

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF LABRADOR IRON MINES HOLDINGS LIMITED, LABRADOR IRON MINES
LIMITED and SCHEFFERVILLE MINES INC. (the "Applicants")**

**FACTUM OF THE APPLICANTS
(Motion re: Stay Extension - Returnable September 30, 2016)**

September 29, 2016

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TO: THE SERVICE LIST

**ONTARIO
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ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

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MINES LIMITED and SCHEFFERVILLE MINES INC. (the "Applicants")**

**FACTUM OF THE APPLICANTS, LABRADOR IRON MINES LIMITED,
LABRADOR IRON MINES HOLDINGS LIMITED and SCHEFFERVILLE MINES INC.**

PART I. OVERVIEW

1. On this motion, the Applicants seek an extension of the Stay Period (as defined in the Initial Order at paragraph 15) to January 27, 2017, approval of the sale of certain surplus railcars (the "Railcars") and authority to distribute the proceeds of that sale, and an order sealing the complete and unredacted affidavit tendered in support of the Motion.

PART II. FACTS

2. The Applicants were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA") pursuant to an Initial Order of the Ontario Superior Court of Justice dated April 2, 2015.¹

¹ Initial Order of the Honourable Regional Senior Justice Morawetz dated April 2, 2015.

3. The Initial Order granted a stay of proceedings until May 1, 2015. The Court has since extended the Stay Period (as defined in paragraph 15 of the Initial Order) four times. Most recently, on June 30, 2016 the Stay Period was extended to September 30, 2016.²

A. *Progress Since the Last Stay Extension*

4. The Applicants have proceeded diligently during the time since June 30, 2016.

Their activities have included:

- (a) Maintaining the Company's business and assets on a care and maintenance basis, which includes carrying out statutorily required environmental monitoring, conducting water quality sampling and dealing with reporting and other regulatory requirements;
- (b) Continuing to engage with a machinery and equipment sales broker to sell the Company's surplus assets;
- (c) Undertaking, in consultation with the Monitor, the claims procedure pursuant to the Claims Procedure Order;
- (d) Continuing to refine a business plan to both maximize the revenue from an orderly sale of non-core assets and to preserve the value of the business after it emerges from CCAA protection;

² Affidavit of Richard Pinkerton sworn September 23, 2016 (the "Pinkerton Affidavit") at para. 4.

- (e) Completing a suspension agreement with one of its railway operators pending the resumption of its operations;
- (f) Continuing to develop a plan of compromise and arrangement (the "Plan");
- (g) Keeping employees, key vendors, significant creditors (including RBRG Trading (UK) Limited, SIPA and Grey Rock Services Inc.), local community leaders, government agencies, First Nations groups and other stakeholders apprised of developments in these proceedings;
- (h) Providing rail car repair and maintenance services at the facility of the Company's subsidiary in Sept-Îles;
- (i) Preparing a projection for the Company's Houston-Malcolm property;
- (j) Completing and filing its unaudited financial statements for the quarter ended June 30, 2016;
- (k) Convening its annual shareholders' meeting, held on September 20, 2016;
- (l) Relocating its head office premises; and

- (m) Making payments for goods and services received following the date of the Initial Order.³

5. In particular:

- (a) LIM has successfully concluded a suspension agreement with a major rail services provider which provides, among other things, for the suspension of LIM's obligations to contribute to future capital costs for railway maintenance and upgrades and for take-or-pay tariffs in respect to guaranteed minimum tonnage shipments. The agreed suspensions will continue until the resumption of mining operations and are without prejudice to the rail carrier's pre-filing claims. In consideration of these suspensions, LIM has waived certain prepaid credits against future rail tariffs.⁴
- (b) The Applicants have successfully negotiated an agreed resolution of all matters between the Applicants and the Sept-Îles Port Authority ("**SIPA**").⁵
 - (i) Labrador Iron Mines Holdings Limited ("**LIMH**") and Labrador Iron Mines Limited ("**LIM**") are parties to various agreements with the SIPA, in respect of the use of a multi user loading and docking facility, including a security agreement dated February 15, 2013,

³ Seventh Report of KSV Kofman Inc. as CCAA Monitor of Labrador Iron Mines Holdings Limited, Labrador Iron Mines Limited and Schefferville Mines Inc. (the "**Monitor's 7th Report**") at page 9.

⁴ Pinkerton Affidavit at para.23.

⁵ Pinkerton Affidavit at para. 24.

granting SIPA an interest in the Railcars, as security for certain obligations.⁶

- (ii) LIMH has been engaged in extensive negotiations with SIPA in pursuit of an agreed resolution of all matters between the Applicants and SIPA.
 - (iii) By agreement dated September 28, 2016, LIMH, LIM and SIPA (the "**SIPA Settlement Agreement**"), those entities have resolved all issues arising out of their agreements and these proceedings. Among other things, the SIPA Settlement Agreement calls for the remittance to SIPA of the net proceeds arising from the sale of the Railcars (discussed below) within two days of the closing of a transaction.⁷
- (c) The Applicants have been diligently working on a Plan that they anticipate filing in the very near future, and that will:
- (i) restructure the corporate and operating structure of the Applicants' business to preserve its assets and undertaking in a standby mode in the near term and allow time for the Applicants to continue their efforts to restructure their operating agreements with major service suppliers;

⁶ Pinkerton Affidavit at para. 16.

⁷ Supplementary Affidavit of Richard Pinkerton sworn September 28, 2016 (the "**Supplementary Pinkerton Affidavit**") at para. 6.

- (ii) position the Applicants to refinance an orderly resumption of their iron ore mining activities when economic conditions warrant;
- (iii) effect a compromise, settlement and payment of all proven claims in the near term; and
- (iv) grant releases in favour of the Applicants and others.⁸

6. The Plan will be put forward by the Applicants in the expectation that all creditors, stakeholders and other Persons with an economic interest in the Applicants and their business will derive a greater benefit from the implementation of the Plan than would result from a bankruptcy or immediate liquidation.⁹

B. Cash Flow

7. The Applicants have prepared a statement forecasting their cash flow for the period of the proposed stay extension. The Applicants are projected to have sufficient liquidity to fund the business activities and these proceedings through to July 31, 2015.¹⁰

C. SALE OF SURPLUS RAILCARS

8. To preserve cash resources to fund their reduced operations during these CCAA proceedings, the Applicants have pursued efforts to generate revenue from their existing operational assets through the provision of rail maintenance services at

⁸ Pinkerton Affidavit at para.27

⁹ Pinkerton Affidavit at para. 28

¹⁰ Monitor's 7th Report, pages 5-6, Appendix B.

the Applicants' facility in Sept-Îles, Québec, and by marketing for sale their surplus, non-core assets.¹¹

9. As detailed below, LIM undertook a process to sell the Railcars, which are surplus to the Applicants' current needs. Of the 99 Railcars, 67 are 36 years old and the remaining 32 units are 42 years old. The Railcars were formerly used to transport phosphate and coal and required modifications and upgrades in order to be suitable for LIM's requirements. Although LIM acquired the Railcars in 2012 as part of the purchase of a larger fleet of railcars, they were never used by LIM and have been idle for over three years. Many had been idle prior to LIM's purchase.¹²

10. Shortly after the Railcars were acquired LIM leased other railcars which were specifically designed and built to haul iron ore and consequently more suitable for LIM's requirements. As a result, the Railcars were no longer required for LIM's operations and are now surplus to LIM's requirements.¹³

11. The Railcars are presently located in a storage yard near Welland, Ontario owned by Trillium Railway Co. Ltd. ("**Trillium**"). Trillium is proposing to significantly increase the cost of storing the Railcars.¹⁴

12. LIM considered but ultimately determined that the Railcars would not be attractive to other rail operators for the following reasons:

¹¹ Pinkerton Affidavit at para. 5.

¹² Pinkerton Affidavit at para. 6.

¹³ Pinkerton Affidavit at para. 7.

¹⁴ Pinkerton Affidavit at para. 8.

- (a) **Further Modifications:** LIM's modifications to the Railcars were only partially completed at the time such work was suspended. It would have to be determined whether a possible buyer will require such modifications to be completed or the Railcars restored to their original condition;
- (b) **Obsolescence:** In the more than 30 years since the Railcars were manufactured, the rail industry has largely abandoned the use of steel railcars for the haulage of coal and other bulk products in favour of aluminum cars which are considerably lighter resulting in a greater haulage capacity and lower haulage costs;
- (c) **Roadworthiness:** Although the Railcars were roadworthy at the time they were delivered to Trillium's facility, they have been idle for over three years. A full inspection will be required and, if necessary, maintenance and repair work completed and certified before the Railcars could be moved off of Trillium's rail line. These requirements are contained in the Association of American Railroads Interchange Rules ("**AAR Rules**") which apply to all North American railway traffic. The resulting costs would offset any possible sale proceeds;
- (d) **Age:** The AAR Rules further require that any railcars which are more than 40 years old must be retired from service unless extensive (and

costly) repair and rebuilding work is carried out and certified in which latter event the cars may be used for up to a further 10 years; and

- (e) **Market Demand:** Market demand for the Railcars is extremely soft. The railway industry is experiencing a downturn in traffic volumes, specifically in bulk products such as coal. Currently, aluminum coal cars are in storage facilities throughout the US and these car types would be put back to service in preference to steel bulk cars. In fact, the Railcars were available for sale at the time LIM purchased them because they were surplus to the needs of the North American coal fleet.¹⁵

13. Based on the foregoing, the Applicants concluded that their ability to sell the Railcars was limited or non-existent. Moreover, if buyers could be found, the costs involved in getting the Railcars into a condition in which they could be moved to the buyer's specified delivery point would negatively impact (or possibly exceed) the sales proceeds to be received.¹⁶

14. As a result of the considerations described above, LIM concluded that a sale of the Railcars for their scrap value is the best alternative from a financial point of view. There is an active North American market for scrap steel. Prevailing prices for scrap steel are published regularly by the American Metal Market ("**AMM**"), a subscriber-based online and print provider of metal industry news and pricing information. The AMM publishes a monthly report of quoted scrap steel prices for various delivery

¹⁵ Pinkerton Affidavit at para. 9.

¹⁶ Pinkerton Affidavit at para. 10.

points throughout North America including (most importantly for LIM) Hamilton, Ontario. The AMM quoted price is often used as the benchmark for scrap steel dealers.¹⁷

15. The sale process undertaken by LIM for the sale of the Railcars entailed requests for quotations during the summer of 2016 to two scrap steel dealers. These dealers are the only ones located on the Trillium railway line in southwestern Ontario and they are located within a few kilometres of the present location of the Railcars.¹⁸

16. LIM did not seek quotations from scrap steel dealers which were located off the Trillium railway line to avoid to the costs of inspections and possibly repairs or upgrades potentially required to meet the certification requirements under the AAR Rules to permit the delivery to scrap dealers located on or near other rail lines.¹⁹

17. LIM's process for the sale of the Railcars resulted in two offers to purchase, and LIM selected the offer that will generate the highest net proceeds.²⁰

PART III. ISSUES

18. The issues to be determined on this motion are:

- (a) whether this court should grant an extension of the Stay Period, as requested;

¹⁷ Pinkerton Affidavit at para. 11.

¹⁸ Pinkerton Affidavit at para. 12.

¹⁹ Pinkerton Affidavit at para. 13.

²⁰ Pinkerton Affidavit at para. 14.

- (b) whether the court should authorize the sale of the Railcars and distribution of the net proceeds to SIPA; and,
- (c) whether the Court should seal the complete and unredacted Pinkerton Affidavit.

PART IV. LAW

A. EXTENSION OF THE STAY PERIOD

19. The Applicants are seeking an extension of the Stay Period to and including January 27, 2012.

20. In *Growthworks Canadian Fund Ltd., Re*, Justice Brown expressly recognized that a stay of proceedings is a key element of any CCAA process and that a stay affords a company breathing room in which to re-organize its affairs and compromise its obligations, or to divest assets to enable the business to operate under different ownership while generating funds to pay obligations or, in complex situations, to effect an orderly liquidation of the business enterprise.²¹

21. Pursuant to section 11.02(2) of the CCAA:

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that

²¹ *Growthworks Canadian Fund Ltd., Re*, 2014 ONSC 1856 (Ont Sup Ct / Commercial List) at para. 60.

might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.²²

22. For the Court to make an order under section 11.02(2) of the CCAA, it must be satisfied that (i) circumstances exist that make the order appropriate; and (ii) the applicant has acted, and is acting in good faith and with due diligence.²³

23. With respect to (i) above, Justice Deschamps, for the Court, stated in *Ted Leroy Trucking Ltd.*,

... Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA — avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.²⁴

24. The main purpose of the CCAA was succinctly described by Farley J. in *Lehndorff General Partner Ltd, Re*, where His Honour stated that "[t]he CCAA is intended to provide a structured environment for the negotiation of

²² CCAA, section 11.02(2)

²³ CCAA, section 11.02(3)

²⁴ *Ted Leroy Trucking Ltd., Re*, 2010 SCC 60 at para. 70.

compromises between a debtor company and its creditors for the benefit of both."²⁵

25. In *Pacific National Lease Holding Corp., Re*, Brenner J. (as he then was) provided a more thorough elaboration of the objectives of the CCAA:

(1) The purpose of the CCAA is to allow an insolvent company a reasonable period of time to reorganize its affairs and prepare and file a plan for its continued operation subject to the requisite approval of the creditors and court.

(2) The CCAA is intended to serve not only the company's creditors but also a broad constituency which includes the shareholders and employees.

(3) During the stay period, the Act is intended to prevent manoeuvres for positioning amongst the creditors of the company.

(4) The function of the court during the stay period is to play a supervisory role to preserve the status quo and to move the process along to the point where a compromise or arrangement is approved or it is evident that the attempt is doomed to failure.

(5) The status quo does not mean preservation of the relative pre-stay debt status of each creditor. Since the companies under CCAA orders continue to operate and having regard to the broad constituency of interests the Act is intended to serve, the preservation of the status quo is not intended to create a rigid freeze or relative pre-stay positions.

(6) The court has a broad discretion to apply these principles to the facts of the particular case.²⁶

²⁵ *Lehndorff General Partner Ltd., Re* (1993), 17 CBR (3d) 24 (Ont Gen Div / Commercial List) at para. 6.

²⁶ *Pacific National Lease Holding Corp., Re*, 11992] BCJ No 3070 (BC SC) at para. 26, aff'd (1992), 15 CBR (3d) 265 (BC CA)

26. In addition to furthering the purposes of the CCAA, the court must consider a number of other factors when deciding whether to grant an extension of a stay of proceedings. These factors include, *inter alia*, the nature of the debtor's business, the industry in which it operates, the stage of proceedings, whether there is any equity for the secured creditors, whether the secured creditors support the restructuring, the interests of other creditors, whether there is an ongoing business with trade creditors and employees, whether the monitor supports the extension, the debtor's progress during the previous stay period, whether the creditors will be prejudiced by the extension, and the comparative prejudice to the debtor, the creditors, and other stakeholders in not granting the extension.²⁷

27. The Applicants submit that it is appropriate in the circumstances for an order to be made extending the Stay Period to and including January 27, 2017 for the following reasons:

- (a) the Applicants have acted and continue to act in good faith and with due diligence in carrying out the terms of the Initial Order;
- (b) thus far, there has been no opposition to these proceedings;
- (c) the Applicants have made considerable progress in their negotiations with creditors to date and on the verge of filing a Plan;

²⁷ *Lehndorff*; *supra* para. 25 at paras. 7 and 8; *Dura Automotive Systems (Canada) Ltd., Re*, 2010 ONSC 1102 (Ont Sup Ct (Commercial List)) at paras. 9 and 24; *Worldspan*, *supra* para. 24 at para. 22; *Federal Gypsum Co., Re*, 2007 NSSC 347 at paras. 24-29

- (d) the Applicants' business, when operating, provides a needed source of revenue for the local communities;
- (e) the Applicants' creditors will not be materially prejudiced by an extension of the Stay Period; and
- (f) the Monitor recommends that the Stay Period be extended as requested.²⁸

B. Sale of the Railcars and Distribution

28. Subsection 36(1) of the CCAA authorizes a debtor company to sell its assets outside the ordinary course of business, provided it is authorized to do so by the Court:

36. (1) A debtor company in respect of which an order has been made under this Act 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.²⁹

29. The test for approval is not onerous. At common law, the factors to consider on a motion for approval are set out in the Ontario Court of Appeal decision of *Royal Bank v. Soundair Corp.*:

- (a) whether the [applicant] has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers are obtained.
- (d) whether there has been unfairness in the working out of the process.³⁰

²⁸ Monitor's 7th Report, page 11.

²⁹ *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 36(1).

³⁰ (1991), 4 O.R. (3d) 1 at para. 16.

30. Since the Court of Appeal's judgment in *Soundair*, Parliament has amended the CCAA in 2009 to codify the factors to be considered. Subsection 36(3) reads:

- (3) 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 monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor 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.³¹

31. These factors are not exhaustive, and this Court has continued to apply the principles set out in *Soundair* in combination with the statutory test in recognition of the substantial overlap between the common law and statutory factors.³²

32. A key consideration in applying these factors is the business judgment of the Monitor and the parties involved. It is well-established that absent a violation of the *Soundair* principles, courts should defer to the Monitor's business judgment in supporting a proposed sale.³³

1. The Sale Should be Approved

33. The Sale is consistent with the letter and spirit of section 36 of the CCAA:

- (a) it is the result of a reasonable, transparent and considered sale process;

³¹ CCAA, *supra* note 8, s. 36(3).

³² See e.g. *Re Target Canada Co.*, 2015 ONSC 2066 at para. 15 [Commercial List]; *Re Crate Marine Sales Ltd.*, 2015 ONSC 1062 at para. 25 [Commercial List].

³³ See e.g. *Soundair*, *supra* note 9 at para. 21; *Re Eddie Bauer of Canada Inc.* (2009), 57 C.B.R. (5th) 241 ("the Court should to the extent possible uphold the business judgment of the Court officer and the parties supporting it. Absent a violation of the *Soundair* principles, the result of that process should as well be upheld" at para. 22) (Ont. S.C.J. [Commercial List]).

- (b) the Monitor has approved both the process and the result;
- (c) SIPA, as secured creditor, does not oppose the Sale;
- (d) no creditors or other stakeholders will be prejudiced by the approval of the Sale—to the contrary, they stand to benefit from the avoided storage costs; and
- (e) the consideration to be received for the assets is fair and reasonable considering the condition of the Railcars, as verified by reference to an open, public market for scrap metal and the competing bid.

2. The Equipment should vest in the Buyer

34. Subsection 36(6) of the *CCAA* gives this Court authority to “authorize a sale or disposition free and clear of any security, charge or other restriction.”³⁴

35. The Offer contemplates that the Buyer will be provided with clear title to the Railcars. In these circumstances, a vesting order would further the progress of the Applicants’ restructuring efforts in accordance with the scheme of the *CCAA*.

C. The Sealing Order

36. Subsection 137(2) of the *Ontario Courts of Justice Act* gives courts a discretion to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.³⁵

³⁴ *CCAA*, *supra* note 8, s. 36(6).

³⁵ R.S.O. 1990, c. C.43, s. 137(2).

37. The test for the exercise of this discretion comes from the Supreme Court of Canada's judgment in *Sierra Club of Canada v. Canada (Minister of Finance)*.³⁶

Sealing orders should be granted where:

(a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and

(b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.³⁷

38. This test applies in the insolvency context.³⁸ Courts in insolvency proceedings have made sealing orders over confidential or commercially sensitive documents to protect the interests of debtors and other stakeholders.³⁹

39. The complete and unredacted Pinkerton Affidavit contains confidential and commercially sensitive information. If it is made public prior to the completion of the sale of the Applicants' rolling stock, it will materially prejudice LIM and the price at which that Equipment can be sold. This is an important interest that goes to the very purpose of CCAA protection, namely to facilitate financial rehabilitation of distressed companies, while maximizing recovery for creditors.

40. If granted, a Sealing Order will protect the commercial interests of LIM and its stakeholders. This salutary effect greatly outweighs the deleterious effects of inhibiting immediate public access to the details of the offers and appraisal filed in this motion

³⁶ 2002 SCC 41.

³⁷ *Ibid.* at para. 53.

³⁸ *Re Stelco Inc.* (2006), 17 C.B.R. (5th) 76 at para. 4 (Ont. S.C.J. [Commercial List]).

³⁹ See e.g. *Re Nortel Networks Inc.* (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J. [Commercial List]); *Re Hollinger Inc.*, 2011 ONCA 579.

PART V. RELIEF SOUGHT

41. The Applicants respectfully request that this Court order the relief sought in the form of a draft order to be provided at the hearing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29th day of September, 2016



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SCHEDULE "A" LIST OF AUTHORITIES

1. *Labrador Iron Mines Holdings Limited*, (April 2, 2015) Toronto CV-15-10926-00CL (Ont. S.C.J. [Commercial List])
2. *Growthworks Canadian Fund Ltd., Re*, 2014 ONSC 1856 (Commercial List)
3. *Ted Leroy Trucking Ltd., Re*, 2010 SCC 60
4. *Lehndorff General Partner Ltd., Re*, (1993) 17 CBR (3d) 24 (Commercial List)
5. *Pacific National Lease Holding Corp., Re*, [1992] BCJ 3070 (BC SC), aff'd (1992), 15 CBR (3d) 265 (BC CA)
6. *Dura Automotive Systems (Canada) Ltd., Re*, 2010 ONSC 1102 (Commercial List).
7. *Federal Gypsum Co., Re*, 2007 NSSC 347.
8. *Re Target Canada Co.*, 2015 ONSC 2066 (Commercial List)
9. *Re Crate Marine Sales Ltd.*, 2015 ONSC
10. *Re Eddie Bauer of Canada Inc.* (2009), 57 C.B.R. (5th) 241
11. *Re Stelco Inc.* (2006), 17 C.B.R. (5th) 76
12. *Re Nortel Networks Inc.* (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J. [Commercial List])
13. *Re Hollinger Inc.*, 2011 ONCA 579

SCHEDULE "B"

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

36 (1) A debtor company in respect of which an order has been made under this Act 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.

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

(3) 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 monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor 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.

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LABRADOR IRON MINES HOLDINGS LIMITED, LABRADOR IRON MINES LIMITED and SCHEFFERVILLE MINES INC.

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

PROCEEDING COMMENCED AT
TORONTO

**FACTUM OF THE APPLICANTS
(Motion re: Stay Extension
Returnable September 30, 2016)**

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