

**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  
(Claims Procedure Motion, Returnable April 18, 2016)**

April 8, 2016

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TO: THE SERVICE LIST

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**PART I. OVERVIEW**

1. On this motion, the Applicants seek an order, substantially in the form attached as Schedule "A" to the Notice of Motion ("the **"Claims Procedure Order"**"), approving a procedure for the identification and determination of claims against the Applicants (the **"Claims Procedure"**). Unless indicated otherwise, capitalized terms not defined herein have the same meaning as in the draft Claims Procedure Order.

**PART II. FACTS**

**A. Background**

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.<sup>1</sup>

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<sup>1</sup> Affidavit of Richard Pinkerton sworn April 7, 2016 ("Claims Procedure Affidavit") at para. 3, MR Tab 2,

3. The Applicants' protection from their creditors under the CCAA was extended from May 1, 2015 to June 30, 2016 pursuant to Orders of the Court dated April 30, July 27 and December 16, 2015.<sup>2</sup>

**B. Claims Procedure Order**

4. The Applicants are seeking to implement the Claims Procedure at this time to move forward with their restructuring efforts on a timely basis for the benefit of stakeholders generally.<sup>3</sup>

5. The proposed Claims Procedure will enable the Applicants to ascertain Claims that exist against the Applicants in order to assess what impact such Claims may have with respect to its restructuring and a plan of compromise and arrangement.

6. The Applicants have developed the proposed Claims Procedure with input from the Monitor and its counsel.<sup>4</sup>

7. The Claims Procedure has been designed to be comprehensive so that the Applicants, the Monitor and the Court can obtain a clear picture of the nature and full extent of the Claims that the Applicants may have to address in the context of their restructuring.<sup>5</sup>

8. The following Claims are excluded from the Claims Procedure:

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p. 61.

<sup>2</sup> Claims Procedure Affidavit at para. 3, MR Tab 2, p. 61.

<sup>3</sup> Claims Procedure Affidavit at para. 12, MR Tab 2, p. 63.

<sup>4</sup> Claims Procedure Affidavit at para. 13, MR Tab 2, p. 64.

<sup>5</sup> Claims Procedure Affidavit at para. 14, MR Tab 2, p. 64.

- (a) Claims secured by any of the Charges; and
- (b) any Claim of the Toronto Dominion Bank in connection with letters of credit deposited with the environmental authorities of the province of Newfoundland & Labrador as security for the fulfillment of the Applicants' site reclamation obligations under applicable environmental laws of such province.<sup>6</sup>

9. The proposed Claims Procedure contemplates a reverse claims process pursuant to which the Applicants, with the assistance of the Monitor, will prepare a schedule (the "**Claims Schedule**") containing a list of all known secured and unsecured Creditors (each a "**Scheduled Creditor**" and collectively the "**Scheduled Creditors**") with Claims against one or more of the Applicants showing the name, last known address, last known facsimile number, and last known email address of each Scheduled Creditor and the amount of each such Scheduled Creditor's Claim against the applicable Applicants as valued by the Applicants. Creditors need only assume an active role in the Claims Procedure in the event that their claim does not appear in the Claims Schedule, or in the event that they wish to dispute the valuation of their claim as shown in the Claim Schedule. The Applicants believe that this reverse claims model will be more efficient and consequently more cost effective.<sup>7</sup>

10. A Scheduled Creditor who wishes to dispute the Claim as set out in the Claims Package, shall deliver to the Monitor a Notice of Dispute of Claim which must be

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<sup>6</sup> Claims Procedure Affidavit at para. 14(i), MR Tab 2, p. 67.

<sup>7</sup> Claims Procedure Affidavit at paras. 14, 17, MR Tab 2, pp. 64-68.

received by the Monitor by no later than May 31, 2016 (the “**Claims Bar Date**”) specifying the details of the dispute with respect to its Claim, failing which such Scheduled Creditor shall be deemed to have accepted the valuation of Scheduled Creditor’s Claim and all of the Scheduled Creditor’s rights to dispute such Claim or to otherwise assert or pursue the same shall be forever extinguished and barred without further act or notification.<sup>8</sup>

11. The proposed Claims Procedure is set out in greater detail in paragraphs 14 to 17 of the Claims Procedure Affidavit.

### **PART III. ISSUE**

12. The sole issue to be determined on this motion is whether this court should approve the proposed Claims Procedure.

13. The Applicants submit that it is appropriate to approve the proposed Claims Procedure because:

- (a) doing so will assist the Applicants in identifying, quantifying and adjudicating claims against it in a timely manner for the benefit of creditors generally; and
- (b) the terms of the proposed Claims Procedure Order are appropriate, fair and reasonable.

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<sup>8</sup> Claims Procedure Affidavit at para. 14(d), MR Tab 2, p. 65.

## PART IV. LAW

### A. *Approval of the Claims Procedure*

14. Section 11 of the CCAA affords the Court the jurisdiction to make any order it considers appropriate in the circumstances.<sup>9</sup> This includes the ability to approve a process to solicit and determine claims against a debtor company.<sup>10</sup>

15. A claims procedure order assists the debtor in determining the universe of claims against it and provides greater certainty in that regard to assist the debtor and stakeholders in making informed choices about restructuring options.<sup>11</sup>

16. In *ScoZinc Ltd. (Re)*, the Nova Scotia Supreme Court observed that the “practice has arisen for the court to create by order a claims process that is both flexible and expeditious.”<sup>12</sup>

17. In this case, the proposed Claims Procedure accords with the Court’s discretion under the CCAA and meets the purpose of claims procedures generally. It is also flexible, expeditious and procedurally fair.

18. Creditors will receive ample notice of the Claims Procedure Order and the call for claims by way of:

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<sup>9</sup> CCAA, s. 11.

<sup>10</sup> *ScoZinc Ltd. (Re)*, 2009 NSSC 136 at para. 25, Applicants’ Book of Authorities (“BOA”) Tab 1.

<sup>11</sup> See *Timminco Limited (Re)*, 2014 ONSC 3393 at para. 43 (“[b]y establishing a claims-bar date, the debtor can determine the universe of claims and the potential distribution to creditors, and creditors are in a position to make an informed choice as to the alternatives presented to them”), BOA Tab 2.

<sup>12</sup> *Supra* at para. 23, BOA Tab 1.

- (a) broad notice in the Globe and Mail (National Edition, English), the Telegram (St. John's, Newfoundland, English) and Le Journal Nord-Côtier (Sept-Îles, Québec, French);<sup>13</sup>
- (b) a Claims Package from the Monitor, sent within 5 business days of the date of the Claims Procedure Order;<sup>14</sup> and
- (c) notice posted on the Monitor's website.<sup>15</sup>

19. Creditors will have adequate time to file their Claims. The Claims Bar Date provides 43 days after approval of the Claims Procedure Order (if it is approved on April 18, 2016), and notice will be published forthwith following approval of the Claims Procedure Order.<sup>16</sup> The Monitor agrees that the Claims Bar Date is reasonable and provides sufficient time for potential claimants to submit any Claims they may have.

20. The process for adjudicating disputed Claims is fair. Any creditor who disputes the Applicants' revision or disallowance of that person's Claim may file a Notice of Dispute.<sup>17</sup> In the event that the Applicants are unable to resolve the dispute, the Monitor is required to refer the dispute to the Court or a Claims Officer for adjudication.<sup>18</sup> The Claims Officer is not identified but will be selected with the Monitor's approval, with regard to the law governing the dispute, so as to minimize

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<sup>13</sup> Claims Procedure Affidavit at para. 14(b), MR Tab 2, p. 64.

<sup>14</sup> Claims Procedure Affidavit at para. 14(c), MR Tab 2, p. 65.

<sup>15</sup> Claims Procedure Affidavit at para. 14(e), MR Tab 2, p. 65.

<sup>16</sup> Claims Procedure Affidavit at paras. 14(b), (d), MR Tab 2, pp. 64-65.

<sup>17</sup> Claims Procedure Order at para. 28, MR Tab 1A, p. 25.

<sup>18</sup> Claims Procedure Affidavit at para. 14(j), MR Tab 2, p. 67.

expense. The draft order provides for detailed appeal routes from such a decision.<sup>19</sup> The appeal is to the CCAA judge while reserving the right of the Court to refer the matter elsewhere, with regard to the laws governing the dispute.<sup>20</sup> Section 17 of the CCAA provides that courts in other provinces shall act in aid of and be auxiliary to each other in all matters provided for by the CCAA.

21. The proposed Claims Procedure is also flexible. Claimants are permitted to submit claims electronically or via facsimile, personal delivery, courier or prepaid mail.<sup>21</sup>

22. As noted above, the Monitor will play an important role in the proposed Claims Procedure, which will ensure that all stakeholders will be treated reasonably and fairly.

### **B. Conclusion**

23. The Claims Procedure proposed by the Applicants is flexible and expeditious. It provides for fair, reasonable and appropriate deadlines and procedures for submitting claims. The Monitor is of the view that the Court should approve the proposed Claims Procedure.

24. For the foregoing reasons, it is respectfully submitted that the Claims Procedure should be approved.

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<sup>19</sup> Claims Procedure Order at para. 12, MR Tab 1A, p. 13.

<sup>20</sup> Claims Procedure Order at para. 12, MR Tab 1A, p. 13.

<sup>21</sup> Claims Procedure Order at para. 47, MR Tab 1A, p. 34.



**PART V. RELIEF SOUGHT**

25. The Applicants respectfully request that this Court make the requested Claims Procedure Order in the form of the proposed order included in the Applicant's motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8<sup>th</sup> day of April, 2016



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## SCHEDULE "A" – LIST OF AUTHORITIES

1. *ScoZinc Ltd. (Re)*, 2009 NSSC 136
2. *Timminco Limited (Re)*, 2014 ONSC 3393

## SCHEDULE "B" – RELEVANT LEGISLATION

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

General power of court

11. Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[...]

17 All courts that have jurisdiction under this Act and the officers of those courts shall act in aid of and be auxiliary to each other in all matters provided for in this Act, and an order of a court seeking aid with a request to another court shall be deemed sufficient to enable the latter court to exercise in regard to the matters directed by the order such jurisdiction as either the court that made the request or the court to which the request is made could exercise in regard to similar matters within their respective jurisdictions.

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