



ksv advisory inc.



No. VLC-S-S-228723
Vancouver Registry

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

- AND -

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF
PURE GOLD MINING INC.

PETITIONER

SUPPLEMENT TO THE SIXTH REPORT OF KSV RESTRUCTURING INC.
AS MONITOR

May 26, 2023

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1.0 Introduction

1. This report (the "**Supplemental Report**") supplements the Sixth Report of the Monitor dated May 19, 2023 (the "**Sixth Report**").
2. The Supplemental Report is subject to the restrictions and qualifications set out in the Sixth Report. Defined terms not otherwise defined herein have the meanings provided to them in the Sixth Report.
3. The purpose of this Supplemental Report is to provide the Monitor's views in respect of one of the bases for the objection of KND Complex Litigation ("**KND**"), legal counsel to the plaintiff in the BC Action, to the release contemplated to be granted in favour of the Company's directors and officers pursuant to the RVO and to address issues raised by counsel for a lien claimant.

2.0 Releases

1. Pursuant to the terms of the RVO filed with the Company's application materials, all of the Company's present and former directors and officers, including those who ceased serving prior to the initiation of the CCAA proceedings, are included in the definition of "Released Parties".
2. In its Sixth Report, the Monitor recommended that the release contemplated under the RVO be limited to the Company's directors and officers who served during the pendency of the CCAA Proceedings. The Company has advised the Monitor that it accepts the Monitor's recommendation and that the RVO sought on the application will be amended accordingly.
3. On May 18, 2023, KND emailed counsel for the Company objecting to, among other things, the proposed releases in favour of the Company's present and former officers and directors.
4. On May 20, 2023, after having reviewed the Sixth Report, KND emailed counsel for the Company and counsel for the Monitor, noting the Monitor's recommendation that the releases should be limited to the directors and officers of the Company who served in such capacities during the CCAA Proceedings and commenting that KND believed that to be the correct approach. Nevertheless, KND went on to comment that "there is insufficient evidence at this time to support [the Monitor's] conclusory statements that [Messrs. O'Dea and Currie] made a significant contribution to the result". The Monitor assumes that the "result" referred to by KND is the Transaction.
5. A copy of KND's May 20, 2023 email is attached hereto as Appendix "A".
6. Notwithstanding KND's comments, the Monitor continues to be of the view that Messrs. O'Dea and Currie should be entitled to the benefit of the release for the following reasons:
 - a) both of these individuals held their respective positions from the commencement of the CCAA proceedings until around March 17, 2023, the date that they resigned (the "**Resignation Date**");

- b) although the Transaction had not been announced as of the Resignation Date, it was well advanced by that date;
 - c) to continue operating while in CCAA protection, a debtor company requires either a board of directors or a court officer with enhanced powers, such as a chief restructuring officer or a "super monitor". Absent such governance, a different insolvency process would be required, such as a receivership or a bankruptcy. Given the uncertain value of the Company's business and assets outside of a going-concern transaction, as well as concerns regarding environmental contamination, any potential receiver or trustee would require a substantial indemnity for its fees, costs and all potential liability. In this case, the only party likely to consider providing such an indemnity was Sprott, being the Company's largest secured creditor. It is unknown whether Sprott would have been prepared to provide such an indemnity, though the Monitor expects it is unlikely given the unknown and potentially significant financial risk involved;
 - d) absent an indemnity for a receiver or a trustee, it is possible that the Mine would have been abandoned. This would have had a potentially devastating effect on the environment (it is virtually certain that the Bond would have been called upon in such circumstances), the loss of employment for the workers at the Mine (an important consideration in a small rural community) and a near-certain total loss of all value for any stakeholders; and
 - e) the continued involvement of Messrs. O'Dea and Currie allowed the business to continue to operate on a care and maintenance basis during the SISP. This allowed the Company to retain employees and provide the opportunity for the business to be marketed for sale on a going-concern basis such that a buyer would have the opportunity to restart operations in due course.
7. The Monitor is satisfied that each of Messrs. O'Dea and Currie contributed materially to ensuring the continued operation of the Company, and, as a result, the consummation of the Transaction, which is the best achievable result in the circumstances.
8. The Monitor further notes that the directors and officers of insolvent companies are generally encouraged through different means to stay in their positions so as to shepherd the company through a restructuring process on the expectation that the involvement of those persons is more likely to ensure stability and generate better outcomes. One of the means by which to encourage such persons to continue in the positions is the expectation of a release for certain liabilities in the event of a successful outcome. It would, in the Monitor's view, be problematic from a commercial and precedential standpoint to preclude Messrs. O'Dea and Currie from obtaining the benefit of the proposed release in the circumstances of this case.

3.0 Lien Claimants

1. At paragraph 10.0(2) of the Sixth Report, the Monitor stated that it "is not aware of any other secured creditors (i.e. other than Sprott) or any claim that ranks or may rank in priority to Sprott, other than the amounts secured under the Court-ordered charges..."
2. On May 25, 2023, counsel for a lien claimant emailed counsel for the Monitor to inquire whether the Monitor had considered construction lien claims when making that statement.
3. The Monitor has since confirmed to counsel for the lien claimant, and wishes to clarify for the Court and other stakeholders, that in making the above statement, the Monitor was considering only secured claims (i.e. claims in respect of which the Company granted security in favour of a creditor). The Monitor did not intend to include potential lien claims in that description.
4. The Monitor is, in fact, aware of several lien claims and of lien claimants who have asserted that all or a portion of their lien claim ranks ahead of Sprott's secured claim. The Monitor has not as yet sought an opinion from counsel as to the validity and potential priority of any of the lien claims.
5. The Monitor understands that Sprott is of the view that some or all of the lien claims are not valid under the *Construction Act (Ontario)* and to the extent any liens are valid, they are subordinate to Sprott's secured claim and that Sprott intends to challenge the lien claims, including their claim to priority over Sprott's secured claim.

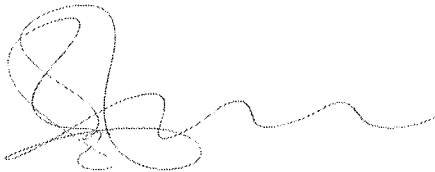
4.0 Conclusion and Recommendation

1. As set out in this Supplemental Report, the Monitor's position on the proposed releases for the Company's directors and officers remains unchanged from the Sixth Report.

* * *

All of which is respectfully submitted,

**KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS CCAA MONITOR OF PURE GOLD MINING INC.
AND NOT IN ITS PERSONAL CAPACITY**



Per: Robert Kofman, President

Appendix "A"

From: Sage Nematollahi <sn@knd.law>
Sent: Saturday, May 20, 2023 7:09 AM
To: Kibben Jackson <kjackson@fasken.com>; Peter Rubin <peter.rubin@blakes.com>
Cc: Eli Karp <ek@knd.law>; Taek Soo Shin <ts@knd.law>
Subject: [EXT] Re: In the Matter of Pure Gold Mining Inc.; SCBC Vancouver Registry Action No. S-228723

Counsel:

Thank you for the Monitor's 6th Report.

We have noted the Monitor's recommendation, as regards the releases being sought, that the releases should be limited to such former directors and officers of PureGold who were in those capacities during the CCAA proceedings. We think this is the correct approach, and are supportive of same. We would be appreciative to receive information regarding the following:

- 1) Mr. Darin Labrenz departed PureGold in or around the fall of 2021. Please confirm no releases, whatsoever, would be sought in relation to Mr. Labrenz.
- 2) Mr. Sean Tetzlaff departed PureGold in or around January 2022. Please confirm no releases, whatsoever, would be sought in relation to Mr. Tetzlaff.
- 3) We understand releases would be sought for Messrs. Mark O'Dea and Greame Currie. The Monitor states that these D&Os "have been integral to the continued uninterrupted operations of the Company as well as the conduct of the Pre-Filing SISP (in the case of the Directors and Officers and Sprott) and the SISP (in the case of all Released Parties), including facilitating due diligence by various interested parties and assisting to negotiate the Transaction." We note that the operations at PureGold Mine were suspended, and that that the Mine was placed in care and maintenance just before the CCAA filing in October 2022, thus it appears that it had no "continued uninterrupted operations" during the CCAA proceeding (see PureGold's news release dated October 24, 2023, which is enclosed for convenience). We note, furthermore, that the CCAA filings by the company and the Monitor suggests that the SISP failed (in the sense that in *PaySlate* the Honourable Justice Walker noted that SISP had failed). In fact, the current transaction with West Red Lake was announced a full month *after* all the remaining management and directors of PureGold had resigned. While the position being taken by the Monitor may be true, in our view, there is insufficient evidence at this time to support the conclusory statements that these proposed released parties made a significant contribution to the result. Please advise whether better and further evidence would be provided and, if so, by whom and by when.
- 4) Please advise us regarding the Petitioner's and Monitor's position on our Notice of Application delivered yesterday at your earliest convenience. As previously noted, we intend to send a correspondence to Justice Walker, which we intend to do by no later than Wednesday, May 24.

Thank you
Sage

Sage Nematollahi (he/him)
Lawyer (Admitted in BC, ON & NY)

KND Complex Litigation

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On May 19, 2023, at 6:31 PM, Kibben Jackson <kjackson@fasken.com> wrote:

To the Service List:

Please find attached the unfiled 6th Monitor's Report dated May 19, 2023. We will circulate the filed version in due course.

Regards,

Kibben Jackson*

Partner

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Fasken Martineau DuMoulin LLP

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