

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, C. 57, AS AMENDED

AND

IN THE MATTER OF ELEVATION GOLD MINING CORPORATION,  
ECLIPSE GOLD MINING CORPORATION, GOLDEN VERTEX CORP.,  
and GOLDEN VERTEX (IDAHO) CORP.,

PETITIONERS

**APPLICATION RESPONSE**

**Application response of:** Patriot Gold Corp. ("**Patriot Gold**")

THIS IS A RESPONSE TO the Notice of Application of KSV Restructuring Inc. on behalf of the Petitioners filed the 28<sup>th</sup> day of January, 2025.

The application respondent estimates that the application will take 30 minutes.

**PART 1: ORDERS CONSENTED TO**

The application respondent consents to the granting of the orders set out in NONE of the paragraphs of Part 1 of the Notice of Application.

**PART 2: ORDERS OPPOSED**

Patriot Gold opposes the granting the orders set out in paragraphs 1(a)(ii), (iii), (iv) and 1(b) of Part 1 of the Notice of Application.

**PART 3: ORDERS ON WHICH NO POSITION IS TAKEN**

Patriot Gold takes no position on the granting of the orders set out in paragraph 1(a)(i) of Part 1 of the Notice of Application.

**PART 4: FACTUAL BASIS**

**Background**

1. Elevation Gold Mining Corporation's ("**Elevation**") principal operation was the production of gold and silver from the Moss Gold Mine (the "**Moss Mine**") owned by Golden Vertex Corp. ("**GVC**"). GVC is a company incorporated pursuant to the laws of the state of Arizona in the United States of America ("**US**"), and its assets and primary interest holders and creditors are in the US.

Affidavit #1 of Tim Swendseid, sworn July 29, 2024  
[**First Swendseid Affidavit**] at paras 7 and 18

2. On August 1, 2024, this Court (the "**Canadian Court**") granted the Petitioners and their subsidiaries protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**") in an initial order (the "**Initial Order**"). The Initial Order was amended and restated on August 12, 2024 (the "**ARIO**").

Order Made After Application, pronounced August 1, 2024  
Order Made After Application (Amended and Restated Initial Order),  
pronounced August 12, 2024

3. On September 16, 2024, the United States Bankruptcy Court for the District of Arizona (the "**US Court**") entered an order recognizing Canada as the Petitioners' centre of main interest, recognizing the proceeding before the Canadian Court (the "**Canadian Proceeding**") as a foreign main proceeding under chapter 15 of title 11 of the United States Code, affirming the Monitor as the appointed foreign representative of the Canadian Proceeding, and recognizing the Initial Order and ARIO in the US (the "**ARIO Recognition Order**").

Fifth Report of the Monitor, dated January 27, 2025 at Appendix "A"

4. Patriot Gold holds a royalty interest in certain minerals at the Moss Mine. Patriot Gold's royalty interest in the Moss Mine is the subject of motions (the "**Determination**

**Motions**) in the proceedings before the US Court (the **“US Proceedings”**). The Determination Motions were filed in the US Court on October 14, 2024. Patriot Gold’s position in the Determination Motions is that its royalty interest in the minerals at the Moss Mine (and the proceeds of such minerals) is a separate real property interest that is not owned by GVC.

Affidavit #1 of Hayley Roberts, made February 10, 2025  
at Exhibits “A” and “B” (the **“First Roberts Affidavit”**)

Affidavit #1 of Susan Danielisz, dated December 13, 2024 at Exhibit “B”

First Swendseid Affidavit at para 82

Affidavit #6 of Tim Swendseid, sworn December 3, 2024  
(the **“Sixth Swendseid Affidavit”**) at para 23

5. On November 18 and 19, 2024, an adversary proceeding was commenced to address the Determination Motions and Patriot Gold and Nomad Royalty Company Ltd. (**“Nomad”**) each filed an adversary complaint against the Petitioners for, among other things, a declaratory judgment regarding the respective royalty interests asserted by Patriot Gold and Nomad, an accounting, a constructive trust over all amounts owing to the respective royalty holders, conversion, and other relief (the **“Adversary Proceedings”**). Among other things, under applicable US law, if successful, these claims mean that certain assets of GVC derived from the production of minerals would not be assets of GVC, and would be the property of Patriot Gold and Nomad. The Adversary Proceedings remain pending before the US Court.

Affidavit #1 of Susan Danielisz, sworn December 13, 2024  
at Exhibits “A” and “B”

### **Sale Approval and Recognition**

6. The Petitioners, along with KSV Restructuring Inc. (in its capacity as Monitor of the Petitioners, the **“Monitor”**) and INFOR Financial Inc., as sales agent, conducted a sales process resulting in the execution of a final sale agreement amongst Elevation and EG Acquisition LLC (the **“Purchaser”**) on December 2, 2024 (the **“Sale Agreement”**). The sale was structured as a ‘reverse vesting’ transaction whereby, among other things, the Purchaser acquired all shares in GVC, and by extension, acquired the Moss Mine (the **“Transaction”**).

Sixth Swendseid Affidavit at paras 7–17

7. On December 17, 2024, the Canadian Court granted three orders:
  - (a) an order approving the Transaction (the **"Sale Approval Order"**);

Order Made After Application (Approval and Vesting Order),  
pronounced December 17, 2024
  - (b) an order permitting the Monitor to distribute the net proceeds of the Transaction after a 30-day holding period (the **"Distribution Order"**); and  

Order Made After Application (Distribution Order),  
pronounced December 17, 2024
  - (c) a sealing order, sealing the Confidential Affidavit #7 of Tim Swendseid, sworn December 3, 2024.

Sealing Order, pronounced December 17, 2024
  
8. On December 5, 2024, the Monitor filed a motion in the US Court seeking recognition of the Sale Approval Order and the Distribution Order that were anticipated to be granted by the Canadian Court, which was supplemented on December 20, 2024 with confirmation that the Sale Approval and Distribution Orders were granted by the Canadian Court (collectively, the **"US Sale Approval Motion"**).

Affidavit #2 of Susan Danielisz, dated February 11, 2025  
(the **"Second Danielisz Affidavit"**) at Exhibit "A"  
First Roberts Affidavit at Exhibit "C"
  
9. On December 23, 2024, Nomad and Patriot filed objections to the US Sale Approval Motion to ensure that any recognition of the US Court would adequately protect their interests as detailed in the Determination Motions pursuant to the direction of Justice Fitzpatrick in the Sale Approval Order. These objections were heard on December 23, 2024 (the **"December 23 Hearing"**).

First Roberts Affidavit at Exhibits "F", "G" and "H"
  
10. Between December 24 and December 27, 2024, the Monitor, Patriot, and Nomad exchanged proposed recognition orders and advanced submissions to the US Court on the proper content of any order recognizing the Sale Approval Order.

Second Danielisz Affidavit at Exhibits "B", "C", and "D"

11. On December 27, 2024, the parties appeared again before the US Court to advance their submissions on the content of the order to recognize the Sale Approval Order, and in particular the treatment of the claims by Patriot and Nomad to propriety interests in the royalties, to be determined in the Determination Motions (the “**December 27 Hearing**”).

First Roberts Affidavit at Exhibit “J”

12. On December 30, 2024, the US Court entered an order recognizing the Sale Approval Order in the US (the “**Sale Recognition Order**”).

Second Danielisz Affidavit at Exhibit “G”, paras 1–9

13. Pursuant to the Sale Agreement, the Transaction closed on December 31, 2024.

Sixth Swendseid Affidavit at Exhibit “A”

#### **The Priority of Claims in the GVC Residual Assets**

14. The Transaction contemplated the transfer to Elevation all of the “**GVC Residual Assets**”, which include:

- (a) all of GVC’s cash and cash equivalents, bank deposits, bank balances, and moneys in possession of banks, the Monitor, and other depositories;
- (b) any Accounts Receivable from Refinery (each as defined in the Fourth Report of the Monitor, dated December 3, 2024);
- (c) any deposits of GVC held in trust accounts to secure payment of the reasonable fees and disbursements of the Monitor, the Sales Agent, and any professional advisors of GVC, Elevation, or the Monitor.

Fourth Report of the Monitor, dated December 3, 2024 at para 3.3(3)(g)

Sale Agreement at s. 2.1.5

15. The Sale Approval Order contemplates claims in the GVC Residual Assets persist in the same priority as prior to the Transaction:

...all of GVC’s right, title and interest in and to the GVC Residual Assets shall vest absolutely and exclusively in the name of Elevation Gold and all Claims and Encumbrances attached to the GVC Residual Assets shall continue to attach to the GVC Residual Assets with the same nature and priority as they had immediately prior to their transfer

Order Made After Application (Approval and Vesting Order),  
pronounced December 17, 2024 at para 6(e)

16. Moreover, the Sale Approval Order specifically addresses Patriot's royalty claim:

Notwithstanding anything to the contrary in this Order, this Court specifically makes no finding as to whether the interests of Patriot or Nomad are interests in real property or in relation to the Adversary Claims, and any interests, rights, or related claims asserted by Patriot or Nomad against the Petitioners in the Adversary Claims shall not be affected by this Court's approval of the Sale Agreement or the Transaction, and shall be adjudicated in the Chapter 15 Court and, where appropriate, any other federal or state U.S. courts. This Order is without prejudice to the determination by the United States Bankruptcy Court for the District of Arizona of (i) whether the interests of Patriot or Nomad are interests in real property or (ii) the Adversary Claims, including with respect to the positions of all parties.

Order Made After Application (Approval and Vesting Order),  
pronounced December 17, 2024 at para 11

17. The Sale Recognition Order expressly adopted paragraph 11 of the Sale Approval Order by copying and pasting the entire paragraph into the Sale Recognition Order at para 5(a).

Second Danielisz Affidavit at Exhibit "G", para 5(a)

18. The Sale Recognition Order further provided at paragraph 5(b) that:

All "GVC Residual Assets" (as defined in the Canadian Sale Order) transferred from GVC to Elevation Gold under the Canadian Sale Order, including all pre-sale closing cash, accounts receivable, and rights to the proceeds from mineral extraction ... (iii) shall not be consumed, used, or distributed in any way by the Monitor or the Debtors pending order of this Court.

Second Danielisz Affidavit at Exhibit "G", para 5(b)

19. Patriot and Nomad's claims were further protected in paragraph 5(d)(ii) of the Sale Recognition Order:

The third party releases granted in the Canadian Orders shall not be recognized or effective in the United States with regard to: (i) the respective claims and interests of the Royalty Holders against GVC and/or the other Debtors with respect to property located within the United States; and (ii) any claims that the Royalty Holders may hold

or assert in the United States against any third parties, including, without limitation, the Debtors' directors, officers, employees, or any third party recipients of funds in which the Royalty Holders assert(ed) an interest.

[Emphasis added]

Second Danielisz Affidavit at Exhibit "G", para 5(d)

20. The Monitor now challenges this language at paragraph 5(b) of the Sale Recognition Order on the basis that the Sale Recognition Order prevents GVC from using the GVC Residual Assets for any purpose, including to defend the Determination Motions in the Adversary Proceedings and, as a result, the Petitioners must fund the litigation from the proceeds of the Transaction, which is prejudicial to Maverix as the Petitioners' senior secured creditor (the "**Monitor's Complaint**").

Notice of Application of KSV Restructuring Inc., dated January 28, 2025 at para 24

21. The Monitor's Complaint is not justified and seeks to circumvent the US Court's jurisdiction to grant the Sale Recognition Order.

#### **The Monitor's Complaint should be an appeal before the US Court**

22. The Monitor's Complaint regarding the Sale Recognition Order is seeking to vary an enforceable US order properly made in the Chapter 15 proceedings. Such relief must be sought before the appropriate US court.
23. There are four issues with bringing the Monitor's Complaint before this Court for determination.
24. First, the Monitor's Complaint was raised by the Monitor and Patriot before the US Court. The US Court considered the issue and expressly opined on the question.
25. Second, the Monitor has been inconsistent in its position regarding its position on the Monitor's Complaint, and this application is its latest attempt to change its position after such attempts were rejected by the US Court.
26. Third, to the extent there is any inconsistency, which there is not, the Monitor's Complaint is with respect to the US Court's recognition of the Sale Approval Order—the Sale Recognition Order—conflicting with the US Court's recognition of the ARIO—the

ARIO Recognition Order. This is a conflict amongst two recognition orders of the US Court, not a conflict between orders of the Canadian Court and US Court.

27. Fourth, the Monitor's Complaint pertains to claims of US creditors in US assets held by a US debtor over which the US Court expressly retained jurisdiction. These connections to the US cannot be overwhelmed by transferring the assets to Canada as part of the Transaction.

The Monitor's Complaint was squarely before and decided by the US Court

28. The Monitor's Complaint—the question of the preservation and priority of existing claims in the GVC Residual Assets—was explicitly before, and considered by, the US Court in making the Sale Recognition Order.
29. The Monitor, Patriot, and Nomad discussed and debated the Monitor's Complaint at length in front of the US Court at the December 23 Hearing.

First Roberts Affidavit at Exhibit "H", p. 520, line 6–p. 521, line 4; p. 521, lines 10–23; p. 522, line 16–p. 524, line 11; p. 525, line 8–p. 526, line 8; p. 529, lines 10–18; p. 530, line 20–p. 531, line 8; p. 533, line 2–p. 534, line 7; p. 535, lines 19–25; p. 537, line 14–p. 539, line 19

30. At the conclusion of the December 23 Hearing, the US Court ruled that it would grant the Sale Recognition Order, but only under conditions described at the hearing. Those conditions included:

That no asserted rights, claims or interests of the Royalty Holders under their respective royalty deeds or agreement will be altered or affected by the recognition order, including a reference to the same qualification contained in the Canadian Sale Order, and the pending Adversary Proceedings filed by the Royalty Holders would be unaffected and remain pending before this Court;

That the "GVC Residual Assets" transferred from GVC to Elevation under the Canadian Sale Order will be segregated and preserved pending this Court's determinations and orders regarding the Royalty Holders' claims and interests regarding such property.

[Emphasis added]

First Roberts Affidavit at Exhibit "H", p. 543, lines 8 – 11; p. 536, lines 14 – 17  
Second Danielisz Affidavit at Exhibit "G", para 5(b)



31. Further, at the December 27 Hearing, the US Court expressly considered further submissions from the parties concerning the contents of the Sale Recognition Order. In these submissions, the parties again discussed and debated the Monitor's Complaint exhaustively before the US Court.

First Roberts Affidavit at Exhibit "J", p. 565, line 2–22;  
p. 566, line 1–p. 569, line 24; p. 580, line 11–p. 597, line 8

32. Having heard the parties submissions on the contents and wording of the Sale Recognition Order, the US Court ultimately conclude that the order should read as follows:

All "GVC Residual Assets" (as defined in the Canadian Sale Order) transferred from GVC to Elevation Gold under the Canadian Sale Order, including all pre-sale closing cash, accounts receivable, and rights to proceeds from minerals extraction (i) shall remain subject to all of the respective asserted or potential claims and/or interests of the Royalty Holders, (ii) shall be segregated, preserved, and accounted for by the Monitor and the Debtors, and (iii) shall not be consumed, used, or disbursed in any way by the Monitor or the Debtors pending further order of this Court

Second Danielisz Affidavit at Exhibit "G", para 5(b)

33. The US Court's comments in the accompanying Minute Entry are illuminating, as they demonstrate that the issue of the Monitor's Complaint was expressly considered. Moreover, the US Court expressly permitted and required the Monitor to seek relief from the US Court if any adjustments were necessary:

The Royalty Holders claim ownership of, among other things, the GVC Residual Assets and assert that these funds must be preserved until their property right claims are resolved. Although initially disagreeing with this position, during a recent hearing counsel for the Monitor informed the Court that the Royalty Holders' concerns were misplaced because the Monitor acknowledges that no portion of the GVC Residual Assets will be distributed without this Court's prior approval. The Monitor's presentation was compelling, and the Court directed the parties to submit a form of order memorializing approval of the Canadian sale consistent with the agreed resolution of the GVC Residual Asset Issue.

While continually making the Court aware of the urgency in obtaining approval of the Canadian Order, the Monitor belatedly sought to change its position by claiming that approval of a general GVC Residual Asset set-aside would be inconsistent with the

Canadian Order. That is not this Court's intention. The Canadian Order approves the sale of Debtors' equity and provides for payment of expenses incurred up to the sale date and permits sale proceeds to be set aside for this purpose. The GVC Residual Assets will exist separate from this process. The Royalty Holders claim ownership of these funds based upon their assertion of Arizona property rights. The Court expresses no opinion as to the merits of these claims, but is committed to moving expeditiously to resolve them.

The Monitor now also claims that the requested asset set-aside is too broad because the Royalty Holders have not quantified their claims. During the most recent hearing, the Royalty Holders asserted a right to proceeds in an amount represented to be in excess of the projected funds that will comprise the GVC Residual Assets. At this late date, the Court cannot permit the Monitor to withdraw from its proposal regarding maintenance of the disputed funds. If the Monitor believes some adjustment is required after the closing of the Canadian sale, it can seek relief from this court.

Based upon the forgoing,

IT IS ORDERED, approving the Monitors request subject to the condition set forth in the order, entered by this court.

[Emphasis added]

First Roberts Affidavit at Exhibit "K"

34. The question that the Monitor is asking this Court to determine was expressly considered and opined on by the US Court. Before the US Court, the nature and priority of Patriot and Nomad's claims in the GVC Residual Assets was argued and decided—the US Court determined that the GVC Residual Assets should be set-aside until the claims of Patriot and Nomad are decided and not consumed in any way.
35. If the Monitor disagrees with the US Court's determination, the Monitor was entitled to seek direction as directed by Judge Ballinger, or to appeal the Sale Recognition Order under US procedure. It did neither, and relied upon the Sale Recognition Order to close the transaction, and now seeks to circumvent that order by coming before this Court instead.

*The Monitor is Changing its Position*

36. The Monitor has been inconsistent with its position regarding the nature and priority of claims in the GVC Residual Assets. This application is its latest attempt to change its

position as it determined the Sale Recognition Order granted by the US Court is not in its interests.

37. In its Supplement to the Monitor's Motion for Recognition and Enforcement of the Canadian Sale and Distribution Order, the Monitor admits that the GVC Residual Asset's may be subject to Patriot's royalty claim and such claim should persist in the Transaction:

GVC's Residual Assets, which include its cash, bank deposits, and accounts receivable are to be transferred to Elevation Gold subject to all existing liens and claims, including the senior liens of Maverix and whatever interests Patriot and Nomad might allege they have in those assets. Elevation Gold will also assume the Residual Liabilities which include liabilities owed to Maverix, obligations under a Finder's Fee Agreement described in schedule 1.1 of the Sale Agreement, and unsecured pre-filing creditor claims.

The completed transaction leaves GVC intact but for the Residual Assets transferred to Elevation Gold which will remain subject to all encumbrances, and the Residual Liabilities assumed by Elevation Gold. GVC retains the licenses and permits needed to operate the business, the Moss Mine, and assets used in the business. It also retains the agreements with Patriot and Nomad and the liabilities under those agreements pending the outcome of the determination process in this Court. As of the closing date, Patriot and Nomad will have whatever rights and claims they have today under those agreements, but those claims will be against a financially sound GVC, which will be free of more than \$32 million of secured debt owed to Maverix. Patriot and Nomad will also retain any interests they might allege they have in GVC's cash and receivables, and they can make those claims against Elevation Gold pursuant to the terms of the Distribution Order. The only impact on Patriot and Nomad will be the result of proceedings in this Court, which will determine the nature and extent of their interests.

[Emphasis added]

First Roberts Affidavit at Exhibit "C", p. 241, lines 16–28; p. 242, lines 1–5

38. Moreover, the Monitor made express representations at the December 23 Hearing regarding its intended uses of the funds, which it then tried to retreat from at the December 27 Hearing.
39. At the December 23 Hearing, counsel to the Monitor made a number of representations to the US Court with respect to the impact of the Sale Approval Order and its recognition

by the US Court on the rights and claims of Nomad and Patriot. In particular, counsel for the Monitor stated:

Now, this is the important part. The intention here is to have these assets, these cash assets [*i.e.*, the GVC Residual Assets], which we believe are subject to the senior lien of . . . Maverix, but we don't need to make that determination. The transfer of those assets to Elevation Gold will be held pending resolution of disputes.

Now, all they have to do, and they acknowledged this at the hearing last week in Canada. There was discussion about the distribution process and a notice period, where the monitor receives a notice, the Monitor cannot distribute, right? Patriot and Nomad said, both of them, that they intend to file just such a notice, and I would suspect what they're going to do is they're going to have a one-page notice stapled to the top of their adversary proceeding, and say, this is our claim. You can't distribute. And the Monitor will not distribute until Your Honor resolves the underlying dispute.

So I think what they're asking for and what Your Honor is sort of trying to reach for, in terms of what this is really about, is already there. It is already contemplated. No one is going to disperse those funds, absent a resolution of those underlying issues.

...

And I think Justice Fitzpatrick tried, and maybe not to everyone's satisfaction here, but she tried hard to make sure that the order she was issuing did not trample on their rights with respect to the nature of the interest in the real property, if any, or their right, if any, with respect to the liquid assets, if I can just call them that ... that are subject -- to their adversary proceedings.

Now, I'm happy to go into detail on any portion of that, but the other thing I would like to remind everyone of: We had a discussion about this one or two hearings ago, and I think Your Honor has touched on it here. Cash collateral, cash collateral, cash collateral. The fact of the matter is that with respect to cash collateral and adequate protection, Section 363 says the burden is on the creditor to establish their interest, and your honor has invited them to do that, invited some sort of provisional remedy to do that, and they have not done it.

The good news is that the Monitor is agreeing to give them a provisional remedy. All they need to do is provide a notice, and it will be held, and it won't go anywhere until your honor resolves the underlying dispute.

[Emphasis added]

First Roberts Affidavit at Exhibit "H", p. 534, line 22–p. 536, line 17

40. The Monitor changed its position at the December 27 Hearing, which the US Court was alive to:

MR. COLEMAN: Yea. So the problem we've got here is that GVC residual assets is really consists of the cash and the amounts receivable of GVC being transferred to Elevation Gold. ... our concern about this provision is that it in effect imposes the type of provisional remedy that they haven't sought and that Your Honor, going back two months ago, suggested to them, if they wanted to freeze assets, that they would have to seek a provisional remedy.

What we were trying to do, Your Honor, to try to close the gap a bit, provide them with protection to a point, but not to hamstringing this estate ....

THE COURT: That's not what you said last time.

First Roberts Affidavit at Exhibit "J", p. 565, lines 2–22

41. The US Court expressed its displeasure with this inconsistency in its December 30, 2024 Minute Entry:

The Royalty Holders claim ownership of, among other things, the GVC Residual Assets and assert that these funds must be preserved until their property right claims are resolved. Although initially disagreeing with this position, during a recent hearing counsel for the Monitor informed the Court that the Royalty Holders' concerns were misplaced because the Monitor acknowledges that no portion of the GVC Residual Assets will be distributed without this Court's prior approval. The Monitor's presentation was compelling, and the Court directed the parties to submit a form of order memorializing approval of the Canadian sale consistent with the agreed resolution of the GVC Residual Asset Issue.

While continually making the Court aware of the urgency in obtaining approval of the Canadian Order, the Monitor belatedly sought to change its position by claiming that approval of a general GVC Residual Asset set-aside would be inconsistent with the Canadian Order. That is not this Court's intention. The Canadian Order approves the sale of Debtors' equity and provides for payment of expenses incurred up to the sale date and permits sale proceeds to be set aside for this purpose. The GVC Residual Assets will exist separate from this process. The Royalty Holders claim ownership of these funds based upon their assertion of Arizona property rights. The Court expresses no opinion as to the merits of these claims, but is committed to moving expeditiously to resolve them.

The Monitor now also claims that the requested asset set-aside is too broad because the Royalty Holders have not quantified their claims. During the most recent hearing, the Royalty Holders asserted a right to proceeds in an amount represented to be in excess of the projected funds that will comprise the GVC Residual Assets. At this late date, the Court cannot permit the Monitor to withdraw from its proposal regarding maintenance of the disputed funds. If the Monitor believes some adjustment is required after the closing of the Canadian sale, it can seek relief from this court.

Based upon the forgoing,

IT IS ORDERED, approving the Monitors request subject to the condition set forth in the order, entered by this court.

[Emphasis added]

First Roberts Affidavit at Exhibit "K"

42. The Monitor cannot take inconsistent positions within the same proceedings, and this was squarely rejected by the US Court. Notwithstanding the preservation provided in the Sale Recognition Order, the Transaction was closed, and now, the Monitor seeks to circumvent the very order that was used to close the Transaction without appearing before the US Court.

*Any Inconsistency is Amongst Recognition Orders not Cross-Border Orders*

43. The Monitor's Complaint cannot be brought before the Canadian Court on the basis that the US Court made an order that is inconsistent with an order of the Canadian Court.
44. To the extent there is any inconsistency, which there is not, it would be an inconsistency between two US recognition orders—the US recognition of the ARIO that applied the court-ordered charges to US assets—the ARIO Recognition Order—and the US recognition of the Sale Approval Order—the Sale Recognition Order. That is not an inconsistency between a Canadian and US order.
45. Any question of inconsistencies between two US orders must be brought before the US Court. The Canadian Court has no jurisdiction to hear a question of consistency between two US orders.

The Monitor's Complaint pertains to US assets subject to US law

46. The US Court was the appropriate forum to determine the questions raised by the Monitor's Complaint. The necessity of the US Court determining the nature and priority of Nomad's and Patriot's claims to US assets has not been disputed in these proceedings. The Adversary Proceedings raise questions of US property law that are to be determined in accordance with US law. Patriot's claim has no connection to Canada, and the US Court expressly retained jurisdiction.

47. Moreover, the Sale Approval Order specifically orders, in respect of the real property claims by Patriot or Nomad, the Adversary Proceedings, and any interests, rights, or related claims asserted by Patriot or Nomad, that they:

11. ... shall be adjudicated in the Chapter 15 Court and, where appropriate, any other federal or state U.S. courts.

Order Made After Application (Approval and Vesting Order),  
pronounced December 17, 2024

48. This issue was then squarely put before the US Court. The US Court recognized that questions pertaining to these US assets were to be determined in the US. Specifically, at the December 23 Hearing the US Court noted that:

... what I read into the Madam Justice Fitzpatrick sort of is saying, listen, take your Arizona property and your Arizona rights to your Arizona bankruptcy court and decide them.... to the extent that it may lap over into Arizona property or Arizona property rights ... the Canadian law has no effect with respect to those things.

First Roberts Affidavit at Exhibit "H", p. 542, lines 21–24

49. At the December 27 Hearing, the US Court further noted that with respect to the claim of Patriot and Nomad, so long as they "arise out of or relate to Arizona law or Arizona property", they are matters that should be determined by the US Court.

First Roberts Affidavit at Exhibit "J", p. 561, lines 3–5, 16–18;  
p. 562, lines 1–4; p. 584, lines 10–11

50. The Monitor cannot circumvent this clear understanding of all parties by repatriating the GVC Residual Assets back to Canada and ignoring the clear language of the Sale Recognition Order. Patriot's claim in the GVC Residual Assets relate to proprietary

claims in US property, and their claims are rooted in Arizona proprietary laws, and the US Court has expressly retained jurisdiction and invited the Monitor to reappear if there was a concern.

### **The Cross Border Communication Protocol**

51. The Cross Border Communication Protocol (the “**Protocol**”) proposed by Monitor is unnecessary for the reasons proposed by the Monitor because, as previously discussed, there are no conflicting orders between the US Court and Canadian Court. With the Transaction closed, there is little to nothing left for the US Court to determine, other than resolve the outstanding Adversary Proceedings. Therefore, the Protocol is unnecessary at this stage of the proceedings.

### **The Monitor’s Fees and Activities**

52. The relief sought to approve the Monitor’s fees and activities ought to be adjourned.

### **PART 5: LEGAL BASIS**

53. Court intervention in CCAA proceedings must always be framed within the powers given to it by the legislation. The Court’s duty in cross-border proceedings is to protect the jurisdiction of all tribunals involved in international restructuring.

*White Birch Paper Holdings Company (Arrangement relative A),*  
2011 QCCS 5223 at para 21

54. This multi-jurisdictional insolvency process only works when there is mutual respect and deference to each court’s authority and process. This Court cannot, and should not, interfere with a US order or the US processes.

*Morguard Investments Ltd v De Savoye*, 1990 CanLII 29 (SCC) [**Morguard**]  
*Matlack Inc., Re* (2001), 2001 CanLII 28467 (ON SC)

55. Circumventing a decision of a US court by bringing a collateral attack in Canada is contrary to the object and purpose of the CCAA, and the principles of cooperation and comity provided for in the CCAA. Courts have repeatedly expressed the importance of comity and cooperation in cross-border insolvency proceedings.

*Hollander Sleep Products, LLC*, 2019 ONSC 3238 at para 41  
*Morguard*, at pp. 1096, 1102-03  
*ISSI Inc v Sassy Inc*, 2016 ONSC 557



**PART 6: MATERIALS TO BE RELIED ON**

1. Affidavit #1 of Tim Swendseid, sworn July 29, 2024;
2. Affidavit #6 of Tim Swendseid, sworn December 3, 2024;
3. Affidavit #1 of Susan Danielisz, sworn December 13, 2024;
4. Affidavit #1 of Haley Roberts, sworn February 10, 2025; and
5. Affidavit #2 of Susan Danielisz, sworn February 11, 2025.

The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is:

Respondent's address for service:

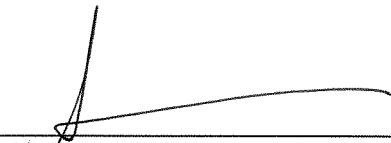
McCarthy Tétrault LLP  
Barristers & Solicitors  
Suite 2400, 745 Thurlow Street  
Vancouver, BC V6E 0C5

**Attention: H. Lance Williams  
Ashley Bowron**

Email address for service (if any):

lwilliams@mccarthy.ca  
abowron@mccarthy.ca

DATE: February 12, 2025

  
\_\_\_\_\_  
H. Lance Williams and Ashley Bowron  
Counsel for the Respondent,  
Patriot Gold Corp.