Court File No. CV-15-10926-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

FACTUM OF THE APPLICANTS

PART I. OVERVIEW

1. Labrador Iron Mines Holdings Limited, Labrador Iron Mines Limited, and Schefferville Mines Inc. (together, the "**Applicants**") were granted protection from their creditors under the Companies' Creditors Arrangement Act (the "**CCAA**") pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated April 2, 2015. KSV Kofman was appointed as monitor of the Applicants (the "**Monitor**") in these CCAA proceedings. The stay of proceedings contained in the Initial Order has been extended by this Honourable Court up to and including January 27, 2017 (the "**Stay Period**").

2. The Applicants bring a motion under the CCAA for an order:

   (a) authorizing the Applicants to file with the Court a plan of compromise and arrangement of the Applicants under the *Companies' Creditors Arrangement Act* (the "**CCAA**"); and

(b) authorizing and directing the Applicants to call a meeting of creditors to consider and vote upon the plan of compromise and arrangement filed by the Applicants, and related relief.

3. The relief sought is appropriate, having regard to the procedural nature of the relief being sought, the terms of the Plan and the interests of creditors, including the likely prospects in the absence of a successful restructuring.

4. Except where otherwise defined or indicated, all terms used but not defined herein have the meanings given to them in the Plan.

PART II. FACTS

A. Claims Process

5. The Applicants, with the assistance of the Monitor, carried out the claims procedure in accordance with the Claims Procedure Order. The claims bar date was May 31, 2016 ("**Claims Bar Date**"). Capitalized terms not otherwise defined in this section are as defined in the Claims Procedure Order.[1]

6. A total of 106 Claims were received or scheduled. The chart below, prepared by the Monitor, summarizes the Claims received prior to the Claims Bar Date.[2]

[1] Eighth Report of the Monitor at para 4.0-1.
[2] Eighth Report of the Monitor at para 4.0-2.

($000s)	LIMH	LIM	SMI	Total
Number of Claims	8	87	11	106
Scheduled Creditor Claims				
Notices of Claim	676	62,504	45	63,225
Increase claimed in Notices of Dispute	-	15,373	-	15,373
Total potential Scheduled Creditor Claims	676	77,877	45	78,598
Unscheduled Creditor Claims[3]	6,843	7,727	198	14,768
Potential Claims before Intercompany Claims	7,519	85,604	243	93,366
Intercompany Claims	-	268,955[4]	23,721	292,676
Total potential Claims	7,519	354,559	23,964	386,042

7. The Applicants' obligations are principally unsecured.[5]

8. The Intercompany Claims are largely the result of LIMH funding LIM's and SMI's operations.[6]

9. No Claims were filed against the Applicants' directors and officers.[7]

10. Of the total Claims filed, 44 Claims are under $5,000 (representing $75,600).[8]

11. There are no Disputed Claims in respect of LIMH or SMI.[9]

12. To date, six Notices of Revision or Disallowance have been issued in respect of Proofs of Claim filed against LIM, disallowing Claims totalling $3.7 million.

[3] Includes Restructuring Period Claims of approximately $186,000.
[4] Includes a Restructuring Period Claim of $2.4 million.
[5] Eighth Report of the Monitor at para 4.0-3.
[6] Eighth Report of the Monitor at para 4.0-4.
[7] Eighth Report of the Monitor at para 4.0-5
[8] Eighth Report of the Monitor at para 4.0-6.
[9] Eighth Report of the Monitor at para 4.0-7.

LIM is in discussions with two Creditors whose Claims account for $3.6 million of the $3.7 million in disputed claims.[10]

13. Of the 11 Claims made against SMI, nine of these Claims are against SMI exclusively, and they total only $243,000 (the "**SMI Only Claims**"). The balance are either Intercompany Claims or Claims against multiple Applicants. The SMI Only Claims, as a percentage of total claims against SMI, represent only 0.9%.[11]

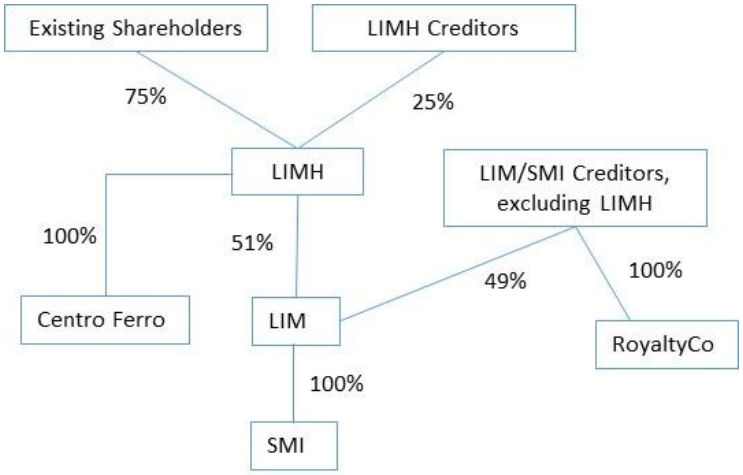
B. The Plan of Compromise and Arrangement

1. Overview

14. The principal purposes of the Plan are to convert the debts of the Applicants, other than Convenience Claims, into equity, so as to create an opportunity for future recovery. Creditors of LIMH will receive shares in LIMH, and creditors of LIM and SMI will receive shares in Amalgamated LIM and RoyaltyCo (a royalty company to be formed.[12]

15. Through a series of steps set out in the Plan, LIMH's ownership of SMI will be transferred to Amalgamated LIM and Amalgamated LIM will become the 100% shareholder of SMI. The following diagram summarizes the Applicants' organizational structure after Plan implementation:

[10] Eighth Report of the Monitor at para 4.0-9.
[11] Eighth Report of the Monitor at para 5.3-2.
[12] Eighth Report of the Monitor at para 5.1-1; Affidavit of John F. Kearney, sworn November 3, 2016, at para 25.



16. The Plan is intended to:

(a) significantly reduce the Applicants' indebtedness such that it will be in a position to raise financing when the iron ore market recovers;

(b) preserve LIM's and SMI's mineral claims, mining leases and surface leases in Newfoundland and Labrador and in Quebec;

(c) provide the Applicants the opportunity to resume its mining activities when iron ore prices stabilize;

(d) preserve a significant portion of the Applicants' tax losses;

(e) provide a settlement of, and consideration for, all Affected Claims;

(f) effect a release and discharge of all Affected Claims; and

(g) avoid a liquidation or reclamation of the Applicants' assets, which could result in no return to stakeholders.[13]

2. Treatment of Creditors

17. The Plan contemplates that creditors will receive compensation under the Plan as follows:

(a) Intercompany Claim. In consideration for its Intercompany Claims (which total approximately $292 million and any additional amounts secured by the Intercompany Charge), LIMH will have its existing shares of LIM diluted and reduced to approximately 51% of Amalgamated LIM's issued, post-Plan Implementation shares and the Intercompany Claims will be extinguished. Absent LIMH's agreement in this regard, LIMH would otherwise be entitled to recover significantly more than 51% of the Plan consideration. LIMH has also elected not to receive any shares of RoyaltyCo. The effect of these agreements is to materially increase recoveries for arm's-length creditors;[14]

(b) Affected Secured Creditors. Absent a Court Order or an agreement in writing between the Applicants and the Affected Secured Creditor, Affected Secured Creditors will be required to take possession of their collateral by a specified date, at a value agreed with the Applicants or as determined by the Court, and participate as an Affected Unsecured

[13] Eighth Report of the Monitor at para 5.1-2.
[14] Eighth Report of the Monitor at para 5.2-2.

Creditor for the balance of the claim. If an Affected Secured Creditor fails to take possession, it shall be deemed to participate as an Affected Unsecured Creditor. There are a very small number of Secured Creditors (principally RBRG, SIPA, and the mine camp lessor), and, as a practical matter, written agreements have been entered into with these creditors that supersede this provision.[15]

(c) Affected Unsecured Creditors of LIMH. Each of the eight Affected Unsecured Creditors of LIMH, excluding the four Convenience Creditors, will release and discharge LIMH in exchange for a Pro Rata Share of 25% of the post-Plan Implementation issued shares of LIMH, with no creditor receiving more than 19.9% of the shares;[16]

(d) Affected Unsecured Creditors of LIM and SMI. The Claims of each Affected Unsecured Creditor of LIM and SMI will be released and discharged and, in exchange, all Affected Unsecured Creditors of LIM and SMI (other than LIMH and Convenience Creditors) will receive their Pro Rata Share of the following:

(i) common shares of Amalgamated LIM representing approximately 49% of LIM's issued, post-Plan Implementation shares; and

[15] Eighth Report of the Monitor at para 5.3-3; Plan of Compromise and Arrangement, s 3.1.
[16] Eighth Report of the Monitor at para 5.2-2(d).

(ii) 100% of the shares of RoyaltyCo;[17]

(e) Convenience Creditors. Creditors with Affected Unsecured Claims that, in the aggregate: i) are less than or equal to $5,000; or ii) exceed $5,000, but elect to value their claims at $5,000 for both voting and distribution purposes under the Plan, are to receive a cash distribution of the lesser of their claim amount or $5,000 ("**Cash Elected Amount**").[18]

(f) Disputed Claims. Pursuant to Section 4.8 of the Plan, once a Disputed Distribution Claim against LIM or SMI becomes a Distribution Claim, the applicable Affected Unsecured Creditor is to receive the consideration provided for under the Plan.[19]

(g) Unaffected Claims. The Plan does not affect holders of the following Claims:

(i) Claims secured by the Administration Charge or the the Directors' Charge;

(ii) Claims in respect of the Applicants' site reclamation obligations to Newfoundland and Labrador;

(iii) Claims of the Toronto-Dominion Bank ("**TD**") in connection with letters of credit deposited with the environmental authorities of

[17] Eighth Report of the Monitor at para 5.2-2(a).
[18] Eighth Report of the Monitor at para 5.2-2(f).
[19] Eighth Report of the Monitor at para 5.6-1.

Newfoundland and Labrador as security for the Applicants' site reclamation obligations thereto, to the extent that TD holds cash collateral in respect of such letters of credit;

(iv) Claims of QNS&L in connection with Confidential Transportation Contract No. 001 between QNS&L and LIM executed on March 8, 2011, as amended; and

(v) Claims of TSH, other than TSH's Pre-Filing Claims, in connection with an agreement entitled "The Transportation by Rail of DSO Project Iron Ore on TSH Railway", as amended.[20]

(vi) Claims as set out in Schedule "E" of the Plan, including, among other things, post-filing claims for goods and services provided to the Applicants subsequent to the Initial Order, certain claims and post-filing claims of Her Majesty the Queen in Right of Canada or of any province or territory (e.g. for any source deductions), and Claims of senior management for post-filing deferred salary.[21]

3. Classification of Creditors and Voting

18. The Plan contemplates that there will be two classes of Affected Unsecured Creditors for purposes of voting and distributions:

[20] Eighth Report of the Monitor at para 5.7-1; Plan of Compromise and Arrangement, s 1.1, definition of "Excluded Claims".
[21] Eighth Report of the Monitor at para 5.7-2.

(a) A class consisting of Affected Unsecured Creditors of LIMH (the "**LIMH Class**"); and

(b) A class consisting of Affected Unsecured Creditors of LIM and SMI creditors, combined (the "**LIM/SMI Class**"), having regard to the insignificance of the SMI Only Claims, the commonality of consideration to be received under the Plan, as described above, and their common prospects in thee vent of a failed restructuring.[22]

19. The Plan provides for treatment of Affected Unsecured Claims for voting purposes as follows:

(a) As a related party, LIMH shall not be entitled to vote in favour of the Plan;[23]

(b) Affected Unsecured Creditors with Convenience Claims (including those who have elected to receive such treatment by filing a Convenience Claim Election by 5:00 p.m. at least one Business Day prior to any Meeting or adjourned Meeting, or deposit such Convenience Claim Election with the Chair at the Meeting before the vote (the "**Election/Proxy Deadline**"), shall be deemed to vote in favour of the Plan. In accordance with Article 4 of the Plan, those creditors shall be entitled to receive only cash distributions equivalent to the lesser of (i)

[22] Eighth Report of the Monitor at para 5.3-1- 5.3-2; Affidavit of John F. Kearney, sworn November 3, 2016, at paras. 9, 27(a); Plan of Compromise and Arrangement, s 3.1, 4.1(b), 4.2.
[23] Eighth Report of the Monitor at para 5.5-1(c).

the aggregate amount of their Voting Claims and (ii) $5,000, being the Cash Elected Amount;[24]

(c) Affected Unsecured Creditors who are not Convenience Creditors shall be entitled to vote their Voting Claims at the Meetings, within their respective class;[25]

20. Affected Unsecured Creditors with a Disputed Voting Claim will be entitled to vote on the Plan, and the Monitor is to keep a separate record of these votes and report to the Court with respect thereto at the motion for the Sanction Order, but the votes will not be counted, pending further order of the Court and the treatment of Disputed Voting Claims is not expected to materially affect the outcome of the Meetings;[26]

4. Releases Contemplated by the Plan

21. The Plan contemplates that, on the Plan Implementation Date, each Creditor will be deemed to forever release the Applicants, the Monitor and each of their present and former shareholders, officers, directors, employees, auditors, financial advisors, legal counsel and agents from any claims, obligations and the like that arose prior to the Plan Implementation Date.[27]

[24] Eighth Report of the Monitor at para 5.5-1(a).
[25] Eighth Report of the Monitor at para 5.5-1(b).
[26] Eighth Report of the Monitor at para 8.0-1(e).
[27] Eighth Report of the Monitor at para 5.4-1; Plan of Compromise and Arrangement, ss 7.5, 7.9.

5. Amendments to the Plan

22. Pursuant to Section 7.4 of the Plan, the Applicants may, with the consent of the Monitor, both prior to and during the Meeting or after the Meeting, amend the Plan, provided: (i) if made prior to or at the Meeting, such amendments are communicated to Affected Unsecured Creditors in the manner required by the Meetings Order (i.e. notice by mail, email or posting on the Monitor's website); and (ii) if made following the Meeting, such amendments are be approved by the Court following notice to the Affected Unsecured Creditors.[28]

6. Support for the Plan

23. In order for the Plan to be approved pursuant to the CCAA, the Plan must be approved by a numerical majority of Affected Unsecured Creditors in each of the two classes, representing at least two thirds in value of the Voting Claims of Affected Unsecured Creditors, in each case present and voting in person or by proxy on the resolution approving the Plan at the Meeting. The Applicants anticipate that they will have the requisite support from Affected Unsecured Creditors, both in number and dollar value, to approve the Plan.

24. Two of the Applicants' largest creditors are SIPA and RBRG.

25. SIPA has executed a settlement agreement with LIMH ("**SIPA Settlement Agreement**") pursuant to which, among other things, SIPA has agreed to compromise its debt and participate as a Convenience Creditor in the Plan.

[28] Eighth Report of the Monitor at para 5.8-1; Affidavit of John F. Kearney, sworn November 3, 2016, at paras 39-40.

Additional details of the SIPA Settlement Agreement can be found in the Monitor's 8th Report.[29]

26. Negotiations with RBRG, the Applicants' largest creditor apart from SIPA, in respect of its support for the Plan, are continuing in a meaningful way and are generally thought to be positive.[30]

7. Conditions Precedent to Plan Implementation

27. The conditions precedent to the Plan are set out in Section 7.6 of the Plan. The main conditions are:

(a) approval of the Plan by the requisite majorities of each class of Affected Unsecured Creditors;

(b) an order of the Court sanctioning the Plan shall have been made and shall have become a Final Order;

(c) completion of a series of corporate transactions, including an assignment by LIMH of the Intercompany Claims to subsidiaries of LIM and SMI, followed by an amalgamation of those entities, in order to preserve the Applicants' tax losses;

(d) execution of management services agreements between LIMH and LIM and between LIM and RoyaltyCo to provide management services and personnel as the parties deem necessary or advisable at actual cost

[29] Eighth Report of the Monitor at para 5.10.
[30] Eighth Report of the Monitor at para 5.9.

(including for management compensation), plus taxes. The Applicants have advised the Monitor that management compensation is to be largely consistent with their historical compensation;

(e) execution of a Royalty Agreement between RoyaltyCo and each of LIM and SMI pursuant to which LIM and SMI grant to RoyaltyCo the Royalty in respect of all Mineral Products (as defined therein) that may be produced from the Houston Project;

(f) constitution of the board of directors of LIM and RoyaltyCo, to be fixed at six directors, including three directors who are officers or directors of LIMH and three directors (initially nominated by LIMH) who are independent of LIMH; and

(g) all amounts owing to the Monitor, the Monitor's counsel and counsel to the Applicants shall have been paid.[31]

28. Apart from the first two conditions precedent, all of these conditions are within the control of the Applicants.

C. Implications of Plan Failure

29. In the event that the Plan is not implemented, recoveries to creditors are likely to be insignificant based on the liquidation value of the Applicants' mineral

[31] Eighth Report of the Monitor at para 5.12-1.

properties, or the potential commencement of reclamation processes by the relevant environmental regulatory authorities.[32]

30. The Monitor reports that the possible, and perhaps likely outcomes if the Plan is not implemented, includes the following:

(a) The Applicants' Board of Directors and management team would resign;

(b) The stay of proceedings would be terminated; however, there is no certainty that a bankruptcy or other form of liquidation proceeding would necessarily follow as a Trustee in Bankruptcy or other Court officer may not be prepared to assume the environmental and other risks associated with taking possession of the Applicants' assets;

(c) The amount of the claims against each of LIMH, LIM and SMI would increase substantially:

(d) LIMH's claims against LIM and SMI would exceed $290 million (all other claims presently total approximately $74 million, excluding Disputed Claims);

(e) QNS&L and TSH, the two railways, may assert take-or-pay and other claims against LIM as their settlements as referenced above in Section 5.7 1. d) would not be completed. (Their settlements preserve their rights to do so if a Plan is not implemented.) These claims, particularly

[32] Eighth Report of the Monitor at para 5.13-1.

those of QNS&L, could exceed $100 million based on the duration and other terms of its contract;

(f) SIPA may assert claims against LIMH pursuant to the SIPA Agreement;

(g) Regulatory authorities could make claims for closure and rehabilitation costs;

(h) RBRG could assert claims of $48 million or more (the amount of the Notice of Dispute it initially submitted) against each of LIMH, LIM and SMI;

(i) There is a significant possibility that LIM's and SMI's mining claims and leases would be forfeited to the provinces of Newfoundland and Labrador and of Quebec as the Applicants would be unable to meet their regulatory and statutory obligations. In the alternative, those interests would be monetized, if saleable, with the majority of the proceeds being distributed to the largest creditors (likely LIMH, QNS&L, RBRG and SIPA);

(j) A further claims process would be necessary before proceeds, if any, could be distributed to creditors; and

(k) Remaining cash on hand, if any, net of professional and administrative costs, would be distributed to creditors according to priorities. Any further recoveries are likely to be negligible.[33]

D. Creditors' Meetings

31. The Meetings shall be held in accordance with the Plan and the Meeting Order. Capitalized terms not defined in this section shall have the same meaning ascribed to them in the Meeting Order.

32. The Meeting Order provides as follows:

(a) The meetings of Affected Unsecured Creditors of LIMH and of LIM/SMI are to be held at 10:00 a.m. EDT and 11:00 a.m. EDT, respectively, on December 6, 2016 at the offices of the Applicants' counsel, Paliare Roland Rosenberg Rothstein LLP, 155 Wellington Street West, 35th floor, Toronto Ontario;

(b) An officer of the Monitor or a person designated by the Monitor shall preside as the chairperson of the Meetings;

(c) The only Persons entitled to attend the Meetings are those persons, including the holders of proxies, entitled to vote at the Meetings and their legal counsel and financial advisors, as well as representatives of the Applicants, the Monitor, and their legal counsel. Any other Person may

[33] Eighth Report of the Monitor at para 5.13-2; Affidavit of John F. Kearney, sworn November 3, 2016, at para 35.

be admitted to the Meetings on invitation of the chairperson or the Applicants;

(d) For purposes of voting at the Meetings, each Affected Unsecured Creditor of each class shall be entitled to one vote as a member of that class equal to the dollar value of its respective Voting Claim. Convenience Creditors shall be deemed to vote in favour of the Plan. LIMH shall not be entitled to vote in favour of the Plan in respect of the Intercompany Claims;

(e) To vote at the Meetings, one must be an Affected Unsecured Creditor with a Voting Claim or a Disputed Voting Claim, or such Affected Unsecured Creditor's representative. Any votes cast in respect of Disputed Voting Claims will not be counted for any purpose, unless, until and only to the extent that such Disputed Voting Claim is finally determined to be a Voting Claim. The Monitor is to keep a separate record of votes cast by Affected Unsecured Creditors holding Disputed Voting Claims and shall report to the Court with respect thereto at the motion for the Sanction Order;

(f) Any creditor who wishes to appoint a proxy shall do so by the Election/Proxy Deadline; and

(g) The Meetings may be adjourned to such date, time and place as may be designated by the Monitor if, among other things, prior to or during the

Meetings, the Monitor, in consultation with the Applicants, decides to adjourn such Meeting.[34]

33. The Monitor will send to all known creditors the materials provided in Schedules "A" to "C" of the Meeting Order, including the Notice of Meeting ("**Notice**"), form of Proxy for Affected Unsecured Creditors and Convenience Claim Election Form. The Monitor will also provide creditors with a copy of the Plan, the Meeting Order, the Plan Affidavit and the Plan Report.[35]

34. Within four business days following the date of the Meeting Order, if issued, the Monitor will arrange for the Notice to be published once in each of *The Globe and Mail* (National Edition), *The Telegram* (St. John's, NL; English) and *Le Journal Nord-Côtie*r (Sept-Îles, Québec; French), with the latter two publications being in the region close to the Applicants' vendors.[36]

35. The Monitor is of the view that the Meetings should allow for the Applicants' creditors to fairly express their intention in terms of whether or not to accept the Plan.[37]

[34] Eighth Report of the Monitor at para 8.0-1; Affidavit of John F. Kearney, sworn November 3, 2016, at paras 42-45.
[35] Eighth Report of the Monitor at para 8.0-2.
[36] Eighth Report of the Monitor at para 8.0-3; Affidavit of John F. Kearney, sworn November 3, 2016, at para 41.
[37] Eighth Report of the Monitor at para 8.0-4.

E. Court Approval

36. If the Plan is accepted by the requisite majorities of creditors, the Applicants have requested the Court's authorization to file a motion for the issuance of a Sanction Order for the sanction and approval of the Plan.

37. The Monitor intends to file a report to Court shortly following the Meeting, which will include the voting results of the Meeting and the Monitor's recommendation to the Court on the sanctioning of the Plan.

38. If sanctioned by the Court, it is contemplated that the Plan will be implemented immediately thereafter.

PART III. ISSUES AND ARGUMENT

39. The issue on this motion is whether this Honourable Court should allow the Applicants to file the Plan and grant the meeting order requested.

40. Broadly, this calls for a consideration of:

(a) the Court's jurisdiction;

(b) whether there is a basis to conclude that the Plan has no reasonable chance of success.

(c) The propriety of the classification of creditors contemplated by the Plan.

A. This Court has jurisdiction to grant the Meeting Order

41. Section 4 of the CCAA expressly contemplates the calling of a meeting of the unsecured creditors of a company to consider and vote on a plan proposing a compromise of the claims of those creditors:

> Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors and, if the court so determines, of the shareholders or the company to be summoned in such manner as the court directs.[38]

B. There is no basis to conclude that the Plan has no reasonable chance of success.

42. The threshold to be satisfied in order to file a plan and call a meeting of creditors is low. As the Ontario Court of Appeal held in *Nova Metal Products*, the feasibility of a plan is a relevant and significant factor to be considered in determining whether to order a meeting of creditors. However, the Court should not impose a heavy burden on a debtor company to establish the likelihood of ultimate success at the outset.[39]

43. The CCAA court should not second guess the probability of success of a proposed plan of arrangement if a creditor meeting is held. The court should order a meeting of creditors unless there is no hope that the plan will be approved by the creditors or, if approved, the plan would not for some other reason be approved by the

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[38] *Companies' Creditors Arrangement Act,* RSC 1985, c C-36, s 4 [*CCAA*].
[39] *Nova Metal Products Inc v Comiskey (Trustee of)* (1990), 1990 CarswellOnt 139 at para 90, 41 OAC 282 (CA).

court.[40] The Court will not approve a proposed meeting order if there is no reasonable chance of success.[41]

44. Thus, in *Federal Gypsum*, the Nova Scotia court ordered a meeting of creditors, dismissing the objections of two creditors who disputed their classification for voting purposes. The court confirmed that the threshold for approving a plan to be presented at a meeting of creditors is "low." The fact that certain creditors may indicate that they are objecting to the debtor's plan or do not intend to support it is not sufficient to prevent the debtor company from placing the plan before all of the creditors at a meeting.[42]

45. This Court has described the granting of a meeting order as an essentially "procedural step" that does not engage considerations of whether the debtor's plan is fair and reasonable.[43] Therefore, unless it is abundantly clear that the plan will not be approved by its creditors, the debtor company is entitled to put its plan before those creditors and to allow the creditors to exercise their business judgment in determining whether to support or reject it.

46. A refusal to summon a creditors' meeting often is attributable to the Court's determination that (a) the plan of arrangement is contrary to the creditors' interests;

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[40] *Re ScoZinc,* 2009 NSSC 163 at para 7.
[41] *Target Canada Co, Re,* 2016 ONSC 316, at paras 68-69.
[42] *Re Federal Gypsum Co,* 2007 NSSC 384 at para 12.
[43] See, for example, *Re Jaguar Mining Inc,* 2014 ONSC 494 at para 48.

(b) it is doomed to failure due to a lack of creditor support; or (c) there is no reasonable chance the debtor will be able to continue in business.[44]

47. None of the above factors warranting the Court's refusal of the filing of the Plan and the holding of the Meeting are present in this case. Here,

(a) the Plan is in the best economic interest of Affected Unsecured Creditors, as they will receive pro-rata distributions and derive a greater benefit from the Plan than from any other alternative;

(b) the Plan is not doomed to failure, particularly as the Plan has been developed in consultation with major stakeholders; and

(c) the Plan provides an opportunity for the continuation of the Applicants' business operations.

48. The Plan is feasible and there is a reasonable prospect for success at a vote of the Affected Unsecured Creditors as a result of the creditor consultation set out above.

49. The Meeting Order and the draft Plan have been developed in consultation with, and have the support of, the Monitor.

50. The Monitor has opined in its Eighth Report that granting the Meeting Order at this time is appropriate and fair and reasonable in the circumstances.

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[44] *Kerr Interior Systems Ltd, Re,* 2011 ABQB 214 at para 29.

C. The Creditors are appropriately classified for voting purposes

51. Section 22(1) of the CCAA provides that:

> A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to a company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.[45]

52. Section 22(2) of the CCAA sets out the factors that are to be taken into account in placing creditors in the same class. Creditors may be included in the same class if their interests are sufficiently similar to give them a commonality of interest, taking into account, among other things, the nature of the debts, liabilities or obligations giving rise to their claims, as well as the remedies available to those creditors in the absence of the compromise or arrangement being sanctioned and the extent to which those creditors would recover their claims by exercising those remedies.[46]

53. These criteria, which were added as part of the 2009 amendments to the CCAA, codify factors considered in case law pre-dating these amendments. Under this case law, it is well-established that the starting point when considering classification of creditors must be the objectives of the CCAA and its purpose of facilitating the restructuring of debtor companies. This purpose must be considered at every stage of the proceeding, including classification.[47]

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[45] *CCAA,* s 22(1).
[46] *CCAA,* s 22(2).
[47] *Re SemCanada Crude Co,* 2009 ABQB 490 at para 16, citing *Re Canadian Airlines Corp,* 2000 ABQB 442 at para 95 [*Canadian Airlines 1*], leave to appeal to CA refused, 2000 ABCA 238, aff'd 2001 ABCA 9, leave to appeal to SCC refused, 2001 CarswellAlta 888.

54. In *Canadian Airlines,* Paperny J., as she then was, summarized the principles applicable to the classification of creditors as follows:

> In summary, the cases establish the following principles applicable to assessing commonality of interest:
>
> 1. Commonality of interest should be viewed on the basis of the non-fragmentation test, not on an identity of interest test;
>
> 2. The interests to be considered are the legal interests the creditor holds qua creditor in relationship to the debtor company, prior to and under the plan as well as on liquidation;
>
> 3. The commonality of these interests are to be viewed purposively, bearing in mind the object of the C.C.A.A., namely to facilitate reorganizations if at all possible;
>
> 4. In placing a broad and purposive interpretation on the C.C.A.A., the court should be careful to resist classification approaches which would potentially jeopardize potentially viable plans.
>
> 5. Absent bad faith, the motivations of the creditors to approve or disapprove are irrelevant.
>
> 6. The requirement of creditors being able to consult together means being able to assess their legal entitlement *as creditors* before or after the plan in a similar manner.[48]

55. Classification is a fact-specific determination that must be evaluated in the unique circumstances of every case. The exercise must be approached with the flexible and remedial jurisdiction of the CCAA in mind.[49]

56. "Commonality of interest" does not mean "identity of interest." "Commonality of interest" is based on the principle that a class consists of those persons whose interests are not so dissimilar as to make it impossible for them to consult together

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[48] *Re Canadian Airlines Corp,* 2000 CarswellAlta 623 at para 31 [*Canadian Airlines 2*], leave to CA refused, 2000 ABCA 149.
[49] *Canadian Airlines 2* at para 18.

with a view to their common interest.[50] It is a non-fragmentation test designed to further the objectives of facilitating the restructuring.

57. It is therefore permissible to include creditors with different legal rights within the same class, as long as their interests are not so dissimilar that they cannot vote with a common interest.[51] Moreover, if a proposed classification prevents the danger of a veto of a plan that promises some better return to creditors than a bankruptcy, it should not be interfered with absent good reason. Issues of fairness can be addressed at the sanction hearing once the creditors have had an opportunity to exercise their business judgment as to whether the plan is acceptable.

58. In this case, two classes of creditors are contemplated by the Plan:

(a) the LIMH Class; and

(b) the LIM/SMI Class.

59. The LIMH Class is a homogenous class of Affected Unsecured Creditors of LIMH, and it is difficult to conceive of any issue.

60. The LIM/SMI Class is somewhat atypical in that it combines Affected Unsecured Creditors of two separate debtors for the purpose of voting, but this is justified by the significant overlap in claims between LIM and SMI; the immateriality of the SMI Only Claims and the application of the non-

[50] *Canadian Airlines 2* para 20, citing *Re Norcen Energy Resources Ltd*, 1988 CarswellAlta 319 at para 49, 72 CBR (NS) 20 at 29 (QB).
[51] *Canadian Airlines 2* at para 17, citing *Sovereign Life Assurance Co v Dodd* (1891), [1892] 2 QB 573 at p 583 (Eng CA).

fragmentation principle; the common prospects faced by all of the Applicants' creditors in the absence of a successful restructuring; and the commonality of consideration provided to creditors of LIM and SMI under the Plan.

61. The Applicants therefore submit that the Court should approve the voting of Affected Unsecured Creditors as contemplated by the Plan.

PART IV. RELIEF SOUGHT

62. The Applicants request that this Honourable Court grant the relief sought in the form of the Meeting ORder.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 9th day of November, 2016

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SCHEDULE "A" – LIST OF AUTHORITIES

Cases

1. *Nova Metal Products Inc v Comiskey (Trustee of)* (1990), 41 OAC 282 (CA)

2. *Re ScoZinc,* 2009 NSSC 163

3. *Target Canada Co, Re,* 2016 ONSC 316

4. *Re Federal Gypsum Co,* 2007 NSSC 384

5. *Re Jaguar Mining Inc,* 2014 ONSC 494

6. *Kerr Interior Systems Ltd, Re,* 2011 ABQB 214

7. *Re SemCanada Crude Co,* 2009 ABQB 490

8. *Re Canadian Airlines Corp,* 2000 ABQB 442

9. *Re Canadian Airlines Corp,* 2000 CarswellAlta 623

10. *Re Norcen Energy Resources Ltd* (1988), 72 CBR (NS) 20 (Alta QB)

11. *Sovereign Life Assurance Co v Dodd* (1891), [1892] 2 QB 573 (Eng CA)

SCHEDULE "B" – RELEVANT LEGISLATION

***Companies' Creditors Arrangement Act,* RSC 1985, c C-36**

Section 4

Compromise with unsecured creditors

Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

Section 22(1), (2)

Company may establish classes

(1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

Factors

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

(a) the nature of the debts, liabilities or obligations giving rise to their claims;
(b) the nature and rank of any security in respect of their claims;
(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

Court File No. CV-15-10926-00CL

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, LABRADOR IRON MINES LIMITED, LABRADOR IRON MINES HOLDINGS LIMITED and SCHEFFERVILLE MINES INC. (MEETING ORDER)

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