

Availability: DIP Facility is available to be drawn until it matures;

Maturity: DIP Facility matures at the earlier of (i) the occurrence of any Additional Event of Default (as described in the DIP Agreement), (ii) [REDACTED] and (iii) the date of a Change of Control (as defined in Term Facility B);

Conditions: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

Interest Rate: 15% per annum; and

Charge: amounts owing under the DIP Facility are proposed to have a fourth-ranking Court-ordered charge on the Property of the Applicants (the "DIP Charge").

43. The DIP Facility is expected to provide sufficient liquidity to allow the Applicants to pay for obligations incurred and scheduled to be paid through [REDACTED]. In addition, as reflected in the DIP Agreement, the Maximum DIP Amount may be increased by an amount not to exceed a [REDACTED] in the aggregate on account of reasonable additional costs incurred relating to the period between March 10, 2020 [REDACTED] and the parties shall determine the quantum of such reasonable additional costs by no later [REDACTED]. This is intended to address ordinary course obligations being incurred by the Applicants during the proposed extension of the Stay Period. Accordingly, the Applicants seek an order authorizing and empowering them to guarantee the DIP Agreement, in order to make the DIP Facility available for the purpose of financing their operations [REDACTED].

44. The DIP Agreement contains commercially sensitive information, including [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

C. Approval of Monitor's Fees and Activities

45. I understand that the Monitor will be filing the Third Report in connection with the within motion seeking approval of its activities, as detailed in the Second Report of the Monitor dated February 26, 2020 and the Third Report, as well as the Monitor's fees since the commencement of the CCAA Proceedings. The Applicants have reviewed the fees of the Monitor and its counsel and support of the payment of the same.

D. Stay Extension

46. Since the Comeback Motion, the Applicants, with the oversight and assistance of the Monitor, have been largely focused on maintaining operational stability of the Lydian Group, while continuing to engage with lenders and various stakeholders on a viable path forward, [REDACTED]

[REDACTED]

47. The Applicants are requesting an extension of the Stay Period until and including April 30, 2020 to provide stability to the Applicants and allow them to continue their efforts to achieve a viable path forward that will maximize recoveries for all stakeholders. During the extended Stay Period through to April 30, 2020, [REDACTED]

[REDACTED]

48. I have been advised that the Monitor will be filing a report, which I understand will include the Applicants' prepared cash flows, demonstrating that the DIP Facility is expected to provide the Applicants with sufficient funding to continue operations through to the requested extension of the Stay Period to April 30, 2020.

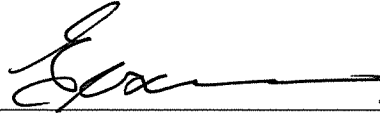
49. Since the granting of the Amended and Restated Initial Order, the Applicants have continued to act diligently and in good faith in respect of all matters relating to the CCAA Proceedings, and will continue to do so during the proposed extension of the Stay Period through to April 30, 2020.

SWORN BEFORE ME at the City of
Toronto, Province of Ontario, on March
10, 2020.



Commissioner for Taking Affidavits

Sanja Sopic



Edward A. Sellers

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AFFIDAVIT OF EDWARD A. SELLERS
Sworn March 10, 2020

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Lawyers for the Applicants

EXHIBIT “C”

THIS IS EXHIBIT "C", referred to in the Affidavit of EDWARD A. SELLERS, sworn on April 27th, 2020.

DocuSigned by:

Sanja Sapic

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Commissioner for Taking Affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
CHIEF JUSTICE MORAWETZ

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THURSDAY, THE 23rd
DAY OF JANUARY, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION
AND LYDIAN U.K. CORPORATION LIMITED

Applicants

AMENDED AND RESTATED INITIAL ORDER
(Amending Initial Order dated December 23, 2019)



THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order amending and restating the Initial Order (the "**Initial Order**") issued on December 23, 2019 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein was heard this day at 130 Queen Street West, Toronto, Ontario.

ON READING the affidavit of Edward A. Sellers sworn December 22, 2019 (the "**Sellers Initial Affidavit**"), the affidavit of Edward A. Sellers sworn January 20, 2020 (the "**Sellers Comeback Affidavit**"), and on hearing the submissions of counsel for the Applicants, counsel for Alvarez & Marsal Canada Inc. (the "**Monitor**"), and counsel for Caterpillar Financial Services (UK) Limited, with counsel for Orion Capital Management, counsel for Resource Capital Fund VI LP, counsel for Osisko Bermuda Limited and counsel for ING Bank N.V. / ABS Svensk Exportkredit (publ) in attendance and not opposing, and on being advised that those parties listed in the affidavits of service filed were given notice of this motion,

INITIAL ORDER AND INITIAL FILING DATE

1. **THIS COURT ORDERS** that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for herein.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, Lydian Armenia CJSC, Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation (the “**Non-Applicant Stay Parties**”) shall enjoy certain of the benefits and the protections provided herein and as subject to the restrictions as hereinafter set out.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to use the central cash management system currently in place among the Applicants, the Non-Applicant Stay Parties and any other of the entities in the Lydian Group as described in the Sellers Initial Affidavit (the “Cash Management System”) and that any present or future bank providing the Cash Management System to the Applicants or the Non-Applicant Stay Parties shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after the Initial Filing Date:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of

insurance (including directors and officers insurance), maintenance and security services; and

- (b) payment for goods or services actually supplied to the Applicants following the Initial Filing Date.

9. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the Initial Filing Date; (b) to grant no security interests, trust, liens, charges or encumbrances

upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA have the right to:

- (a) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and
- (b) continue negotiations with stakeholders in an effort to pursue restructuring options for the Applicants including without limitation all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of their business (the “Restructuring”).

PROCEEDINGS AGAINST THE APPLICANTS, THE NON-APPLICANT STAY PARTIES OR THE PROPERTY

12. **THIS COURT ORDERS** that until and including March 2, 2020, or such later date as this Court may subsequently order (the “Stay Period”), no proceeding or enforcement process in or out of any court or tribunal (each, a “Proceeding”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court.

13. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of the Non-Applicant Stay Parties, or any of their current and future assets, businesses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the “Non-Applicants’ Property”, and together with the Non-Applicants’ businesses, the “Non-Applicants’ Property and Business”) including, without limitation, terminating, making any demand, accelerating, amending or declaring in default or taking any enforcement steps under any agreement or agreements with respect to which any of the Applicants are a party, borrower, principal obligor or guarantor.

NO EXERCISE OF RIGHTS OR REMEDIES

14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any Person against or in respect of the Non-Applicant Stay Parties, or affecting the Non-Applicants’ Property and Business are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Non-Applicant Stay Parties to carry on any business which the Non-Applicant Stay Parties are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicants or the Non-Applicant Stay Parties except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other

data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order or the Initial Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the Initial Filing Date, nor shall any Person be under any obligation on or after the Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order or the Initial Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the Initial Filing Date and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants

after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$263,280 (being US\$200,000 as per the Bank of Canada's published exchange rate on December 20, 2019), as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 33 and 35 herein.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. **THIS COURT ORDERS** that Alvarez & Marsal Canada Inc. is, as of the Initial Filing Date, appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements, including to the extent deemed appropriate by the Monitor as it relates to the Non-Applicant Stay Parties who utilize the Cash Management System with the Applicants, in order to review and

consider the cash requirements and reasonableness of the cash flow forecast prepared by the Applicants, and the continued use of the Cash Management System;

- (b) have full and complete access to the books, records, data, including data in electronic form, and other financial documents of the Non-Applicant Stay Parties to the extent that is necessary to adequately assess the Applicants' business and financial affairs and prospects for a restructuring or transaction of any kind, to report on cash flow forecasts prepared by the Applicants, or to perform its duties arising under this or any further Order of this Court and such Non-Applicant Stay Parties shall cause their respective employees, contractors, agents, advisors, directors and/or officers, as may be necessary, available to the Monitor for such purposes;
- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (d) advise the Applicants in the preparation of the Applicants' cash flow statements, including as it relates to the availability of cash to the Applicants under the Cash Management System by the Non-Applicant Stay Parties;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, wherever situate, in order to assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) assist the Applicants in connection with any arbitration proceedings with the Government of Republic of Armenia ("GOA") that may be commenced by any

Applicant or Non-Applicant Stay Party that involves or affects any of the Applicants' Business or Property (an "**Arbitration**");

- (i) perform such other duties as are required by this Order or by this Court from time to time; and
- (j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

25. **THIS COURT ORDERS** that the Applicants shall make best reasonable efforts to the extent possible to cause the Non-Applicant Stay Parties (including their respective employees, contractors, agents, advisors, directors and/or officers) to cooperate fully with the Monitor in relation to its information requests and its powers and duties set forth herein, and for so long as the stay of proceedings in favour of the Non-Applicant Stay Parties shall remain in place.

26. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property of the Applicants, or any property of the Non-Applicant Stay Parties, and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

27. **THIS COURT ORDERS** that the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any environmental legislation, unless it is actually in possession.

28. **THIS COURT ORDERS** that the Monitor shall provide any creditor of any of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or the Initial Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order or the Initial Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, Canadian counsel to the Applicants and the Applicants' counsel in connection with the recognition proceedings in the United Kingdom and the Bailiwick of Jersey shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants.

31. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$460,740 (being US\$350,000 as per the Bank of Canada's published exchange rate on December 20, 2019), as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 33 and 35 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

33. **THIS COURT ORDERS** that the priorities of the Directors' Charge and the Administration Charge as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$460,740);

Second – Directors' Charge (to the maximum amount of \$263,280).

34. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

35. **THIS COURT ORDERS** that each of the Directors' Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

36. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge and the Administration Charge, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

37. **THIS COURT ORDERS** that the Directors' Charge, and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

38. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

39. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the Initial Filing Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

40. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <<http://www.alvarezandmarsal.com/Lylian>>.

41. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

42. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

43. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

44. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

45. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, Armenia, the Bailiwick of Jersey, the United Kingdom, or the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an

officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

46. **THIS COURT DECLARES** that it shall issue a letter substantially in the form of the letter attached hereto as Schedule "A" to request the assistance of the Royal Court of Jersey in these proceedings.

47. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

48. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

49. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 9:30 a.m. Eastern Standard/Daylight Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JAN 31 2020

PER / PAR:

SCHEDULE "A"
(Letter of Request for the Royal Court of Jersey)

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 A PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION
AND LYDIAN U.K. CORPORATION LIMITED

LETTER OF REQUEST
(COMITY APPLICATION)

To: The Bailiff of the Royal Court of Jersey
Royal Court Building, Royal Square
St Helier, Jersey
JE1 1JG

The Ontario Superior Court of Justice (Province of Ontario, Canada) ("**Ontario Court**"), respectfully requests the assistance of the Royal Court of Jersey to provide assistance to the Ontario Court as set out below and assures the Royal Court of Jersey reciprocal assistance in appropriate circumstances.

WHEREAS:

1. By an order dated the 23 December 2019 of the Ontario Court ("**CCAA Order**"), Lydian International Limited ("**Lydian International**"), Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited (collectively, the "**Debtors**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (Canada) ("**CCAA**") on the grounds that they were unable to pay their debts. Certain other non-applicant entities were also granted a stay of proceedings¹ (the non-applicant entities together with the Debtors are the "**Lydian Group**"). A copy of the CCAA Order is attached hereto as Schedule "A".

¹ Lydian Armenia CJSC, Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation.

2. The Ontario Court was advised that the Lydian Group is connected to Jersey by means of Lydian International, a corporation continued under the laws of Jersey from the Province of Alberta, Canada, pursuant to the *Companies (Jersey) Law 1991* (Lydian International was originally incorporated under the *Business Corporations Act* (Alberta)). Lydian International's registered office is located at Bourne House 1st Floor, Francis Street, St Helier, Jersey.

3. Pursuant to paragraphs 2 and 3 of the CCAA Order, the Debtors, including Lydian International, are companies to which the CCAA applies, shall enjoy certain of the benefits and the protections provided for in the CCAA Order, and shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

4. Pursuant to paragraph 21 of the CCAA Order, Alvarez & Marsal Canada Inc. was appointed as the monitor (the "Monitor"), an officer of the Ontario Court, to monitor the business and financial affairs of the Debtors pursuant to the CCAA.

5. Pursuant to the CCAA and the CCAA Order, the Monitor has broad powers including the authorization to have full and complete access to the Debtor's Property (as the term "Property" is defined in the CCAA Order), including the premises, books, records, data (including in electronic form) and other financial documents of the Debtors, to the extent that is necessary to adequately assess the Debtors' business and financial affairs or to perform its duties arising under the CCAA Order (see e.g. paragraph 22(d) of the CCAA Order).

6. Pursuant to paragraph 42 of the CCAA Order, the Debtors and the Monitor were authorized "to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of [the CCAA Order] and for assistance in carrying out the terms of [the CCAA Order]". The same paragraph further provides that "the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada."

NOW:

7. I, the Honourable Geoffrey B. Morawetz, Chief Justice of the Ontario Court, confirm that, as a matter of international comity, the courts of the provinces and territories of Canada will consider giving effect to orders made by the Royal Court of Jersey relating to the

bankruptcy of an individual or company (save for the purpose of enforcing the fiscal laws of Jersey).

8. It having been shown to the satisfaction of the Ontario Court that it is necessary for the purposes of justice and to assist the Debtors and the Monitor with the carrying out of the terms of the CCAA Order, and assist the Monitor in the performance of its duties, pursuant to the CCAA Order of the Ontario Court, I hereby request the assistance of the Royal Court of Jersey to act in aid of the Debtors and the Monitor in the conduct of the reorganization of the Debtors and in particular (without prejudice to the generality of the foregoing):

- (a) by recognising the appointment of the Monitor with such appointment to be registered in the Rolls of the Royal Court of Jersey in respect of Lydian International;
- (b) by recognising the rights and powers of the Debtors and Monitor in respect of the Property of Lydian International;
- (c) by declaring that no action shall be taken or proceeded with against Lydian International except by leave of the Ontario Court and subject to such terms as the Ontario Court may impose; and
- (d) by granting such further or other relief as it thinks fit in aid of the Debtors and the Monitor and the reorganization of Lydian International.

Dated: 23 December 2019



The Honourable Geoffrey B. Morawetz,
Chief Justice of the Superior Court of Justice
(Ontario)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION AND LYDIAN U.K. CORPORATION LIMITED

Court File No.: CV-19-00633392-00CL

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL
ORDER**

Stikeman Elliott LLP
Barristers & Solicitors
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Toronto, Canada M5L 1B9

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Fax: (416) 947-0866

Lawyers for the Applicants

EXHIBIT “D”

THIS IS EXHIBIT "D", referred to in the Affidavit of EDWARD A. SELLERS, sworn on April 27th, 2020.

DocuSigned by:
Sanja Sopic
E820930A2731482...

Commissioner for Taking Affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

)

WEDNESDAY, THE 11TH

CHIEF JUSTICE MORAWETZ

)

DAY OF MARCH, 2020



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION
AND LYDIAN U.K. CORPORATION LIMITED

Applicants

ORDER

(Re Approval of BMO Engagement, DIP Agreement and Extension of the Stay of
Proceedings)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 130 Queen Street West, Toronto, Ontario.

ON READING the affidavit of Edward A. Sellers sworn March 10, 2020 (the "**Sellers Stay Extension Affidavit**") and the Exhibits thereto, the affidavits of Edward A. Sellers sworn March 10, 2020 (the "**Second Sellers BMO Affidavit**") and January 21, 2020 (the "**First Sellers BMO Affidavit**") and the Exhibits thereto, and the Third Report of Alvarez & Marsal Canada Inc. in its capacity as Monitor of the Applicants (the "**Monitor**") dated March 10, 2020 (the "**Third Report**"), and on hearing the submissions of counsel for the Applicants, the Monitor, Caterpillar Financial Services (UK) Limited ("**CAT**"), Orion Capital Management, Resource Capital Fund VI LP, Osisko Bermuda Limited and ING Bank N.V./ ABS Svensk Exportkredit (publ) ("**ING**"), and on being advised that those parties listed in the affidavits of service filed were given notice of this motion,

EXTENSION OF STAY PERIOD

1. **THIS COURT ORDERS** that the stay period as referred to in the Amended and Restated Initial Order of Chief Justice Morawetz dated January 23, 2020 (the “**Amended and Restated Initial Order**”) is extended until and including April 30, 2020 in respect of the Applicants and the Non-Applicant Stay Parties.

APPROVAL OF FINANCIAL ADVISOR’S ENGAGEMENT, INCREASE TO ADMINISTRATION CHARGE AND TRANSACTION CHARGE

2. **THIS COURT ORDERS** that the Applicants are authorized to continue the engagement of BMO Nesbitt Burns Inc. (“**BMO**”) on the terms and conditions set out in the Revised BMO Engagement Letter (as defined in the Second Sellers BMO Affidavit).

3. **THIS COURT ORDERS** that BMO shall be paid its fees and expenses in accordance with the terms of the Revised BMO Engagement Letter, whether incurred prior to or after the date of this Order, by the Applicants, and shall be entitled to the benefit of the Administration Charge (the “**Administration Charge**”) provided for in paragraph 32 of the Amended and Restated Initial Order in respect of its Monthly Fee (as defined in the Second Sellers BMO Affidavit) and a charge (the “**Transaction Charge**”) on the Applicants’ current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”) to secure the Recapitalization Fee (as defined in the Second Sellers BMO Affidavit). The Transaction Charge shall have the priority set out in paragraphs 10 and 12 hereof.

4. **THIS COURT ORDERS** that the Administration Charge shall be increased to secure the Monthly Fee, up to the maximum aggregate amount of \$658,200 (being US\$500,000 as per the Bank of Canada’s published exchange rate on December 20, 2019), as security for the professional fees and disbursements of the Monitor, counsel to the Monitor, the Applicants’ counsel and BMO, incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 10 and 12 hereof.

DIP FINANCING

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to use the central cash management system currently in place among the Applicants, the Non-Applicant

Stay Parties and any other of the entities in the Lydian Group, as set out in the Amended and Restated Initial Order.

6. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to guarantee a credit facility from Orion Co IV (ED) Limited, Resource Capital Fund VI L.P. and Osisko Bermuda Limited (collectively, the “**DIP Lenders**”) in connection with the Sixteenth Amending Agreement dated March 10, 2020 between the DIP Lenders, Lydian Armenia CJSC (“**Lydian Armenia**”) as Borrower and the Applicants and the other Lydian Group entities listed therein as guarantors (the “**DIP Agreement**”), in order to finance working capital requirements of the Applicants and Non-Applicant Stay Parties, and other general corporate purposes, all as specifically provided for in the DIP Agreement.

7. **THIS COURT ORDERS** that the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Charge**”), which DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 10 and 12 hereof.

8. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Charge;
- (b) upon the occurrence of an event of default under the DIP Agreement, the DIP Lenders may apply to the Court to exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Agreement and the DIP Charge; and
- (c) the foregoing rights and remedies of the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

9. **THIS COURT ORDERS AND DECLARES** that the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the DIP Agreement.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

10. **THIS COURT ORDERS** that the priorities of the Administration Charge and the Directors' Charge (as each of those terms is defined in the Amended and Restated Initial Order), the Transaction Charge and the DIP Charge, as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$658,200 (being US\$500,000 as per the Bank of Canada's published exchange rate on December 20, 2019));

Second- the Directors' Charge (to the maximum amount of \$263,280);

Third- the Transaction Charge (to the maximum amount of \$5,923,800 (being US\$4,500,000 as per the Bank of Canada's published exchange rate on December 20, 2019));

Fourth- the DIP Charge.

11. **THIS COURT ORDERS** that, for greater certainty, the Administration Charge, the Director's Charge, the Transaction Charge and the DIP Charge shall not apply to the equipment owned by Lydian Armenia intended for use in connection with the Amulsar Project (as defined in the Sellers Stay Extension Affidavit) and financed by equipment financiers including CAT and ING.

12. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the Directors' Charge, the Transaction Charge or the DIP Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

13. **THIS COURT ORDERS** that each of the Administration Charge, the Directors' Charge, the Transaction Charge or the DIP Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any individual, firm, corporation, governmental

body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**").

14. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge, the Directors' Charge, the Transaction Charge or the DIP Charge, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Administration Charge, the Directors' Charge, the Transaction Charge and the DIP Charge.

15. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge, the Transaction Charge and the DIP Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

MONITOR'S FEES AND ACTIVITIES

16. **THIS COURT ORDERS** that the Monitor's activities, as set out in the Second Report of the Monitor dated February 28, 2020, be and hereby are approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

17. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and the Monitor's counsel, Thornton Grout Finnigan LLP, as disclosed in the Third Report and detailed in the Affidavit of Alan Hutchens sworn March 10, 2020 (the "**Hutchens Affidavit**") and the Affidavit of D.J. Miller sworn March 9, 2020 (the "**Miller Affidavit**"), respectively, as appended to the Third Report, be and hereby are approved.

SEALING

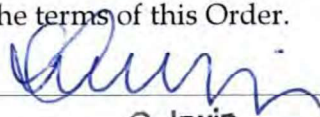
18. **THIS COURT ORDERS** that the First Sellers BMO Affidavit, the Second Sellers BMO Affidavit, the BMO Engagement Letter, the Revised BMO Engagement Letter, the CAT Settlement and the ING Settlement (as each of the foregoing terms are defined in the Sellers Stay Extension Affidavit), the unredacted DIP Agreement, the unredacted Sellers Stay Extension Affidavit, and the unredacted invoices attached as Confidential Exhibit 1 to each of the Hutchens Affidavit and Miller Affidavit are hereby sealed and shall not form part of the public record until further order of the Court.

GENERAL

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, Armenia, the Bailiwick of Jersey, the United Kingdom, or the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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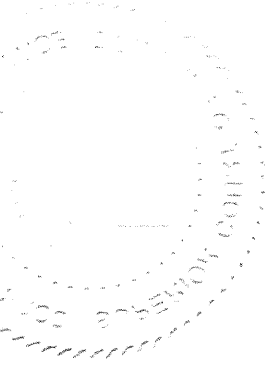
MAR 11 2020


C. Irwin
Registrar

PER / PAR: 

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION AND LYDIAN U.K. CORPORATION LIMITED

Court File No.: CV-19-00633392-00CL



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

**(Re Approval of BMO Engagement, DIP
Agreement and Extension of the Stay of
Proceedings)**

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Lawyers for the Applicants

EXHIBIT “E”

THIS IS EXHIBIT "E", referred to in the Affidavit of EDWARD A. SELLERS, sworn on April 27th, 2020.

DocuSigned by:
Sanja Sapic
E820930A2731482...

Commissioner for Taking Affidavits

Companies- reasons.

[2020]JRC049

**ROYAL COURT
(Samedi)**

17 March 2020

**Before : R. J. MacRae, Esq., Deputy Bailiff, and Jurats Thomas
and Hughes.**

IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL LIMITED

Advocate S. J. Alexander for the Representor.

JUDGMENT

THE DEPUTY BAILIFF:

1. On 25th February, 2020, the Court made various orders in response to a letter of request dated 23rd December, 2019, addressed to the Royal Court and transmitted to the Court under an order made by Chief Justice Morawetz of the Ontario Superior Court of Justice dated 23rd January, 2020.
2. We now give reasons for our decision.
3. Lydian International Limited ("Lydian International") is a Jersey company. It is the ultimate holding company for the wider Lydian Group. It is not necessary to set out the identity of all the companies in the Lydian Group. But Lydian International holds 100% of the shares in Lydian Canada Ventures Corporation, a company registered in British Columbia. Lydian Canada Ventures Corporation in turn owns 100% of the shares in Lydian UK Corporation Limited, a United Kingdom company.
4. Ultimately, through two companies registered in the British Virgin Islands, the companies that we have described wholly own an Armenian company which holds the principal asset of the group, a gold mine in Armenia.

5. The three companies identified, Lydian International, Lydian Canada Ventures Corporation and Lydian UK Corporation Limited were the three companies within the Group which were the subject of an application made to the Ontario Supreme Court under the Companies' Creditors Arrangement Act ("the CCAA").
6. The CCAA is a Canadian federal statute allowing insolvent debtors to restructure their business and financial affairs. In particular, it allows a company to continue its business whilst it seeks to make arrangements with its creditors. This includes "debtor in possession" insolvency proceedings whereby the debtor (in this case the three companies referred to) remains in possession of their property and are able to carry on their business until conclusion of the proceedings. The proceedings are carried out under the supervision of the court with the assistance of an independent insolvency practitioner known as the "Monitor".
7. The financial difficulties which the Lydian group companies are currently encountering are a consequence of difficulties in completing the construction of the gold mine which are said to have been caused by arbitrary measures taken by the government of Armenia. It is not necessary to describe further the difficulties this has caused to the Lydian Group.

The judgment of the Supreme Court of Justice, Ontario ("the Ontario Court")

8. The judgment of the Ontario Court recognised that Lydian International is a Jersey company, initially incorporated in Alberta. The applicants to the Ontario Court submitted that the Lydian Group business was completely integrated and its business directed primarily out of Canada, with most of its strategic decision making being conducted in Toronto and Vancouver. The Lydian Group's loan agreements were governed primarily by the laws of Ontario. It was clear from the judgment of the Ontario Court that the restructuring arrangements for the Lydian Group are complex and that it may be appropriate for the insolvency regime of one jurisdiction to oversee the process.
9. The Ontario Court held that the Jersey and UK companies, although foreign incorporated were "companies" pursuant to the CCAA, as they either had assets or did business in Canada. They were also "debtor companies" for the purpose of the CCAA as they were insolvent and had liabilities in excess of C\$5m.
10. The Ontario Court held *"The registered 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. I am also satisfied that, in the 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.”

11. The Ontario Court has made interim orders which need to be renewed frequently and are under the supervision of the Monitor. These orders have, *inter alia*, the effect that the applicants remain in possession and control of their current and future assets; may continue to carry on business in a manner consistent with the preservation of their business; are entitled to pay various expenses; are directed not to make payments of principal or interest to any of their creditors and are protected from any proceedings or enforcements against them except with consent of the applicants and the Monitor, or leave of the Court. These protections extend to the directors and officers of the applicants. The Monitor has been ordered to monitor the receipts and disbursements of the three companies; report to the Court at such time and intervals as the Monitor may deem appropriate with respect to matters relating to the property of the companies; advise the companies in the preparation of their cash flow statements; have full and complete access to the affairs of the companies and, be at liberty to engage counsel or such other persons as the Monitor deems appropriate respecting the exercise of its powers and obligations.

The letter of request

12. The letter of request ordered to be sent to this Court is entitled “*Letter of Request (Comity Application)*”. *The letter requests the assistance of this Court and invites the Court to give various relief. Importantly, the Ontario Court confirms “that, as a matter of international comity, the courts of the provinces and territories of Canada will consider giving effect to orders made by the Royal Court of Jersey relating to the bankruptcy of an individual or company (save for the purpose of enforcing the fiscal laws of Jersey)”.*
13. The Ontario Court requests the assistance of the Royal Court to act in aid of the applicants and the Monitor in the conduct of the reorganisation of the applicants and in particular, in summary, by recognising the appointment of the Monitor; by recognising the rights and powers of the applicants and the Monitor in respect of the property of Lydian International; by declaring that no action shall be taken or proceeded with against Lydian International except by leave of the Ontario Court and by granting such further or other relief as the Royal Court shall think fit in aid of the applicants and the Monitor in the reorganisation of Lydian International.

14. The Court was concerned to satisfy itself firstly that it had jurisdiction to grant the orders made and secondly, if it had such jurisdiction, whether it would be appropriate to exercise it in favour of granting some or all of the orders sought in the letter or request.

The Court's jurisdiction

15. There is no statutory basis to assist the Ontario Court.
16. Article 49 of the Bankruptcy (Désastre) (Jersey) Law 1990 provides that:

“(1) The court may, to the extent it thinks fit, assist the courts of a relevant country or territory in all matters relating to the insolvency of a person, and when doing so may have regard to the extent it considers appropriate to the provisions for the time being of any model law on cross border insolvency prepared by the United Nations Commission on International Trade Law.

...

(4) In this Article “relevant country or territory” means a country or territory prescribed by the Minister.”

17. However, the provisions of the order made by the Minister under Article 49, as contained in the Bankruptcy (Désastre) Jersey Order 2006, list a number of countries and territories which do not include Canada.
18. We were assisted by various Jersey cases cited to us in the course of argument in which the Royal Court, in the exercise of its discretion and having regard to the principles of comity, decided to make orders having the effect of implementing orders made by foreign courts in respect of bankruptcies in those jurisdictions.
19. The authority of most assistance was the decision of the Royal Court in Tacon –v- Nautilus Trust Company Limited, John Grimshaw and Montrow International Limited [2007] JRC 107 and the decision of the Court of Appeal on appeal in Montrow International –v- Tacon [2007] JCA 144.

20. In that case the Royal Court was considering an application made by the respondents to stay an order previously made by the Royal Court whereby it had recognised the appointment by the High Court of the British Virgin Islands of a provisional liquidator and authorised him to exercise in Jersey various powers as provisional liquidator of companies, including Montrow International Limited. At paragraph 24 the Court said:

“24. The second preliminary objection was that this Court does not have power to order a director to provide information etc at the instance of a provisional liquidator of an overseas company because Jersey does not have the concept of a provisional liquidator. Reliance was placed upon a dictum of Lord Hoffmann in Cambridge Gas Transport Cooperation v the Official Committee of Unsecured Creditors of Navigator Holdings plc [2006] 3 WLR 689 where he said at para 22

“What are the limits of the assistance which the court can give? In cases in which there is statutory authority for providing assistance, the statute specifies what the court may do.....At common law, their Lordships think it doubtful whether assistance could take the form of applying provisions of the foreign insolvency law which form no part of the domestic system. But the domestic court must at least be able to provide assistance by doing whatever it could have done in the case of a domestic insolvency. The purpose of recognition is to enable the foreign office holder or the creditors to avoid having to start parallel insolvency proceedings and to give them the remedies to which they would have been entitled if the equivalent proceedings had taken place in the domestic forum.”

25. However, that comment was made in the context of what powers the domestic court could exercise in aid of the foreign court. It was not concerned with the question of to whom such assistance could be given. In that respect Lord Hoffmann had at para 20 said the following:-

“Corporate insolvency is different in that, even in the case of movables, there is no question of recognising a vesting of the company’s assets in some other person. They remain the assets of the company. But the underlying principle of universality is of equal application and this is given effect by recognising the person who is empowered under the foreign bankruptcy law to act on behalf of the insolvent company as entitled to do so in England.”

26. The person entitled under BVI law to act on behalf of Montrow is Mr Tacon as provisional liquidator. The Court should therefore recognise him

even though Jersey does not have the concept of a provisional liquidator. The same point would arise in respect of a duly appointed administrator of an English company. Jersey does not have the concept of placing a company in administration but, given that under English law, an administrator once appointed is the person empowered to act for the company, this Court would, in conformity with the remarks of Lord Hoffmann, recognise the administrator of an English company as being the person entitled to act on behalf of that company.

27. No one suggested in argument that the liquidator of a Jersey company does not have a comparable power to obtain information from a director as is envisaged by Para 2(g) of the order and accordingly we reject the argument that this Court is unable to make the order in question merely because Jersey does not have the concept of a provisional liquidator.”

21. The single judge of the Court of Appeal, Michael Beloff QC, refused leave to appeal.
22. It is true that the relief available under the CCAA including, for example, the appointment of the Monitor and certain other orders made by the Canadian Court, are not features of Jersey law. Accordingly, the Court would be going rather further than the Royal Court went in Tacon –v- Nautilus and others in granting the relief sought. In that case, although Jersey does not have the concept of a provisional liquidator, it was not suggested that a liquidator of a Jersey company did not have the power to obtain information envisaged by the order that was sought.
23. In this case, the Court is being invited to make orders ancillary to those made in the Ontario Court which could not be obtained in any Jersey bankruptcy or insolvency procedure, as there is no equivalent process in Jersey.
24. It was accepted by counsel for Lydian International that there were elements of the Canadian process which were not known to Jersey law, but it was said that there was nothing about the relief that was sought that was inconsistent with public policy or contrary to any fundamental principles of Jersey law. We accepted this argument.
25. Accordingly, the Court found that it did have jurisdiction to make the order sought in the letter of request.

Exercise of our jurisdiction

26. This is not a case (unlike, for example, the Montrow International case) where the foreign insolvency process was itself heavily contested. Nor is it a case where such process was undertaken in the absence of representation by or on behalf of the creditors.
27. We were shown a list of the principal creditors, of whom six are secured and ten are unsecured. Some of the secured creditors were represented by counsel at the hearing before the Chief Justice of the Ontario Court.
28. We note that there are no secured or unsecured creditors (with the exception of the applicant's Jersey lawyers) in Jersey so no Jersey creditors will be prejudiced by any order that this court may make. Further, in accordance with the orders made at the convening hearing in this matter, all creditors were notified of the hearing. There was a delay in notifying certain of the unsecured creditors, but they still had sufficient time (five days) to respond prior the deadline of 18th February 2020 and, in the event, none of the secured or unsecured creditors have expressed any opposition to the orders being sought.
29. The only creditor who can be described as an objector to the proceedings is Caterpillar Financial SARL which is one of the six secured creditors of the three companies that are applicants in the CCAA proceedings (but not the largest). Caterpillar has been in communication with counsel for Lydian International, and its concern relates to the fact that Lydian International is a guarantor of a loan granted by Caterpillar to another company in the Lydian Group which is not the subject of the CCAA proceedings; Caterpillar objects to the CCAA court attempting to apply the Canadian stay "extra judicially" to collateral in Armenia and protests that any order by a Jersey court would not be effective against either Lydian International or the Armenian collateral.
30. We were shown evidence showing that at the most recent hearing before the Ontario Court, Caterpillar elected to reserve its position in respect of any challenge to the Ontario Court orders. In any event, as set out below, we ordered that any affected creditor (including Caterpillar) may have liberty to apply in relation to the orders that we made.
31. As to Lydian International itself, we were told that it is Jersey tax resident; that its registered office is in Jersey; it has an employee in Jersey; board meetings have occurred here in the past and we note that one of the six directors of the Company is resident in the Channel Islands.

32. There has been correspondence between Lydian International's Jersey advocates and the office of the Viscount in order to see if she has any substantive views on the application made. She did not express any views that were hostile to this application.
33. Although there is no precedent in Jersey for a Canadian CCAA order or similar order being enforced or recognised in relation to a Jersey company, we had no doubt that we should assist the Canadian Court in this case. There were no reasons of Jersey public policy impeding the court making the orders sought. To the contrary, it is consistent with Jersey's status as a responsible jurisdiction for the Royal Court to lend assistance in order to facilitate an international insolvency process in a friendly country that has a potential to benefit the creditors of the Lydian Group as a whole.
34. Further, whilst of course this court retains a discretion as whether or not to assist an overseas court and as to the nature and degree of assistance, the fact remains that it is the Ontario Court which is exercising the principal insolvency jurisdiction in this case, and this court should have regard to the decisions of that court particularly where, as in this case, we have been supplied with a substantial body of material explaining the background to this matter, together with a reasoned judgment of the Ontario Court, following a hearing to which the creditors were convened and certain of the creditors represented by counsel.
35. The Court gave substantial weight to the indication in the letter of request that the Canadian court would consider giving effect to equivalent orders made by the Royal Court in respect of the bankruptcy of an individual or company and ordered that:
- (i) 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 be notified to the Jersey Financial Services Commission;
 - (ii) 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;
 - (iii) 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

- (iv) Lydian International and any party affected by this Representation, including the creditors of Lydian International, shall have liberty to apply.

Authorities

Creditors Arrangement Act

Bankruptcy (Désastre) (Jersey) Law 1990.

Bankruptcy (Désastre) Jersey Order 2006

[Tacon –v- Nautilus Trust Company Limited, John Grimshaw and Montrow International Limited](#)
[2007] JRC 107

[Montrow International –v- Tacon](#) [2007] JCA 144.

EXHIBIT “F”

THIS IS EXHIBIT "F", referred to in the Affidavit of EDWARD A. SELLERS, sworn on April 27th, 2020.

DocuSigned by:
Sanja Sopic
E820930A2731482...

Commissioner for Taking Affidavits

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:

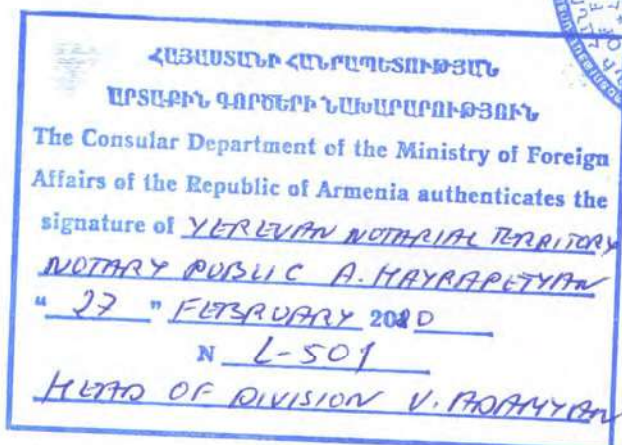
Գրանցված է գրանցամատյանում թիվ 1368

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
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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 դեպքում տրված կորդինատներով կետը գտնվում է Գնդեվազ-Ջերմուկ ավտոճանապարհի վրա, իսկ երկու շարժական տնակները դրանից 183 մետր հյուսիս-արևելք: Երկրորդ դեպքում՝ 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

EXHIBIT “G”

THIS IS EXHIBIT "G", referred to in the Affidavit of EDWARD A. SELLERS, sworn on April 27th, 2020.

DocuSigned by:

Sanja Sopic

E820930A2731482...

Commissioner for Taking Affidavits

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>
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MEMORANDUM

To: Harry Bronozian, MS; Chemical/Environmental Engineer
From: Ann Maest, PhD; Buka Environmental
Date: 11 December 2019
Re: Missing elements and underestimation of risk in Lydian's 2019 NI 43-101 technical report

Introduction

Lydian has published a revised NI 43-101 technical report (Lydian International, 2019; "Technical Report") for the Amulsar Project in Armenia. The Canadian National Instrument (NI) 43-101 Standards of disclosure for mineral projects is a set of rules and guidelines for reporting and displaying information related to mineral properties owned by, or explored by, companies listed on stock exchanges in Canada. The focus of the NI 43-101 is disclosure with professional accountability, and the core principles rest on the Qualified Person, using standards and best practices, and producing a Technical Report (TMX and Ontario Stock Exchange, 2018). A Qualified Person must meet certain ethical, education, and experience requirements.

The revised Technical Report claims higher reserves based on a re-evaluation of existing information with no additional drilling. It is unclear if the projected environmental effects are based on a similar re-evaluation or simply reflect past reporting.

An "advanced property" is required to discuss environmental studies, permitting, and social or community impact in its Technical Report because water, tailings, and waste are critical areas of project risk (TMX and Ontario Stock Exchange, 2018, p. 107, 113). The disclosure essentials for advanced projects also stress the importance of obtaining and maintaining the "social license" to operate. The environmental risks of the Amulsar Project and the lack of a social license are seriously underrepresented in the Lydian (2019) Technical Report. I present information on these two topics in the memorandum, with a focus on environmental risks.

Environmental Risks

The Qualified Person for the NI 43-101 report is responsible for communicating the project risks and clearly report on the material risks in a manner understandable to investors (TMX and Ontario Stock Exchange, 2018, p. 19). The NI 43-101 further requires that public reporting of technical information is clear, transparent, balanced, not misleading, and based on reasonable, clearly explained assumptions. Public reporting must also be unbiased and identify the potential risks and uncertainties (TMX and Ontario Stock Exchange, 2018, p. 22).

Risks Related to Acid Rock Drainage are Misleading and Not Based on Clearly Explained Assumptions

Acid mine or acid rock drainage is widely acknowledged as the most important and serious environmental and water quality risk associated with hardrock mining operations such as the Amulsar Project (see, e.g., U.S. Department of Agriculture, 1993). Lydian has acknowledged that acid rock drainage (ARD) at the Amulsar Project is a risk for the waste rock (barren rock storage facility, or BRSF), the pit wall rock, and the pit backfill (Lydian, 2019, p. 1-16). The extent of the risk, however, is downplayed in Lydian's Technical Report:

“Using industry-practice mitigation measures, the ARD has been shown to have no significant local or regional water quality impact (Wardell Armstrong, 2016).” (Lydian, 2019, p. 1-16)

While methods to minimize ARD generation are described in Lydian's report (see, e.g., for the BRSF on p. 18-8 and 18-9), Lydian does not describe how these methods will result in “no significant...impact” of ARD or whether or not the methods are industry best practice, as required by NI 43-101 (throughout TMX and Ontario Securities Commission, 2018).

Encapsulation is Lydian's primary method proposed to “prevent the generation of ARD” from the BRSF (Lydian, 2019, p. 18-9). The GARD Guide, a compilation of industry best practice for ARD management, discusses the use of acid-consuming materials in encapsulation.¹ However, Lydian is not proposing to add acid-consuming (i.e. neutralizing) material to the BRSF for encapsulation. Instead, Lydian is assuming that compaction from truck traffic and the presence of argillic clay minerals will seal off the acid-generating waste rock from contact with infiltrating water or melting snow (Lydian, 2019, p. 18-9). The waste rock in the BRSF and the pits will likely be the largest source of ARD from the Amulsar Project, and the Technical Report presents a plan for increased reserves, which will result in the production of more waste rock (p. 1-1).

According to Lydian (2019, p. 25-32), Golder produced a seepage model “showing the encapsulation to be an effective ARD mitigation measure” that would reduce seepage to 2 L/s during spring runoff at the 50% base-case condition.² This mid-range calculation does not represent potential high-flow conditions under which the seepage rate would be higher than 2 L/s. The 2019 Golder report is not available on either the Lydian International or Lydian Armenia websites, and from the title it does not appear to be related to ARD mitigation. Lydian also uses the Technical Report to summarize new information on ARD geochemical characterization that is not available on their websites (GRE, 2019, discussed below). Therefore, the NI 43-101 requirement for transparency and clearly explaining the material risks and associated uncertainties is not met for this important claim about preventing or minimizing one of the largest risks associated with the Amulsar Project.

An independent third-party review of Lydian's most recent Environmental and Social Impact Assessment (ESIA; Wardell Armstrong, 2016) was conducted by ELARD and TRC (2019). An assessment of Amulsar's ARD potential was conducted by GRE in 2017 (GRE, 2017). The ELARD and

¹ GARD Guide, Chapter 6, Section 6.6.3.5. http://www.gardguide.com/index.php/Chapter_6

² The Golder report referred to is Golder (2019). Amulsar Project Site Wide Water Balance - Revision 2. Lakewood, Colorado: Golder Associates Inc.

TRC (2019) review calls the GRE assessment “misleading,” because, among other reasons, it “underestimates the potential for ARD generation and the associated water quality, environmental impacts, and water treatment requirements” (ELARD and TRC, p. 27). A more recent ARD assessment by GRE (2019) is cited in Lydian (2019), but this document is not available on Lydian’s website.³ Because the report is not publicly available, it is unclear if it addresses the increased planned production and generation of acid-generating material. However, the geochemical testing result figures in the 2019 Technical Report are identical to those in the 2016 ARD Management Plan submitted with the 2016 ESIA.⁴ Therefore, it must be assumed that no new geochemical testing has been conducted on the additional waste rock produced from mining the additional reserves. Underestimating acid generation and contaminant leaching potential will underestimate the severity and extent of environmental impacts and result in proposing inadequate mitigation measures, including water treatment approaches (Prabhakar-Fox and Lottermoser, 2015). Because once ARD forms it can continue for centuries, such underestimates can have potentially long-term consequences and can notably affect the economics of Lydian’s operation.

The ELARD and TRC (2019) review is mentioned in Lydian’s Technical Report (see, e.g., p. 4-13). Parts of the ELARD and TRC (2019) review are on Lydian Armenia’s website (only as a “rough translation”), with responses from Lydian, the expert group (ELARD), and the RA Investigative Body.⁵ However, the full review by ELARD/TRC is not on their website, nor is the list of TRC’s recommended mitigation measures (TRC, 2019), most of which Lydian agreed to. These omissions are an example of low transparency by Lydian, and the reports should be included in a corrected NI 43-101 report. The list of recommended mitigation measures is on the RA Investigative Committee website,⁶ as is the ELARD/TRC review.⁷ These important documents should also be put on Lydian’s website to meet the transparency requirements of NI 43-101.

In the response document³ the conclusion by the Republic of Armenia Investigating Body rests on the following statement “...if Lydian planned mitigation and closure measures and the above supplemental and contingent mitigation measures are adequately and verifiably planned, modeled, designed, implemented, operated, monitored, and maintained during the operation and post closure phases, the environmental risks to nearby water resources (groundwater, and major rivers and springs) should be manageable.” This refers to the “about 16 mitigation measures recommended by ELARD/TRC.” In other words, the Armenian government is stating that they will have more confidence in the environmental behavior of the Amulsar Project if these mitigation measures are implemented and maintained. However, Lydian does not mention the mitigation measures in their Technical Report and has not accounted for the increased costs of implementing the recommended mitigation measures. This omission from Lydian’s NI 43-101 is serious and should be corrected in a revised NI 43-101 that transparently states what the mitigation measures are and how much it would cost to

³ The only 2019 document listed or available on Lydian’s websites is the 2019 NI 43-101 report. See:

<https://www.lydianinternational.co.uk/projects/amulsar/technical-reports>

⁴ See, e.g., Figures 25-5 and 25-8 – 25-12 in the 2019 Technical Report.

⁵ Republic of Armenia (rough translation):

https://www.lydianarmenia.am/img/uploadFiles/5814d2c3e43b82fceceInvestigativeCommittee_Analysis_FINALENG.pdf

⁶ <http://investigative.am/images/2019/lidian/porcagnnutyun/amulsar.pdf>

⁷ <http://www.investigative.am/images/2019/lidian/porcagnnutyun/amulsar11.pdf>

adequately and verifiably plan, model, design, implement, operate, monitor, and maintain them during operation and through to post-closure.

Risks and Costs Related to Mine Water Treatment are Underestimated

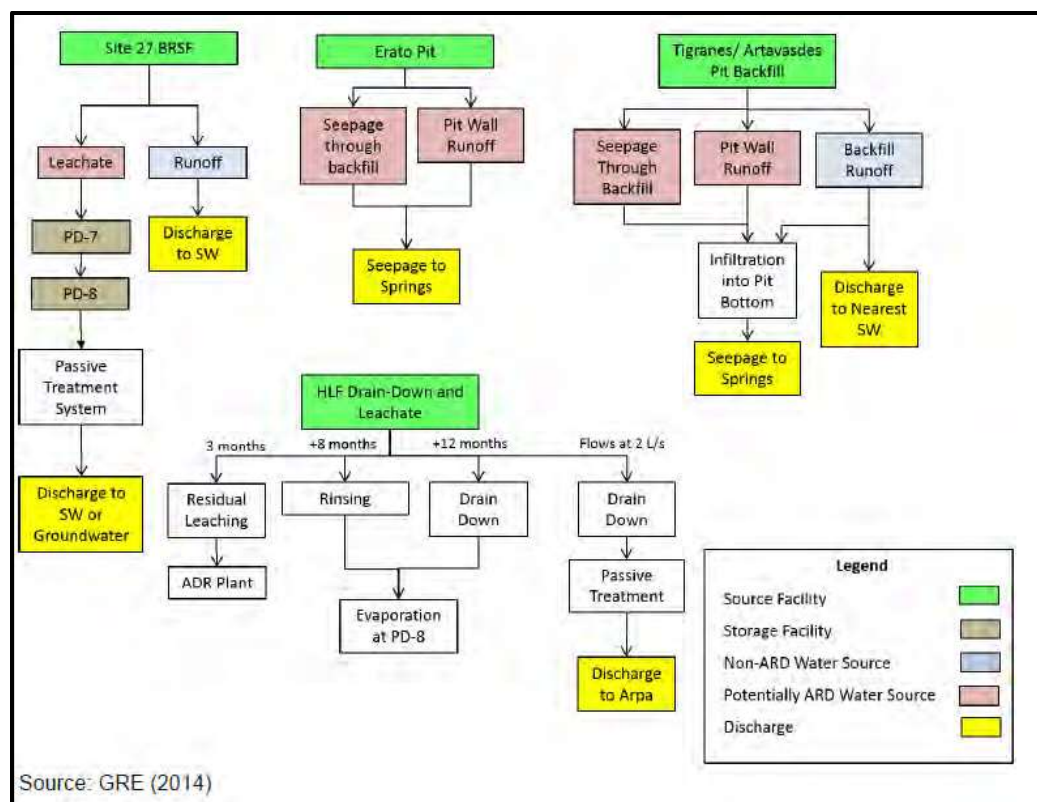
As noted, the ELARD and TRC (2019, p. 27) review states that the ARD assessment for Amulsar underestimates the potential for water treatment requirements. Lydian has contradictory statements in its Technical Report and other documents about the need and costs for mine water treatment during operations and closure. These assumptions and omissions and the lack of specificity translate to a lack of transparency and increased risk for investors.

Lydian believes mine water treatment will be needed for the BRSF in Year 4, which is during operations, and for the heap leach facility (HLF) in Year 15, which is during closure (Technical Report, p. 21-10). However, no costs are included for water treatment during operations, with the exception of a single line item for workers' potable water (p. 21-6). The Technical Report mentions capital and operating costs for passive mine water treatment in the closure section (p. 21-10) and says treatment costs are included in closure costs (Table 21-10), but the values are only presented on an annual basis with no specificity about what is included or excluded.

Lydian states in its response letter to the government of Armenia (Lydian Armenia, 2019) that leachate from the BRSF will not need treatment during closure because the cap system will "prevent any rainfall" from contacting waste rock – thus reclassifying BRSF runoff as non-contact water during closure. It is highly unlikely that the cap and evapotranspiration layer mentioned will be 100% effective, yet this is Lydian's assumption. Figure 26-16 in the Technical Report (reproduced as Figure 1 below) shows passive treatment of BRSF and HLF leachate during closure but no capture or treatment of runoff from these facilities. The figure also shows that leachate from Erato and Tigranes/ Artavasdes pit backfill and walls will not be treated during closure. Lydian assumes that the backfill will be 100% non-acid-generating ("NAG"; Lydian Armenia, 2019) and will not leach metals or other mine contaminants to the environment in concentrations that could create water quality risks. This assumption contradicts waste rock leach test results, is overly optimistic, and is not accounted for in contingency measures or costs.

Lydian issued a response letter to the ELARD and TRC (2019) review (Lydian Armenia, 2019). The letter states "...the Company commits not to discharge any untreated contact water from the site to the environment" (emphasis added). Lydian's definition of contact water is too limited. The Technical Report divides water at the mine into three categories: contact, impacted, and non-contact, with "impacted" water including runoff from haul roads, crushing, the conveyor, non-acid generating waste rock, and topsoil stockpiles. Runoff that contacts ore (from the crusher and conveyor) and waste rock is considered *contact* water and is normally sent to the contact water pond for monitoring and treatment. Lydian declares, without requiring monitoring, that "impacted" water will be lumped with non-contact water because "...this water is assumed to not require additional treatment⁸ prior to release to the environment." (Lydian, 2019, p. 18-13). By creating a term and a non-standard definition, Lydian is again underestimating risks and costs for mine water treatment that will be needed at Amulsar.

⁸ beyond sediment management



Source: Lydian, 2019, Figure 25-16.

Figure 1. Leachate management during closure for the Amulsar Project. Note that BRSF runoff and pit wall and backfill leachate will be discharged to the environment without treatment during closure.

Further, Lydian contradicts itself later in the Technical Report by saying that all water coming into contact with waste rock, pit walls, or spent ore is considered contact water and will require treatment (p. 25-28):

“Furthermore, the water quality from all barren rock and from the spent heap leach material is not expected to meet regulatory discharge standards without treatment and management. As a result, all water coming into contact with barren rock, pit walls, or spent HLF material is considered contact water and must be managed accordingly”

The inconsistencies in the Technical Report are an indication that Lydian has not carefully evaluated the characterization of mined materials and is at best confused about the types of mine water that will be generated and the extent and type of treatment that will be required.

Lydian assumes for purposes of water treatment, that the Upper Volcanics (UV) material will not generate acid (Technical Report, p. 25-16). According to Table 25-12 in the Technical Report, most waste rock in the BRSF will be from “NAG” UV and colluvium material, and the backfill will be an even split of UV/colluvium and Lower Volcanics (LV) material. An inadequate number of longer term (kinetic) tests were run on UV waste rock. The three UV kinetic tests shown in Figure 25-8 demonstrate that two tests were prematurely stopped, and the one that continued beyond 20 weeks did produce acidic leachate with a pH below 6 (cutoff for acidic leaching according to the industry-

sponsored GARD Guide).⁹ The Technical Report also describes three categories of LV waste rock: strongly, mildly, and non- acid generating (p. 25-26 – 25-27). However, the pH values produced for all categories are acidic, with the “NAG” category producing “pH with a leachate of ~4.8.” More testing is needed, but the limited results suggest that “NAG” waste rock, which will be placed in the BRSF and as backfill in the pits, will generate acid. As noted, contact water runoff and leachate from pit walls and backfill will be discharged to the environment without treatment.

Regardless of whether acid is produced, waste rock can release metals and other mine contaminants. The short-term leach test results showed that waste rock leached concentrations of barium, copper, iron, manganese, nickel, and sulfate that approached or exceeded regulatory discharge standards (Technical Report, p. 25-21). The limited static and kinetic testing results strongly imply that, especially with longer leach times, waste rock leachate will require collection and treatment well into closure.¹⁰ Lydian assumes only limited treatment of BRSF draindown water will be needed during closure and post-closure.

Lydian commits “...to apply active treatment if its passive treatment system fails to ensure the necessary result” (Lydian Armenia, 2019). In the letter, Lydian mentions using lime dosing of contact water prior to passive treatment as an “active” treatment approach, if needed, yet this approach is not mentioned in the Technical Report, which post-dates the letter. In a broader sense, Lydian does not include contingency costs for active treatment, which will be substantially more expensive than passive treatment, in the Technical Report.

Costs for mine water treatment need to be more clearly described in a revised Technical Report, and assumptions about the need for treatment need to be better supported. Including realistic costs for treatment of all contact water during operation, closure, and post-closure will increase costs and could change Amulsar from the “low cost” operation touted by Lydian to a higher cost mine with higher environmental risks.

Social License to Operate

Obtaining and maintaining a social license to operate is a critical element for mines (TMX and Ontario Securities Commission, 2018, p. 114). The license to operate in this context must be granted by the communities and has been ranked as the number one business risk for the mining sector in 2019/2020 (Mitchell, 2018).

Lydian states in its Technical Report that “... local people are generally supportive of the project.” (p. 1-16). At the same time, as they note, “A continuous illegal blockade at Amulsar has been in place since 22 June 2018, causing construction activities to be suspended since this date. Access has generally been limited to activities related to contractor demobilization and winterization.” (p. 1-17).

⁹ www.gardguide.com/index.php?title=Chapter_2

¹⁰ It is worth mentioning that the leach test Lydian used underestimates leachate concentrations because it uses a 20:1 water:rock ratio. The U.S. state of Nevada uses a leach test with a 1:1 water:rock ratio (the Meteoric Water Mobility Procedure) that is more appropriate for an arid or semi-arid climate. Lydian refers to climate similarities between Amulsar and Nevada (Lydian, 2019, p. 21-10) but chose a leach tests with too much dilution.

Communities are often split about mining due to concerns about the environment and their traditional, pre-mine livelihoods versus new, potentially higher paying jobs. Regardless of the local consensus on the project, Lydian stated in June 2019 that it has lost more than \$60 million since the protests began (in one year; Bacchi, 2019).

Ongoing protests would continue to risk the financial success of the project, and lack of financial success threatens environmental compliance, especially for a company like Lydian that has no prior experience in the sector. A failure in environmental compliance that risks the health or safety of communities or the environment will likely restart the protests. Lydian is proposing a Community Support Recovery Plan, and costs have been included in its G&A costs in their Technical Report (p. 20-32). But the plan and the proposed audits will not necessarily stop the blockades. The impact of future protests and blockades has not been factored into Lydian's financial disclosure. As noted in its Table 26-1 Project Risks, Lydian acknowledges that the ongoing problem with its social license to operate would only move from Critical to High with the implementation of the Community Support Recovery Plan. Given the failure of Lydian and the government to stop the ongoing protests, it seems their prediction may be overestimated, and the risks would be Critical for the foreseeable future.

Summary

Lydian's 2019 NI 43-101 Technical Report underestimates risks, costs, and associated uncertainties for its Amulsar Project and in so doing fails to adequately meet the disclosure, professional accountability, and transparency requirements of NI 43-101. The information in the Technical Report contradicts the statement of no identified risks (except ability to secure permits) on p. 1-10 and strongly suggests that development of the project will be affected by known (based on limited waste characterization results) and unknown (because of a lack of adequate waste characterization) environmental and social risks. The risks will result in higher operational and closure costs than estimated by Lydian. Importantly, all waste rock produced at the site will generate acid, according to Lydian's limited geochemical testing results. A revised NI 43-101 Technical Report should be completed that addresses these inadequacies and includes appropriate costs.

References Cited

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- U.S. Department of Agriculture, Forest Service. 1993. Acid Mine Drainage from Impact of Hardrock Mining on the National Forests: A Management Challenge. <https://archive.org/details/CAT31108485>
- Wardell Armstrong LLP. 2016. Amulsar Gold Mine Project. Environmental and Social Impact Assessment (ESIA). June 2016. <https://www.lydianarmenia.am/index.php?m=publications&lang=eng&p=99>

EXHIBIT “H”

THIS IS EXHIBIT "H", referred to in the Affidavit of EDWARD A. SELLERS, sworn on April 27th, 2020.

DocuSigned by:

Sanja Sopic

E820930A2731482...

Commissioner for Taking Affidavits

March 19, 2020

VIA EMAIL

Arpine Galfayan
Armenian Environmental Front Civil
Initiative
5 Spendaryan str. apt. 24,
Yerevan, Armenia
armecofront@gmail.com

Dear Sir/Madam:

Re: In the Matter of Lydian International Limited et. al. (“Lydian”)
Court File No.: CV-19-00633392-00CL

As mentioned in our email dated March 7, 2020 in response to yours dated February 28, 2020, we act as counsel to Alvarez & Marsal Canada Inc. in its capacity as court-appointed Monitor (the “**Monitor**”) of Lydian International Limited and certain of its subsidiaries pursuant to the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA Proceeding**”) pending before the Ontario Superior Court of Justice (the “**Court**”). We have made Chief Justice of Ontario Morawetz, who is the presiding judge in the CCAA Proceeding, aware of your correspondence dated March 10, 2020, and he has reviewed your communication. The Court has directed the Monitor to report on the issues raised in your email dated February 28, 2020 in its next report to the Court, which the Monitor will do.

The Court has asked the Monitor to advise you that, if the Armenian Environmental Front (“**AEF**”) Civil Initiative wishes to raise any issues, make submissions or take any position in respect of Lydian’s actions, it must prepare, serve and file a Notice of Appearance with the Court. In order to do that, you may want to retain counsel in Canada to assist you. Here is a link to the form of Notice of Appearance that is to be prepared, pursuant to the *Rules of Civil Procedure*: <http://ontariocourtforms.on.ca/static/media/uploads/courtforms/civil/38a/rcp-38a-e.pdf>.

Parties are not permitted to communicate directly with the Court. Any future correspondence that you wish to send to the Monitor and any Notice of Appearance you prepare must be sent to the entire Service List of interested parties in the CCAA proceeding and filed with the Court. That is the hallmark of the open and transparent forum adopted by the Court in CCAA proceedings. The Service List of parties that you will need to serve with any materials, including your Notice of Appearance, can be found on the Monitor’s website, which is accessible here: <https://www.alvarezandmarsal.com/content/lydian-service-list>.

Please refer to paragraph 46 of the enclosed Endorsement of Chief Justice Morawetz dated March 13, 2020. His Honour has specifically requested that the AEF Civil Initiative electronically serve (on the entire Service List) and file with the Canadian Court all materials that you wish to be brought to the attention of the Canadian Court, in accordance with the Ontario *Rules of Civil Procedure*.

Yours truly,

Thornton Grout Finnigan LLP

"D.J. Miller"
[electronic signature]

D.J. Miller

Enclosures

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN
INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION AND LYDIAN U.K.
CORPORATION LIMITED

Court File No.: CV-19-00633392-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AFFIDAVIT OF EDWARD A. SELLERS
Sworn April 27, 2020

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Lawyers for the Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	THURSDAY, THE 30 TH
)	
CHIEF JUSTICE MORAWETZ)	DAY OF APRIL, 2020

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION
AND LYDIAN U.K. CORPORATION LIMITED**

Applicants

ORDER

(Re Approval of DIP Amendment and Extension of the Stay of Proceedings)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 130 Queen Street West, Toronto, Ontario.

ON READING the affidavit of Edward A. Sellers sworn April 27, 2020 (the "**April Stay Extension Affidavit**"), the supplementary affidavit of Edward A. Sellers sworn April 30, 2020 (the "**Supplementary April Stay Extension Affidavit**") and the Exhibits thereto, the Third Report of Alvarez & Marsal Canada Inc. in its capacity as Monitor of the Applicants (the "**Monitor**") dated March 10, 2020 (the "**Third Report**"), the Fourth Report of Alvarez & Marsal Canada Inc. in its capacity as Monitor (the "**Fourth Report**") and on hearing the submissions of counsel for the Applicants, the Monitor, Caterpillar Financial Services (UK) Limited, Orion Capital Management, Resource Capital Fund VI LP, Osisko Bermuda Limited and ING Bank N.V./ ABS Svensk Exportkredit (publ), and on being advised that those parties listed in the affidavits of service filed were given notice of this motion,

EXTENSION OF STAY PERIOD

1. **THIS COURT ORDERS** that the stay period as referred to in the Amended and Restated Initial Order of Chief Justice Morawetz dated January 23, 2020 (the “**Amended and Restated Initial Order**”) is extended until and including June 30, 2020 in respect of the Applicants and the Non-Applicant Stay Parties.

DIP FINANCING

2. **[THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to enter into the DIP Amendment (as defined in the April Stay Extension Affidavit) in order to finance working capital requirements of the Applicants and Non-Applicant Stay Parties, and other general corporate purposes, all as specifically provided for in the DIP Amendment.]

3. **[THIS COURT ORDERS** that, for greater certainty, in connection with the Applicants’ obligations under the DIP Amendment, the DIP Lenders (as defined in the Sellers Stay Extension Affidavit) shall be entitled to the benefit of the DIP Charge referred to in paragraph 7 of the Order of this Court dated March 11, 2020 (the “**March 11 Order**”), which DIP Charge has the priority set out in paragraphs 10 and 12 of the March 11 Order.]

MONITOR’S FEES AND ACTIVITIES

4. **THIS COURT ORDERS** that the Monitor’s activities, as set out in the Third Report and the Fourth Report, be and hereby are approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and the Monitor’s counsel, Thornton Grout Finnigan LLP, as disclosed in the Fourth Report and detailed in the Affidavit of Alan Hutchens sworn April 1, 2020 (the “**Hutchens Affidavit**”) and the Affidavit of D.J. Miller sworn April 1, 2020 (the “**Miller Affidavit**”), respectively, as appended to the Fourth Report, be and hereby are approved.

SEALING

6. **THIS COURT ORDERS** that the unredacted April Stay Extension Affidavit, [the unredacted Supplementary April Stay Extension Affidavit], and [the unredacted DIP Amendment], are hereby sealed and shall not form part of the public record until further order of the Court.

GENERAL

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, Armenia, the Bailiwick of Jersey, the United Kingdom, or the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

**(Re Approval of DIP Amendment and
Extension of the Stay of Proceedings)**

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Lawyers for the Applicants

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<p>ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST Proceeding commenced at Toronto</p>	
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<p>MOTION RECORD (Re: DIP Amendment and Extension of the Stay of Proceedings) (Returnable April 30, 2020)</p>	
<hr/>	
<p>STIKEMAN ELLIOTT LLP Barristers & Solicitors 5300 Commerce Court West 199 Bay Street Toronto, Canada M5L 1B9</p>	
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<p>Lawyers for the Applicants</p>	

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)

CHIEF JUSTICE MORAWETZ)

Handwritten signature
MONDAY
~~THURSDAY~~, THE 30TH
DAY OF ~~APRIL~~, 2020



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION
AND LYDIAN U.K. CORPORATION LIMITED

Applicants

ORDER

THIS MOTION, made by the Applicants, was heard this day in writing in substitution to an in-person hearing.

ON READING THE consent of the parties, filed,

1. THIS COURT ORDERS that the stay of proceedings as provided for in the Amended and Restated Initial Order of Chief Justice Morawetz dated January 23, 2020 shall be lifted for the purposes of permitting Caterpillar Financial Services (UK) Limited ("CAT") the ability to exercise its enforcement rights with respect to the Mobile Mining Equipment (as defined in the Motion Record of the Respondent, CAT dated January 22, 2020) in accordance with various pledge agreements entered into between Lydian Armenia CJSC and CAT pertaining to the Mobile Mining Equipment.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAY 22 2020

111576955 v3

PER / PAR: *Handwritten signature*

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION AND LYDIAN U.K. CORPORATION LIMITED

Court File No.: CV-19-00633392-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
CHIEF JUSTICE MORAWETZ)

THURSDAY, THE 30TH
DAY OF APRIL, 2020



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION
AND LYDIAN U.K. CORPORATION LIMITED

Applicants

ORDER

THIS MOTION, made by the Applicants, was heard this day in writing in substitution to an in-person hearing.

ON READING THE consent of the parties, filed,

1. THIS COURT ORDERS that the stay of proceedings as provided for in the Amended and Restated Initial Order of Chief Justice Morawetz dated January 23, 2020, shall be lifted for the purposes of permitting Ab Svensk Exportkredit ("SEK"), on its own behalf, or ING Bank N.V. ("ING"), in its capacity as security agent for SEK pursuant to the Movable Assets Pledge (Security Interest) Agreement (the "Assets Pledge Agreement") entered into between ING, SEK and Lydian Armenia CJSC ("Lydian Armenia"), to exercise its enforcement rights in accordance with the Assets Pledge Agreement with respect to the equipment financed pursuant to the Facility Agreement between Lydian Armenia, Lydian International Limited and ING dated February 8, 2017, as transferred by ING to SEK as lender, as amended from time to time.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAY 22 2020

PER / PAR:

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION AND LYDIAN U.K. CORPORATION LIMITED

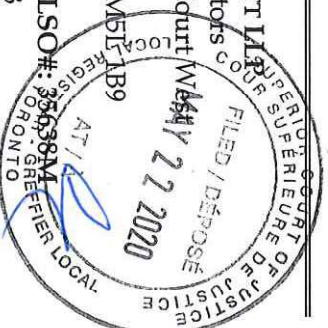
Court File No.: CV-19-00633392-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

ORDER

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Lawyers for the Applicants

Court File No. 19-00633392-00CL

**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 A PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION,
AND LYDIAN U.K. CORPORATION LIMITED**

Applicants

**AFFIDAVIT OF EDWARD A. SELLERS
(Sworn June 15, 2020)**

I, Edward A. Sellers, of the Town of Rosseau, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Interim President and Chief Executive Officer of the Applicant Lydian International Limited ("**Lydian International**"). I have been the President and Chief Executive Officer of Lydian International since June 12, 2019. I am also a director of the other Applicants in this proceeding. I have been on the Board of Directors of the Applicant Lydian International since November 1, 2018, and went on the Board of Directors of the other Applicants in this proceeding after June 12, 2019.

2. Due to my involvement with the Applicants, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of Lydian International and have spoken with certain of the directors, officers and/or employees of the Applicants, as necessary. Where I have relied upon information from others, I believe the information to be true.

3. This affidavit is sworn in support of a motion brought by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and such

proceedings, the “**CCAA Proceedings**”) seeking an Order (the “**Meeting Order**”), substantially in the form attached as Tab 3 of the Applicants’ Motion Record:

- a) accepting the filing of a plan of arrangement of the Applicants under the CCAA and *Business Corporations Act* (British Columbia) (the “**BCBCA**”) dated June 15, 2020 (the “**Plan**”) with the Court;
 - b) approving, pursuant to section 22 of the CCAA, the classification of creditors as set out in the Plan for the purposes of the Meeting (defined below) and voting on the Plan;
 - c) authorizing and directing the Applicants to call, hold and conduct a meeting of their Affected Creditors (as defined below) to vote on the Plan (the “**Meeting**”);
 - d) authorizing notice of the Meeting to be effected through service of the Meeting Order (when issued) on counsel for the Affected Creditors;
 - e) approving the procedures to be followed at the Meeting, including voting procedures;
 - f) setting a date for the hearing of the Applicants’ motion for the Sanction and Implementation Order (the “**Sanction Hearing**”);
 - g) sealing the unredacted version of this affidavit and the unredacted version of the BMO Affidavit (as defined below); and
 - h) approving the Monitor’s activities to date, as set out in its Fifth Report to the Court, to be filed (the “**Fifth Report**”).
4. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

PART 1 - OVERVIEW

5. The Applicants are hopelessly insolvent. The sole operating asset owned by the Applicants, the Amulsar mine, has been inaccessible since June 2018 due to illegal blockades and the associated actions and inactions of the Government of Armenia (“**GOA**”).

6. The Applicants' secured lenders entered into numerous forbearances extending the timelines for repayment of the Applicants' indebtedness and have been the only parties funding the Applicants' efforts to find a solution to the situation caused by the illegal blockades. The Applicants' secured lenders have allowed the Applicants to retain multiple legal and financial advisors, engage in protracted negotiations with the GOA, and run multiple sales processes to source a third party investor or purchaser for the Applicants' mining assets and/or their claim against the GOA. Unfortunately, none of these efforts, which have spanned nearly two years, have yielded any third party transaction capable of completion which would satisfy the claims of the secured lenders.

7. In all this time, no other stakeholder has proposed to fund the Applicants' efforts to unlock any value from any of the Applicants' assets, despite numerous requests by or on behalf of the Applicants to that effect.

8. Nearly two years after the illegal blockades and the Applicants' financial deterioration commenced, the Applicants have incurred over \$137 million in dislocation expenses. After granting multiple forbearances and advancing over \$20 million in additional funding to support the Applicants' efforts to preserve and protect their investment in the Amulsar mine, the Applicants' secured lenders have advised that they are not prepared to continue to support further independent efforts by the Applicants.

9. As indicated in my affidavit sworn April 29, 2020 filed in the CCAA Proceedings, it has been a condition of additional funding provided to or for the benefit of the Applicants since April 30, 2020 that the Applicants pursue the completion of a restructuring in these proceedings, with a view to distributing the shares of Lydian Canada to or for the benefit of the Applicants' secured lenders (the "**Exit Plan**"), or face enforcement steps.

10. With no independently generated revenues and no alternative sources of funding available to the Applicants, the Applicants' choices are limited to either:

- a) seeing enforcement steps taken by the secured lenders, resulting in the privatization of the Applicants' assets through the enforcement of share pledges and other security;

- b) seeking to file alternative bankruptcy, administration, or liquidation proceedings across multiple jurisdictions, in the absence of funds to do so; or
- c) implementing the Exit Plan through a plan of arrangement under the CCAA (the “Plan”).

11. All of these options result in the Applicants’ assets transitioning to the secured lenders. Only the last option of doing so through a Plan permits an orderly transition, minimizes collateral impacts on the Applicants’ principal operating subsidiary (Lydian Armenia) and numerous other stakeholders, and provides for winding down the proceedings before this Court and the Jersey Court.

12. The Applicants’ secured lenders are prepared to fund the additional costs associated with implementing such a Plan and the Applicants value the opportunity to exit these proceedings in an orderly manner.

PART 2 - BACKGROUND ON THE APPLICANTS AND LACK OF OPTIONS

13. I repeat and rely on my affidavits filed in these proceedings sworn December 22, 2019 (the “**Initial Affidavit**”), January 20, 2020 (the “**Comeback Affidavit**”), March 10, 2020 (the “**March Stay Extension Affidavit**”), April 27, 2020 (the “**April Stay Extension Affidavit**”) and April 29, 2020 (the “**Supplementary April Stay Extension Affidavit**”) in support of this motion. Copies of the Comeback Affidavit, the redacted March Stay Extension Affidavit, the redacted April Stay Extension Affidavit and the redacted Supplementary April Stay Extension Affidavit (without exhibits) are attached hereto as **Exhibit “A”, “B”, “C” and “D”** respectively. Capitalized terms not otherwise defined herein are as defined in the Comeback Affidavit. A copy of the Initial Affidavit and the March Stay Extension Affidavit is available, together with all other filings in the CCAA Proceedings, on the Monitor’s website for these proceedings at <https://www.alvarezandmarsal.com/Lydian>.

(a) The Destruction of the Applicants’ Business

14. As set out in my Initial Affidavit, the Applicants’ business consisted of the exploration and development of a gold mine located in south-central Armenia (the “**Amulsar Project**” or “**Amulsar**”). Beginning in June 2018 and continuing to date, Lydian Armenia and its employees,

contractors and suppliers have been prevented from carrying out any development and construction work at the Amulsar Project due to a number of factors including ongoing illegal blockades at the site, and duplicative and unnecessary environmental audits and investigations with respect to the Amulsar Project that have been conducted or requisitioned by the GOA.

15. At the time the blockades commenced, construction at the Amulsar site was approximately 75% complete. The blockades caused extensive delays in the Amulsar Project's development schedule, forced Lydian Armenia in the short term to dismiss in excess of 90% of its workforce and terminate substantially all its supply relationships, and caused the Lydian Group to default on substantially all of its obligations to its lenders. From 2018 to date the situation has worsened, and less than twenty people remain employed full time by Lydian Armenia.

16. The Applicants' dire financial and operational challenges have been chronicled and described in various press releases of Lydian International. Attached as **Exhibits "E", "F", "G" and "H"** are copies of sample press releases announcing the onset of the illegal blockades, the Applicants' efforts to resolve the illegal blockades with the GOA and within the Armenian court system, the commencement and outcome of the ELARD audit, and the GOA's ongoing failure to restore the Lydian Group's access to the site.

(b) The Applicants' Debt Levels

17. As outlined in my Initial Affidavit, at the commencement of the CCAA Proceedings, the Lydian Group had liabilities totaling approximately \$395 million, the majority of which related to secured obligations owing under various term loans and streaming obligations to Orion Co IV (ED) Limited, a division of Orion Capital Management, Resource Capital Fund VI L.P. and Osisko Bermuda Limited (collectively, the **"Senior Lenders"**). The Senior Lenders are the Applicants' only secured creditors.

18. Since the commencement of the blockades in 2018, the Applicants have incurred over \$137 million in dislocation expenses over two years and have sought further financial support in the form of forbearance arrangements and cash advances from the Senior Lenders exceeding \$20 million.

19. The Forbearance Agreements lapsed in December 2019 and the Applicants commenced these CCAA Proceedings on December 23, 2019.

20. During the CCAA Proceedings, the Senior Lenders agreed to provide DIP financing to the Applicants, totaling approximately \$7.009 million to date, in order to enable the Applicants and Non-Applicant Stay Parties to take various steps to preserve their assets and pursue various monetization efforts.

21. Interest on the obligations to the Senior Lenders and the Equipment Financiers (as defined below) has continued to accrue at a rate of between \$35-\$40 million per year since the commencement of the blockades, with an additional \$10-\$15 million of annual deferred financing cost accretion. In aggregate, the annual expense for debt related interest and deferred financing cost accretion is between \$45-\$55 million. In addition to debt related expenses, the ongoing operating costs of the Lydian Group have only been financed to date by depleting existing internal sources or through additional financial support from the Senior Lenders.

22. The Lydian Group's obligations to their secured lenders at the end of the first financial quarter in 2020 ("Q1 2020") had increased to an aggregate amount of \$375.4 million, and have increased further since owing to additional interest accruals and DIP facility advances. Total liabilities at the end of Q1 2020 were \$406.8 million.

23. In addition to the Senior Lenders, Lydian has secured obligations to its equipment financiers, CAT, ING and Ameriabank (the "**Equipment Financiers**"). At the commencement of the CCAA Proceedings, the approximate secured debt obligations owing to the Equipment Financiers were \$89.9 million. As of Q1 2020 a total of \$90.6 million was owed to the Equipment Financiers.

24. A summary of the Lydian Group's total indebtedness (inclusive of amounts owed to the Senior Lenders in their capacity as DIP Lenders) and its major shareholders as of the end of Q1 2020 is provided below:

Entity	Shareholdings	Term Loan	Stream Agreement	Equipment Finance
Orion Mine Finance	88,836,000 shares (11.7%)	US\$161.1M		
Resource Capital Funds	243,183,333 shares (32%)	US\$27.2M	US\$34.6M	
Osisko Gold Royalties Ltd.		US\$4.3M	US\$57.6M	
Caterpillar Financial Services (UK) Limited				US\$26.5M
AB Svensk Exportkredit (publ)				US\$53.7M
Ameriabank CJSC				US\$10.4M
Total	332,019,333	US\$192.6M	US\$92.2M	US\$90.6M

25. The Applicants are in the process of updating the debt figures above through to May 31, 2020, and have initiated discussions with the Senior Lenders to seek agreement in that regard. The Applicants intend to include updated amounts in the Plan Meeting Order to be filed.

(c) The Applicants' Responses to Financial and Operational Challenges

26. As outlined in my Initial Affidavit and the other affidavits I have sworn in the CCAA Proceedings, the Lydian Group has been attempting to address the catastrophic financial and operational consequences of the ongoing illegal blockades, the GOA's inaction to remove the blockaders from the Amulsar site and the GOA's duplicative and unnecessary environmental audits for over two years. The Lydian Group's efforts in that regard have included the following:

- a) attempting to address issues which have resulted in stalled construction at the Amulsar site, including making repeated attempts to engage the GOA on removing the blockaders and restoring access to the site;

- b) negotiating settlements for tens of millions of dollars in trade claims based on an abrupt cessation of construction at Amulsar;
- c) commencing legal proceedings in Armenia to enforce the rule of law and the removal of the blockaders from the Amulsar site, and participating in protracted appeal procedures with respect to those proceedings;
- d) expending significant time and resources to respond to various duplicative and unjustified environmental audits and orders with respect to the Amulsar site, including responding to Armenian litigation in connection with the environmental orders, and actively engaging in the ELARD audit;
- e) preparing for the possibility of gaining re-entry to the site and completing construction, including through a refreshed 43-101 Technical Report to support capital raising efforts;
- f) defensive and protective measures to stop the erosion of and enforcement on Lydian Armenia's assets, including efforts to winterize the site, negotiating multiple forbearance agreements with all secured lenders, and reaching enforcement settlement agreements with two of Lydian Armenia's Equipment Financiers (CAT and ING);
- g) efforts to reduce governance costs, including the cost associated with Lydian International's public platform, by reducing the number of directors and implementing certain governance changes of the subsidiaries of the Lydian Group;
- h) obtaining DIP financing from the Senior Lenders to enable the Applicants to continue their efforts in pursuing a transactional outcome for the Lydian Group through the SISP and take steps to preserve enterprise value; and
- i) making attempts to monetize the Lydian Group's assets through the SISP and the solicitation process for the financing of the Treaty Arbitration, which are further discussed below.

(d) The Applicants' CCAA Proceedings

27. In December 2019, when the last of the Forbearances Agreements expired, the Applicants sought CCAA protection in order to permit them to stabilize their situation and explore and pursue the best avenues to maximize recoveries for the Lydian Group's stakeholders.

28. The Initial Order was granted on December 23, 2019, and the Stay Period was subsequently extended to January 23, 2020. At the Applicants' motion returnable on January 23, 2020, the Court issued an Amended and Restated Initial Order which, among other things, expanded the Applicants' restructuring capabilities within the CCAA Proceedings. The Stay Period has been extended on various occasions and is currently set to expire on June 30, 2020.

29. On March 11, 2020 (the "**March Stay Extension Motion**"), the Court issued an Order approving BMO's engagement as the Applicants' financial advisor, and approving the DIP Agreement (the "**March Stay Extension Order**"). On April 30, 2020, the Court issued an Order amending the DIP Agreement and extending the stay of proceedings until June 30, 2020 (the "**April Stay Extension Order**"). Copies of the Amended and Restated Initial Order, the March Stay Extension Order and the April Stay Extension Order are attached hereto as **Exhibit "I"**, **"J"** and **"K"**, respectively.

30. The Applicants also sought and obtained a Letter of Request from this Court seeking the assistance of the Royal Court of Jersey (the "**Royal Court**") to assist the Applicants and the Monitor in advancing the Applicants' restructuring proceedings. Following the issuance of the Letter of Request, the Applicants worked with their Jersey counsel to prepare and finalize materials seeking the recognition of the CCAA Proceedings by the Royal Court.

31. On February 25, 2020, the Royal Court issued an order (the "**Recognition Order**") recognizing the Amended and Restated Initial Order in Jersey and granting certain protections to Lydian International and the Monitor in Jersey. On March 17, 2020, the Royal Court published reasons to accompany the Recognition Order. Copies of the Recognition Order and Recognition Reasons are attached hereto as **Exhibits "L"** and **"M"**, respectively.

32. Since the commencement of the CCAA Proceedings, the Applicants have engaged in discussions with all secured lenders to the Lydian Group and other stakeholders, and continued their discussions with the GOA in an effort to facilitate an end to the actions which resulted in

Lydian Armenia's inability to access the Amulsar Project. To date, and despite the Company's best efforts, the Company has not been successful in gaining re-entry to the Amulsar site on any ongoing basis. As a result, the mine site has deteriorated significantly due to numerous factors, including exposure to harsh weather conditions and an inability to take steps to maintain and protect the equipment and structures on the site.

33. In addition (and as described in further detail in Part 3 below and in the affidavit of Mark Caiger sworn June 11, 2020 (the "**BMO Affidavit**"), the Applicants have pursued other monetization efforts including refinancing efforts, a potential sale involving all or part of the Lydian Group through the SISP or a financing of a proposed Treaty Arbitration against the GOA. The SISP process has not resulted in a transaction to date. The solicitation of financing for the Treaty Arbitration was put on hold at the request of the Senior Lenders during the course of the CCAA Proceedings.

34. CAT and ING sought to lift the stay of proceedings in the CCAA Proceedings in order to initiate enforcement steps. In early May, 2020, this Court issued orders lifting the stay of proceedings to enable CAT and ING to take enforcement steps with respect to their equipment. Copies of these orders are attached hereto as **Exhibit "N"** and **"O"**, respectively. CAT and ING are currently in a position to take enforcement steps at any time.

(e) Governance Challenges

35. Following the implementation of the governance changes described in the March Stay Extension Affidavit and the April Stay Extension Affidavit, the majority of the Lydian Group's directors resigned. Additional directors have not yet been appointed to any of the Applicants following consultation with the Lydian Group's senior lenders. Mr Victor Flores and I remain as the only directors of Lydian International, and I remain as the only director of Lydian Canada and Lydian UK.

36. The Lydian Group's D&O insurance coverage has been extended on a month to month basis, with the financial support of the Senior Lenders, since December 31, 2019. The Lydian Group's insurance broker ("**Marsh**") has confirmed that there can be no further extension to the existing D&O insurance coverage beyond June 30, 2020.

37. Marsh has also confirmed that if any replacement D&O insurance coverage were sought: a) it would be assessed under existing underwriting criteria in view of the Lydian Group's deteriorating circumstances; b) the market for similar coverage has tightened considerably since December 2018 when the last D&O insurance was obtained; and c) the market for similar coverage typically only issues insurance for an annual term requiring premiums that are fully paid and non-refundable. Even if replacement D&O insurance coverage were available, it is likely to require a premium payment at or above the prior premium amount, which was ~\$975,000 per year.

38. The existing D&O insurance policy provides for the purchase of an extended reporting period of 6 years at a premium expense equal to 150% of the current annual premium. So even buying 'run-off' insurance would cost approximately \$1.5 million.

39. The Applicants do not have the financial capacity to buy replacement D&O insurance or 'run-off' insurance. Multiple attempts have been made to negotiate with the Senior Lenders for alternative protections for the Applicants' directors and officers. However, such protections are not available.

40. Therefore, I am not prepared to continue in my current roles beyond the expiry of the current D&O insurance on July 1, 2020. The Monitor has advised that they are not prepared to assume additional governance roles in respect of the Applicants. Accordingly, after June 30, 2020, absent a transition of the Applicants' assets to the Senior Lenders, the Applicants will not have a sufficient number of directors required by the applicable corporate statutes.

(f) Expiration of Senior Lenders' Support

41. As described above, the Senior Lenders have refrained from enforcing on their security for nearly two years. They have funded an additional \$20 million to or for the benefit of the Applicants and permitted the Applicants to incur over \$137 million in dislocation expenses to preserve and protect their investment in the Amulsar mine and support attempts to realize value for other stakeholders during that time. In April 2020, Orion acting as agent on behalf of the Senior Lenders (the "**Agent**"), advised that a majority of the Senior Lenders were no longer prepared to support independent efforts by the Applicants to seek value from the Lydian Group's assets and were prepared to take enforcement steps with respect to the Lydian Group's property. The Agent

also advised that a majority of the Senior Lenders would not advance any further funds to the Applicants without a commitment by the Applicants to pursue the Exit Plan.

42. Accordingly, the DIP Amendment approved by this Court on April 30, 2020, contains a requirement for the Applicants to provide a term sheet or memo to the DIP Lenders in a form acceptable to Orion and either Osisko or RCF, acting reasonably, that sets out the terms, transactions, steps and timelines for the proposed completion of the Applicants' restructuring and prospective conclusion of the CCAA proceedings, with a view to distributing the shares of Lydian Canada to or for the benefit of Lydian International's Senior Lenders.

43. Since the extension of the Stay Period on April 30, 2020, the Applicants, in consultation with the Monitor, have been in dialogue with the Senior Lenders to establish a mechanism for an orderly transition of the Applicants' affairs going forward. The Applicants are seeking approval to circulate the Plan and hold a meeting of Affected Creditors (which is limited to the Senior Lenders) as they believe it represents the most efficient mechanism to effect an orderly transition of the Lydian Group's affairs and avoids uncoordinated enforcement steps being taken on the Lydian Group's property to the detriment of the Lydian Group's stakeholders generally.

(g) Cease Trade Order

44. As outlined in the Initial Affidavit, Lydian International has had two types of securities listed on the Toronto Stock Exchange ("TSX"). The trading of Lydian International's ordinary shares on the TSX was halted shortly after the commencement of the CCAA Proceedings after the Investment Industry Regulatory Organization of Canada was notified by Lydian International's legal counsel of the anticipated CCAA filing on the morning of December 23, 2020. On January 10, 2020, Lydian International issued a press release announcing that it had received notice that the TSX would be delisting Lydian International's ordinary shares effective at the close of market on February 5, 2020. A copy of this press release is attached hereto as **Exhibit "P"**. Lydian International did not appeal that decision or seek an alternative listing. Lydian International's ordinary shares were delisted at the close of market on February 5, 2020.

45. As a public company, Lydian International is subject to the regulatory regime imposed on public companies by the Province of Ontario and enforced by the Ontario Securities Commission (the "OSC"). Following the delisting of its shares in February 2020, Lydian International became

a “venture issuer” under applicable securities laws, and remained subject to continuous disclosure obligations for all annual and interim filings for 2020, the preparation of which is expensive and time consuming.

46. The Senior Lenders confirmed that they would not fund the costs of Lydian International complying with its public disclosure requirements going forward, and these costs were not included in the DIP financing provided to the Applicants in March and April 2020. Given its extremely limited liquidity, Lydian International was not in a position to continue to comply with its public reporting requirements for 2020.

47. Due to Lydian International’s financial constraints, Lydian International alerted the OSC in February 2020 that it was not able to continue with its public disclosure going forward. As a result of the onset of the COVID-19 pandemic, the OSC granted a 45 day extension for any annual or interim filings that were due before June 1, 2020.

48. On June 9, 2020, the OSC issued a cease trade order against Lydian International for its failure to make the required interim filings for the first quarter of 2020. A copy of the Cease Trade Order is attached hereto as **Exhibit “Q”**.

PART 3 - THE APPLICANTS’ PREVIOUS EFFORTS TO MONETIZE THEIR ASSETS

49. As described in the Initial Affidavit, the Comeback Affidavit, the March Stay Extension Affidavit and the April Stay Extension Affidavit, the Applicants, in conjunction with BMO, have made extensive efforts to seek refinancing and sale opportunities with respect to the Amulsar Project over the last several years, as well as seeking financial support to pursue the Treaty Arbitration. As described below, these efforts have been unsuccessful to date.

50. In addition, the preparation of the Lydian Group’s 43-101 Technical Report involved 4 – 6 months of work across the entire Lydian Group, required in excess of \$1.25 million in professional costs and resulted in a substantial improvement to the financial profile of the Amulsar Project.

(a) SISP

51. As described in the Initial Affidavit, the Lydian Group retained BMO in 2018 to canvas potential refinancing or sale options and carry out the SISP. BMO’s efforts in carrying out multiple

rounds of the SISP are described in detail in the BMO Affidavit. As set out in the BMO Affidavit, during the initial round of the SISP, BMO contacted 40 parties, including 18 potential strategic counterparties and 22 potential financial counterparties. The 9 parties who signed non-disclosure agreements were provided with access to a virtual data room (“VDR”) containing financial and operational information about the Lydian Group. Although the 2018 process generated potential interest from several parties, no transaction resulted from it.

52. In the Summer and Fall of 2019, BMO renewed its efforts in connection with the SISP based on the improved financial profile of the Amulsar Project identified in the 43-101 Technical Report and the GOA’s statements that they would support the reopening of the Amulsar Project. As described in the BMO Affidavit, during this second round of the SISP, BMO contacted 32 potential counterparties, including 31 potential strategic counterparties (16 of which were also contacted in 2018) and 1 potential financial counterparty. Several counterparties expressed concerns regarding the situation in Armenia, and Lydian Armenia’s continued inability to access the Amulsar site.

53. As set out in the BMO Affidavit, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

54. BMO and the Company continued to engage with the other potential purchaser who came forward during the second round of the SISP. As outlined in the BMO Affidavit, subsequent to the commencement of the CCAA Proceedings, discussions continued between this potential purchaser and one of the Company’s secured lenders to determine if a transaction could be implemented, with the support of the Applicants’ stakeholders. Those discussions took place over the holiday period in 2019, and continued through the spring of 2020. In early May 2020, it was determined unanimously by the Company’s senior lenders that a transaction with this potential purchaser would not be possible.

55. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) Treaty Arbitration Financing

56. As outlined in the Initial Affidavit, in October 2019, the Lydian Group, with the assistance of BMO, commenced a process to solicit interest in financing the Treaty Arbitration. The Company sought potential outside financing for the Treaty Arbitration with the concurrence of the Senior Lenders as there was no commitment in place at the time with the Senior Lenders to finance the Treaty Arbitration, or related costs associated with maintaining the Company's operations during any Treaty Arbitration process.

57. BMO contacted 21 potential counterparties to determine their interest in financing the Treaty Arbitration, including established litigation and arbitration financiers with substantial funds under their management. BMO also contacted 3 existing shareholders of the Company who had expressed a potential interest in financing the Treaty Arbitration. Parties were provided with access to a VDR containing a selected set of arbitration-related documentation, following execution of a Common Interest Privilege and Confidentiality Agreement. Following the commencement of the CCAA Proceedings, BMO was in contact with 3 additional parties based on inbound inquiries received by the Monitor and the Company.

58. [REDACTED]

[REDACTED] However, these expressions of interest were not ultimately developed into a firm proposal for the financing of the Treaty Arbitration.

59. On the basis of input received from the Senior Lenders, and in accordance with the terms of the DIP Agreement, since January 23, 2020, the Applicants and BMO have not taken any material steps to advance the SISP process relating to financing the Treaty Arbitration. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(c) Discussions with the GOA

60. As outlined in my Initial Affidavit, commencing in June 2018 and continuing to the present time, Lydian Armenia has been subjected to numerous unlawful and discriminatory actions. The actions increased in number and worsened over time. They have harmed the Lydian Group, prohibited its access to the Amulsar site, effectively stripped it of its previously acquired rights to develop the Amulsar Project, and stopped all construction and operations at the site. Lydian Armenia has been required to fight to i) maintain its current mineral permits and licenses, which were provided in accordance with Armenian requirements; and ii) defend the company's environmental standards and actions, and its reputation in Armenia and internationally.

61. Despite numerous attempts to negotiate a potential return to the Amulsar site with the GOA over the past two years, discussions on access have been unsuccessful and the Company has been unable to secure the GOA's confirmed commitment to permit a return to the site.

(d) Litigation

62. The Applicant's local counsel in Armenia have advised that a proposed class action has been announced in Armenia by eleven minority shareholders of Lydian International as against the GOA and Armenian police, in connection with the failure to remove the blockades from the Amulsar site and the corresponding financial losses resulting from the cessation of all construction activity at the Amulsar Project. The Applicants' local counsel in Armenia have advised that the proposed class action is still in its preliminary stages, and it is uncertain whether the proposed class action will receive any meaningful response from the GOA prior to June 30, 2020. The Applicants have been unable to obtain a copy of the pleadings at this time, but will provide translated copies of the pleadings to this Court when they become available.

PART 4 - SUMMARY OF THE PLAN

63. The Applicants drafted the Plan with the aim of providing an efficient mechanism to transition the Lydian Group's affairs, and avoid uncoordinated enforcement steps that would be taken by the Senior Lenders on the Lydian Group's property to the detriment of the Lydian Group's stakeholders generally. A copy of the Plan is attached hereto as **Exhibit "R"**. Any

capitalized terms used in this Part but not otherwise defined have the meanings set out in the Plan.

64. The Plan is finalized in principle and substantially complete but modifications will be made to fill in some details, and a final version of the Plan will be given to Affected Creditors prior to the Meeting.

65. The below summary is not intended to be a comprehensive description of the Plan and readers are advised to review the text of the Plan carefully. In case of any discrepancy between the Plan and the below summary, the text of the Plan shall govern.

66. The Applicants consulted extensively with each of the Senior Lenders and the Monitor in the preparation of the Plan over a course of many weeks.

67. The Plan will be presented to only the Senior Lenders, who are the Applicants' only secured creditors. All of the Applicants' unsecured creditors, including the Equipment Financiers are Unaffected Creditors in the Plan. Equity Claimants of Lydian International are also unaffected by the Plan, however, as further described below, it is intended that the equity interests of Lydian International will be cancelled, extinguished and released as part of the J&E Process (as defined below). As Unaffected Creditors, these groups will not have a right to vote or participate in the Plan.

68. The purpose of the Plan is to (a) implement a corporate and financial restructuring of the Applicants, (b) provide for the assignment or settlement of all intercompany debts owing to the Applicants prior to the Effective Time to, among other things, minimize adverse tax consequences to Lydian Armenia and its stakeholders, (c) provide for the equivalent of an assignment of substantially all of the assets of Lydian International to an entity owned and controlled by the Senior Lenders ("**SL Newco**"), through an amalgamation of Lydian Canada with SL Newco resulting in a new entity ("**Restructured Lydian**"), and (d) provide a release of all of the existing indebtedness and obligations owing by Lydian International to the Senior Lenders. The Plan will result in the privatization of the Lydian Group, to continue as Restructured Lydian.

69. Further, the Plan provides for an orderly wind up, and the financing of such a wind up, of Lydian International and an orderly disposition or winding up, and financing thereof, of the affairs of certain subsidiaries of Lydian International (including Lydian US, Lydian Zoloto,

Lydian Georgia and Georgian Resource Company LLC (“**Lydian GRC**”)) which would include the release of all obligations and guarantees of such subsidiaries to the Senior Lenders, if any. The claims of Unaffected Creditors which are not dealt with in the Plan will be addressed through the wind up of Lydian International through a Just and Equitable Winding Up Process under Jersey law, described below (the “**J&E Process**”).

70. The Plan would enable the Applicants to terminate the CCAA Proceedings, see Lydian Canada and Lydian UK emerge from the CCAA Proceedings and have the Monitor discharged upon completion of these steps. The Plan contemplates that Restructured Lydian and its shareholders would determine the manner and timing of pursuing any strategy for the remainder of the Lydian Group following the implementation of the Plan.

(a) Steps to Plan

71. For ease of reference, a chart showing the Lydian Group’s current corporate structure is attached hereto as **Exhibit “S”**. The Plan involves the following material steps:

- a) the intercompany debt owed by Lydian Armenia to Lydian US totalling approximately \$3.2 million (the “**Armenia-US Interco Debt**”) will be assigned by Lydian US to Lydian International, such that Lydian Armenia will owe such indebtedness to Lydian International in exchange for the satisfaction of approximately \$3.2 million of an approximate total of \$12.7 million intercompany debt owing by Lydian US to Lydian International (the “**US-Jersey Interco Debt**”);
- b) Lydian US will repay \$9 million of the US-Jersey Interco Debt, and Lydian International will repay the entirety of a \$9 million intercompany debt it owes to Lydian US (the “**Jersey-US Interco Debt**”) by way of set-off;
- c) the remainder of approximately \$500,000 of the US-Jersey Interco Debt will be transferred and assigned by Lydian International to Lydian US as a capital contribution, without issuance of shares of common stock of Lydian US. The US-Jersey Interco Debt and the Jersey-US Interco Debt shall be fully released and discharged;

- d) the amount loaned by Lydian Armenia to Lydian International pursuant to the Plan will be repaid by Lydian International by (i) setting off against the Armenia-Jersey Interco Debt (as defined below) the amount of Post-Implementation Date Expenses (as defined below) actually paid by the Monitor to the beneficiaries thereof, and such amount shall be fully, finally, irrevocably and forever compromised, released, discharged cancelled and barred without any liability, payment or other compensation in respect thereof, and (ii) the Monitor returning any unused funds to Lydian Armenia;
- e) Lydian International will assign to Lydian Canada the intercompany debt of approximately \$187 million owing by Lydian Armenia to Lydian International (the “**Armenia-Jersey Interco Debt**”) (less the amount loaned by Lydian Armenia to Lydian International pursuant to the Plan) and the Armenia-US Interco Debt assigned to Lydian International as set out above in exchange for Lydian Canada issuing common shares of Lydian Canada to Lydian International, in an amount to be determined prior to the Plan being presented to Affected Creditors for a vote, having a fair market value equal to Armenia-Jersey Interco Debt (less the amount loaned by Lydian Armenia to Lydian International pursuant to the Plan) and the Armenia-US Interco Debt;
- f) Lydian International will transfer and assign the shares of Lydian Resources Georgia Limited (“**Lydian Georgia**”) and the intercompany debt of approximately \$2.8 million owed by Lydian GRC to Lydian International (the “**GRC-Jersey Interco Debt**”) to a party related Lydian Armenia’s Managing Director, who provided GRC with approximately \$140,000 last year to permit GRC to avoid default (the “**Lydian Georgia Purchaser**”). As consideration therefor, the Lydian Georgia Purchaser shall, and shall cause Lydian Georgia and Lydian GRC to, release Lydian International and all of the current and former directors and officers of Lydian International, Lydian Georgia and Lydian GRC from any and all claims;
- g) Lydian International will transfer and assign all claims of Lydian International against Lydian Canada and any of its subsidiaries to Lydian Canada;

- h) Lydian Canada and SL Newco will be amalgamated by arrangement pursuant to the BCBCA to form Restructured Lydian. The articles and share capital of Restructured Lydian shall be as set out in the Plan;
- i) the common shares of Lydian Canada held by Lydian International will be exchanged for the preferred share of Restructured Lydian to be held by Lydian International;
- j) the common shares of SL Newco held by Orion will be exchanged for one common share of Restructured Lydian;
- k) all obligations of each of SL Newco and Lydian Canada immediately prior to the amalgamation shall attach to Restructured Lydian, and Restructured Lydian shall continue to be liable for them;
- l) common shares of Restructured Lydian will be issued to the Senior Lenders in the amounts and proportions set forth in the Plan, as finalized before the Plan is presented to the Affected Creditors for a vote;
- m) New Directors will be appointed to the board of directors of Restructured Lydian by the Senior Lenders immediately prior to the Effective Time;
- n) New Directors will be appointed to the board of directors of Lydian International by the existing directors of Lydian International immediately prior to the Effective Time;
- o) the Restructured Lydian Preferred Share shall be redeemed by Lydian International in accordance with its terms;
- p) all Affected Claims and Released Claims shall be fully and finally released, as described below; and
- q) Restructured Lydian shall not be an applicant in the CCAA Proceedings and the style of cause in the CCAA Proceedings shall be immediately amended to remove Lydian Canada and Lydian UK as Applicants.

72. The Stream Agreement, the Credit Agreement (including Term Facility B), and the DIP Agreement, as amended, will remain an outstanding obligation of Lydian Armenia with related guarantees from Restructured Lydian and its subsidiaries.

73. The Plan anticipates that the DIP Agreement will be further amended and additional amounts will be advanced to Lydian Armenia (the “**DIP Exit Credit Facilities**”) immediately prior to the Plan Implementation Date for the purpose of funding the implementation of the Plan and funding a reserve for the Post-Implementation Date Expenses (the “**Post-Implementation Expenses Reserve**”). The funds advanced under the DIP Exit Credit Facilities will be used to redeem the Restructured Lydian Preferred Share, and the balance of the DIP Exit Credit Facilities constituting the Post-Implementation Date Expenses Reserve shall be transferred to Lydian International and held by the Monitor, solely for the benefit of the Post-Implementation Date Expenses. The Monitor shall pay the Post-Implementation Date Expenses from the Post-Implementation Date Expenses Reserve upon, and in accordance with, receipt by Lydian International of an invoice for payment and written direction by Lydian International to the Monitor.

74. The Plan provides for a Plan Implementation Date on or prior to June 30, 2020.

(b) Treatment of Lydian Entities

75. The Plan contemplates that Lydian International will undergo a process for an orderly wind up through the J& E Process in Jersey, which is outlined below. Lydian US and Lydian Zoloto, will also be wound up and dissolved (the costs of which will to be provided for as Post-Implementation Date Expenses), and all other entities of the Lydian Group (other than Lydian Georgia and Lydian GRC) will remain and can be addressed by the Senior Lenders and Restructured Lydian following the Plan Implementation Date.

76. As noted above, Lydian International will transfer and assign the shares of Lydian Georgia and the GRC-Jersey Interco Debt to the Lydian Georgia Purchaser and, Lydian Georgia and Lydian GRC will provide the releases described above.

77. Following the Plan Implementation Date, the existing equity interests of Lydian International will be cancelled, released, and extinguished and will be of no further force and

effect, provided, however, that after the Effective Time: (i) the existing shareholders of Lydian International and other Equity Claimants with an Equity Claim against Lydian International shall retain their ordinary shares and Equity Claims against Lydian International until the Just and Equitable Winding up of Lydian International is effected, and (ii) the shares of Lydian International's subsidiaries shall remain outstanding and shall continue to be held by the existing holders of such shares, except as otherwise provided in the Plan.

(c) Just and Equitable Winding up of Lydian International

78. Mourant Ozannes LLP ("**Mourant**"), Lydian International's counsel in Jersey, has advised that the most cost-effective and efficient process to follow in order to wind up Lydian International is the J&E Process under Jersey law. I understand that the Royal Court of Jersey (the "**Royal Court**") has the jurisdiction to wind up a company where it is satisfied that it is just and equitable or it is expedient in the public interest that it be wound up.

79. If the Royal Court orders a winding up on just and equitable grounds, then it has wide powers to direct the conduct of the winding up, and may appoint a liquidator, direct the manner in which the winding up is to be conducted, and make such orders as it sees fit to ensure that the winding up is conducted in an orderly manner. Mourant has also advised that it is usual in a just and equitable winding up that all powers formerly exercisable by the directors become exercisable by the liquidator, and that the terms of the order regulating the winding up are otherwise bespoke in nature and can be tailored to suit the circumstances.

80. Mourant has further advised that at a minimum, the liquidator would be carrying out a statutory notification of their appointment to the Jersey Registrar and Lydian International's creditors, and would satisfy themselves of the assets and liabilities of Lydian International (through an initial investigation and assessment process). If necessary, the liquidator can also put into place a process of collecting and distributing assets, declaring a final dividend and reporting to creditors. I understand that Mourant estimates that it will take a month or so to obtain to obtain an order for the just and equitable winding up of Lydian International and the appointment of a liquidator, and a further 2-3 months, or possibly longer, for the liquidator to complete their work. The cost of implementing the J&E Process of Lydian International will form part of the Post-Implementation Date Expenses, as described below.

81. The Applicants intend to work with a liquidator that is selected to tailor the order to suit the Applicants' circumstances, and will provide a draft copy of the liquidation order intended to be sought in the J&E Process prior to seeking an Order of this Court sanctioning the Plan.

82. As noted, the Applicants previously sought and obtained a Letter of Request from this Court seeking the assistance of the Royal Court of Jersey (the "**Royal Court**") to assist the Applicants and the Monitor in advancing the Applicants' restructuring proceedings. Mourant have advised that it would assist the J&E Process if another Letter of Request were issued by this Court, seeking the Royal Court's assistance in the winding-up of Lydian International pursuant to the J&E Process as part of the Plan. If the Plan is approved by the Requisite Majority, I understand that the Applicants will request that this Court issue another Letter of Request in connection with the Sanction Motion.

(d) Releases

83. The Plan provides for certain releases customary in plans of arrangement under the CCAA. The Plan will release:

- a) the Applicants, their employees, agents and advisors (including counsel) and each of the members of the Existing Lydian Group's current and former directors and officers (collectively, "**D&Os**") from any and all claims by any person (including, without limitation, holders of equity claims, and the GOA), except for (i) Lydian Canada's or Lydian UK's obligations under the Plan or incorporated into the Plan; (ii) the obligations of any member of the Existing Lydian Group other than the Released Guarantors under the Credit Agreement, the other Loan Documents (as defined in the Credit Agreement), the Stream Agreement, the Stream Documents (as defined in the Stream Agreement), the DIP Agreement and any other agreements entered into in relation to the foregoing, from and after the Plan Implementation Date, (iii) the obligations of any of the Applicants and the subsidiaries of the Restructured Lydian with respect to any Unaffected Claim, and (iv) in the case of the D&Os of the Applicants, those claims that are not permitted to be released pursuant to s. 5.1(2) of the CCAA;

- b) the Monitor and its counsel from any and all claims by any person, including, without limitation, in connection with the Plan or the implementation thereof, including any distribution pursuant to the Plan, except for any claims arising from the willful misconduct or gross negligence of the Monitor or other applicable Released Party; and
- c) the Senior Lenders and each of their respective affiliates, affiliated funds, their directors, officers, employees, agents and advisors (including counsel) from any and all claims of any person, except for (i) the Senior Lenders' obligations under the Plan or incorporated into the Plan, or (ii) any claims arising from the willful misconduct or gross negligence of the applicable Released Party.

(e) Post-Implementation Date Expenses

84. As noted, the Plan anticipates that the DIP Exit Credit Facilities will fund the Post-Implementation Date Expenses, to be held by the Monitor in the Post-Implementation Date Expenses Reserve and disbursed in accordance with a written direction by Lydian International to the Monitor. The Post-Implementation Date Expenses consist of:

- a) all potential costs and expenses (including fees of Lydian International's counsel and Monitor and its counsel) estimated to be incurred and accrued related to any further stay extensions or motions at any time prior to the termination of the CCAA Proceedings;
- b) all estimated costs and expenses incurred and accrued up to the termination of the CCAA Proceedings by Lydian International and the other Released Guarantors, including all reasonable and documented fees of their advisors, the Monitor and its counsel and director insurance premiums incurred and accrued up to the termination of the CCAA Proceedings; and
- c) the costs and expenses estimated to be incurred in connection with or related to dissolving or winding up Lydian International, Lydian US and Lydian Zoloto,

in each case, as set forth on, and in call cases, subject to the maximums set forth on Schedule "B" to the Plan, and such other amounts as the Senior Lenders may agree in writing.

85. On the Plan Implementation Date, in consultation with the Monitor, an amount equal to the Remaining Post-Implementation Date Expenses shall be paid by Lydian International to the Monitor and held by the Monitor in the Post-Implementation Date Expenses Reserve for the benefit of Lydian International and the parties with Post-Implementation Date Expenses not paid or satisfied on the Plan Implementation Date (the "**Remaining Post-Implementation Date Expenses**") in accordance with Schedule "B" to the Plan. The Monitor will disburse the Remaining Post-Implementation Date Expenses to the parties with Remaining Post-Implementation Date Expenses in accordance with Schedule "B" of the Plan upon receipt by Lydian International of an invoice for payment, a written direction from Lydian International and the written direction to be provided for in the Sanction and Implementation Order. Following payment of all of the Remaining Post-Implementation Date Expenses, the Monitor shall transfer any remaining funds in the Post-Implementation Date Expenses Reserve to Restructured Lydian immediately prior to the date that the CCAA proceedings are terminated.

(f) Conditions to Plan Implementation

86. It is anticipated that the conditions to the implementation of the Plan will be satisfied or waived on or before the Plan Implementation Date, such that the Plan can take effect at the Effective Time that day (the "**Effective Date**").

87. The Plan provides that the following conditions will have been met on or before the Effective Date:

- a) the Plan shall have been approved by requisite majority of voting Affected Creditors (majority of voting Affected Creditors representing two-thirds in value of voting Affected Creditors);
- b) the amalgamation of Lydian Canada and SL Newco shall have been approved by the shareholders of each of Lydian Canada and SL Newco in accordance with the articles of Lydian Canada and SL Newco, as applicable, and the BCBCA;

- c) the CCAA Court shall have granted the Sanction and Implementation Order sanctioning the Plan substantially in the form agreed with the Applicants and satisfactory to the Monitor;
- d) all Post-Implementation Date Expenses incurred and accrued as of the Plan Implementation Date shall have been paid (unless otherwise agreed between the Applicants and the Monitor), and the Applicants, in consultation with the Monitor, shall be satisfied that adequate provision has been made in the Post-Implementation Date Expense Reserve for any Post-Implementation Date Expenses due or accruing due from and after the Plan Implementation Date;
- e) the Senior Lenders shall have funded the DIP Exit Credit Facility to Lydian Armenia and the subsequent transfers to Lydian International and the Monitor shall have taken place; and
- f) the Plan Implementation Date shall occur on or prior to June 30, 2020.

(g) Meeting Order

88. The proposed Meeting Order authorizes the Applicants to convene a meeting of a single class of creditors (that being the Affected Creditors) to consider and vote on the Plan.

89. The Meeting Order sets out the following timeline:

- a) June 19, 2020 at 10:00 a.m. (Toronto time): The date of the Meeting, which is to be held by live video conference;
- b) June 22, 2020: The latest date by which the Monitor is to file a report with respect to the results of the vote at the Meeting; and
- c) June 29, 2020: The date of the Sanction Hearing. Persons intending to oppose the application for a Sanction Hearing (the “**Sanction Motion**”) must (i) file and serve a Notice of Appearance by June 19, 2020 and (ii) serve their opposition materials by June 23, 2020.

a. Notification

90. The Meeting Order provides that service by email of a copy of the Meeting Order (when issued) on counsel to all Affected Creditors constitutes good and sufficient service of the Meeting Order, the Plan and the Sanction Motion. The Applicants will also serve the within motion record, containing a copy of the Plan and draft Meeting Order, on the service list, and Lydian International will issue a press release announcing that the Applicants are seeking the issuance of the Meeting Order. The Applicants believe that, in the circumstances, this is an appropriate form of notice because (i) there is a small number of Affected Creditors, all of whom are represented by counsel; and (ii) counsel to the Affected Creditors have been highly engaged in these CCAA Proceedings in general and the development of the Plan in particular. As such, counsel to the Affected Creditors are already familiar with the proposed Meeting, Plan and Sanction Motion and do not require additional notice.

b. Conduct of the Meeting

91. The Meeting Order provides that a representative of the Monitor, designated by the Monitor, will preside as Chair of the Meeting and, subject to any further Order of this Court, will decide all matters relating to the conduct of the Meeting.

92. The only persons entitled to attend the Meeting are the Applicants, their director(s), the Monitor, BMO, the Affected Creditors and their respective legal counsel. Any other person may be admitted to the Meeting on invitation of the Chair or the Applicants.

93. The presence of one Affected Creditor holding an Affected Claim at the Meeting constitutes quorum.

c. Voting

94. The Meeting Order provides for a fair and equitable voting process. The Chair is responsible for directing a vote with respect to the resolution to approve the Plan. The Chair may also direct a vote with respect to any other matter that arises at the Meeting and requires a vote.

95. Only Affected Creditors holding Affected Claims as of the date of the issuance of the Meeting Order are entitled to vote. They are each entitled to one vote equal to the aggregate dollar value of their Affected Claim.

96. If the Applicants, the Monitor, or any Affected Creditor disputes the quantum or validity of an Affected Creditor's Affected Claim (a "**Disputed Claim**"), the holder of the Disputed Claim is nevertheless entitled to one vote equal to the aggregate dollar value of its Affected Claim, without prejudice to the determination of the dollar value of such Disputed Claim for the purposes of the Meeting Order and any distribution. The Monitor is to keep a separate record of votes cast by each holder of a Disputed Claim and will report to the Court with respect thereto.

97. Certain persons are not entitled to vote on the Plan, including holders of Unaffected Claims and Equity Claims.

98. As required by the CCAA, the Plan requires that approval is conditional on an affirmative vote by a majority in number of Affected Creditors representing at least two-thirds in value of the Affected Creditors, in each case who are entitled to vote at the Meeting and who are present and voting on the resolution approving the Plan at the Meeting (the "**Required Majority**").

99. As noted above, the Plan contemplates the amalgamation of Lydian Canada with SL Newco under the BCBCA. Lydian International is the sole shareholder of Lydian Canada.

100. Pursuant to the BCBCA, a special majority of shareholders must pass a special resolution to effect an amalgamation. A special majority is defined in the BCBCA as a majority of at least two-thirds of the votes cast on the special resolution. The BCBCA also permits a company to specify in its articles the special majority of votes that is required for shareholders to pass a special resolution, so long as a special majority consists of at least two-thirds of the votes cast on the resolution. Article 11.2 of Lydian Canada's Articles of Incorporation dated August 28, 2018, a copy of which are attached hereto as **Exhibit "T"**, provide that the votes required for Lydian Canada to pass a special resolution at a general meeting of shareholders is two-thirds of the votes cast on the resolution.

(h) Sealing

101. My affidavit and the BMO Affidavit contain commercially sensitive information, including the expressions of interest received by BMO through the SISP and solicitation process for the financing of the Treaty Arbitration, and the reasons for why those expressions of interest did not lead to transactions capable of completion. The Applicants are concerned that the GOA or a third party potentially interested in financing the Treaty Arbitration may use the information in my affidavit and the BMO Affidavit to the detriment of the Lydian Group and Restructured Lydian in the future. As a result, the Applicants are seeking that the commercially sensitive provisions of my unredacted affidavit and the unredacted BMO Affidavit, be sealed pending further Order of this Court.

PART 5 - APPROVAL OF MONITOR'S ACTIVITIES

102. I understand that the Monitor will be filing the Fifth Report in connection with the within motion seeking approval of its activities, as detailed in the Fifth Report.

I confirm that while connected via video conference technology, Edward A. Sellers showed me the front and back of his government-issued photo identity document and that I am reasonably satisfied it is the same person and the document is current and valid. I confirm that I have reviewed each page of this affidavit with Edward A. Sellers and verify that the pages are identical.

Sworn before me by video conference from the Town of Rosseau, Ontario to the City of Toronto, Ontario, on June 15, 2020.

DocuSigned by:

Sanja Sopic

FR20930A2731482

Sanja Sopic

Commissioner for Taking Affidavits

DocuSigned by:

Edward A. Sellers

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EDWARD A. SELLERS

TAB A

EXHIBIT "A"

referred to in the Affidavit of

EDWARD A. SELLERS

Sworn June 15, 2020

DocuSigned by:
Sanja Sopic
E820930A2731482...

Commissioner for Taking Affidavits

Court File No.CV-19-00633392-00CL

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 A PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION
AND LYDIAN U.K. CORPORATION LIMITED

Applicants

AFFIDAVIT OF EDWARD A. SELLERS
(Sworn January 20, 2020)

I, Edward A. Sellers, of the Town of Rosseau, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Interim President and Chief Executive Officer of the Applicant Lydian International Limited ("**Lydian International**"). I have been the President and Chief Executive Officer of Lydian International since June 12, 2019. I am also a director of the other Applicants in this proceeding. I have been on the Board of Directors of the Applicant Lydian International since November 1, 2018, and went on the Board of Directors of the other Applicants in this proceeding after June 12, 2019.
2. Due to my involvement with the Applicants, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of Lydian International and have spoken with certain of the directors, officers and/or employees of the Applicants, as necessary. Where I have relied upon information from others, I believe the information to be true.
3. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.
4. This affidavit is sworn in support of a motion brought by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", and such proceedings, the "**CCAA Proceedings**") seeking:

- a) an Amended and Restated Initial Order providing for certain amendments to the Initial Order substantially in the form of the draft order attached as Tab 3 of the Motion Record, including provisions expanding the Applicants' restructuring capabilities within the CCAA Proceedings, increasing the Administration Charge and adding a Transaction Charge (as defined below) to include the fees payable to the Applicants' financial advisor;
- b) an order substantially in the form of the draft order attached as Tab 4 of the Motion Record: (i) extending the stay of proceedings (the "**Stay Period**") in respect of the Applicants and the Non-Applicant Stay Parties to February 25, 2020; (ii) sealing the unredacted version of the BMO Engagement Letter; (iii) approving the Monitor's activities to date; and
- c) such further and other relief as the Court deems just.

PART 1 - BACKGROUND AND STATUS OF THE CCAA PROCEEDINGS

5. I repeat and rely on my affidavit sworn December 22, 2019 (the "**Initial Affidavit**") in support of this motion. A copy of the Initial Affidavit (without exhibits) is attached hereto as **Exhibit "A"**.

6. The Applicants are part of a corporate enterprise (the "**Lydian Group**") ultimately owned by Lydian International whose business consists of the exploration and development of a gold mine located in south-central Armenia (the "**Amulsar Project**" or "**Amulsar**").

7. The Applicant Lydian International is a corporation continued under the laws of Jersey from the Province of Alberta, and is the parent corporation of the Lydian Group. The other two Applicants, Lydian Canada Ventures Corporation ("**Lydian Canada**") and Lydian U.K. Corporation Limited ("**Lydian UK**"), are subsidiaries of Lydian International. Due to the complete integration of the business and operations of the Lydian Group, the Applicants also sought and obtained an extension of the stay of proceedings over other members of the Lydian Group, including Lydian Armenia CJSC ("**Lydian Armenia**"), the principal operating subsidiary in the Lydian Group. The corporate structure of the Lydian Group is described in greater detail in the Initial Affidavit. For ease of reference, a copy of the Lydian Group's corporate chart is attached hereto as **Exhibit "B"**.

8. As set out in greater detail in my Initial Affidavit, the Applicants sought, and obtained CCAA protection, on December 23, 2019 due to the confluence of a number of factors, including (i) ongoing illegal blockades at the Amulsar site since June 2018 which prevented Lydian Armenia from accessing the site and completing construction, and caused the Lydian Group to default on its obligations to its lenders, (ii) certain actions and inactions of the Government of Armenia (the "GOA"), which continue to prevent the resumption of construction activity at the Amulsar site, despite the findings of audits that Lydian Armenia is in compliance with all environmental requirements, and (iii) the expiration of the Lydian Group's forbearance arrangements with their lenders.

9. As a result of these and other factors described in the Initial Affidavit, the Applicants sought and obtained creditor protection and related relief under the CCAA pursuant to a December 23, 2019 order of this Court (the "**Initial Order**"). Alvarez & Marsal Canada Inc. ("**A&M**") was appointed Monitor of the Applicants (the "**Monitor**") in the CCAA Proceedings. On January 2, 2020, this Court issued an Order extending the Stay Period with respect to the Applicants to January 23, 2020 (the "**Stay Order**"). Copies of the Initial Order and the Stay Order are attached hereto as **Exhibit "C"**, and **"D"**, respectively, and are available, together with all other filings in the CCAA Proceedings, on the Monitor's website for these proceedings at <https://www.alvarezandmarsal.com/Lydian>.

A. Status of Proceedings

10. Since the granting of the Initial Order on December 23, 2019, the Applicants, with the oversight and assistance of the Monitor, have been working diligently to maintain the stability of their business operations, continue discussions with their senior lenders and other stakeholders, and advance discussions regarding a potential sale involving the Lydian Group or a financing of the Lydian Group's Treaty Arbitration, which is described in the Initial Affidavit.

11. The Applicants' activities since the Initial Order include the following:

- (a) making several follow up requests to the GOA to confirm the GOA's intentions with respect to restoring Lydian Armenia's access to the Amulsar site, to which no response was received. During my recent visit to the Amulsar Project with the Monitor, the GOA did not make itself available to meet with Lydian

representatives, and the Applicants are uncertain whether further meetings will occur in the near term;

- (b) making repeated requests and engaging in a dialogue with the GOA with respect to regaining access to the Amulsar site to permit winterization to be completed. These efforts were not successful, as the blockaders have refused to permit Lydian Armenia to access the site to complete winterization and the GOA has failed to take action to restore access for this purpose. The Applicants will continue their efforts in this regard and will maintain an advanced state of readiness to effect winterization, including maintaining all necessary supplies and making arrangements with service providers;
- (c) responding to information requests from the Lydian Group's lenders regarding a variety of topics including the progress of negotiations with various stakeholders, the Lydian Group's intentions regarding a viable path forward to maximize stakeholder value, the status of the equipment at the Amulsar site and the progress of the strategic sale and investment solicitation process ("SISP") and Treaty Arbitration financing process;
- (d) advancing discussions relating to a potential purchaser who participated in the SISP carried out by BMO Nesbitt Burns Inc. ("BMO"), as further described below;
- (e) responding to inquiries from and engaging with various parties who have expressed an interest in financing the Treaty Arbitration, as further described below;
- (f) communicating with Ameriabank CJSC ("**Ameriabank**") regarding amounts swept from Lydian Armenia's bank accounts following the CCAA filing;
- (g) preparing materials, together with the Monitor, seeking the recognition of the Initial Order and CCAA Proceedings by the Royal Court of Jersey, as further outlined below;

- (h) continuing a dialogue with the Lydian Group's insurance broker to understand the potential availability of any D&O insurance coverage beyond January 31, 2020. Following discussions with their D&O insurance providers, the Applicants were able to obtain an initial one month extension of D&O insurance coverage from December 31, 2019 to January 31, 2020. A further one month extension of D&O insurance coverage has been obtained following discussions, which included the Monitor, with the Applicant's D&O insurance providers;
- (i) finalizing arrangements with the Applicants' insurance broker to extend coverage for Cost of Construction insurance, including coverage for on-site equipment, until March 31, 2020 in consultation with the Monitor, and advancing discussions with Applicant's insurance broker regarding replacement insurance for asset protection;
- (j) meeting with employees in Armenia, together with the Monitor, to explain the CCAA Proceedings and answer any employee questions regarding the path forward;
- (k) planning for further cost reductions in consultation with the Monitor, including implementing certain further employee reductions in Armenia which have become necessary due to the circumstances arising from the GOA's failure to restore Lydian Armenia's access to the Amulsar site; and
- (l) preparing a cash flow forecast for the period requested for the stay extension, and related financial information on potential scenarios under consideration as part of the path forward, in consultation with the Monitor.

12. In light of timing of the commencement of the Applicants' CCAA Proceedings shortly before the beginning of the 2019 Holiday Season in North America and through the new year in Armenia, and the short extension of the stay of proceedings through to January 23, 2020 granted through the Stay Order, the Applicants have not made definitive decisions regarding the direction of their restructuring and require more time to continue their discussions with their stakeholders and to consider their options to maximize value.

(a) SISP

13. As described in the Initial Affidavit, the Lydian Group retained BMO in 2018 to canvas potential refinancing or sale options and carry out the SISP. The 2018 process generated potential interest from several parties but no transaction resulted from it. In the Fall of 2019, BMO renewed its efforts in connection with the SISP based on the GOA's statements that they would support the reopening of the Amulsar Project. BMO reached out to a broad range of potential strategic and financial counterparties. Several counterparties expressed concerns regarding the situation in Armenia, and Lydian Armenia's continued inability to access the Amulsar site.

14. BMO and the Applicants are reviewing the current status of the SISP and a non-binding draft term sheet setting out a proposal for a transaction with respect to the Amulsar Project. The Applicants and BMO were engaged in discussions with a potential purchaser prior to the commencement of the CCAA Proceedings. Discussions have been ongoing between the potential purchaser and one of the Applicant's secured lenders to determine if a transaction can be implemented, with the support of the Applicants' stakeholders.

15. The Applicants and BMO, with the assistance and oversight of the Monitor, intend to take carriage of those discussions within the current SISP to determine if a viable proposal can be submitted to the Applicants' stakeholders and the Court.

(b) Treaty Arbitration Financing

16. As outlined in the Initial Affidavit, in October 2019, the Lydian Group, with the assistance of BMO, commenced a process to solicit interest in financing the Treaty Arbitration. BMO contacted a variety of established litigation financing companies with substantial funds under their management. Parties were provided with access to a Virtual Data Room ("VDR") containing a selected set of arbitration-related documentation, following execution of a Common Interest Privilege and Confidentiality Agreement. Additional parties approached BMO after the commencement of the CCAA Proceedings to seek the opportunity to consider the potential arbitration financing. This solicitation process has generated several non-binding expressions of interest to date. The Applicants and BMO, with the assistance and oversight of the Monitor, intend to continue with the Treaty Arbitration financing solicitation process during the proposed stay extension period.

(c) **Jersey Recognition Proceedings**

17. On December 23, 2019 the Applicants sought and obtained a Letter of Request from this Court seeking the assistance of the Royal Court of Jersey (the “**Royal Court**”) to assist the Applicants and the Monitor in advancing the Applicants’ restructuring proceedings. Since the Letter of Request was issued, the Applicants have worked with their Jersey counsel to prepare materials seeking the recognition of the CCAA Proceedings by the Royal Court, and those materials have been finalized as of the date of the swearing of this affidavit. I understand from Jersey counsel that there is a hearing scheduled before the Royal Court on January 24, 2020, at which time the Applicants will be seeking an Order of the Royal Court formally recognizing the CCAA Proceedings in Jersey. The Monitor is filing an affidavit to assist the Jersey Court in connection with the request for recognition, and the form of such affidavit has also been finalized. Applicants will update the Court on developments in that regard on January 23, 2020.

PART 2 - THE AMENDED AND RESTATED INITIAL ORDER

18. The proposed Amended and Restated Initial Order provides for certain amendments to the Initial Order, namely the insertion of certain provisions contained in the standard form template CCAA Initial Order developed by the model order subcommittee of the Commercial List Users’ Committee of the Ontario Superior Court of Justice (the “**Model Initial Order**”). These include more fulsome restructuring provisions and provisions expanding the Monitor’s rights to assist with the Applicants’ restructuring efforts, and the granting of a Transaction Charge (as defined and described below). A blackline comparison showing the proposed amendments to the Model Initial Order is attached at Tab 5 to the Applicant’s motion record.

A. Restructuring Provisions

19. At the time the CCAA Proceedings were commenced, the Applicants needed urgent relief to permit them to stabilize their situation and explore the best avenues to maximize recoveries for their stakeholders. As a result, the Applicants did not seek to include certain restructuring provisions from the Model Initial Order in the Initial Order. The Applicants now intend to seek those more expansive restructuring provisions in the Amended and Restated Initial Order in order to enable them to take certain steps that may become necessary during the CCAA Proceedings, including: reducing or shutting down their business or operations, terminating

employees, and pursuing all avenues of refinancing for all or part of the Lydian Group's business, in whole or in part.

20. Further, through the Amended and Restated Initial Order, the Applicants are seeking to expand the Monitor's ability, as contemplated in the Model Initial Order, to advise the Applicants in the development of a Plan of Compromise or Arrangement, hold and administer meeting(s) for voting purposes, as well as returning some of the additional protective language found in the Model Initial Order.

B. Charges

(a) D&O Charge

21. In light of the extension of the Applicants' D&O insurance coverage through to March 2, 2020, the Applicants do not intend to seek an increase in the D& O Charge of USD \$200,000 at this time.

(b) BMO Engagement and Transaction Charge

22. The Applicants do not currently anticipate seeking to increase their Administration Charge as it relates to counsel or the Monitor at this time. The Applicants are seeking to expand the Administration Charge to grant protection to the Applicants' financial advisor, BMO. BMO's services in connection with the SISP and the solicitation process for the financing of the Treaty Arbitration were provided pursuant to an engagement letter between BMO and Lydian International, which was most recently amended on October 1, 2019 (the "**BMO Engagement Letter**"). The BMO Engagement letter (in the form to be filed) sets out the scope of BMO's services as financial advisor to Lydian International, and provides for a monthly work fee and a transaction fee payable to BMO upon the completion of a successful sale or refinancing transaction, consisting of a percentage of the transaction value.

23. In order to secure Lydian International's obligations under the BMO Engagement Letter, the Applicants are seeking to increase the Administration Charge to cover BMO's monthly work fee, to the maximum amount of USD\$500,000. In addition, the Applicants will also be seeking a charge, in an amount to be determined and disclosed prior to the hearing of this motion (the "**Transaction Charge**") to secure BMO's potential transaction fee payable if a successful

transaction is implemented. The Amended and Restated Initial Order provides that the Transaction Charge shall rank third on the property of the Applicants, and that the unredacted form of the BMO Engagement Letter be sealed.

24. BMOs has worked extensively with Lydian International since its initial engagement and has significant knowledge with respect to the business, operations and finances of the Lydian Group. As noted, BMO has worked diligently to assist the Applicants in carrying out the SISP and the solicitation for the financing of the Treaty Arbitration. BMO's continued involvement will be critical to the successful completion of a transaction as part of the CCAA Proceedings that will maximize value for stakeholders.

PART 3 - STAY EXTENSION

25. Since the Initial Order, the Applicants have continued to act diligently and in good faith in respect of all matters relating to the CCAA Proceedings. To date, the Applicants and their advisors have been largely focused on maintaining operational stability of the Lydian Group, while continuing to engage with lenders and various stakeholders on a viable path forward, including advancing discussions relating to parties interested in pursuing a transactional outcome for the Lydian Group and/or financing the Treaty Arbitration.

26. The Stay Period granted in the Initial Order, as extended through the Stay Order, had the effect of imposing a stay of proceedings until and including January 23, 2020. The Applicants are requesting an extension of the Stay Period until and including February 25, 2020 to provide stability to the Applicants and allow them to continue their efforts to achieve a viable path forward that will maximize recoveries for all stakeholders.

27. During the extended Stay Period through to February 25, 2020, the Applicants will:

- (a) attempt to continue discussions with the GOA regarding regaining access to the Amulsar site;
- (b) continue negotiating a transactional outcome with a potential purchaser who emerged through the SISP;
- (c) continue canvassing financing options for the Treaty Arbitration. As noted, the Applicants have been approached by additional parties potentially interested in

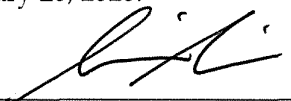
financing the Treaty Arbitration since the commencement of the CCAA Proceedings; and

(d) consider whether to take any steps to advance the Treaty Arbitration.

28. I have been advised that the Monitor will be filing a report, which I understand will include the Applicants' prepared cash flows, demonstrating that the Applicants will have sufficient funds to continue operating through the proposed Stay Period. Funding for the proposed Stay Period includes a continuation of the Applicants' practice of transferring funds from Lydian Armenia (a Non-Applicant Stay Party) to Lydian International (an Applicant) pursuant to the Cash Management System, on an as-needed basis, and may include transfers from other members of the Lydian Group.

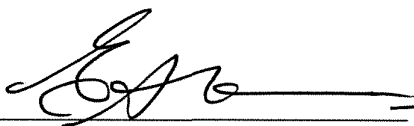
29. To the extent that the Applicants will need debtor-in-possession financing to fund the next phase of the CCAA Proceedings, the Applicants will report to the Court on those requirements on February 25, 2020. In the circumstances, I do not believe that any creditor will suffer material prejudice as a result of the extension of the Stay Period.

SWORN BEFORE ME at the City of
Toronto, Province of Ontario, on
January 20, 2020.



Commissioner for Taking Affidavits

Sanja Sopic



Edward A. Sellers

[Exhibits intentionally omitted]

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN
INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION AND LYDIAN U.K.
CORPORATION LIMITED

Court File No.: CV-19-00633392-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF EDWARD A. SELLERS
Sworn January 20, 2020

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Lawyers for the Applicants

TAB B

EXHIBIT "B"

referred to in the Affidavit of

EDWARD A. SELLERS

Sworn June 15, 2020

DocuSigned by:
Sanja Sopic
E820930A2731482...

Commissioner for Taking Affidavits

Court File No.CV-19-00633392-00CL

**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 A PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION
AND LYDIAN U.K. CORPORATION LIMITED**

Applicants

**AFFIDAVIT OF EDWARD A. SELLERS
(Sworn March 10, 2020)**

I, Edward A. Sellers, of the Town of Rosseau, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Interim President and Chief Executive Officer of the Applicant Lydian International Limited ("**Lydian International**"). I have been the President and Chief Executive Officer of Lydian International since June 12, 2019. I am also a director of the other Applicants in this proceeding. I have been on the Board of Directors of the Applicant Lydian International since November 1, 2018, and went on the Board of Directors of the other Applicants in this proceeding after June 12, 2019.

2. Due to my involvement with the Applicants, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of Lydian International and have spoken with certain of the directors, officers and/or employees of the Applicants, as necessary. Where I have relied upon information from others, I believe the information to be true.

3. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

4. This affidavit (the “**Sellers Stay Extension Affidavit**”) is sworn in support of a motion brought by the Applicants pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”, and such proceedings, the “**CCAA Proceedings**”) seeking:

- a) an Order substantially in the form of the draft order attached as Tab 3 of the Motion Record,
 - (i) approving the Engagement Letter between BMO Nesbitt Burns Inc. (“**BMO**”) and the Applicants and Lydian Armenia CJSC (“**Lydian Armenia**”) dated February 21, 2020 (the “**Revised BMO Engagement Letter**”), increasing the Administration Charge to include BMO’s Monthly Fee (as defined and described below) and adding a Transaction Charge to the Amended and Restated Initial Order granted in these proceedings to include BMO’s Recapitalization Fee (as defined and described below);
 - (ii) sealing the Revised BMO Engagement Letter and the Affidavit of Edward Sellers sworn March 10, 2020 describing the terms of the Revised BMO Engagement Letter (the “**Second Sellers BMO Affidavit**”), and continuing to seal the Affidavit of Edward Sellers sworn January 1, 2020 (the “**First Sellers BMO Affidavit**”) and the Engagement Letter between BMO and Lydian International dated October 1, 2019 exhibited thereto (the “**BMO Engagement Letter**”);
 - (iii) approving the Applicants’ ability to enter into an agreement regarding debtor-in-possession financing (the “**DIP Agreement**”) pursuant to which the Applicants will obtain access to a DIP Facility (as defined below) to fund certain obligations of the Applicants and the Non-Applicant Stay Parties through the stay extension period to April 30, 2020, which is to be secured by a charge over the Applicants’ property (“**DIP Charge**”);
 - (iv) sealing the unredacted DIP Agreement, the unredacted Sellers Stay Extension Affidavit, CAT Settlement and the ING Settlement (as defined below);
 - (v) extending the stay of proceedings (the “**Stay Period**”) in respect of the Applicants and the Non-Applicant Stay Parties to April 30, 2020;

- (vi) approving the fees of the Monitor and its counsel;
 - (vii) sealing Confidential Exhibit “1” attached to the Affidavit of Alan Hutchens sworn March 9, 2020 and Confidential Exhibit “1” attached to the Affidavit of D.J. Miller sworn March 9, 2020, each of which are appended to the Monitor’s Third Report to the Court dated March 9, 2020 (the “**Third Report**”) and contain unredacted invoices issued by the Monitor and its counsel, respectively; and
 - (viii) approving the Monitor’s activities to date as set out in its Second Report to the Court dated February 28, 2020 and the Third Report; and
- b) such further and other relief as the Court deems just.

PART 1 - STATUS OF THE CCAA PROCEEDINGS

5. I repeat and rely on my affidavits sworn December 22, 2019 (the “**Initial Affidavit**”) and January 20, 2020 (the “**Comeback Affidavit**”) in support of this motion. Copies of the Initial Affidavit and the Comeback Affidavit (without exhibits) are attached hereto as **Exhibit “A”** and **Exhibit “B”**, respectively. Capitalized terms not otherwise defined herein are as defined in the Comeback Affidavit.

6. The Applicants’ business consists of the exploration and development of a gold mine located in south-central Armenia (the “**Amulsar Project**” or “**Amulsar**”). The Initial Order was granted on December 23, 2019. On January 2, 2020, the Court issued an Order extending the Stay Period with respect to the Applicants and the Non-Applicant Stay Parties to January 23, 2020. At the Applicants’ motion returnable on January 23, 2020 (the “**Comeback Motion**”), the Court issued an Amended and Restated Initial Order which, among other things, expanded the Applicants’ restructuring capabilities within the CCAA Proceedings, granted additional protections to the Monitor and extended the Stay Period with respect to the Applicants and the Non-Applicant Stay Parties until March 2, 2020. At the Applicants’ motion returnable on March 2, 2020, this Court further extended the Stay Period to March 11, 2020. A copy of the Amended and Restated Initial Order is attached hereto as **Exhibit “C”**, and is available, together with all other filings in the CCAA Proceedings, on the Monitor’s website for these proceedings at <https://www.alvarezandmarsal.com/Lydian>.

A. The Applicants' Activities Since the Comeback Motion

7. Since the granting of the Amended and Restated Initial Order, the Applicants, with the oversight and assistance of the Monitor, have been working diligently to maintain the stability of their business operations, continue discussions with their senior lenders and other stakeholders, and advance discussions regarding a potential sale involving the Lydian Group. On the basis of input received from the Lydian Group's senior lenders, since the Comeback Motion the Applicants have not taken any material steps to advance the solicitation process for the financing of the Lydian Group's Treaty Arbitration.

8. The Applicants' activities since the Comeback Motion include the following:

- (a) attempting to engage in a further dialogue with the GOA with respect to regaining access to the Amulsar site;
- (b) finalizing materials, together with the Monitor, seeking the recognition of the Initial Order, Amended and Restated Initial Order and CCAA Proceedings by the Royal Court of Jersey, as further outlined below;
- (c) communicating and meeting with the Lydian Group's lenders regarding a variety of topics including the progress of negotiations with various stakeholders, the lenders' position regarding a viable path forward to maximize stakeholder value for the Lydian Group, the status of the equipment at the Amulsar site and the progress of the SISF;
- (d) negotiating the DIP Agreement with the Applicants' senior lenders;
- (e) continuing to advance discussions with respect to implementing a transaction with a potential purchaser who participated in the SISF, as further described below;
- (f) communicating with one of the Applicants' equipment lessors, Caterpillar Financial Services (UK) Limited ("CAT") in response to the objection (the "**CAT Objection**") filed in connection with the Comeback Motion, objecting to the Applicants' request to extend the stay of proceedings, on the basis that CAT seeks to take immediate possession of its equipment located at the Amulsar Project. The

CAT Objection was scheduled to be heard on March 5, 2020. The Applicants have reached a consensual resolution to the CAT Objection (the “CAT Settlement”), a copy of which will be filed under seal with this Court;

- (g) preparing materials to respond to CAT’s documentary production requests in connection with the CAT Objection, and preparing for potential cross-examinations, as outlined below;
- (h) communicating with another equipment lessor of the Applicants, ING Bank N.V, and AB Svensk Exportkredit (publ) (“ING”) regarding the proposed treatment of ING’s equipment located at the Amulsar Project during the pendency of the CCAA Proceedings;
- (i) communicating with the Lydian Group’s insurance broker regarding extending the Course of Construction insurance coverage for the equipment on the Amulsar site beyond March 31, 2020, or obtaining substitute asset insurance coverage. I understand that although a few markets initially expressed interest in providing substitute asset insurance coverage, a combination of a hardening insurance market affecting all property risks globally, hesitancy to underwrite risks in Armenia and the fact the project has been stalled for more than 18-months have proven to be challenging factors in obtaining replacement insurance. The Applicants continue to pursue insurance options;
- (j) continuing a dialogue with the Lydian Group’s insurance broker to understand the potential availability of any D&O insurance coverage beyond March 2, 2020. Following discussions with their D&O insurance providers, the Applicants were able to obtain a 14-day extension of D&O insurance coverage from March 2, 2020 to March 16, 2020. I understand a further extension is available through the proposed extension of the Stay Period, provided various conditions are met, including financial support for the Applicants through the proposed extension of the Stay Period;

- (k) implementing certain governance changes with respect to certain subsidiaries of the Applicants in the British Virgin Islands and Lydian Armenia, as further described below;
- (l) engaging in a dialogue with the Lydian Group's lenders, equipment financiers and counsel in Canada, the United Kingdom and Armenia in order to determine the most efficient way to streamline the Applicants' governance structure;
- (m) completing audited year-end financial reporting and making public markets disclosure as required by Reporting Issuers subject to Canadian securities laws;
- (n) making arrangements to close the Denver office of the Lydian Group and source alternative resources and support to continue with adequate levels of financial control and reporting for the Lydian Group during the proposed extension of the Stay Period; and
- (o) preparing a cash flow forecast for the period requested for the stay extension, and related financial information on potential scenarios under consideration as part of the path forward, in consultation with the Monitor.

9. As will be outlined below, the Applicants implemented certain governance changes with respect to the Applicants' subsidiaries in the British Virgin Islands, as well as Lydian Armenia. These governance changes became effective on February 21, 2020.

10. Further, the Applicants intend to implement additional governance changes with respect to other members of the Lydian Group. The changes are described below.

11. The Applicants continue to engage in discussions with their lenders regarding a viable path forward to maximize stakeholder value. To that end, the Applicants have been advancing discussions with a purchaser who emerged through the SISP (the "**SISP Party**").

12. Due to their inability to access additional liquidity generally, the Applicants will require DIP financing in order to continue their efforts in pursuing a transactional outcome for the Lydian Group and pursue other steps beyond March 11, 2020. As will be described in greater detail below, the Applicants' secured lenders, being Orion Co IV (ED) Limited, a division of Orion Capital Management ("**Orion**") Resource Capital Fund VI L.P. ("**RCF**") and Osisko Bermuda

Limited (“**Osisko**”) (collectively, the “**DIP Lenders**”), have agreed to provide the Applicants with a DIP Facility to support the Applicants through to the requested extension of the Stay Period to April 30, 2020.

(a) **Jersey Recognition Proceedings**

13. On December 23, 2019, as amended on January 23, 2020, the Applicants sought and obtained a Letter of Request from this Court seeking the assistance of the Royal Court of Jersey (the “**Royal Court**”) to assist the Applicants and the Monitor in advancing the Applicants’ restructuring proceedings. Since the Letter of Request was issued, the Applicants have worked with their Jersey counsel to prepare and finalize materials seeking the recognition of the CCAA Proceedings by the Royal Court, including supporting affidavits from the Applicants’ Canadian counsel and the Monitor and providing notification of the recognition proceedings to Lydian International’s creditors, in accordance with the requirements of Jersey law. On February 25, 2020, the Royal Court issued an Order (the “**Recognition Order**”), ordering that the Amended and Restated Initial Order be recognized and given effect to provide that:

- a) Alvarez & Marsal Canada Inc. shall be appointed as Monitor of Lydian International, with such appointment to be registered in the rolls of the Royal Court and the appointment of the Monitor notified to the Jersey Financial Services Commission;
- b) Lydian International is to remain in possession of its current and future assets, undertakings and properties of every nature and kind whatsoever in Jersey;
- c) subject to further order of the Ontario Court (as defined in the Recognition Order), Lydian International shall continue to carry on its business in a manner consistent with the preservation of its business and property; and
- d) no proceeding or enforcement process in or out of any court or tribunal be commenced or continued against or in respect of Lydian International, or affecting its business or the property, except with the written consent of Lydian International and the Monitor, or with leave of the Ontario Court.

14. The Recognition Order further provides that reasons will be set out in a judgment to be delivered by the Deputy Bailiff at a later date, which the Applicants have not yet received. A copy of the Recognition Order is attached hereto as **Exhibit "D"**.

(b) CAT Objection

15. On January 22, 2020, CAT filed an objection in connection with the Comeback Motion, for the purpose of initiating steps to enforce on equipment supplied to Lydian Armenia currently located at the Amulsar site (the "**CAT Equipment**"). On January 22, 2020, I swore an affidavit in response to the CAT Objection (the "**CAT Responding Affidavit**"). The parties agreed to adjourn the hearing of the CAT Objection pending the next hearing (which was then scheduled to occur on March 2, 2020), and to provide the parties an opportunity to discuss potential resolution of the CAT Objection.

16. On January 27, 2020, CAT's counsel sought the production of certain documents in anticipation of conducting a cross-examination on the CAT Responding Affidavit. The Applicants worked with their counsel to compile the necessary documentation to respond to CAT's production request and to prepare for potential cross examinations.

17. On February 19, 2020, CAT filed a Supplementary Motion Record in connection with the CAT Objection, (the "**CAT Reply Materials**").

18. Following further discussions between the Applicants, CAT, and the Lydian Group's senior lenders, the Applicants and CAT have reached a consensual resolution regarding the CAT Objection. I understand that pursuant to the CAT Settlement, CAT has agreed that the CAT Equipment can stay at the Amulsar site [REDACTED]. The terms of the CAT Settlement are confidential and will be filed under seal with the Court.

19. During our Court attendance on January 23, 2020, counsel for ING advised that their client would also be opposing future stay extensions and he anticipated delivering motion materials similar to the CAT Objection. While motion materials were not ultimately delivered, the Applicants have also reached a resolution with ING (the "**ING Settlement**") which would ensure their support [REDACTED]. The terms of the settlement with ING are confidential and will be filed under seal with the Court.

(c) **Governance Changes Implemented to Date**

20. The corporate structure of the Lydian Group on the date of the commencement of the CCAA Proceedings (the “**Filing Date**”) was described in detail in my Initial Affidavit. For ease of reference, a copy of the Lydian Group’s corporate chart as of the Filing Date is attached hereto as **Exhibit “E”**.

21. In mid-February 2020, the Applicants became aware of material potential director or officer liability arguments under Armenian law.

22. In order to address this risk, and to ensure that there was continuing financial support for payment obligations which were or may be incurred by Lydian Armenia, the following governance changes were implemented with respect to the Lydian Group:

- a) William Dean, Hayk Aloyan and I, as the three directors of Lydian International Holdings Limited (“**Lydian Holdings**”), a corporation incorporated under the laws of the British Virgin Islands which is a direct, wholly-owned subsidiary of Lydian UK, resigned. 11910728 Canada Inc.(“**DirectorCo**”), a corporation incorporated under the laws of the *Canada Business Corporations Act*, which is a direct, wholly-owned subsidiary of Lydian Canada, was appointed as the sole director of Lydian Holdings, in accordance with the corporate law requirements of the British Virgin Islands. I am the sole officer and director of DirectorCo;
- b) William Dean, Hayk Aloyan and I, as the three directors of Lydian Resources Armenia Limited (“**Lydian Resources**”), a corporation incorporated under the laws of the British Virgin Islands which is a direct, wholly-owned subsidiary of Lydian Holdings and wholly owns Lydian Armenia, resigned. DirectorCo was appointed as the sole director of Lydian Resources;
- c) all directors and officers of Lydian Armenia, other than the Managing Director Hayk Aloyan, resigned in their capacities as directors and officers, though they remained employees of Lydian Armenia, if so employed. DirectorCo was named the sole shareholder representative for Lydian Armenia in accordance with Armenian law requirements. This enables DirectorCo to exercise authority as shareholder of Lydian Armenia. Mr. Aloyan retained his officer role as Managing

Director, subject to the direction of DirectorCo as shareholder representative of Lydian Resources.

23. An updated version of the Lydian Group's corporate chart, which reflects these changes, is attached hereto as **Exhibit "F"**.

24. The above governance changes are intended to address the potential liability issues arising under Armenian law referred to above while leaving the powers to direct Lydian Armenia's activities within the existing chain of authority below Lydian International.

(d) Upcoming Governance Changes

25. As noted, the Applicants sought and were able to obtain a 14-day extension of D&O insurance coverage from March 2, 2020 to March 16, 2020.

26. The Applicants considered their governance needs in each jurisdiction where members of the Lydian Group are incorporated, being Jersey, Canada, the United Kingdom, the British Virgin Islands and Armenia. Following this review and extensive consultations with the senior lenders, it is anticipated that the following governance changes will occur prior to advances being available under the proposed DIP Agreement:

- a) I will continue to serve as Interim President and Chief Executive Officer of Lydian International through the proposed extension of the Stay Period to April 30, 2020;
- b) the members of the existing Board of Directors of Lydian International, other than Victor Flores and I, will resign;
- c) the other directors and officers of Lydian Canada and Lydian UK, will resign. I will stay on as director, and Victor Flores will also be appointed as a director of those entities;
- d) Victor Flores will also be appointed a director of DirectorCo; and
- e) A third director may also be appointed in the future to one or more of the boards of Lydian International, Lydian Canada, Lydian UK and DirectorCo following consultation with the Lydian Group's senior lenders.

27. I have been advised a further extension of the D&O insurance coverage is available for the ongoing directors and officers through the proposed extension of the Stay Period to April 30,

2020, provided various conditions are met, including financial support being available to the Applicants through the proposed extension of the Stay Period. I understand that the Monitor will be filing a report in connection with the within motion, showing that the DIP Facility will provide the necessary financial support to the Applicants through to April 30, 2020.

(e) SISP

28. BMO and the Applicants, in consultation with their lenders, are continuing to engage and advance discussions with the SISP Party.

(f) Communication to the Court by Members of the Armenian Environmental Front Civil Initiative

29. I understand that early on February 28, 2020, the Monitor received an email from Arpine Galfayan, on behalf of the Armenian Environmental Front (“AEF”) Civil Initiative. Attached to the email was a letter to the Court (the “**AEF Letter**”) from certain individuals who identify themselves as Armenian citizens and members of the AEF Civil Initiative, which they describe as a volunteer environmental watchdog group. It appears that the email and AEF Letter were also emailed directly to the Court, without being served on the service list. A copy of the AEF Letter, with the enclosure referred to therein, is attached hereto as **Exhibit “G”**.

30. In short, the AEF Letter alleges that there were certain factual misrepresentations contained in my Initial Affidavit, including with respect to (i) the April 10, 2019 ruling issued by Armenia’s Administrative Court concluding that the blockaders had trespassed on Lydian Armenia’s property, and issuing an order directing the police to remove the trespassers and their property from Lydian Armenia’s land (the “**Removal Order**”), an English translation of which was attached to the Initial Affidavit, and which is attached again hereto as **Exhibit “H”**, and (ii) the findings contained in the August 7, 2019 report of Earth Link and Advanced Resources Development (“**ELARD**”), following the environmental audit conducted by ELARD in 2019. The AEF Letter also implies that Lydian Armenia inappropriately entered into a settlement agreement with the Jermuk Health Centre CJSC (the “**Jermuk Health Centre**”) related to the termination of a long term lease agreement.

31. The Applicants have provided extensive and detailed documentation to the Monitor addressing the points raised in the AEF Letter, much of which is technically complex. I did not

have time to sit with the Monitor to take them through the materials or swear a responding affidavit, but will turn to it promptly after the hearing of the extension motion.

PART 2 - RELIEF REQUESTED BY THE APPLICANTS

A. BMO Engagement and Transaction Charge

32. As outlined in the Comeback Affidavit, BMO's services in connection with the SISP were provided pursuant to the BMO Engagement Letter. The Applicants filed a copy of the BMO Engagement Letter under seal with this Court in connection with the Comeback Motion, as an exhibit to the First Sellers BMO Affidavit. At the Comeback Motion, the Applicants advised the Court that the issue of the BMO Engagement Letter would be determined at a later date. The Applicants, with the Monitor's assistance, were able to continue discussions with their senior lenders and a consensus was reached on the terms of the relief being sought by the Applicants relating to the BMO Engagement Letter.

33. The BMO Engagement Letter was amended on February 21, 2020 to address this arrangement and add additional members of the Lydian Group as signatories (the "**Revised BMO Engagement Letter**"). The Revised BMO Engagement letter sets out the scope of BMO's services as financial advisor to the Applicants, and provides for a monthly work fee (the "**Monthly Fee**") and a transaction fee payable to BMO upon the completion of a successful sale or refinancing transaction, consisting of a percentage of the transaction value (the "**Recapitalization Fee**"). .

34. In order to secure the Applicants' obligations under the Revised BMO Engagement Letter, the Applicants are seeking to increase the Administration Charge to the maximum total amount of \$500,000 to secure the Monthly Fee and add the Transaction Charge to secure the Recapitalization Fee, to the maximum total amount of \$4,500,000. The Administration Charge and the Transaction Charge shall not apply to the equipment financed by the equipment financiers, including CAT and ING. I understand the Applicants' senior lenders are supportive of the increase to the Administration Charge and the granting of the Transaction Charge.

35. BMO has worked extensively with the Applicants since its initial engagement and has significant knowledge with respect to the business, operations and finances of the Lydian Group. As noted in the Comeback Affidavit, BMO has worked diligently to assist the Applicants in carrying out the SISP and the solicitation for the financing of the Treaty Arbitration. Since the

Comeback Motion, BMO has worked with the Applicants to advance discussions with the SISP Party. BMO's continued involvement will be critical to the successful completion of a transaction as part of the CCAA Proceedings that will maximize value for stakeholders.

36. I have sworn a further affidavit (the "**Second Sellers BMO Affidavit**") in connection with the Applicants' request attaching the Revised BMO Engagement Letter as an exhibit, which will also be filed under seal. Due to the commercially sensitive nature of the information contained in the engagement letters between BMO and Lydian International, and consistent with what I am advised is BMO's past practice, the Applicants are seeking the approval and sealing of the Revised BMO Engagement Letter, and the sealing of the Second Sellers BMO Affidavit and exhibits thereto, pending further Order of this Court. The Applicants are also seeking a continuation of the sealing of the First Sellers BMO Affidavit. I note that in connection with the sealing order for the First Sellers BMO Affidavit and the BMO Engagement Letter granted at the Comeback Motion, Chief Justice Morawetz noted in his endorsement (the "**Comeback Endorsement**") that "I am satisfied that these two documents contain sensitive commercial information, the disclosure of which could be harmful to the stakeholders and as such these documents are to be sealed pending further order." A copy of the Comeback Endorsement is attached hereto as **Exhibit "I"**.

B. DIP Agreement Approval and DIP Charge

37. As was demonstrated by the cash flow forecast filed with the Initial Affidavit, and is set out in the Monitor's First Report dated January 21, 2020 (the "**First Report**"), a copy of which is attached hereto as **Exhibit "J"**, at the time of the Comeback Motion, and the updated cashflows filed in respect of the March 2, 2020 motion, the Applicants identified that interim financing would be required beyond March 11, 2020.

38. The Applicants, in consultation with the Monitor, prepared an updated 13-week cash flow forecast for the period between March 6, 2020 to May 1, 2020, which illustrates that the Applicants will require financing in order to continue operations through the extension of the Stay Period to April 30, 2020.

39. As set out in the Initial Affidavit, in January 2019, certain of the Applicants' lenders, including Orion and RCF, committed to make available an additional amount of up to \$18.56

million to fund Lydian Armenia through to December 20, 2019 ("**Term Facility B**"). As of the Filing Date, approximately \$12 million has been drawn under Term Facility B.

40. The Applicants and their counsel, in consultation with the Monitor, have negotiated an amendment to the Term Facility B (as amended, the "**DIP Agreement**") pursuant to which the Applicants will obtain access to an additional amount [REDACTED] (the "**DIP Facility**") to be provided as additional draws under the Term Facility B. A copy of the unredacted DIP Agreement is attached hereto as **Confidential Exhibit "K"**.

41. Given the current structure of Term Facility B and the Cash Management System as previously described in the Initial Affidavit, funds made available through Lydian Armenia facilities are available to be transferred to and used by the Applicants. Funding for the proposed extension of the Stay Period includes a continuation of the Applicants' practice, as outlined in the Initial Affidavit, of transferring funds from Lydian Armenia (a Non-Applicant Stay Party) to Lydian International (an Applicant) pursuant to the Cash Management System, on an as-needed basis, and may include transfers from other members of the Lydian Group. In accordance with original loan structure in Term Facility B, the Applicants are not borrowers under the DIP Facility, but participate as guarantors of the DIP Facility.

42. The material terms of the DIP Agreement are set out below:

Borrower: Lydian Armenia;

Lenders: Orion, RCF and Osisko;

Guarantors: the Applicants, Lydian Holdings, Lydian Resources, Lydian US Corporation, Kavkaz Zoloto CJSC, Lydian Resources Georgia Limited, Lydian Resources Kosovo Limited, Georgian Resource Company LLC;

Facility Amount: a non-revolving credit facility up to a maximum amount of

[REDACTED]
[REDACTED]
[REDACTED];

Availability: DIP Facility is available to be drawn until it matures;

Maturity: DIP Facility matures at the earlier of (i) the occurrence of any Additional Event of Default (as described in the DIP Agreement), (ii) [REDACTED] and (iii) the date of a Change of Control (as defined in Term Facility B);

Conditions: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

Interest Rate: 15% per annum; and

Charge: amounts owing under the DIP Facility are proposed to have a fourth-ranking Court-ordered charge on the Property of the Applicants (the "DIP Charge").

43. The DIP Facility is expected to provide sufficient liquidity to allow the Applicants to pay for obligations incurred and scheduled to be paid through [REDACTED]. In addition, as reflected in the DIP Agreement, the Maximum DIP Amount may be increased by an amount not to exceed a [REDACTED] in the aggregate on account of reasonable additional costs incurred relating to the period between March 10, 2020 [REDACTED] and the parties shall determine the quantum of such reasonable additional costs by no later [REDACTED]. This is intended to address ordinary course obligations being incurred by the Applicants during the proposed extension of the Stay Period. Accordingly, the Applicants seek an order authorizing and empowering them to guarantee the DIP Agreement, in order to make the DIP Facility available for the purpose of financing their operations [REDACTED].

44. The DIP Agreement contains commercially sensitive information, including [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

C. Approval of Monitor's Fees and Activities

45. I understand that the Monitor will be filing the Third Report in connection with the within motion seeking approval of its activities, as detailed in the Second Report of the Monitor dated February 26, 2020 and the Third Report, as well as the Monitor's fees since the commencement of the CCAA Proceedings. The Applicants have reviewed the fees of the Monitor and its counsel and support of the payment of the same.

D. Stay Extension

46. Since the Comeback Motion, the Applicants, with the oversight and assistance of the Monitor, have been largely focused on maintaining operational stability of the Lydian Group, while continuing to engage with lenders and various stakeholders on a viable path forward, [REDACTED]

[REDACTED]

47. The Applicants are requesting an extension of the Stay Period until and including April 30, 2020 to provide stability to the Applicants and allow them to continue their efforts to achieve a viable path forward that will maximize recoveries for all stakeholders. During the extended Stay Period through to April 30, 2020, [REDACTED]

[REDACTED]

48. I have been advised that the Monitor will be filing a report, which I understand will include the Applicants' prepared cash flows, demonstrating that the DIP Facility is expected to provide the Applicants with sufficient funding to continue operations through to the requested extension of the Stay Period to April 30, 2020.

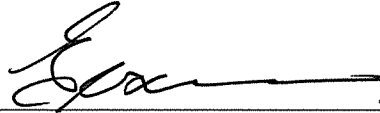
49. Since the granting of the Amended and Restated Initial Order, the Applicants have continued to act diligently and in good faith in respect of all matters relating to the CCAA Proceedings, and will continue to do so during the proposed extension of the Stay Period through to April 30, 2020.

SWORN BEFORE ME at the City of
Toronto, Province of Ontario, on March
10, 2020.



Commissioner for Taking Affidavits

Sanja Sopic



Edward A. Sellers

[Exhibits intentionally omitted]

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN
INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION AND LYDIAN U.K.
CORPORATION LIMITED

Court File No.: CV-19-00633392-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AFFIDAVIT OF EDWARD A. SELLERS
Sworn March 10, 2020

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Lawyers for the Applicants

TAB C

EXHIBIT "C"

referred to in the Affidavit of

EDWARD A. SELLERS

Sworn June 15, 2020

DocuSigned by:
Sanja Sopic
F820930A2731482

Commissioner for Taking Affidavits

Court File No.CV-19-00633392-00CL

**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 A PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION
AND LYDIAN U.K. CORPORATION LIMITED**

Applicants

**AFFIDAVIT OF EDWARD A. SELLERS
(Sworn April 27, 2020)**

I, Edward A. Sellers, of the Town of Rosseau, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Interim President and Chief Executive Officer of the Applicant Lydian International Limited ("**Lydian International**"). I have been the President and Chief Executive Officer of Lydian International since June 12, 2019. I am also a director of the other Applicants in this proceeding. I have been on the Board of Directors of the Applicant Lydian International since November 1, 2018, and went on the Board of Directors of the other Applicants in this proceeding after June 12, 2019.
2. Due to my involvement with the Applicants, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of Lydian International and have spoken with certain of the directors, officers and/or employees of the Applicants, as necessary. Where I have relied upon information from others, I believe the information to be true.
3. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

4. This affidavit (the “**April Stay Extension Affidavit**”) is sworn in support of a motion brought by the Applicants pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”, and such proceedings, the “**CCAA Proceedings**”) seeking:

- a) an Order substantially in the form of the draft order attached as Tab 3 of the Motion Record,
 - (i) extending the stay of proceedings (the “**Stay Period**”) in respect of the Applicants and the Non-Applicant Stay Parties to June 30, 2020;
 - (ii) approving amendments (the “**DIP Amendment**”) to the Applicants’ debtor-in-possession financing agreement approved by this Court on March 11, 2020 (the “**DIP Agreement**”) to provide for an increase in the Applicants’ DIP Facility (as defined below) to fund certain obligations of the Applicants and the Non-Applicant Stay Parties through the stay extension period to June 30, 2020, to be secured by the DIP Charge previously approved by this Court on March 11, 2020 (“**DIP Charge**”);
 - (iii) sealing the unredacted DIP Amendment;
 - (iv) sealing the unredacted April Stay Extension Affidavit, and any unredacted supplementary affidavit, to be filed;
 - (v) approving the fees of the Monitor and its counsel, as detailed in the affidavit of Alan Hutchens to be sworn and the affidavit of D.J. Miller to be sworn, each of which are appended to the Monitor’s Fourth Report to the Court, to be filed (the “**Fourth Report**”);
 - (vi) approving the Monitor’s activities to date as set out in its Third Report to the Court dated March 10, 2020 and the Fourth Report; and
- b) such further and other relief as the Court deems just.

PART 1 - STATUS OF THE CCAA PROCEEDINGS

5. I repeat and rely on my affidavits sworn December 22, 2019 (the “**Initial Affidavit**”), January 20, 2020 (the “**Comeback Affidavit**”), and March 10, 2020 (the “**March Stay Extension Affidavit**”) in support of this motion. Copies of the Comeback Affidavit and the redacted March Stay Extension Affidavit (without exhibits) are attached hereto as **Exhibit “A”** and **“B”**