para 21](#), *In the Matter of Nevada Copper, Inc. et al.*, Court File No. CV-24-00722252-00CL.

28. Justice Penny's holdings equally apply to the Final Orders. The Final Orders provide substantially the same relief for the Debtors as their interim counterparts—relief designed to assist the Debtors pursue a successful restructuring.²⁸ Nothing has changed between the interim and final versions that would affect Justice Penny's holding regarding consistency with Canadian public policy.

29. Importantly, consistent with the DIP Credit Agreement, the Final DIP Order allows the Debtors to access the full \$60 million of funding under the DIP Facility.²⁹ Under the DIP Credit Agreement, the Debtors are required to obtain this Court's recognition of the Final DIP Order within fourteen days of its entry by the Bankruptcy Court (i.e., by July 29, 2024). Absent such recognition, the Debtors could be in default of the DIP Credit Agreement and jeopardize access to essential funding for their restructuring.³⁰ Timely recognition is therefore necessary to the restructuring itself.

30. Additionally, the Final DIP Order and the Final Insurance Order were entered on a consensual basis following the Debtors' diligent efforts to resolve their stakeholders' comments and concerns. The United States Trustee maintained technical objections regarding the

²⁸ The Foreign Representative has included blacklines between the interim and final versions of each of the Final Orders in its motion record at Exhibits "N" to "Q" of the Losco Affidavit, MR, Tab 2, pp 413, 481, 498 and 509.

²⁹ Blackline between Interim and Final DIP Order, section 3(b), Exhibit "N" to Losco Affidavit, MR, Tab 2, p 432.

³⁰ Martin Affidavit, para 96, Exhibit "A" to the Losco Affidavit, MR, Tab 2, p 47.

Bankruptcy Code. The Bankruptcy Court overruled objections to the other two Final Orders following a hearing on the merits.³¹

31. The Information Officer notes in its First Report that it believes this Court's recognition of the Final Orders is reasonable and appropriate in the circumstances.³² It notes that the Final Orders are, for the most part, common in Chapter 11 proceedings and are substantially consistent with the interim orders previously recognized by this Court pursuant to the Supplemental Order.³³

(ii) *This Court should recognize the Bidding Procedures Order*

32. The Foreign Representative also seeks recognition of the Bidding Procedures Order.

33. The Bidding Procedures Order is a central pillar of the Debtors' restructuring. The sale process authorized by the Bidding Procedures Order is intended to result in a transaction that will both allow the business to continue as a going concern and maximize the potential value of the assets for the benefit of creditors and other stakeholders. Indeed, after a hearing on the merits, the Bankruptcy Court determined that the bidding procedures authorized by the Bidding Procedures Order are fair, reasonable, appropriate and reasonably designed to promote a competitive and robust bidding process to generate the greatest level of interest in the Debtors' business resulting in the highest or otherwise best offer.³⁴

³¹ Losco Affidavit, para 12, MR, Tab 2, p 14.

³² First Report of the Information Officer, s 8.1.

³³ First Report of the Information Officer, s 4.2.

³⁴ Bidding Procedures Order, para 3, Supplemental Pajovic Affidavit, Exhibit "A", Supp MR, Tab 1.

34. Nothing in the Bidding Procedures 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 sale and investment solicitation processes of a substantially similar nature to the process approved by the Bidding Procedures Order.³⁵ Canadian courts have also regularly exercised their jurisdiction under sections 49 and 50 of the CCAA to recognize Chapter 11 bankruptcy orders that approve bidding procedure orders with similar effect as the Bidding Procedures Order.³⁶

35. Further, like in plenary CCAA proceedings, the Foreign Representative intends to return before this Court to seek, among other potential relief, Canadian recognition of the Bankruptcy Court's order approving any sale that materializes from the bidding procedures.

36. Recognition of the Bidding Procedures Order is necessary to ensure that the CCAA's purposes are achieved and that the Debtors have the best opportunity to restructure their affairs. It is appropriate in these circumstances for this Court to recognize the Bidding Procedures Order.

³⁵ See, e.g., [SISP Approval Order of Justice McEwen dated August 18, 2022](#), *In the Matter of a Plan of Compromise or Arrangement of Just Energy Group Inc. et al.*, Court File No. CV-21-00658423-00CL (Ont. Sup. Ct. J. [Commercial List]); *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#), paras 164-170; [SISP Approval Order of Justice Penny dated December 20, 2024](#), *In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp.*, Court File No. CV-21-00673304-00CL (Ont. Sup. Ct. J. [Commercial List]).

³⁶ See, e.g., [Second Supplemental Order of Justice Penny dated June 18, 2024, para 2\(e\)](#), *In the Matter of Red Lobster Management LLC et al.*, Court File No. CV-24-00720567-00CL (Ont. Sup. Ct. J. [Commercial List]); [Order \(Recognition of Foreign Orders\) of Justice Conway dated May 16, 2022, para 3\(c\)](#), *In the Matter of Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuite Des Affaires (Canada) Ltee*, Court File No. CV-22-00679628-00CL (Ont. Sup. Ct. J. [Commercial List]).

PART V – RELIEF REQUESTED

37. The Foreign Representative respectfully requests that this Court recognize the Final Orders and the Bidding Procedures 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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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. [Endorsement of Justice Penny dated June 21, 2024](#), *In the Matter of Nevada Copper, Inc. et al.*, Court File No. CV-24-00722252-00CL
5. [SISP Approval Order of Justice McEwen dated August 18, 2022](#), *In the Matter of a Plan of Compromise or Arrangement of Just Energy Group Inc. et al.*, Court File No. CV-21-00658423-00CL (Ont. Sup. Ct. J. [Commercial List])
6. *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#)
7. [SISP Approval Order of Justice Penny dated December 20, 2024](#), *In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp.*, Court File No. CV-21-00673304-00CL (Ont. Sup. Ct. J. [Commercial List])
8. [Second Supplemental Order of Justice Penny dated June 18, 2024](#), *In the Matter of Red Lobster Management LLC et al.*, Court File No. CV-24-00720567-00CL (Ont. Sup. Ct. J. [Commercial List])
9. [Order \(Recognition of Foreign Orders\) of Justice Conway dated May 16, 2022](#), *In the Matter of Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuite Des Affaires (Canada) Ltee*, Court File No. CV-22-00679628-00CL (Ont. Sup. Ct. J. [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>ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST Proceeding commenced at TORONTO</div><div>FACTUM OF THE FOREIGN REPRESENTATIVE (Motion for Recognition of Final Orders and Bidding Procedures Order, returnable July 24, 2024)</div><div>Torys LLP 79 Wellington St. W., 30th Floor Box 270, TD South Tower Toronto, ON M5K 1N2 Tony DeMarinis (LSO#: 29451Q) 416.865.8162 tdemarinis@torys.com Jeremy Opolsky (LSO#: 60813N) 416.865.8117 jopolsky@torys.com Mike Noel (LSO#: 80130F) 416.865.7378 mnoel@torys.com Lawyers for Nevada Copper, Inc., Nevada Copper Corp., 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC</div></div>