

[2] The Applicants are part of a gold exploration and development business in south central Armenia (the "Amulsar Project"). The Amulsar Project is directly owned and operated by Lydian Armenia CJSC ("Lydian Armenia"), a wholly-owned subsidiary of the Applicants.

[3] As set out in the affidavit of Edward A. Sellers sworn December 22, 2019 (the "Sellers Affidavit"), the Applicants have been experiencing and continue to experience liquidity issues due to blockades of the Amulsar Project and other external factors. The Sellers Affidavit details such activities and Mr. Sellers deposes that these activities have prevented Lydian Armenia and its employees, contractors and suppliers from accessing, constructing and ultimately operating the Amulsar Project.

[4] Mr. Sellers states that the lack of progress at the Amulsar Project has prevented the Lydian Group (as that term is defined below) from generating any positive cash flow and has also triggered defaults on certain of the Lydian Group's obligations to its lenders which, if enforced, the Lydian Group would be unable to satisfy.

[5] The Lydian Group has operated under forbearance agreements in respect of these defaults since October 2018, but the most recent forbearance agreement expired on December 20, 2019.

[6] The Applicants contend that they now require immediate protection under the CCAA for the breathing room they require to pursue remedial steps on a time sensitive basis.

[7] The Applicants intend to continue discussions with their lenders and other stakeholders, including the Government of Armenia ("GOA"). The Applicants also intend to continue evaluating potential financing and/or sale options, all with a view to achieving a viable path forward.

The Applicants

[8] Lydian International is a corporation continued under the laws of the Bailiwick of Jersey, Channel Islands, from the Province of Alberta pursuant to the *Companies (Jersey) Law 1991*. Lydian International was originally incorporated under the *Business Corporations Act*, R.S.A. 2000, c. B-9 (Alberta) on February 14, 2006 as "Dawson Creek Capital Corp.", and subsequently became Lydian International on December 12, 2007.

[9] Lydian International's registered office is located in Jersey. On June 12, 2019, Lydian International shareholders approved its continuance under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44, but this continuance has yet to be implemented.

[10] Lydian International has two types of securities listed on the Toronto Stock exchange: (1) ordinary shares and (2) warrants that expired in 2017.

[11] Lydian Canada is a direct, wholly owned subsidiary of Lydian International. Lydian Canada is incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57 (British Columbia) and has a registered head office in Toronto. Its registered and records office is located in British Columbia.

[12] Lydian UK is a corporation incorporated in the United Kingdom and is a direct, wholly-owned subsidiary of Lydian Canada with a head office located in the United Kingdom. Lydian UK has no material assets in the UK.

[13] Lydian International and Lydian UK have assets in Canada in the form of deposits with the Bank of Nova Scotia in Toronto.

[14] The Applicants are part of a corporate group (the "Lydian Group") with a number of other subsidiaries ultimately owned by Lydian International. Other than the Applicants, certain of the Lydian Group's subsidiaries are Lydian U.S. Corporation ("Lydian US"), Lydian International Holdings Limited ("Lydian Holdings"), Lydian Resources Armenia Limited ("Lydian Resources") and Lydian Armenia, a corporation incorporated under the laws of the Republic of Armenia. Together, Lydian U.S., Lydian Holdings, Lydian Resources and Lydian Armenia are the "Non-Applicant" parties.

[15] The Applicants submit that due to the complete integration of the business and operations of the Lydian Group, an extension of the stay of proceedings over the Non-Applicant parties is appropriate.

[16] The Applicants contend that the Lydian Group is highly integrated and its business and affairs are directed primarily out of Canada. Substantially all of its strategic business affairs, including key decision-making, are conducted in Toronto and Vancouver.

[17] Further, all the Applicants and Non-Applicant Parties are borrowers or guarantors of the Lydian Group's secured indebtedness. The Lydian Group's loan agreements are governed primarily by the laws of Ontario.

[18] Finally, the Lydian Group's forbearance and restructuring efforts have been directed out of Toronto.

[19] The Lydian Group is focused on constructing the Amulsar Project, its wholly-owned development stage gold mine in Armenia. The Amulsar Project was funded by a combination of equity and debt capital and stream financing. The debt and stream financing arrangements are secured over substantially all the assets of Lydian Armenia and Lydian International in the shares of various groups of the Lydian Group.

[20] The Applicants contend that time is of the essence given the Applicants' minimal cash position and negative cash flow.

Issues

[21] The issues for consideration are whether:

- (a) the Applicants meet the criteria for protection under the CCAA;
- (b) the CCAA stay should be extended to the Non-Applicant Parties;

- (c) the proposed monitor, Alvarez & Marsal Canada Inc. ("A&M") should be appointed as monitor;
- (d) Ontario is the appropriate venue for this proceeding;
- (e) this court should issue a letter of request of the Royal Court of Jersey;
- (f) this Court should exercise its discretion to grant the Administration Charge and the D & O Charge (as defined below); and
- (g) it is appropriate to grant a stay extension immediately following the issuance of the Initial Order.

Law and Analysis

[22] Pursuant to section 11.02(1) of the CCAA, a court may make an order staying all proceedings in respect of a debtor company for a period of not more than 10 days, provided that the court is satisfied that circumstances exist to make the order appropriate.

[23] Section 11.02(1) of the CCAA was recently amended and the maximum stay period permitted in an initial application was reduced from 30 days to 10 days. Section 11.001 which came into force at the same time as the amendment to s. 11.02(1), limits initial orders to "ordinary course" relief.

[24] Section 11.001 provides:

- 11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period:

[25] The News Release issued by Innovation, Science and Economic Development Canada specifically states that these amendments "limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players."

[26] In my view, the intent of s. 11.001 is clear. Absent exceptional circumstances, the relief to be granted in the initial hearing "shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period". The period being no more than 10 days, and whenever possible, the *status quo* should be maintained during that period.

[27] Following the granting of the initial order, a number of developments can occur, including:

- (a) notification to all stakeholders of the CCAA application;
- (b) stabilization of the operation of debtor companies;
- (c) ongoing negotiations with key stakeholders who were consulted prior to the CCAA filing;
- (d) commencement of negotiations with stakeholders who were not consulted prior to the CCAA filing;
- (e) negotiations of DIP facilities and DIP Charges;
- (f) negotiations of Administration Charges;
- (g) negotiation of Key Employee Incentives Programs;
- (h) negotiation of Key Employee Retention Programs;
- (i) consultation with regulators;
- (j) consultation with tax authorities;
- (k) consideration as to whether representative counsel is required; and
- (l) consultation and negotiation with key suppliers.

[28] This list is not intended to be exhaustive. It is merely illustrative of the many issues that can arise in a CCAA proceeding.

[29] Prior to the recent amendments, it was not uncommon for an initial order to include provisions that would affect some or all of the aforementioned issues and parties. The previous s. 11.02 provided that the initial stay period could be for a period of up to 30 days. After the initial stay, a “comeback” hearing was scheduled and, in theory, parties could request that certain provisions addressed in the initial order could be reconsidered.

[30] The practice of granting wide-sweeping relief at the initial hearing must be altered in light of the recent amendments. The intent of the amendments is to limit the relief granted on the first day. The ensuing 10-day period allows for a stabilization of operations and a negotiating window, followed by a comeback hearing where the request for expanded relief can be considered, on proper notice to all affected parties.

[31] In my view, this is consistent with the objectives of the amendments which include the requirement for “participants in an insolvency proceeding to act in good faith” and “improving participation of all players”. It may also result in more meaningful comeback hearings.

[32] It is against this backdrop that the requested relief at the initial hearing should be scrutinized so as to ensure that it is restricted to what is reasonably necessary for the continued operations of the debtor company during the initial stay period.

[33] For the reasons that follow, I conclude that it is appropriate to grant a s. 11.02 order in respect of the Applicants.

[34] I am satisfied that Lydian Canada meets the CCAA definition of “company” and is eligible for CCAA protection.

[35] I have also considered whether the foreign incorporated companies are “companies” pursuant to the CCAA. Such entities must satisfy the disjunctive test of being an “incorporated company” either “having assets or doing business in Canada”.

[36] In *Cinram International Inc., (Re)*, 2012 ONSC 3767, 91 C.B.R. (5th) 46, I stated that the threshold for having assets in Canada is low and that holding funds in a Canadian bank account brings a foreign corporation within the definition of “company” under the CCAA.

[37] In this case, both Lydian International and Lydian UK meet the definition of “company” because both corporations have assets in and do business in Canada.

[38] In my view the Applicants are each “debtor companies” under the CCAA. The Applicants are insolvent and have liabilities in excess of \$5 million. I am satisfied that the Applicants are eligible for CCAA protection.

[39] The Applicants seek to extend the stay to Lydian Armenia, Lydian Holdings, Lydian Resources Armenia Limited and Lydian US. I am satisfied that, in the circumstances, it is appropriate to grant an order that extends the stay to the Non-Applicant Parties. The stay is intended to stabilize operations in the Lydian Group. This finding is consistent with CCAA jurisprudence: see e.g., *Sino-Forest Corporation (Re)*, 2012 ONSC 2063, at paras. 5, 18, and 31; *Canwest Global Communications Corp. (Re)* (2009), 59 C.B.R. (5th) 72 (Ont. S.C.); and *Target Canada Co. (Re)*, 2015 ONSC 303, 22 C.B.R. (6th) 323, at paras. 49-50.

[40] I am also satisfied that it is appropriate to appoint A & M as monitor pursuant to the provisions of s. 11.7 of the CCAA.

[41] With respect to whether Ontario is the appropriate venue for this proceeding, Lydian Canada’s registered head office is located in Toronto and its registered and records offices are located in Vancouver. In my view, Ontario has jurisdiction over Lydian Canada. The registered head offices for Lydian International and Lydian UK are in Jersey and the UK respectively, however, both entities have assets in Ontario, those being funds on deposit with the Bank of Nova Scotia in Toronto. Further, it seems to me that both Lydian International and Lydian UK have a strong nexus to Ontario and accordingly I am satisfied that Ontario is the appropriate jurisdiction to hear this application.

[42] I am also satisfied that, in these circumstances, it is appropriate for this court to issue to the Royal Court of Jersey a letter of request as referenced in the application record.

Administration Charge

[43] The Applicants seek a charge on their assets in the maximum amount of US \$350,000 to secure the fees and disbursements incurred in connection with services rendered by counsel to

the Applicants, A & M and A & M's counsel, in respect of the CCAA proceedings (the "Administration Charge").

[44] Section 11.52 of the CCAA provides the ability for the court to grant the Administration Charge.

[45] The recently enacted s. 11.001 of the CCAA limits the requested relief on this motion, including the Administration Charge, to what is reasonably necessary for the continued operation of the Applicants during the Initial Stay Period. The Sellers Affidavit outlines the complex issues facing the Applicants.

[46] In *Canwest Publishing Inc.*, (Re), 2010 ONSC 222, 63 C.B.R.(5th) 115, Pepall J. (as she then was) identified six non-exhaustive factors that the court may consider in addition to s. 11.52 of the CCAA when determining whether to grant an administration charge. These factors include:

- (a) the size and complexity of business 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 monitor.

[47] It seems to me that the proposed restructuring will require extensive input from the professional advisors and there is an immediate need for such advice. The requested relief is supported by A & M.

[48] I am satisfied that the Administration Charge in the limited amount of US \$350,000 is appropriate in the circumstances and is reasonably necessary for the continued operation of the business at this time.

D & O Charge

[49] The Applicants also seek a charge over the property in favour of their former and current directors in the limited amount of \$200,000 (the "D & O Charge").

[50] The Applicants maintain Directors' and Officers' liability insurance (the "D & O Insurance") which provides a total of \$10 million in coverage.

[51] The D & O Insurance is set to expire on December 31, 2019.

[52] Section 11.51 of the CCAA provides the court with the express statutory jurisdiction to grant the D & O charge in an amount the court considers appropriate, provided notice is given to the secured creditors who are likely to be affected.

[53] In *Jaguar Mining Inc., (Re)*, 2014 ONSC 494, 12 C.B.R. (6th) 290, I set out a number of factors to be considered in determining whether to grant a directors' and officers' charge:

- (a) whether notice has been given to the secured creditors likely to be affected by the charge;
- (b) whether the amount is appropriate;
- (c) whether the Applicant could obtain adequate indemnification insurance for the director at a reasonable cost; and
- (d) whether the charge applies in respect of any obligation incurred by a director or officer as a result of the directors' or officers' gross negligence or willful misconduct.

[54] Having reviewed the Sellers Affidavit, it seems to me that the granting of the D & O charge is necessary in the circumstances. In arriving at this conclusion, I have also taken into account that the D & O Insurance will lapse shortly; having directors involved in the process is desirable; that the secured creditors likely to be affected do not object; and that A & M has advised that it is supportive of the D & O Charge. Further, the requested amount is one that I consider to be reasonably necessary for the continued operation of the Applicants.

Extension of the Stay of Proceedings

[55] The Applicants have requested that, if the initial order is granted, I should immediately entertain and grant an order extending the Stay Period until and including January 17, 2020 which will provide the Applicants and all stakeholders with enough time to adequately prepare for a comeback hearing.

[56] The Applicants submit that I am authorized to grant a stay extension immediately after granting the initial order because section 11.02(2) of the CCAA does not provide a minimum waiting time before an applicant can seek a stay extension. The Applicants reference recent decisions where courts have scheduled hearings within two or three days after the granting of an initial order. Reference is made to *Clover Leaf Holdings Company (Re)*, 2019 ONSC 6966 and *Re Wayland group Corp. et al.* (2 December 2019), Toronto CV-19-00632079-00CL. In *Clover Leaf*, the stay extension for 36 days and additional relief including authorization for DIP financing was granted three days after the initial order and in *Wayland*, the stay extension was granted two days after the initial order.

[57] I acknowledge that, in this case, it may be challenging for the Applicants to return to court at or near the end of the 10-day initial stay period due to the year-end holidays. I also acknowledge that the offices of many of the parties involved in these proceedings may not be open during the holidays.

[58] However, the statutory maximum 10-day stay as referenced in s. 11.02(1) expires on January 2, 2020 and the courts are open on that day.

[59] As noted above, absent exceptional circumstances, I do not believe that it is desirable to entertain motions for supplementary relief in the period immediately following the granting of an initial order.


[60] It could very well be that circumstances existed in both *Clover Leaf* and *Wayland* that justified the stay extension and the ancillary relief being granted shortly after the initial order.

[61] However, in this case, I have not been persuaded on the evidence that it is necessary for the stay extension to be addressed prior to January 2, 2020 and I decline to do so.

Disposition

[62] The initial order is granted with a Stay Period in effect until January 2, 2020. In view of the holiday schedules of many parties, the following procedures are put in place. The Applicants can file a motion returnable on January 2, 2020, requesting that the stay be extended to January 23, 2020. Any party that wishes to oppose the extension of the stay to January 23, 2020 is required to notify the Applicant, A & M and the Commercial List Office of their intention to do so no later than 2:00 p.m. on December 30, 2019. In the event that the requested stay extension is unopposed, there will be no need for counsel to attend on the return of the motion. I will consider the motion based on the materials filed.

[63] If any objections are received by 2:00 p.m. on December 30, 2019, the hearing on January 2, 2020 will address the opposed extension request. Any further relief will be considered at the Comeback Motion on January 23, 2020.



Chief Justice Geoffrey B. Morawetz

Date: December 24, 2019

IN THE ROYAL COURT OF JERSEY
(SAMEDI DIVISION)

IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL LIMITED

AND IN THE MATTER OF THE LETTER OF REQUEST FROM THE ONTARIO SUPERIOR COURT
OF JUSTICE

AFFIDAVIT OF MAX GALT

I, **MAX GALT**, of Mourant Ozannes, 22 Grenville Street, St, Helier, Jersey, JE4 8PX, hereby make oath and say as follows:-

Introduction

1. I am a solicitor of the Senior Courts of England and Wales. I work at Mourant Ozannes as an Associate in the litigation team and assist Advocate Stephen Alexander in this matter. Mourant Ozannes are advocates for the representor, Lydian International Limited (**Lydian International**), and I make this affidavit in support of its Representation.
2. The purpose of this affidavit is to:-
 - (a) explain the steps taken to comply with the convening orders made by the Act of Court dated 5 February 2020 (the **Act of Court**) (**File 1, Tab 3**); and
 - (b) apprise the Court of correspondence and interactions from and between Mourant Ozannes and the Viscount in relation to the Representation.
3. The contents of this Affidavit are true to the best of my knowledge, information and belief, and are within my own knowledge except where I state otherwise. Where they are not within my own knowledge, I indicate their source.
4. There is now produced and shown to me a bundle of true copy documents marked **MG1** to which I shall refer.

Service on the Monitor and Creditors

5. By the Act of Court, the Royal Court ordered, *inter alia*, that:

- (a) The Representation and affidavit evidence in support be served by email to the following email address: rbengino@tgf.ca, of Alvarez & Marsal Canada Inc., in its capacity as the Monitor of Lydian International, Lydian Canada Ventures Corporation, and Lydian U.K Corporation Limited, such service to be effected by ordinary service; and
- (b) Notice of the proceedings be provided to the creditors by way of ordinary post or email to their respective addresses as last shown on the records of the Monitor within seven days of the date of the Act of Court (that is, by 12 February 2020).

Service on the Monitor

- 6. On 12 February 2020 Mourant Ozannes duly served the Monitor by email with a copy of the Representation, the affidavit of Alan Hutchens dated 30 January 2020, and the affidavit of Edward A. Sellers dated 30 January 2020. A copy of the email appears at **page 1**. The exhibits to the aforementioned affidavits were made available to the Monitor via email link granting access to a data room on 18 February 2020. A copy the email appears at **page 2**.
- 7. On 20 February 2020 Mourant Ozannes further served the Monitor by email with a copy of the Affidavit of Elizabeth Pillon dated 18 February 2020. A copy the email appears at **page 3**.

Notification of creditors

- 8. The secured and unsecured creditors of Lydian International were identified from a list prepared by Alvarez and Marsal Canada Inc., in its capacity as the Monitor for Lydian International, which was published on its website on 23 December 2019. A copy of that list appears at **page 4**.
- 9. Lydian has, in total, sixteen creditors that are listed by the Monitor in the above list. Six are secured creditors (two of which have had both secured and unsecured contracts with Lydian International) and ten are unsecured creditors. Mourant Ozannes and Stikeman Elliott LPP, both acting for Lydian International, are included in the list of unsecured creditors.
- 10. On 12 February 2020, Mourant Ozannes received the contact email addresses for all six of the secured creditors of Lydian International, and one of the unsecured creditors, from Stikeman Elliott, who had obtained the email addresses directly from the Monitor. Copies of the emails sent to creditors, along with the letters sent as attachments, appear at **pages 5 to 25**.
- 11. Email addresses for the remaining creditors were received from Stikeman Elliot on 13 February 2020. Those creditors were notified by both by post and by email on 13 February 2020 (with the exception of Mourant Ozannes, who it was plainly not necessary to serve).

Copies of the emails sent to creditors, along with the letters sent as attachments, appear at **pages 26 to 49**.

12. On 17 February 2020 Maurant Ozannes contacted all of the creditors to request that they acknowledge receipt of the aforementioned notice. As at the date of this affidavit being sworn all apart from 3 of the creditors have acknowledged receipt. A table is exhibited at **page 50** showing those creditors who have acknowledged receipt and copies of their emails appear at **pages 51 to 64**.
13. Caterpillar Financial Services (UK) Ltd (**Caterpillar**), a secured lender of Lydian Armenia CJSC in the sum of Swiss Franc 25,954,390, has written to Maurant Ozannes in response to its notification letter at **pages 65 to 66** and has confirmed, inter alia, that:
 - (a) Caterpillar has objected to the Ontario Court attempting to apply the Canadian stay of proceedings to collateral secured by its lending in Armenia;
 - (b) Caterpillar consider that any order by a Jersey court would not be effective against Lydian Armenia CJSC or the collateral; and
 - (c) Caterpillar would take appropriate steps to formalize its claim against Lydian International if recognition is granted.
14. Caterpillar's objections to the CCAA orders have been addressed by the Ontario Court in the context of the CCAA proceedings (**pages 67 to 68**) and the current position is as follows:
 - (a) Caterpillar agreed to stand down its objections at the previous hearing in Canada on 23 January 2020 until the next hearing before the Ontario Court on 2 March 2020;
 - (b) The Lydian Group would not be entitled to rely on the adjournment/standing down to make any allegations in response to Caterpillar's objection; and
 - (c) Caterpillar is entitled to challenge the Lydian Group's evidence, and to sever supplemental material for the 2 March 2020 hearing, if so required.

Engagement with the Viscount

15. We have liaised with the Viscount's department from outset on the form and content of the Representation and supporting evidence. Further to reviewing the evidence that was filed for the convening hearing, and following amendments being made in line with the Viscount's views, the Viscount relayed that she had no additional observations in relation to the application (**pages 69 to 71**).

In the Royal Court of Jersey

Samedi Division

2020/019

In the year two thousand and twenty, the twenty-fifth day of February.

Before Robert James MacRae, Esquire, Deputy Bailiff of Jersey, assisted by
Jurats Rozanne Barbara Thomas and David Gareth Hughes.

IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL
LIMITED

AND IN THE MATTER OF THE LETTER OF REQUEST FROM THE ONTARIO
SUPERIOR COURT OF JUSTICE

Upon receipt of a letter of request to the Royal Court of Jersey from the Ontario Superior Court of Justice (the Ontario Court) dated the 23rd December, 2019, issued under an order of the Ontario Court dated the 23rd January, 2020.

And upon reading the representation of Lydian International Limited (Lydian International).

And upon hearing the Advocate for Lydian International, the Court, for reasons to be set out in a judgment to be delivered by the Deputy Bailiff at a later date, ordered that the directions and orders of the Ontario Court be recognised and be given effect to as follows, so that:-

1. Alvarez & Marsal Canada Inc. ("the Monitor") be appointed as the monitor of Lydian International with such appointment registered in the rolls of the Royal Court and the appointment of the Monitor notified to the Jersey Financial Services Commission;
2. Lydian International shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever in Jersey and, subject to further order of the Ontario Court, Lydian International shall continue to carry on business in a manner consistent with the preservation of its business and property;
3. No proceeding or enforcement process in or out of any court or tribunal shall be commenced or continued against or in respect of Lydian International, or affecting its

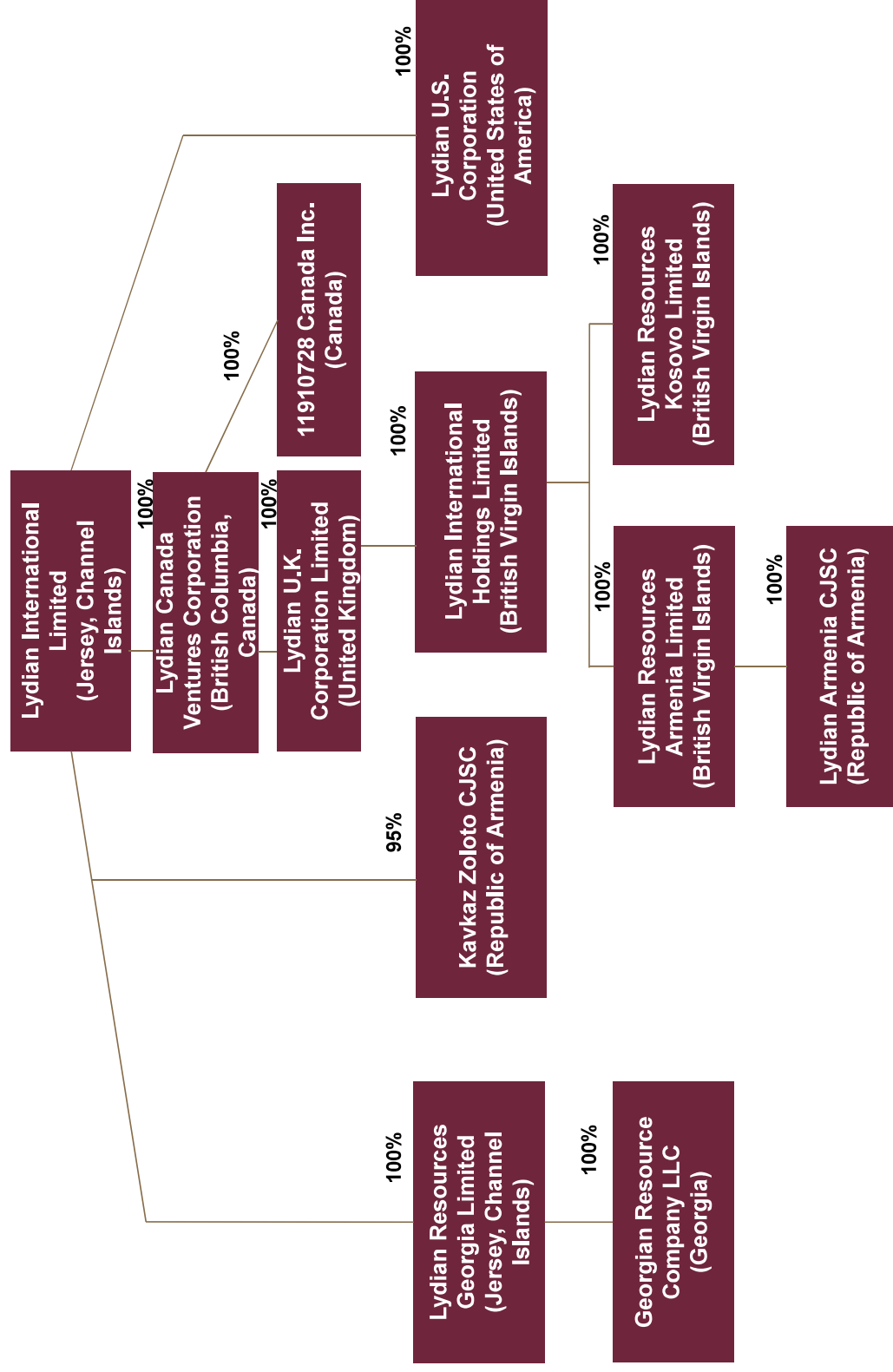
- business or its property, except with the written consent of Lydian International, or with leave of the Ontario Court; and
4. Lydian International and any party affected by this Representation, including the creditors of Lydian International, shall have liberty to apply.


Greffier Substitute

MO (SJA)

APPENDIX B

Lydian Organization Chart - Post-Reorganization



APPENDIX C

To: Honorable Geoffrey B. Morawetz Chief Justice, Ontario Superior Court of Justice
Copy to: Alvarez & Marsal Canada Inc.

February 28, 2020

Letter in Relation to Court File No.CV-19-00633392-00CL Motion Record of January 20, 2020 Presented by Lydian Group's Lawyers

Attachment 1. Police of Armenia, clarification on implementing court order regarding the Amulsar blockades

Honorable Chief Justice Morawetz and Superior Court of Justice (Commercial List),

We, Arpine Galfayan, Anna Shahnazaryan, Mariam Davtyan, Ani Khachatryan and Levon Galstyan, are citizens of Armenia and concerned parties regarding Lydian Group's mining activities in Armenia as mining affects the environment and economy of the whole country. We are also self-organized in a volunteer environmental watchdog group.

We have seen the Motion Record of Lydian Group's Lawyers including Lydian Group's CEO Edward Sellers' affidavit of December 2019 and Chief Justice Geoffrey Morawetz's appeal to the Royal Court of Jersey published by Alvarez and Marshal on their website (<https://bit.ly/2PwOs81>).

We find it of utmost importance to inform you of the factual misrepresentations and therefore material misleading found in Mr. Edward Sellers' affidavit of December 2019. We also present to you additional information regarding court decisions made in Armenia in relation to Lydian's assets. While the government of Armenia has positioned itself in support of Lydian and has not made sanctions in relation to misleading conducted by the company for the past 6-7 years, and although we have found over two dozen instances of factual misrepresentations, by this letter we submit only three important points and express willingness to submit further clarifications, as requested.

Regarding the blockades and the Police of Armenia not implementing court order

1. Lydian provided factually incorrect information regarding implementation by Armenia's police of court decisions. Mr. Sellers claims: *"Police forces in Armenia have not acted on orders made by Armenian courts requiring the removal of blockaders and the commencement of criminal proceedings against them, and the GOA [Government of Armenia] has failed to cause the police to enforce court orders, further extending the illegal blockades."*

Lydian Armenia's court complaint was not about removal of blockades but about acting on trespassing in real estate in ownership of the company. The matter was the fact that protesters had set-up a protest site at the intersection of a main road and company-used gravel roads leading to its facilities and the mountain. The police recognized the action of the people as peaceful assembly in protection of their rights and right to protest. And so did the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his report to the Human Rights Council (May 2019, Visit to Armenia, para. 75-80). The police did carry out the order of the court to "eliminate trespassing" and ordered removal of the protesters' house-trailers from the territory of the real estate in the ownership of the company. It also took note that no trespassers were present in facilities owned by Lydian. The fact that the protests and resistance against a disastrous mining project continue immediately in the buffer zone of the inter-city road, is not a matter of compliance or non compliance with court orders. We requested the Armenian Police to clarify whether they implemented the court order and received a response which we are attaching to this letter. It is translated through a Notary approval and Apostille verification.

Regarding court decisions affecting Lydian's assets in Armenia

2. On December 12, 2019, the Civil Court of Vayk, Republic of Armenia, made a final decision over civil case AVD3/0249/02/19 (full case description found at DataLex, official website of Ministry of Justice of Armenia on court cases, http://datalex.am/?app=AppCaseSearch&case_id=27303072741028376) by which it approved the Settlement (Truce) Agreement of November 29, 2019 made between plaintiff "Lydian Armenia" (counter respondent) and respondent "Jermuk Ashkharh" CVJC (counter plaintiff, a hotel company). Earlier, by its claim of February 2019, Lydian demanded protection from the hotel owner's unilateral severance of property rental agreement in Jermuk, Armenia at the address of Shahumyan 20. Hotel owner "Jermuk Ashkharh" made a counter-claim and demanded circa 150.000 USD of damages resulting from Lydian's non-compliance with the rental agreement. By November 2019, Lydian offered a settlement (truce) and engaged in an agreement with "Jermuk Ashkharh" to annul the property rental agreement, to return the property to the owner and redeem damages in an amount of 1.270.000 USD, in addition to the earlier claimed amount of around 150.000 USD, calculated as non-paid rental and utility costs. The damages were calculated in relation to Lydian's restructuring of some parts of the hotel's building. **We draw your attention to the fact that during a period when Lydian was trying to extend forbearance agreements with its creditors and insolvency procedures were predictable, it engaged in a truce to pay a hotel company in Jermuk an amount, exceeding initial claims by almost 9 times.**

Regarding Assessment of Lydian's Environmental and Social Impact Assessment

3. In their affidavit of December 2019 (ELARD Audit (para. 58-70), para. 61), Mr. Sellers claims: "*ELARD completed the audit and released its report to the GOA on August 7, 2019, concluding that the Amulsar Project does not present a danger to the local water systems, and proposing some minor technical recommendations. In its report, ELARD did not challenge the validity of Lydian Armenia's EIA [emphasis added].*"

However, the Independent 3rd Party Assessment of the Impacts on Water Resources and Geology, Biodiversity and Air Quality, carried out by ELARD and TRC, claims the opposite:

"The ESIA/EIA assessments are deficient and corresponding conclusions are unreliable. Accordingly, the question of whether exploitation of the ore deposit can conclusively be considered safe cannot be answered [emphasis added]. The question about environmental damage is answered in responses to previous questions. (4.1. Responses to specific ToR questions, Question #10)"

The ELARD report clearly shows dozens of evidences of the company's deliberate misrepresentation of the reviewers' conclusions. Despite the fact that Lydian and Armenia's government attempted to subvert the detailed analysis of independent experts, we expect the Court and Bankruptcy Monitor to familiarize themselves with the full report and draw conclusions on how Lydian has misled them (as it did with its investors and creditors) in relation to the findings of this report (full report accessible at: <http://www.investigative.am/images/2019/lidian/porcaqnutyun/amulsar11.pdf>).

We remain at your disposal to provide more information, our address is: Spendaryan 5, apt 24, Yerevan 0002, Armenia, email: armecofront@gmail.com.

Arpine Grigoryan *Arpine Grigoryan*
ANI KHACHATRYAN *ANI KHACHATRYAN*
Levon Galstyan *Levon Galstyan* 2

Mariam Davtyan *Mariam Davtyan*
Anna Shakhazaryan *Anna Shakhazaryan*

REPUBLIC OF ARMENIA
VAYOTS DZOR REGIONAL DEPARTMENT OF THE POLICE
JERMUK DIVISION

3701, Jermuk city, Myasnikyan 3, tel./fax (010) 59 06 38, (0287) 2 14 42

No 84/277

18.02.2020

To the journalist of the «Infocom.am» sity
Tehmine Yenokyan

In response to your enquiry dated 06.02.2020 we would like to inform you that the Administrative Court of RA under its decision taken on the case No VD/9786/05/18 which entered in legal force obliged the Police to eliminate the tresspassory entries into the territory of the real estate under the ownership of the plaintiff.

Back on 21.05.2019 the employees of the Vayots Dzor regional department of the Police visited the territory under the ownership of "Lydian Armenia" company adjoined to the Gndevaz village of the Vayots Dzor region where the mobile house trailers actually belonging to the ecology campaigners were situated. As a result of awareness-raising activities the trailers were removed from the territory of the company with help of a crane and other heavy machinery brought to the area by the Police and placed near the Gndevaz-Jermuk road.

Nevertheless, the company informed the Police about its objections declaring that the house trailers have still remained in the area under its ownership.

The Jermuk Division of the Vayots Dzor Regional Department of the Police of RA addressed a relevant petition to the Head of the Jermuk Community on 30.05.2019 requesting to assist in works for setting out the units of real estate in the sections RENCO-km9+200 of the M-2 Gndevaz-Jermuk H-43 road and site No 28-km8+00 under the coordinates indicated. On 01.06.2019 the presence of qualified employees of the «Geodesy and Cartography» SNCO was provided in the area adjoined to the Gndevaz village of the Jermuk community through the mediation of the Head of the Jermuk community.

The Police preliminary communicated with an employee of the «Lydian Armenia» company suggesting to participate in setting out and measurement of the land plots but the latter elected not to participate referring to the absence of the management's permit.

On 01.06.2019 the qualified specialist under the control and immediate participation of the Police employees set out the units of real estate on site with help of special measurement devices.

The whole process was video-recorded by the Police, all details of the actions taken and the questions put to the specialist were fixed in the reports drawn up which were signed by the participants of the action. As a result, the specialist-geodesist drew two maps where the on-site positions of the real estate and mobile house trailers corresponding to the coordinates specified under the Court decision was clearly shown. According to the opinion signed by the specialist on 05.06.2019 the point with the coordinates specified in the first case is situated on the Gndevaz-Jermuk road and two mobile house trailers 183m north-east from it.

In the second case the point with the coordinates specified is situated at the Gndevaz-Jermuk roadside edge, 15m north from the mobile trailer.

Thus, it was ascertained that the mobile house trailers were not situated in the territory of the units of real estate under the ownership of the company as well as there were not any natural persons in those land plots, hence there was not any trespassory entry.

On the base of aforesaid we would like to inform you that the requirements defined under the court decision taken on the case VD/9786/05/18 have been adhered in full.

Any other judicial cases related to the decisions of the courts of RA regarding the «Lydian Armenia» CJSC have not been filed with the Jermuk Division of the Vayots Dzor Regional Department of the Police of RA.

Head,
Major of the Police signature A. Armenakyan
Seal

Translated by Arpine Bartikyan _____,

On this twenty-first day of February of twenty twenty, I, Atom Hayrapetyan, Notary of the Yerevan notarial circuit of RA, certify the authenticity of the signature of the translator of this text from Armenian into English. According to the 68th article of the Law of RA "About Notary's Office" I certify that the translation of this document was done by the translator known to me, but not the facts stated in it.

Registration N 1968
State duty and payment for service is levied according to the Laws
of RA "About State Duty" and "About Notary's Office"
Notary signature, seal





երկու հազար քսան թվականի փետրվարի քսանմեկ

Ես, ՀՀ Երևան նոտարական տարածքի նոտար՝ ԱՏՈՄ ԳՐԻԳՈՐԻԻ ՀԱՅՐԱՊԵՏՅԱՆՍ, վավերացնում եմ տվյալ տեքստի հայերեն լեզվից անգլերեն լեզվով թարգմանչի ստորագրության իսկությունը:

<Նոտարիատի մասին> ՀՀ օրենքի 68 հոդվածի համաձայն հաստատում եմ փաստաթղթի թարգմանությունը կատարած թարգմանչի ստորագրության իսկությունը, այլ ոչ թե դրանում շարադրված փաստերը:

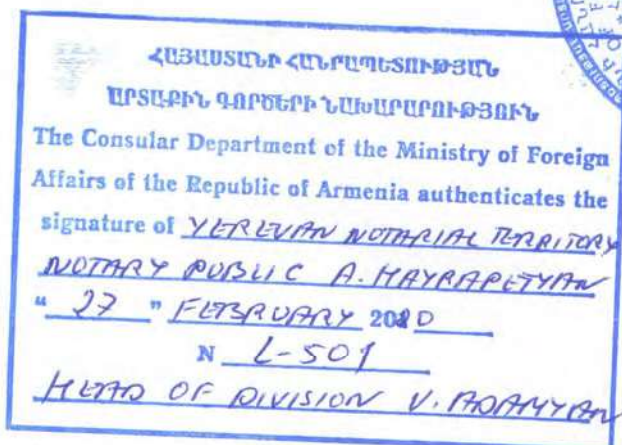
Գրանցված է գրանցամատյանում թիվ 1368

Գանձված են պետական տուրք հինգ հարյուր ՀՀ դրամ և հինգ հարյուր ՀՀ դրամ ծառայության վճար, համաձայն <Պետական տուրքի մասին> և <Նոտարիատի մասին> ՀՀ օրենքների



Նոտար

Ատոմ Գրիգորիի Հայրապետյան





ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅՈՒՆ
ՈՍՏԻԿԱՆՈՒԹՅԱՆ ՎԱՅՈՑ ՉՈՐԻ
ՄԱՐԶԱՅԻՆ ՎԱՐՉՈՒԹՅԱՆ
ԶԵՐՍՈՒԿԻ ԲԱԺԻՆ

3701, ք. Ջերմուկ, Մյասնիկյան 3 հեռ. ֆաքս /010/ 59.06.38, /0287/ 2.14.42

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«infocom.am» կայքի լրագրող
Թեհմինե Ենոքյանին

Ձեր 06.02.2020 թ. հարցմանն ի պատասխան տեղեկացնում ենք, որ ՀՀ վարչական դատարանը թիվ ՎԴ/9786/05/18 գործով կայացրած և օրինական ուժի մեջ մտած վճռով ոստիկանությանը պարտավորեցրել է վերացնել հայցվորին սեփականության իրավունքով պատկանող անշարժ գույքերի տարածք կատարած ներխուժումները:

Դեռևս 2019 թ. մայիսի 21-ին ոստիկանության Վայոց ձորի մարզային վարչության ծառայողները այցելել են Վայոց ձորի մարզի Գնդեվազ գյուղին հարակից՝ «Լիդիա Արմենիա» ընկերությանը պատկանող անշարժ գույքի տարածք, որտեղ առկա են եղել բնապահպան ակտիվիստներին փաստացի պատկանող շարժական վագոն տնակները: Իրականացված բացատրական աշխատանքների արդյունքում, ոստիկանության կողմից տարածք բերված վերամբարձ կոունկի և այլ ծանր տեխնիկայի միջոցով տնակները հանվել են ընկերության տարածքից և տեղադրվել Գնդեվազ-Ջերմուկ ավտոճանապարհի մոտ:

Չնայած դրան, ընկերությունը գրավոր անհամաձայնություն է հայտնել ոստիկանություն՝ հայտարարելով, որ տնակները միևնույն է գտնվում են իրենց պատկանող տարածքում:

ՀՀ ոստիկանության Վայոց ձորի մարզային վարչության Ջերմուկի բաժինը 30.05.2019թ. համապատասխան միջնորդությամբ դիմել է Ջերմուկ համայնքի ղեկավարին՝ խնդրելով աջակցել Մ-2 Գնդեվազ-Ջերմուկ Հ-43 ճանապարհի ՌԵՆԿՈ -կմ9+200 և թիվ 28 տեղամաս-կմ 8+00 հատվածներում ներկայացված կորդինատներով անշարժ գույքային միավորների նշահարման աշխատանքներին: Ջերմուկ համայնքի ղեկավարի, միջնորդությամբ 01.06.2019թ. ապահովվել է «Գեոդեզիա և քարտեզագրություն» ՊՈԱԿ-ի որակավորում

ունեցող աշխատակիցների ներկայությունը Ջերմուկ համայնքի Գնդեվազ գյուղին հարակից՝ խնդրո առարկա տարածքներում:

Ոստիկանության կողմից նախապես կապ է հաստատվել «Լիդիան Արմենիա» ընկերության աշխատակցի հետ, առաջարկել մասնակցել հողամասերի նշագրմանը, չափագրման աշխատանքներին, սակայն վերջինս հղում անելով ղեկավարության թույլտվության բացակայությանը, հրաժարվել է մասնակցությունից:

01.06.2019թ., այցելելով տեղանք, ոստիկանության ծառայողների ղեկավարությամբ և անմիջական մասնակցությամբ որակավորված մասնագետը հատուկ չափիչ գործիքների օգնությամբ իրականացրել է գույքային միավորների նշահարում տեղանքում:

Ամբողջ գործընթացը տեսագրվել է ոստիկանության կողմից, կատարված գործողությունների բոլոր մանրամասները և մասնագետին առաջադրված հարցերը արտացոլվել են կազմված արձանագրություններում, որոնք ստորագրել են գործողության մասնակիցները: Արդյունքում, մասնագետ գեոդեզիստի կողմից կազմվել են տեղանքի երկու քարտեզներ, որոնցում հստակ երևում են վճռում նշված կորդինատներով գույքի և շարժական տնակների դասավորությունը տեղանքում՝ իրական ժամանակի մեջ: Մասնագետի կողմից ստորագրված 05.06.2019թ. եզրակացության համաձայն՝ 1-ին ղեպքում տրված կորդինատներով կետը գտնվում է Գնդեվազ-Ջերմուկ ավտոճանապարհի վրա, իսկ երկու շարժական տնակները դրանից 183 մետր հյուսիս-արևելք: Երկրորդ ղեպքում՝ տրված կորդինատներով կետը գտնվում է Գնդեվազ-Ջերմուկ ավտոճանապարհի եզրին՝ շարժական տնակից 15 մետր դեպի հյուսիս:

Այսպիսով, պարզվել է, որ շարժական տնակները չեն գտնվում ընկերությանը պատկանող անշարժ գույքային միավորների տարածքում, ինչպես նաև այդ հողամասերում բացակայում են ֆիզիկական անձինք, հետևապես՝ ներխուժում առկա չէ:

Վերոգրյալից ելնելով, հայտնում ենք, որ թիվ ՎԴ/9786/05/18 գործով կայացրած դատական ակտի պահանջները ոստիկանության կողմից ամբողջությամբ կատարվել են:

Ոստիկանության Վայոց ձորի մարզային վարչության Ջերմուկի բաժնում «Լիդիան Արմենիա» ՓԲ ընկերության հետ 22 դատարանների վճիռների հետ կապված այլ դատական գործեր չեն եղել:

Պետ,
Ոստիկանության մայոր՝



Ա.Արմենակյան

From: [D. J. Miller](#)
To: ["armecofront ."; "Lydian@alvarezandmarsal.com"](#)
Cc: ["mmackenzie@alvarezandmarsal.com"; "ahutchens@alvarezandmarsal.com"; Rachel Bengino](#)
Subject: Lydian Group CCAA Proceedings
Date: March-07-20 1:39:25 PM

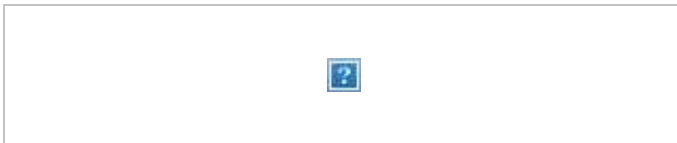
Arpine Galfayan and Members of the AEF Civil Initiative:

We act as counsel to Alvarez & Marsal Canada Inc. (“A&M”) in its capacity as court-appointed Monitor of certain members of the Lydian Group (the “**Applicants**”) pursuant to the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA Proceeding**”). As Monitor, A&M acts as “the eyes and ears of the Court”, and is an officer of the Court. We have received and considered your email and the attachments outlining certain concerns that you wish to be brought to the attention of the Canadian Court. As Monitor, we have also sought information from the Applicants with respect to the concerns that you have raised.

Please be assured that the Canadian Court, including specifically Chief Justice of Ontario Morawetz, who is presiding over the CCAA Proceeding, has reviewed your communication and is aware of the situation. His Honour has asked the Monitor to include information on this communication in its Third Report to the Court. The Monitor will be doing so. Should we require further information from you in advance, or following the delivery of that Third Report, we will reach out directly with any specific questions we may have.

Thank you.

D.J.



D. J. Miller | DJMiller@tgf.ca | Direct Line: +1 416 304-0559 | Thornton Grout Finnigan LLP | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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From: armecofront . [mailto:armecofront@gmail.com]
Sent: Friday, February 28, 2020 7:27 AM
To: Lydian@alvarezandmarsal.com
Cc: mmackenzie@alvarezandmarsal.com; ahutchens@alvarezandmarsal.com; D. J. Miller <DJMiller@tgf.ca>; Rachel Bengino <RBengino@tgf.ca>
Subject: Material misleading found in Mr. Edward Sellers’ affidavit (Lydian Group)

Dear representatives and lawyers of Alvarez & Marsal Canada Inc.,

We are citizens of Armenia and concerned parties regarding Lydian Group's mining activities in Armenia as mining affects the environment and economy of the whole country. We are also self-organized in a volunteer environmental watchdog group.

We have seen the Motion Record of Lydian Group's Lawyers including Lydian Group's CEO Edward Sellers' affidavit of December 2019, and we find it of utmost importance to inform you (representatives and lawyers of the Monitor) as well as Honorable Chief Justice Morawetz **of the factual misrepresentations and therefore material misleading found in Mr. Edward Sellers' affidavit of December 2019.**

Although we have found over two dozen instances of factual misrepresentations, we submitted only three important points in our letter to Chief Justice Motawetz.

Hereby, we forward you the documents sent to the Honorable Chief Justice, and we hope that you will also share this information with other concerned parties, including the Royal Court of Jersey.

We are certainly ready to submit further clarifications upon request.

Yours sincerely,

Arpine Galfayan, on behalf of
Armenian Environmental Front (AEF) Civil Initiative
Website: <http://www.armecofront.net/>
YouTube channel: <http://www.youtube.com/user/armecofront>
Facebook page: <https://www.facebook.com/armecofront>
Tel. +374 99 53 05 88, +374 93 53 49 59
Address: 5 Spondiaryan str. apt. 24, Yerevan, Armenia

APPENDIX D

SIXTEENTH AMENDING AGREEMENT

Sixteenth Amending Agreement dated March ____, 2020 (this “**Sixteenth Amending Agreement**”) by and among Lydian Armenia CJSC (the “**Borrower**”), Lydian International Limited (“**Lydian**”), the other Guarantors party hereto, Orion Co IV (ED) Limited (“**Orion**”), Resource Capital Fund VI L.P. (“**RCF**”) and Osisko Bermuda Limited (“**Osisko**”), in their capacity as lenders (the “**Lenders**”), and Orion, as administrative agent for and on behalf of the Lenders (in such capacity, the “**Administrative Agent**”).

WHEREAS:

- (a) Reference is made to a credit agreement dated November 30, 2015, between the Borrower, Lydian, the lenders party thereto, and the Administrative Agent, as amended by an amending agreement dated March 11, 2016, a second amending agreement dated September 30, 2016, a third amending agreement dated October 14, 2016, a fourth amending agreement dated October 21, 2016, a fifth amending agreement dated June 30, 2017, a sixth amending agreement dated April 19, 2018, a seventh amending agreement dated June 29, 2018, an eighth amending agreement dated July 31, 2018, a ninth amending agreement dated August 15, 2018, a tenth amending agreement dated August 31, 2018, an eleventh amending agreement dated September 28, 2018, a twelfth amending agreement dated November 2, 2018, a thirteenth amending agreement dated January 15, 2019, a fourteenth amending agreement dated July 1, 2019 and a fifteenth amending agreement dated October 1, 2019 (collectively, the “**Existing Credit Agreement**” and as amended by this Sixteenth Amending Agreement, the “**Credit Agreement**”).
- (b) The parties entered into the fourth amended and restated forbearance agreement dated as of October 14, 2019 between, *inter alia*, the Borrower, Lydian, the Lenders, the Stream Purchasers, ING Bank N.V., AB Svensk Exportkredit (publ), Caterpillar Financial Services (UK) Limited and Ameriabank Closed Joint-Stock Company (the “**Forbearance Agreement**”).
- (c) The forbearance period under the Forbearance Agreement ended as of December 20, 2019 and Lydian, Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited initiated proceedings (the “**CCAA Proceedings**”) under the *Companies' Creditors Arrangement Act* before the Superior Court of Justice (Commercial List).
- (d) Notwithstanding the expiration of the Term Facility B Availability Period on December 20, 2019, the Term Facility B Lenders have agreed to provide funding to the Borrower, by way of new post-filing Advances under the Term Facility B up to the Maximum DIP Amount, to fund certain obligations of the Lydian Group Members in connection with the CCAA Proceedings.
- (e) The parties hereto wish to amend the Existing Credit Agreement to extend the availability period and the maturity date applicable to the Term Facility B and to provide for additional terms and conditions upon which advances of DIP Loans will be made available to the Borrower for the benefit of the Lydian Group Members.

- (f) Unless otherwise indicated, capitalized terms used in this Sixteenth Amending Agreement that are not otherwise defined herein have the meanings given to them in the Existing Credit Agreement.

In consideration of the above and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the signatories hereto agree as follows:

ARTICLE 1 CREDIT AGREEMENT AMENDMENTS

- 1.1 The Existing Credit Agreement is hereby amended as follows to be effective as of the Effective Date:
- (a) The definition of “Agreement” in Section 1.1 (*Definitions*) of the Existing Credit Agreement is deleted in its entirety and replaced with the following:

“**Agreement**” means this credit agreement and all Schedules attached hereto, as amended by the Amending Agreement, the Second Amending Agreement, the Third Amending Agreement, the Fourth Amending Agreement, the Fifth Amending Agreement, the Sixth Amending Agreement, the Seventh Amending Agreement, the Eighth Amending Agreement, the Ninth Amending Agreement, the Tenth Amending Agreement, the Eleventh Amending Agreement, the Twelfth Amending Agreement, the Thirteenth Amending Agreement, the Fourteenth Amending Agreement, the Fifteenth Amending Agreement and the Sixteenth Amending Agreement.”
 - (b) The definition of “Cash Flow Forecast” in Section 1.1 (*Definitions*) of the Existing Credit Agreement is deleted in its entirety and replaced with the following:

“**Cash Flow Forecast**” means the detailed cash flow forecast attached as Exhibit “1” to the Sixteenth Amending Agreement, which is in form and substance satisfactory to the DIP Lenders and the Monitor, reflecting the projected cash requirements and anticipated obligations to be incurred by the Lydian Group Members from the week ending March 7, 2020 [REDACTED] calculated on a weekly basis.”
 - (c) The definition of “Event of Default” in Section 1.1 (*Definitions*) of the Existing Credit Agreement is deleted in its entirety and replaced with the following:

“**Event of Default**” means, collectively, those events listed in Sections 3.5.6 and 9.1.”
 - (d) The definition of “Term Facility B Maturity Date” in Section 1.1 (*Definitions*) of the Existing Credit Agreement is deleted in its entirety and replaced with the following:

“**Term Facility B Maturity Date**” means the earlier of (i) the occurrence of any Additional Event of Default, (ii) [REDACTED] and (iii) the date of a Change of Control.”

- (e) The following is added to Section 1.1 (*Definitions*) of the Existing Credit Agreement in its proper alphabetic order:

[REDACTED]

[REDACTED]

“**Additional Event of Default**” has the meaning ascribed to it in Section 3.5.6.

“**CCAA Applicants**” means, collectively, Lydian, Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited.

“**CCAA Proceedings**” means the proceedings initiated by the CCAA Applicants under the *Companies’ Creditors Arrangement Act* (Canada).

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**DIP Charge**” means a super priority Court-ordered charge on the assets, undertakings and properties of the CCAA Applicants in respect of the guarantees given by each of the CCAA Applicants in favor of the DIP Lenders, up to the aggregate amount of the DIP Loans, which charge shall be in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, but shall be subordinate to the Administration Charge, the Directors’ Charge (as each term is defined in the Initial Order) and the Transaction Charge (as defined in the DIP Order). For greater certainty, the DIP Charge shall not charge any assets, undertakings and properties that are subject to the liens pursuant to the Equipment Financing facilities.

“**DIP Lenders**” means those Term Facility B Lenders providing DIP Loans pursuant to the Sixteenth Amending Agreement. In each instance where the term “Term Facility B Lenders” appears in the Credit Agreement, such reference shall, solely as it relates to DIP Loans, be taken to mean DIP Lenders.

“**DIP Loans**” means, collectively, all Term Facility B Loans advanced to the Borrower on or after the effective date of the Sixteenth Amending Agreement, plus the Additional Arbitration Funding Amount, and “**DIP Loan**” means any one of them.

“Initial Order” means the initial order dated December 23, 2019 granted by the Court in connection with the CCAA Proceedings, as amended and restated on January 23, 2020 and as may be further amended and restated.

“Majority DIP Lenders” means at any time one or more DIP Lenders holding greater than 66 2/3% of the DIP Loans.

“Maximum DIP Amount” means [REDACTED], plus any Additional Arbitration Funding Amount that may be provided by RCF, if and when advanced, [REDACTED]

[REDACTED] provided that: (i) [REDACTED] in the aggregate on account of reasonable additional costs incurred by the Borrower in accordance with the terms of this Agreement and relating to the period from and after the date hereof and prior to the Term Facility B Maturity Date but not payable until after the Term Facility B Maturity Date; and (ii) the parties hereto shall determine the quantum of such reasonable additional costs by not later than [REDACTED]

“Monitor” means Alvarez & Marsal Inc., the Court-appointed monitor in connection with the CCAA Proceedings, appointed pursuant to the Initial Order.

“Orion” means Orion Co IV (ED) Limited.

“Osisko” means Osisko Bermuda Limited.

[REDACTED]
“RCF” means Resource Capital Fund VI L.P.

“Sixteenth Amending Agreement” means the sixteenth amending agreement dated March ____, 2020 entered into by and among, *inter alia*, the Borrower, the CCAA Applicants, the Lenders and the Administrative Agent.”

- (f) Article 3 of the Existing Credit Agreement is amended by adding the following as a new Section 3.5:

“Section 3.5 Provisions Applicable to DIP Loans

3.5.1 *Term Facility B Loans.* All DIP Loans provided pursuant to the Credit Agreement constitute Term Facility B Loans and except as otherwise provided in this Section 3.5, the provisions applicable to Term Facility B Loans shall apply to all DIP Loans.


3.5.2 *Availment.* Notwithstanding Section 3.2 of the Credit Agreement, Advances for DIP Loans will be available to the Borrower on a bi-weekly basis and shall be

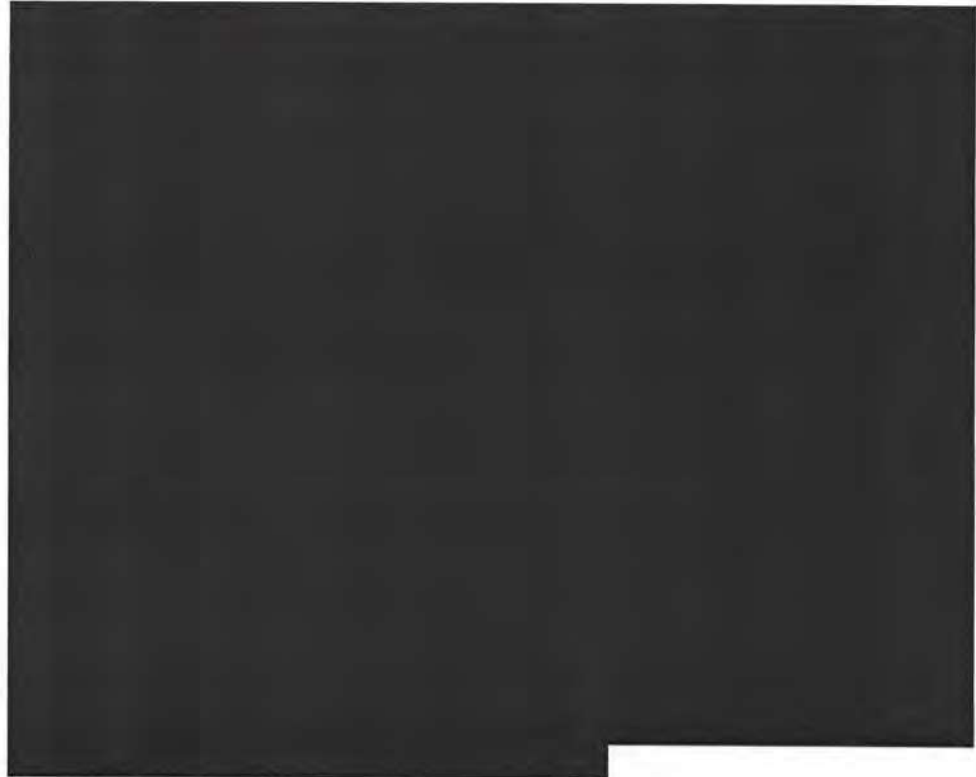
in such amounts as the Borrower requests, provided that (i) the amount of the requested Advance is in accordance with the Cash Flow Forecast, subject to immaterial or timing variances, and (ii) all conditions precedent to such Advance have been satisfied or waived by the DIP Lenders. Each Advance of a DIP Loan shall be made by the DIP Lenders in accordance with the following Applicable Percentages: 48.08% in respect of Orion; 34.37% in respect of Osisko; and 17.55% in respect of RCF, which may be adjusted in the event RCF funds any Additional Arbitration Funding Amount.

3.5.3 Conditions Precedent to DIP Loans. The following conditions precedent shall be satisfied, or waived by the DIP Lenders, in their sole discretion, prior to each Advance of a DIP Loan:

- (a) each DIP Loan (together with all previous DIP Loans) must be no greater than the amount shown on the Cash Flow Forecast for the applicable period, subject to immaterial or timing variances, and, in aggregate, the principal amount of all DIP Loans shall not exceed the Maximum DIP Amount;
- (b) the Administrative Agent shall have received a copy of an Order of the Court (the “**DIP Order**”) in form and substance reasonably satisfactory to the Administrative Agent (i) authorizing the DIP Loans on the terms and conditions set out herein, and (ii) granting the DIP Charge;
- (c) neither the Initial Order nor the DIP Order shall have been vacated, stayed or otherwise caused to become ineffective, and neither the Initial Order nor the DIP Order shall have been amended in a manner that is prejudicial to the DIP Lenders, as determined by the DIP Lenders, acting reasonably;
- (d) the DIP Lenders shall have received, as and when required hereunder, all information to which they are entitled hereunder (including, without limitation, the updated cash flow information required pursuant to Section 3.5.4(b), which such information shall be satisfactory to the DIP Lenders);
- (e) no Additional Event of Default shall have occurred and be continuing, nor will any such event occur as a result of the Advance of the DIP Loan; and
- (f) there shall be no pending motions for leave to appeal, appeals, injunctions or other legal impediments relating to the DIP Loans, or pending litigation seeking to restrain, vary or prohibit the operation of all or any part of this Agreement.

3.5.4 Covenants. The Lydian Group Members shall:

- (a) notwithstanding Section 7.15.25, 



- (b) keep the DIP Lenders apprised on a bi-weekly basis of their cash flow requirements by providing: (i) an updated cash flow forecast for the same period as the Cash Flow Forecast, such updated cash flow projection to be in a form consistent with the Cash Flow Forecast; (ii) actual cash flow results from the immediately preceding bi-weekly period; and (iii) a comparison of the actual cash flow results from the immediately preceding bi-weekly period as against the Cash Flow Forecast for such bi-weekly period (as may be updated), such information to be delivered to the DIP Lenders by no later than 5:00 p.m. (Toronto time) on the Wednesday of every second week;
- (c) keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Collateral and the business and affairs of the Lydian Group Members;
- (e) forthwith notify the DIP Lenders of the occurrence of any Additional Event of Default, or of any event or circumstance that may, with the passage of time or the giving of notice, constitute an Additional Event of Default;
- (f) forthwith notify the DIP Lenders, upon becoming aware of the commencement of, or of the receipt of notice of intention to commence, any action, suit, investigation, litigation or proceeding before any court, governmental department, board, bureau, agency or similar body affecting any Lydian Group Member;

- (g) promptly after the same is available, provide copies to the DIP Lenders of all pleadings, motion records, application records, judicial information, financial information and other documents filed by or on behalf of any Lydian Group Member or the Monitor in the CCAA Proceedings;
- (h) ensure that all motion records, pleadings, application records, orders and other documents filed, proposed, sought and served by any Lydian Group Member or in respect of which any Lydian Group Member consents or supports, in or in connection with the CCAA Proceedings shall be in form and substance reasonably satisfactory to the Majority DIP Lenders, and provide to the DIP Lenders copies of such documents as soon as practicable prior to any filing or service in the CCAA Proceedings; and
- (i) ensure that no Lydian Group Member enters into any material contract or material engagement without the consent of the Majority DIP Lenders.

3.5.5 *Security.* In addition to the existing Security, all Obligations arising from the DIP Loans shall be secured by the DIP Charge. Any enforcement of the DIP Charge may only be made by the Administrative Agent on the instructions of the Majority DIP Lenders. The DIP Lenders acknowledge, confirm and agree that notwithstanding any of the rights and remedies available to them hereunder, the DIP Charge cannot be enforced by the Administrative Agent without an order being obtained from the Court in the CCAA Proceedings.

3.5.6 *Events of Default.* The occurrence of any one or more of the following events shall constitute “**Additional Events of Default**”:

- (a) the issuance of an Order terminating the CCAA Proceedings or lifting the stay in the CCAA Proceedings as it relates to any of the Lydian Group Members to permit the enforcement of any security against any Obligor or the Collateral, other than as may be agreed to by the CCAA Applicants with the consent of the DIP Lenders and the Monitor, or the appointment of a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against any Obligor or the Collateral;
- (b) the issuance of an Order (i) granting an Encumbrance of equal or superior status to that of the DIP Charge, other than as provided in the definition of “DIP Charge”, or (ii) staying, reversing, vacating or otherwise modifying the DIP Charge;
- (c) any update to the Cash Flow Forecast required to be made in accordance with Section 3.5.4 indicating that the Lydian Group Members would require additional funding above the Maximum DIP Amount to meet their obligations at any time during the period of the Cash Flow Forecast, without the prior consent of the DIP Lenders;
- (d) an Order is made (whether in the CCAA Proceedings or otherwise), a liability arises or an event occurs, including any change in the business,

assets, or conditions, financial or otherwise, of any Obligor, that has or will have a Material Adverse Effect;

- (e) any material violation or breach by any Lydian Group Member of any Order in connection with the CCAA Proceedings upon receipt by any Lydian Group Member of notice from the Administrative Agent of such violation or breach;
- (f) the failure of any Lydian Group Member to perform or comply with any other term or covenant under the Sixteenth Amending Agreement;
- (g) the seeking or support by any Obligor, or the issuance, of any Order (in the CCAA Proceedings or otherwise) that is adverse or potentially adverse to the interests of the DIP Lenders (including, without limitation, in respect of the validity, enforceability or quantum of the Obligations or the DIP Charge); or
- (h) the occurrence of any Event of Default listed in Section 9.1, other than those existing as of the date of the Sixteenth Amending Agreement, and which Event of Default either (y) has been disclosed to the Lenders in writing prior to the date of the Sixteenth Amending Agreement, or (z) the Lenders have actual knowledge of as of the date of the Sixteenth Amending Agreement.

Upon the occurrence and during the continuance of any Additional Event of Default, subject to section 3.5.5, the DIP Charge shall become enforceable.

ARTICLE 2

REPRESENTATIONS, WARRANTIES AND CONFIRMATIONS

- 2.1 Each of the Obligors represents, warrants and covenants that upon the DIP Order being obtained:
- (a) this Agreement and each other agreement, document or instrument to be executed and delivered by an Obligor in connection herewith (i) has been duly executed and delivered by the applicable Obligor; and (ii) constitutes a legal, valid and binding agreement of such Obligor, enforceable against such Obligor in accordance with its terms, except to the extent enforcement may be affected by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Applicable Laws affecting creditors' rights generally and subject to the qualification that equitable remedies may be granted in the discretion of a court of competent jurisdiction;
 - (b) the Cash Flow Forecast includes a provision for payment of all projected obligations of any kind whatsoever reasonably anticipated by the Lydian Group Members on the date hereof that become due and payable during the period covered by the Cash Flow Forecast; and

- (c) except as otherwise disclosed to the DIP Lenders in writing prior to the date hereof, no Default or Event of Default has occurred and is continuing, or will occur as a result of an Advance of DIP Loans.
- 2.2 Each Obligor acknowledges, confirms and agrees that (a) all (i) guarantees granted by such Obligor to and in favour of the Administrative Agent, for its benefit and for the ratable benefit of the Lenders, and (ii) security granted by such Obligor to and in favour of the Collateral Agent, for its benefit and for the ratable benefit of the Secured Parties (as defined in the Stream Intercreditor Agreement), in each case as security for the Obligations, among other things, remains in full force and effect, unamended, and is hereby ratified and confirmed, and (b) the security interests, mortgages, charges, liens, assignments, transfers and pledges granted by each such Obligor in favour of the Collateral Agent, for its benefit and for the ratable benefit of the Secured Parties, will continue to secure and will extend to, *inter alia*, all debts, liabilities and obligations of each such Obligor, whether direct or indirect, absolute or contingent, present or future, pursuant to, arising out of, or in connection with, the Credit Agreement and the other Loan Documents to which it is a party.

ARTICLE 3 CONDITIONS TO EFFECTIVENESS

- 3.1 This Sixteenth Amending Agreement, including the amendments contained herein, shall not be effective unless and until (such date, the “**Effective Date**”):
- (a) the Administrative Agent has received a copy of this Sixteenth Amending Agreement, duly executed and delivered by all parties hereto;
 - (b) the Administrative Agent has received a copy of a duly executed amendment to the Stream Intercreditor Agreement providing that the DIP Loans be repaid in priority to the Lender Priority Obligations (as defined therein);
 - (c) the Administrative Agent has received a copy of the DIP Order;
 - (d) each of the equipment financiers party to the Forbearance Agreement shall be bound to comply with the terms of the Initial Order and the DIP Order with respect to the stay of any enforcement proceedings against any of the Lydian Group Members [REDACTED] or such later date as such equipment financiers may agree; and
 - (e) the DIP Lenders have received a summary of the compensation payable to the directors and officers of the Lydian Group Members.

ARTICLE 4 MISCELLANEOUS PROVISIONS

4.1

[REDACTED]

- 4.2 On and after the Effective Date, any reference to “this Agreement” or “the Agreement” in the Existing Credit Agreement, as applicable, and any reference to the “Credit Agreement” in any other agreements, will mean the Existing Credit Agreement, as amended by this Sixteenth Amending Agreement. This Sixteenth Amending Agreement is a Loan Document.
- 4.3 After the Effective Date, this Agreement will be binding upon and enure to the benefit of the signatories and their respective successors, heirs, executors, administrators, legal representatives and permitted assigns.
- 4.4 This Sixteenth Amending Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 4.5 This Sixteenth Amending Agreement may be executed in any number of separate counterparts and all such signed counterparts will together constitute one and the same agreement. To evidence its execution of an original counterpart of this Sixteenth Amending Agreement, a party may send a copy of its original signature on the execution page hereof to the other parties by facsimile or other means of recorded electronic transmission and such transmission (including in PDF form) shall constitute delivery of an executed copy of this Sixteenth Amending Agreement to the receiving party.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF the undersigned have executed this Sixteenth Amending Agreement as of the date first written above.

Borrower:

**Lydian ARMENIA CJSC, by the
shareholder representative, 11910728
CANADA INC., of its sole shareholder,
LYDIAN RESOURCES ARMENIA
LIMITED**

By: _____
Authorized Signing Officer

CCAA Applicants:

LYDIAN INTERNATIONAL LIMITED

By: _____
Authorized Signing Officer

**LYDIAN CANADA VENTURES
CORPORATION**

By: _____
Authorized Signing Officer

**LYDIAN U.K. CORPORATION
LIMITED**

By: _____
Authorized Signing Officer

Other Guarantors:

**LYDIAN INTERNATIONAL
HOLDINGS LIMITED, by its director,
11910728 CANADA INC.**

By: _____
Authorized Signing Officer

**LYDIAN RESOURCES ARMENIA
LIMITED, by its director, 11910728
CANADA INC.**

By: _____
Authorized Signing Officer

LYDIAN US CORPORATION

By: _____
Authorized Signing Officer

KAVKAZ ZOLOTO CJSC

By: _____
Authorized Signing Officer

**LYDIAN RESOURCES GEORGIA
LIMITED**

By: _____
Authorized Signing Officer

**LYDIAN RESOURCES KOSOVO
LIMITED**

By: _____
Authorized Signing Officer

**GEORGIAN RESOURCE COMPANY
LLC**

By: _____
Authorized Signing Officer

ORION CO IV (ED) LIMITED, in its
capacity as Administrative Agent

By: _____
Authorized Signing Officer

ORION CO IV (ED) LIMITED, in its
capacity as a Lender

By: _____
Authorized Signing Officer

RESOURCE CAPITAL FUND VI L.P.

By: Resource Capital Associates VI L.P.,
General Partner

By: RCA VI GP Ltd., General Partner, in
its capacity as a Lender

By: _____

Authorized Signing Officer

OSISKO BERMUDA LIMITED, in its
capacity as a Lender

By: _____
Authorized Signing Officer

Exhibit “1”
Cash Flow Forecast

[Redacted]

APPENDIX E

Lydian International Limited., et. al.

Cash Flow Forecast For the 8-Week Period Ending May 1, 2020
Amounts in USD

Week Ending (Friday)	Notes	13-Mar-20	20-Mar-20	27-Mar-20	3-Apr-20	10-Apr-20	17-Apr-20	21-Apr-20	1-May-20	8 Week
Forecast Week		Wk-1	Wk-2	Wk-3	Wk-4	Wk-5	Wk-6	Wk-7	Wk-8	Total
Receipts										
Disbursements										
Salaries & Benefits	1	(58,000)	-	(30,000)	(61,000)	-	-	-	(61,000)	(210,000)
Insurance	2	-	(41,000)	-	(4,847)	(82,000)	-	-	-	(127,847)
Board of Directors		-	-	-	(30,000)	-	-	-	(30,000)	(60,000)
Office, IT & Bank		(200)	(2,200)	(200)	(1,410)	(960)	(2,160)	(160)	(1,410)	(8,700)
Travel	3	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(5,000)	(75,000)
Miscellaneous		(625)	(625)	(625)	(500)	(500)	(500)	(500)	(500)	(4,375)
Professional Fees	4	(192,825)	(354,000)	(122,590)	(180,000)	(432,590)	(7,000)	(5,000)	(30,000)	(1,324,005)
Contingency		(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(40,000)
Net Cash Inflows / (Outflows)		(266,650)	(412,825)	(168,415)	(292,757)	(531,050)	(24,660)	(20,660)	(132,910)	(1,849,927)
Available Cash (excludes DSR)										
Beginning Available Balance		181,854	413,204	379	292,964	207	25,157	497	133,837	181,854
Net Cash Inflows / (Outflows)		(266,650)	(412,825)	(168,415)	(292,757)	(531,050)	(24,660)	(20,660)	(132,910)	(1,849,927)
Inter-company transfer		498,000	-	461,000	-	556,000	-	154,000	-	1,669,000
Ending Available Balance	5	413,204	379	292,964	207	25,157	497	133,837	927	927

NOTES:

Disclaimer:

This cash flow forecast ("Forecast") is based on assumptions about future events and conditions that are not ascertainable. Actual results during the Forecast period will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

1. Includes payroll and taxes for certain senior management as well as payment obligations to certain former employees of the Companies.
2. Comprised of political violence insurance and director and officer liability insurance. D&O insurance is assumed to be available until April 30, 2020 only. Political violence insurance is approximately \$5K/mo.
3. Travel costs to and within Armenia to oversee activities related to the mine site owned by the Company's Armenian subsidiary.
4. Includes payments to the Companies' restructuring advisors, legal counsel, CCAA Monitor, CCAA Monitor's legal counsel, arbitration counsel, and other professionals, including those involved with the Company's public company reporting obligations.
5. As provided for in the Initial Order, cash may be transferred to the Applicants in increments from the non-Applicant Stay parties Lydian Armenia and Lydian U.S. Corporation.