Court File No. CV14-10401-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION OF COLOSSUS MINERALS INC., OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Applicant

FACTUM OF THE APPLICANT

Dated: January 15, 2014

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TO: THE SERVICE LIST

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PART I - INTRODUCTION

1. Colossus Minerals Inc. ("**Colossus**" or the "**Company**") filed a Notice of Intention to Make a Proposal ("**NOI**") under section 50.4 (1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") on January 13, 2014. Duff and Phelps Restructuring Inc. was named as proposal trustee in connection with the NOI (the "**Proposal Trustee**").

2. This application is brought by the Company seeking an order substantially in the form of the draft Order included at Tab 1A of the Application Record, *inter alia*:

(a) approving the DIP Term Sheet (as defined below) and granting a DIP Charge (as defined below);

(b) granting a first priority Administration Charge (as defined below);

(c) declaring that the directors and officers of Colossus shall be indemnified against obligations and liabilities that they may incur in their capacity as directors or officers of Colossus after the commencement of these proceedings, and granting a D&O Charge (as defined below);

(d) approving the engagement between the Company and Dundee Capital Markets, a division of Dundee Securities Ltd. ("**Dundee**") dated November 27, 2013 (the "**Engagement Letter**");

(e) approving a proposed sale and investment solicitation process ("**SISP**"); and

(f) extending the time within which a proposal must be filed with the Official Receiver under section 62(1) of the BIA to March 7, 2014.

PART II - THE FACTS[1]

BACKGROUND

Corporate History and Structure

3. Colossus is a development-stage mining company. Its main asset is a gold and platinum group metals project in Brazil owned by a Brazilian subsidiary. Colossus is a publicly traded company listed on the Toronto Stock Exchange under the symbol "CSI", and in the U.S. on the Over-The-Counter market OTCQX International under the symbol "COLUF".[2]

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[1] Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the affidavit of John Frostiak, sworn January 13, 2014 (the "**Frostiak Affidavit**").

[2] Frostiak Affidavit, para 6; Application Record, Tab 2.

4. Colossus was originally incorporated under the *Business Corporations Act* (Ontario) on February 9, 2006 as 2093688 Ontario Limited (before changing its name to Colossus). The Company operates from leased head office premises located at One University Avenue, Suite 401, Toronto, Ontario, M5J 2P1.[3]

5. Colossus is effectively a public holding company and financing vehicle for its direct and indirect subsidiaries (the "**Subsidiaries**", and together with Colossus, the "**Colossus Group**"). A list of the Subsidiaries and Colossus' direct or indirect ownership interest in them is as follows:

NAME OF ENTITY	**OWNERSHIP %**
Serra Pelada - Companhia de Desenvolvimento Mineral ("**SPCDM**")	75
Colossus Mineração Ltda. ("**Colossus Brazil**")	100
Grifo Geologia e Participações Ltd.	100
Mineração Fazenda Monte Belo Ltda.	100

Each of the Subsidiaries is incorporated and carries on business in the Federal Republic of Brazil.[4]

6. Colossus is the only member of the Colossus Group that is a debtor in these Proposal proceedings. The Subsidiaries are not part of these proceedings and it is not presently contemplated that they will file insolvency proceedings in Brazil or in Canada.[5]

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3 Frostiak Affidavit, para 7; Application Record, Tab 2.

4 Frostiak Affidavit, para 8; Application Record, Tab 2.

5 Frostiak Affidavit, para 13; Application Record, Tab 2.

Colossus Group Operations and Assets

7. The Colossus Group currently holds interests in two mineral properties in Brazil: (i) the Serra Pelada Gold-Platinum-Palladium Project (the "**Serra Pelada Project**"); and (ii) the Cutia Property. The Serra Pelada Project is the only material property of the Colossus Group. The Colossus Group does not have any mineral properties that are in production or that contain a mineral reserve as defined by National Instrument 43-101 - *Standards for Disclosure in Mineral Projects* and does not have any projects that generate revenue at this time.[6]

8. The Colossus Group has conducted an initial diamond drilling exploration program on the Cutia Property and the preliminary results have been encouraging. Lack of funding has prevented the Company from conducting additional exploration to further define the resource.[7]

The Serra Pelada Project

9. The Colossus Group's interest in the Serra Pelada Project was initially acquired through a partnership agreement dated July 16, 2007, as amended, between Colossus Brazil and Cooperativa de Mineração dos Garimpeiros de Serra Pelada ("**COOMIGASP**"). The partnership agreement provided for the creation of SPCDM, the joint venture company that holds the exploration licence in relation to the Serra Pelada Project. Colossus Brazil holds a 75% interest in SPCDM, with the other 25% being held by COOMIGASP.[8]

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6 Frostiak Affidavit, para 14; Application Record, Tab 2.

7 Frostiak Affidavit, para 23; Application Record, Tab 2.

8 Frostiak Affidavit, para 15; Application Record, Tab 2.

10. The Serra Pelada Project is located in the Carajas region in the State of Pará, Brazil. As of the date hereof, the Serra Pelada Project consists of three contiguous areas covering 874 hectares.[9]

11. The Serra Pelada Project is fully permitted and approximately 95% of the construction to develop the mine has been completed. Total underground development is approximately 2,300 metres (with approximately 200 additional metres of underground development required to commence production). Underground infrastructure includes pumping systems, roadways, ventilation, electric articulation and other facilities which are all substantially complete.[10]

12. The surface infrastructure has been built with the office complex, infirmary, maintenance facility, power generation building and camp all having been completed. As of the date hereof construction of the process plant is approximately 95% complete, and construction of the tailings dam is approximately 90% complete. Capital investment to bring the process plant into production is estimated to be approximately about US $1 million. It is estimated that it will take four to six weeks of work in instrumentation and piping to bring the process plant online.[11]

13. Pursuant to the terms of the Serra Pelada Agreement, Colossus Brazil is required to make a monthly payment to COOMIGASP of R$350,000 (i.e. the Brazilian currency, the Brazilian Real) until production begins and it has agreed to finance COOMIGASP's portion of development costs. Colossus Brazil has pledged its

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9 Frostiak Affidavit, para 16; Application Record, Tab 2.

10 Frostiak Affidavit, para 17; Application Record, Tab 2.

11 Frostiak Affidavit, para 18; Application Record, Tab 2.

shareholdings in SPCDM to COOMIGASP as a guarantee of performance, such guarantee to be terminated on the commencement of production. Reimbursement of the monthly payments made to COOMIGASP under these provisions is to commence in the second year of production and will be payable in equal quarterly instalments over a two year period.[12]

14. The Colossus Group has expended more than US $300 million on exploration and development expenditures in relation to the Serra Pelada Project.[13]

Employees

15. As of December 1, 2013, the Colossus Group had 467 employees in Brazil and 10 employees at its head office in Toronto for a total of 477 employees. The Toronto employees are employed by the Company. The Brazil employees are employed by one or more of the Subsidiaries. The Colossus Group has historically relied on consultants to carry on many of its activities and, in particular, to supervise the work programs on its mineral properties.[14]

CREDITORS

Unsecured Gold Linked Notes

16. On November 8, 2011 the Company completed a bought deal offering for gross proceeds of CAD $86,250,000. A total of 86,250 units of the Company (the "**Units**") were issued at a price of CAD $1,000 per Unit. Each Unit consists of a face value CAD $1,000 principal amount unsecured gold-linked note (the "**Notes**") issued pursuant to the terms of a trust indenture between Colossus and Equity Financial Trust

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[12] Frostiak Affidavit, para 19; Application Record, Tab 2.

[13] Frostiak Affidavit, para 20; Application Record, Tab 2.

[14] Frostiak Affidavit, para 24; Application Record, Tab 2.

Corporation (the "**Trustee**") dated November 8, 2011 (the "**Trust Indenture**"), and 60 common share purchase warrants of the Company (the "**Warrants**").[15]

17. The Notes will mature on December 31, 2016 and bear interest, accruing and calculated and payable semi-annually in arrears on June 30 and December 31 of each year at a rate of between 6% and 13% dependent on the simple average of the Bloomberg Composite New York Gold Price closing price. Each Warrant entitles the holder thereof to acquire one common share of the Company at a price of CAD $8.50 until expiry at 5:00 pm on November 8, 2016.[16]

Equipment Finance Agreement

18. In November 2012 Colossus Brazil entered into an equipment finance agreement, as amended from time to time (the "**Equipment Finance Agreement**") with Atlas Copco Customer Finance AB ("**Atlas**") to purchase four underground trucks, a rockbolter, two jumbo drills, and three underground loaders to be used at the Serra Pelada Project.[17]

19. As at September 30, 2013 the equipment had principal payments outstanding of US $7,318,000, of which US $1,934,000 is to be repaid over the period ending September 30, 2014.[18]

20. Colossus has guaranteed the obligations of Colossus Brazil under the Equipment Finance Agreement pursuant a continuing corporate guarantee (the "**Atlas**

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15 Frostiak Affidavit, para 26; Application Record, Tab 2.
16 Frostiak Affidavit, para 27; Application Record, Tab 2.
17 Frostiak Affidavit, para 29; Application Record, Tab 2.
18 Frostiak Affidavit, para 30; Application Record, Tab 2.

Guarantee"). Under the terms of the Atlas Guarantee, Colossus guarantees payment to Atlas of Colossus Brazil's indebtedness up to a maximum amount of EUR 5,450,000.[19]

Secured Creditors

21. Two entities, being Dell Financial Services Canada Limited ("**Dell**") and GE VFS Canada Limited Partnership ("**GE**") have registered a security interest in respect of certain of Colossus' equipment.[20]

22. These security interests are restricted to specific equipment only. The court-ordered charges sought by the Company in this Application are to rank subordinate in priority to the Dell and GE security interests, assuming same are validly perfected.[21]

Other Unsecured Creditors

23. The financial statements filed publicly by Colossus are presented on a consolidated basis for the entire Colossus Group. In a management information circular dated December 17, 2013 the Company disclosed that Colossus Group owed approximately US$ 32 million in accounts payable as of that date. Approximately US$ 15 million of this amount represented payables that had been unpaid for at least 30 days.[22]

24. The creditor list included in the NOI filing describes creditors of Colossus only (i.e. on a non-consolidated basis) with claims totaling $170,501,905.10 as of January 10, 2014 (including claims under guarantees that have not yet matured).[23]

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[19] Frostiak Affidavit, para 31; Application Record, Tab 2.

[20] Frostiak Affidavit, para 32; Application Record, Tab 2.

[21] Frostiak Affidavit, para 33; Application Record, Tab 2.

[22] Frostiak Affidavit, para 34; Application Record, Tab 2.

[23] Frostiak Affidavit, para 35; Application Record, Tab 2 and Exhibit "B".

25. As at January 13, 2014, the Company owes current and former employees for unpaid wages and vacation pay and for termination pay in the following aggregate amounts: (i) wage arrears: $28,800.00; (ii) accrued and unused vacation pay: $67,812.12; and (iii) termination pay: $1,605,000.00. It is contemplated (and reflected in the projected cash flow statements discussed below) that the wage arrears and accrued and unused vacation pay amounts will be paid from the initial advance under the DIP Loan.[24]

26. The Company does not generate sales on which HST might be charged and so there is no required HST remittance. The Company does not maintain a pension for its employees. The Company is current on deductions from employee wages at source.[25]

SANDSTORM AGREEMENT

27. On September 18, 2012 Colossus and Colossus Brazil entered into the Sandstorm Agreement to sell life-of-mine refined precious metals to Sandstorm payable equal to 35% of the platinum, 35% of the palladium and 1.5% of the gold produced from the Serra Pelada Project, on production from the Serra Pelada Project. The initial term of the Sandstorm Agreement is 40 years, subject to successive 10 year renewals at the discretion of Sandstorm. Colossus Brazil received an upfront deposit of US $75 million from Sandstorm.[26]

28. Colossus Brazil has guaranteed certain minimum annual deliveries for the initial 10 year period of the Sandstorm Agreement, which were scheduled to commence

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[24] Frostiak Affidavit, para 36; Application Record, Tab 2.

[25] Frostiak Affidavit, para 37; Application Record, Tab 2.

[26] Frostiak Affidavit, paras 38-39; Application Record, Tab 2.

in 2013. In addition, if within 48 months of receiving the upfront deposit the Serra Pelada Project does not produce a minimum of 260,000 gold-equivalent ounces of payable metals over a period of 12 consecutive months, then Sandstorm, in its sole and unfettered discretion, has the option to require that Colossus Brazil refund to Sandstorm a pro-rata portion of the up-front deposit.[27]

29. Pursuant to the Sandstorm Agreement, the obligations of Colossus Brazil are secured by: (i) a first ranking charge and/or security interest registered in the Brazilian Registry of Deeds and Documents in, to and over all equipment, personal and moveable property owned by Colossus Brazil, located on, used at or in connection with the Serra Pelada Project, except for equipment subject to specific equipment leases or purchase financing agreements which prohibit the grant of encumbrances or prior ranking encumbrances thereon, and over the process facility and related components; (ii) a second ranking charge and/or security interest in, to and over all of the issued and outstanding share in the capital of SPCDM owned by Colossus Brazil; and (iii) a first ranking charge and/or security interests to and over "quotas" representing 99.9% of the capital stock of Colossus Brazil owned by Colossus (collectively, the "**Project Charges**").[28]

30. The Sandstorm Agreement provides that the Project Charges secure a portion of the upfront deposit to a maximum of US $10 million.[29]

31. Colossus has guaranteed the obligations of Colossus Brazil under the Sandstorm Agreement and has pledged to Sandstorm "quotas" representing 99.9% of the

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[27] Frostiak Affidavit, para 40; Application Record, Tab 2.

[28] Frostiak Affidavit, para 41; Application Record, Tab 2.

[29] Frostiak Affidavit, para 42; Application Record, Tab 2.

capital stock of Colossus Brazil as security for such guarantee pursuant to a Quota Pledge Agreement dated September 20, 2013.[30]

COLOSSUS' FINANCIAL POSITION AND CASH-FLOWS

32. As none of the Colossus Group's mineral properties are in production, the Colossus Group has no source of revenue. The Colossus Group has incurred significant recurring losses over the past three fiscal years.[31]

33. As at December 31, 2013, Colossus' cash balance was approximately $260,000.[32]

34. The Company's cash flow statement (the "**Cash Flow Statement**") that was prepared in support of the NOI filing estimates that for the period from January 10, 2014 to March 7, 2014, the Company will end with a cash deficit of CDN $4,131,815. As the Cash Flow Statement demonstrates, the Company's cash position is dire and it is in desperate need of financing.[33]

COLOSSUS GROUP'S FINANCIAL DIFFICULTIES

35. Colossus is facing a severe liquidity crisis, caused by, amongst other things, delays in bringing the Serra Pelada Project to commercial production and the Company's inability to raise capital in the financial markets.[34]

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30 Frostiak Affidavit, para 43; Application Record, Tab 2.

31 Frostiak Affidavit, para 46; Application Record, Tab 2.

32 Frostiak Affidavit, para 49; Application Record, Tab 2.

33 Frostiak Affidavit, para 72; Application Record, Tab 2.

34 Frostiak Affidavit, paras 50-54; Application Record, Tab 2.

36. On November 27, 2013 Colossus retained Dundee as financial advisor for the purpose of identifying financing opportunities and potential merger and acquisition partners.[35]

37. On December 31, 2013, the Company missed a scheduled interest payment of CDN $3.3 million due and payable on the Notes. Pursuant to the terms of the Trust Indenture, the failure to pay interest on the relevant interest payment date triggered an event of default at the close of business on January 10, 2014.[36]

38. The Company has limited cash on hand, it has exhausted its liquidity and presently has no ability to raise additional capital, and as such, Colossus has determined to file a NOI and enter into the DIP Term Sheet to restructure the Company.[37]

39. The Company does not have sufficient funds to meet its obligations or carry out its active business operations. Without financing,

(a) the Company is unable to pay amounts due to its employees for unpaid wages and accrued vacation pay (as described above);

(b) the Company and the Subsidiaries will not be able to continue their activities and, among other possible repercussions, risk losing their mining rights in Brazil;

(c) the underground infrastructure at the Serra Pelada Project requires constant dewatering, the absence of which will result in the accumulation

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35 Frostiak Affidavit, para 56; Application Record, Tab 2.

36 Frostiak Affidavit, para 70; Application Record, Tab 2.

37 Frostiak Affidavit, para 64; Application Record, Tab 2.

of significant amounts of water in the underground workings of the mine. In the absence of constant dewatering, it is anticipated that the underground infrastructure will be completely flooded within weeks. The inability of the Company to fund continued dewatering efforts at the property can cause significant degradation of the asset;

(d) the Colossus Group currently employs a large, full time presence of armed security guards to protect the assets located at the Serra Pelada Project. As noted above, construction of the infrastructure at the Serra Pelada Project is approximately 95% complete, with valuable buildings, vehicles and equipment located on site. The inability to pay for the services of a security company to safeguard the assets located at the Serra Pelada Project will likely result in vandalism, theft and damage to the physical assets on site;

(e) the Subsidiaries have recently laid of a significant portion of their workforce in connection with the move of the mine to a "care and maintenance" status. The Colossus Group continues to employ a group of core employees whose involvement is seen as critical to maintaining the value of its core asset, the Serra Pelada Project. Without sufficient financing the Colossus Group will be forced to lay-off its core employees and will suffer a significant loss of institutional knowledge at the Serra Pelada Project. The core employees include a team of multi-disciplinary professionals who have developed a database of scientific and technical information as a result of the Colossus Group's exploration and

development of the Serra Pelada Project over the years. If the Colossus Group is unable to pay the salaries of these key employees it will lose their collective body of experience. The loss of these key professionals will inhibit the ability of any future purchaser to continue with the development of the mine and production of minerals from the Serra Pelada Project; and

(f) the Serra Pelada Project is located in an underdeveloped and economically disadvantaged region of Brazil. Without financing, the closure of the mine and abrupt layoff of all employees has the potential to create a volatile situation which could cause both civil and political unrest in the surrounding communities and which could put the mining assets and mineral title to the Serra Pelada Project at risk.[38]

40. The Serra Pelada Project is presently operating on a "care and maintenance" basis with a reduced staff.[39]

DIP TERM SHEET & CHARGE

41. Prior to filing the NOI, the Company and Sandstorm and certain Noteholders engaged in discussions with respect to a possible alternative financing and restructuring transaction. Those discussions culminated in the execution by the Company, Sandstorm and certain Noteholders of a Summary of Indicative Terms and Conditions dated January 13, 2014 (**the "DIP Term Sheet"**). The execution of the DIP Term Sheet

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[38] Frostiak Affidavit, para 71; Application Record, Tab 2.

[39] Frostiak Affidavit, para 73; Application Record, Tab 2.

by the Company was expressly subject to approval of the Proposal Trustee and the Court.[40]

42. The DIP Term Sheet contemplates that Sandstorm and certain Noteholders (the "**Lenders**") will provide interim financing to the Company (the "**DIP Loan**") in the initial maximum amount of US $4 million to be advanced in accordance with forecast cash flow statements approved by the Proposal Trustee and accepted by the Lenders (with an option to increase the amount of availability under the DIP Loan by up to an additional US $6 million if the Lenders agree to and accept such additional commitments).[41]

43. It is a condition of the DIP Term Sheet that Sandstorm, in its capacity as collateral agent and acting on behalf of the Lenders, be granted a priority court-ordered charge on all the assets, rights, undertakings and properties of Colossus as security for amounts advanced under the DIP Loan (the "**DIP Charge**"), ranking ahead of all other charges other than the Administration Charge and the D&O Charge.[42]

44. The DIP Term Sheet also contemplates that the Company will pursue the SISP in tandem with a BIA proposal ("**BIA Proposal**") to seek to implement either an acceptable sale of its assets or a restructuring. The DIP Term Sheet sets out, in high level terms, the terms of a BIA Proposal that would see Colossus' debts converted to equity, with existing equity reduced to as low as 1.4% of the outstanding equity.[43]

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40 Frostiak Affidavit, para 74; Application Record, Tab 2.
41 Frostiak Affidavit, para 74; Application Record, Tab 2.
42 Frostiak Affidavit, para 77; Application Record, Tab 2.
43 Frostiak Affidavit, para 74; Application Record, Tab 2.

45. Amounts advance under the DIP Loan are intended to provide the Company with sufficient capital to fund its "care and maintenance" program at the Serra Pelada Project in order to preserve the value of the assets and to allow the Company to pursue a potential sale of the Serra Pelada Project or a restructuring of its affairs pursuant to a BIA Proposal.[44]

DUNDEE ENGAGEMENT LETTER & SISP

46. As set out above, Colossus anticipates conducting the SISP in conjunction with Dundee and under the supervision of the Proposal Trustee, over a six week period.[45]

47. The proposed SISP would provide a means for testing the market, gauging interest in the Company and/or its assets and determining whether a transaction is available that is more advantageous to the Company and its stakeholders than the BIA Proposal.[46]

48. It is contemplated that Dundee will continue as financial advisor and will be intimately involved in administering the SISP.[47]

49. It is intended that Dundee's engagement will continue on the terms as set out in the initial Engagement Letter. To ensure that Dundee will be entitled to receive the compensation it is entitled to under the Engagement Letter, the Company is seeking an order approving the Engagement Letter and directing that the amounts payable thereunder are not claims that may be compromised pursuant to BIA Proposal, any plan

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44 Frostiak Affidavit, para 76; Application Record, Tab 2.

45 Frostiak Affidavit, para 91; Application Record, Tab 2.

46 Frostiak Affidavit, para 92; Application Record, Tab 2.

47 Frostiak Affidavit, para 94; Application Record, Tab 2.

of arrangement or compromise ("**Plan**") filed by the Company under the *Companies' Creditors Arrangement*, R.S.C. 1985, c. C-36, as amended ("**CCAA**"), or any other restructuring, and that no such Plan, Proposal or restructuring shall be approved that does not provide for the payment of all amounts due to Dundee pursuant to the terms of the Engagement Letter.[48]

ADMINISTRATION CHARGE

50. The Company is seeking a charge on the assets, property and undertakings of Colossus in priority to all other charges in the maximum amount of CDN $300,000 (the "**Administration Charge**") to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company incurred in connection with services rendered to the Company both before and after the commencement of these BIA Proposal proceedings.[49]

51. Colossus believes that it is critical to the success of the SISP and the potential restructuring of the Company to have the Administration Charge in place to ensure that these insolvency professionals are protected with respect to their fees and disbursements. The professionals that are the beneficiaries of the Administration Charge have contributed, and continue to contribute, to the sale and restructuring of the Company.[50]

52. The Engagement Letter contemplates payment to Dundee of a success fee calculated as 5% of the amount of an Investment (as defined in the Engagement Letter)

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48 Frostiak Affidavit, para 95; Application Record, Tab 2.

49 Frostiak Affidavit, para 81; Application Record, Tab 2.

50 Frostiak Affidavit, para 82; Application Record, Tab 2.

and 2.5% of the transaction value of an Advisory Transaction (as defined in the Engagement Letter) (the "**Success Fee**"). There is no engagement fee or work fee contemplated.[51]

D&O INDEMNITY AND CHARGE

53. To ensure the ongoing stability of the Company during these BIA Proposal proceedings and to maximize the potential of a successful SISP or restructuring, Colossus requires the continued participation of its directors and officers.[52]

54. The directors and officers of Colossus have specialized expertise and relationships with suppliers, employees and other stakeholders, as well as knowledge gained throughout the lengthy development of the Serra Pelada Project, that cannot be replicated or replaced.[53]

55. The Company maintains directors' and officers' liability insurance (the "**D&O Insurance**") for its directors and officers. The current D&O Insurance policies provide a total of $50 million in primary and excess coverage. There are numerous exclusions and limitations of coverage which may leave the directors and officers without coverage under the D&O Insurance. The presence of a these exclusions and coverage limits create a degree of uncertainty with respect to whether the D&O Insurance will adequately cover potential claims.[54]

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51 Application Record, Tab 2N at p. 353.

52 Frostiak Affidavit, para 84; Application Record, Tab 2.

53 Frostiak Affidavit, para 85; Application Record, Tab 2.

54 Frostiak Affidavit, para 87; Application Record, Tab 2.

56. In addition, there are contractual indemnities which have been given by Colossus to its directors and officers. Colossus does not have sufficient funds to satisfy those indemnities should the directors and/or officers incur obligations and liabilities after the commencement of these proceedings.[55]

57. In light of the foregoing, the directors and officers of Colossus have indicated that, due to the exposure associated with these liabilities, they are not prepared to continue their service as directors and officers unless the court grants an order: (i) indemnifying them for obligations and liabilities that they may incur in their capacity as directors and officers of Colossus after commencement of these proceedings, and (ii) creating a charge on the assets of Colossus in the maximum amount of CDN $200,000 (the "**D&O Charge**"), as security for the aforesaid indemnity. The D&O Charge is proposed to rank behind the Administration Charge and ahead of the DIP Charge. The Lenders have consented to the DIP Charge.[56]

58. The amount of the cap on the D&O Charge of CDN $200,000 has been estimated by Colossus' board of directors in consultation with management, Colossus' legal counsel and the Proposal Trustee.[57]

COMPANY'S REQUEST FOR AN EXTENSION

59. The Company is seeking an extension to March 7, 2014 of the time to file a proposal to permit it to advance the SISP and the BIA Proposal described above. This represents a 23 day stay extension to the initial 30 day stay provided for in the BIA.[58]

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55 Frostiak Affidavit, para 88; Application Record, Tab 2.

56 Frostiak Affidavit, para 89; Application Record, Tab 2.

57 Frostiak Affidavit, para 90; Application Record, Tab 2.

60. Colossus has acted, and continues to act, in good faith and with due diligence in taking steps to facilitate either an acceptable sale or restructuring of its business. The Company requires the additional time afforded by the proposed stay extension to pursue the SISP and a potential BIA Proposal. The requested extension will allow the Company to return to court with a better understanding of the interest in the SISP and the potential outcome of the restructuring. The Company is not aware of any creditors who would be prejudiced by a stay extension.[59]

61. The Cash Flow Statement indicates that, should the court approve DIP Loan, the Company will have sufficient liquidity to continue to fund the "care and maintenance" of the Serra Pelada Project until the week ending March 7, 2014.[60]

62. Both the Lenders and the Proposal Trustee have indicated that they are supportive of the requested stay extension.[61]

PART III - ISSUES

63. The issues on this application are as follows:

(a) Should this Court approve the DIP Term Sheet and DIP Charge?

(b) Should this Court grant a priority Administration Charge?

(c) Should this Court approve the D&O indemnity and Charge?

(d) Should this Court approve the Dundee Engagement Letter and the SISP?

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58 Frostiak Affidavit, para 96; Application Record, Tab 2.

59 Frostiak Affidavit, para 97; Application Record, Tab 2.

60 Frostiak Affidavit, para 98; Application Record, Tab 2.

61 Frostiak Affidavit, para 99; Application Record, Tab 2. See also the first report of the Proposal Trustee, dated January 14, 2014 (the "**First Report**") at para 6.0(2).

(e) Should this Court extend the time within which a proposal must be filed with the Official Receiver under section 62(1) of the BIA?

PART IV - LAW AND ARGUMENT

A. COURT SHOULD APPROVE THE DIP TERM SHEET & DIP CHARGE

64. Colossus is seeking approval of the DIP Term Sheet and DIP Charge.

65. Section 50.6 of the BIA expressly authorizes the Court to approve interim financing and order a priority charge as security for amounts advanced to a debtor pursuant to said financing and provides, in part, as follows:

> ***50.6(1)*** *On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.*
>
> ***[..]***
>
> ***50.6(3)*** *The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.*[62]
>
> ***[..]***

66. Section 50.6(5) of the BIA sets out the factors to be considered by the Court in deciding whether to grant an order approving DIP financing and a DIP financing charge:

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[62] Section 50.6, *BIA*; Factum of the Applicant, Schedule B.

> ***50.6(5)*** *In deciding whether to make an order, the court is to consider, among other things,*
> *(a) the period during which the debtor is expected to be subject to proceedings under this Act;*
> *(b) how the debtor's business and financial affairs are to be managed during the proceedings*
> *(c) whether the debtor's management has the confidence of its major creditors;*
> *(d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;*
> *(e) the nature and value of the debtor's property;*
> *(f) whether any creditor would be materially prejudiced as a result of the security or charge; and*
> *(g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.*[63]

67. The following factors support the approval of the DIP Term Sheet and the DIP Charge:

(a) the period during which Colossus will be subject to BIA Proposal proceedings is currently unknown. The DIP Term Sheet contemplates a SISP of 6 weeks from the date of filing, with a BIA Proposal to be pursued in tandem with the SISP. The initial term of the DIP Loan is 12 weeks, subject to extension on terms satisfactory to the Lenders. The Company has sought an initial stay extension until March 7, 2014. As evidenced by the Cash Flow Statement, the amounts to be advanced to the Company as contemplated in the DIP Term Sheet are both necessary and sufficient to fund the Company's cash requirements until at least March 7, 2014. While it is too early to set a specific timeline for these proceedings, the Company intends on diligently pursuing both the SISP and the BIA Proposal with a view to maximizing value for its stakeholder in a timely fashion;

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[63] Section 50.6(5), *BIA*; Factum of the Applicant, Schedule B.

(b) the current management will continue to operate Colossus with a view to assisting with the proposed SISP and BIA Proposal to implement either an acceptable sale or restructuring of Colossus;

(c) the DIP Term Sheet was agreed to amongst the Company, certain Noteholders, and Sandstorm. The Notes represent the Company's largest debt obligation. Sandstorm has significant ongoing rights under the Sandstorm Agreement which are secured by, amongst things, a guarantee and pledge of Colossus' shareholdings in Colossus Brazil. The execution of the DIP Term Sheet by Sandstorm and certain Noteholders and their willingness to provide DIP financing to Colossus is an indication of their continued support of the Company's management;

(d) the DIP Term Sheet specifically provides for the development of a dual track plan that involves the pursuit of a sale transaction through the SISP in tandem with the pursuit of the BIA Proposal. It is clear from the Cash Flow Statement that, in the event that the DIP Term Sheet is not approved by the Court, the Company will be unable to fund the ongoing "care and maintenance" of the Serra Pelada Project. The failure to provide for the "care and maintenance" of the mine site could cause significant deterioration of the assets and seriously jeopardize the Company's ability to make a proposal to its creditors;

(e) in *Re OVG Inc.*,[64] the court recognized that all DIP financing coupled with a DIP financing charge will impact creditors' positions to some degree and potentially reduce the amount recoverable to them. However, the Court held that in the event that the debtor's business would close because of the failure to approve DIP financing and the DIP financing charge, on balance, the benefit to stakeholders of the proposed DIP facility significantly outweighs any prejudice to creditors. In the present matter, in the absence of DIP financing Colossus will have no choice but to lay-off all of its remaining employees and shutter the Serra Pelada Project. If the DIP Term Sheet and DIP Charge are not approved by the Court, Colossus will have insufficient liquidity to fund the "care and maintenance" of the Serra Pelada Project which will put the assets located on site in serious jeopardy; and

(f) the Proposal Trustee has indicated at paragraph 2.2(1) of the First Report that it is supportive of the DIP Term Sheet and the DIP Charge and recommends that the Court approve the Order sought by the Company.

68. It is proposed that the DIP Charge will rank subordinate in priority to Dell and GE, the existing registered secured creditors. The Company has notified Dell and GE of its application and has provided them with copies of its application record. The Company has also provided notice of the within proceedings to Sandstorm, the

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[64] *Re OVG Inc.*, 2013 ONSC 1794 at para 34 (Ont. S.C.J. [Comm. List]), Book of Authorities of the Applicant, Tab 1.

beneficiary of the Quota Pledge Agreement pursuant to which the Company has pledged to Sandstorm "quotas" representing 99.9% of the capital stock of Colossus Brazil.

B. COURT SHOULD GRANT THE ADMINISTRATION CHARGE

69. Colossus is seeking a first priority Administration Charge in the maximum amount of CDN $300,000 to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company, incurred in connection with services rendered to the Company both before and after the commencement of these BIA Proposal proceedings.

70. Section 64.2 of the BIA provides statutory jurisdiction to grant an administration charge and to grant super-priority status to such charge and states as follows:

> ***64.2(1)*** *On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of*
> *(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;*
> *(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and*
> *(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.*
>
> ***64.2(2)*** *The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.*[65]
> **[...]**

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[65] Section 64.2, *BIA*; Factum of the Applicant, Schedule B.

71. In the present matter, the Company respectfully submits that the proposed Administration Charge in favour of the proposed beneficiaries is supported by the following factors:

(a) the Company operates a complex business which includes a large scale mineral property/project in a remote location;

(b) the proposed beneficiaries will provide essential financial and legal services throughout these NOI proceedings and the continued participation of each of the insolvency professionals is critical to the success of the SISP and the potential restructuring of the Company;

(c) the Administration Charge is necessary to ensure that the proposed beneficiaries' fees and disbursements are protected; and

(d) the quantum of the proposed Administration Charge is reflective of the complexity of Colossus' business and is both fair and reasonable in the circumstances of these NOI proceedings.

72. It is proposed that the Administration Charge will rank subordinate in priority to GE and Dell, the existing secured creditors.

C. COURT SHOULD GRANT THE D&O INDEMNITY AND CHARGE

73. Colossus is seeking an order to indemnify its directors and officers for obligations and liabilities that they may incur as in their capacity as directors or officers of Colossus from and after the filing of the NOI, and creating a charge on the assets of Colossus in the maximum amount of CDN $200,000, as security for the potential

obligations and liabilities they may incur after the commencement of these proceedings. The D&O Charge is proposed to rank behind the Administration Charge and ahead of the DIP Charge.

74. Section 64.1 of the BIA expressly provides for the granting of directors' and officers' charge on a priority basis:

> ***64.1(1)*** *On application by a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.*
>
> ***64.1(2)*** *The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.*
>
> ***64.1(3)*** *The court may not make the order if in its opinion the person could obtain adequate indemnification insurance for the director or officer at a reasonable cost.*
>
> ***64.1(4)*** *The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.*[66]

75. The existing directors' and officers' insurance policies are inadequate in that they contain exclusions and limits which create a degree of uncertainty with respect to whether the policies will adequately cover potential claims. The draft Order provides that the directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance

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[66] Section 64.1, *BIA*; Factum of the Applicant, Schedule B.

policy, or to the extent that such coverage is insufficient to pay amounts indemnified under the current policy. In *Re Timminco Ltd.*[67] the Ontario Superior Court of Justice adopted a similar approach in its application of the equivalent provision in the CCAA,[68] and approved the limited D&O charge in favour of the directors and officers.

76. Section 11.51 of the CCAA is substantially similar to section 64.1 of the BIA and the Company submits that the jurisprudence under the CCAA provision should be applicable in interpreting section 64.1 of the BIA.[69]

77. In *Re Canwest Global Communications Corp.*, Pepall J. considered the purposes behind section 11.51 of the CCAA and stated:

> *"The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protection against liabilities they could incur during the restructuring: Re General Publishing Co. [(2003), 39 CBR (4th) 216)]. Retaining the current directors and officers of the applicants would avoid destabilization and would assist in the restructuring. The proposed charge would enable the applicants to keep the experienced board of directors supported by experienced senior management. The proposed Monitor believes that the charge is required and is reasonable in the circumstances and also observes that it will not cover all of the directors' and officers' liabilities in the worst case scenario. In all of the circumstances, I approved the request."*[70]

78. In the present matter, the Company submits that the D&O charge should be granted on the following basis:

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67 *Re Timminco Ltd.*, 2012 ONSC 106 at paras 33-36 (Ont. S.C.J. [Comm. List]), Book of Authorities of the Applicant, Tab 2.

68 Section 11.51, *CCAA*; Factum of the Applicant, Schedule B.

69 *Re Kitchener Frame Limited*, 2012 ONSC 234 at paras 45-47 (Ont. S.C.J. [Comm. List]), Book of Authorities of the Applicant, Tab 3.

70 *Re Canwest Global Communications Corp.*, (2009), 59 CBR (5th) 72 at para 48 (Ont. S.C.J. [Comm. List]), Book of Authorities of the Applicant, Tab 4.

(a) the Company's directors and officers have advised that, due to the potential for personal liability, they are unwilling to continue their services and involvement with the Company without the protection of the D&O Charge;

(b) the continued involvement of the current directors and officers is critical to a successful SISP or restructuring; and

(c) the Proposal Trustee has indicated at paragraphs 4.0(5) and 7.0 of the First Report that the D&O Charge is reasonable and that it is supportive of the relief sought by the Company.

79. It is proposed that the DIP Charge will rank subordinate in priority to Dell and GE, the existing registered secured creditors.

D. COURT SHOULD APPROVE THE SISP & THE DUNDEE ENGAGEMENT LETTER

80. Section 65.13 of the BIA provides statutory jurisdiction for the sale of the Company's assets outside of the ordinary course of business in the context of an NOI:

> ***65.13(1)*** *An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.*
>
> ***[…]***
>
> ***65.13(4)*** *In deciding whether to grant the authorization, the court is to consider, among other things,*
> *(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;*

> *(b) whether the trustee approved the process leading to the proposed sale or disposition;*
> *(c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;*
> *(d) the extent to which the creditors were consulted;*
> *(e) the effects of the proposed sale or disposition on the creditors and the other interested parties; and*
> *(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.*[71]

81. Given the Company's present financial position, the amount available under the DIP Loan, and the financial "runway" that it provides, the Company has only one chance at the SISP. The Company is seeking this Court's approval of the SISP at this time to ensure that the Court is aware and accepting of the proposed marketing process at an early stage.

82. The Company respectfully submits that the SISP will provide for a means of testing the market, gauging interest in the Company and/or its assets and determining whether a transaction is available that is more advantageous to the Company and its stakeholders than the BIA Proposal.

83. The implementation of the SISP is a condition of the DIP Term Sheet. The Proposal Trustee has indicated at paragraph 5.2 of the First Report that it supports the SISP. The SISP does not require that the Company accept the highest, best or any offer received (subject to the approval of the DIP agent) and this Court will retain its jurisdiction to approve any proposed sale under 65.13 of the BIA.

84. The SISP contemplates that Dundee will continue as financial advisor and will be intimately involved in administering the SISP. Dundee was selected by the

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[71] Section 65.13, *BIA*; Factum of the Applicant, Schedule B.

Company based, in part, on its knowledge of the Company and its experience in the mining industry and with assets of this nature. Dundee's experience and involvement with the Company and potential interested parties to date will be important to the success of the SISP, which is relatively short at six weeks in duration.

85. The Company is seeking the Court's approval of the Engagement Letter to ensure that Dundee will receive the compensation it is entitled to under the Engagement Letter, including the Success Fee, and that the amounts payable thereunder are not claims that may be compromised pursuant to BIA Proposal or other Plan.

86. The payment of a success fee by a debtor company to its financial advisors has been deemed appropriate in the context of a restructuring under the CCAA.[72] The experience with success fees under the CCAA is equally applicable to BIA Proposal proceedings. Such arrangements are particularly appropriate where a debtor company has no resources from which to pay financial advisory fees on any other basis.

87. The SISP, which includes Dundee's engagement, is reasonable and fair and will provide the highest likelihood of identifying a potential sale transaction involving the Serra Pelada Project.

88. The Proposal Trustee has indicated at paragraph 5.3(2) of the First Report that it is supportive of the Engagement Letter and the Success Fee.

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[72] *Re ¡Marketing Solutions Group*, 2013 ONSC 2223 at para 22 (Ont. S.C.J. [Comm. List]), Book of Authorities of the Applicant, Tab 5.

See also *Royal Bank of Canada v. Cow Harbour Construction Ltd.*, 2011 ABQB 96 at para 54 (Ont. S.C.J. [Comm. List]), Book of Authorities of the Applicant, Tab 6.

E. THE COURT SHOULD EXTEND THE TIME WITHIN WHICH A PROPOSAL MUST BE FILED

89. The Company filed its NOI on January 10, 2014 and is seeking to extend the time within which a proposal must be filed with the Official Receiver beyond the 30 day period provided for in section 50.4(8) of the BIA. The Company is seeking to extend the period to March 7, 2014 to permit it to pursue the SISP and the BIA Proposal to implement either an acceptable sale or restructuring.

90. The Court has authority to grant the requested extension under section 50.4(9) of the BIA, which states:

> ***50.4(9)*** *The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that*
> *(a) the insolvent person has acted, and is acting, in good faith and with due diligence,*
> *(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and*
> *(c) no creditor would be materially prejudiced if the extension being applied for were granted.*[73]

91. In reference to the above criteria, the Company respectfully submits that:

(a) the Company has acted, and is continuing to act, in good faith and with due diligence in taking steps to facilitate either an acceptable sale or restructuring of its business in an attempt to maximize value for all stakeholders;

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[73] Section 50.4(9), *BIA*; Factum of the Applicant, Schedule B.

(b) it is too early to determine whether or not the Company will be in a position to make a viable proposal to creditors; however, the Company requires the additional time afforded by the proposed stay extension to implement and pursue the SISP and a potential BIA Proposal;

(c) the Company's creditors will not be prejudiced by the requested extension, which will provide the Company with additional time to pursue the SISP and the BIA Proposal for the benefit of all creditors;

(d) should this Court approve the DIP Term Sheet, the Company will have sufficient cash-flow to continue to fund the "care and maintenance" of the Serra Pelada Project through the period ending March 7, 2014. An expiry date of March 7, 2014 will coincide well with the SISP timing and it is expected that the Company will have a much better sense around that time of the options available to it than it would at the expiry of the initial 30 day stay period provided for under the BIA; and

(e) the Proposal Trustee has indicated at paragraph 6.0(2) of the First Report that it is supportive of the requested extension.

F. URGENCY

92. As described above, the Company is facing a severe liquidity crisis.

93. As reflected in the Cash Flow Statement, at a maximum available credit of US $4 million the DIP Loan will provide sufficient liquidity to enable the Company to continue limited operations and to pursue this restructuring until the week ended March 7, 2014.

94. The relief sought by the Company is urgent in that the Company requires immediate access to the DIP Loan, and must commence the SISP without delay, if the restructuring of the Company's affairs is to progress in the timeframe presently available to it.

95. The stability provided for by the Administration Charge and the D&O Charge is of critical importance to facilitate a successful sale or restructuring of Colossus.

PART V - ORDER REQUESTED

96. The Company therefore requests an Order substantially in the form of the draft order attached at Tab 1A of the Company's application record.

97. **ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 15th day of January, 2014

Fasken Martineau DuMoulin LLP

Lawyers for Colossus Minerals Inc.

TAB A

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Re OVG Inc.*, 2013 ONSC 1794 (Ont. S.C.J. [Comm. List])

2. *Re Timminco Ltd.*, 2012 ONSC 106 (Ont. S.C.J. [Comm. List])

3. *Re Kitchener Frame Limited*, 2012 ONSC 234 (Ont. S.C.J. [Comm. List])

4. *Re Canwest Global Communications Corp.*, (2009), 59 CBR (5th) 72 (Ont. S.C.J. [Comm. List])

5. *Re ¡Marketing Solutions Group*, 2013 ONSC 2223 (Ont. S.C.J. [Comm. List])

6. *Royal Bank of Canada v. Cow Harbour Construction Ltd.*, 2011 ABQB 96 (Ont. S.C.J. [Comm. List]).

TAB B

SCHEDULE "B"
RELEVANT STATUTES

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

50.4 Notice of intention

(1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

(a) the insolvent person's intention to make a proposal,

(b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and

(c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,

and attaching thereto a copy of the consent referred to in paragraph (b).

[...]

Where assignment deemed to have been made

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

(b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

[...]

50.6 Order interim financing

(1) On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

[...]

Priority

(3) The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

[...]

Factors to be considered

(5) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the debtor is expected to be subject to proceedings under this Act;

(b) how the debtor's business and financial affairs are to be managed during the proceedings;

(c) whether the debtor's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;

(e) the nature and value of the debtor's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

62 Filing of proposal

(1) If a proposal is made in respect of an insolvent person, the trustee shall file with the official receiver a copy of the proposal and the prescribed statement of affairs.

[...]

64.1 Security or charge relating to director's indemnification

(1) On application by a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

Restriction - indemnification insurance

(3) The court may not make the order if in its opinion the person could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross

negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

64.2 Court may order a security or charge

(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

[...]

65.13 Restriction on disposition of assets

(1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Individuals

(2) In the case of an individual who is carrying on a business, the court may authorize the sale or disposition only if the assets were acquired for or used in relation to the business.

Notice to secured creditors

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(4) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the trustee approved the process leading to the proposed sale or disposition;

(c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[...]

***Companies' Creditors Arrangement Act*, R.S.C., c. C-36**

11.51 Security or charge relating to director's indemnification

(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction - indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Court File No. CV14-10401-00CL

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION OF COLOSSUS MINERALS INC., OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

Proceedings commenced in Toronto

FACTUM OF THE APPLICANT
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