



Estate No. 11-1904494  
Court No. B141089  
Vancouver Registry

**THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY OF  
CRESTON MOLY CORP.

Estate No. 11-1904501  
Court No. B141088  
Vancouver Registry

**THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY OF  
MERCATOR MINERALS LTD.

**NOTICE OF APPLICATION**

**Name of applicants:** Deloitte Restructuring Inc. in its capacity as trustee in bankruptcy of Mercator Minerals Ltd. and Creston Moly Corp. (in such dual capacities the "Trustee")

ON NOTICE TO: Société Générale  
Silver Wheaton (Caymans) Ltd.  
RMB Australia Holdings Ltd.  
Daselina Investments Ltd.  
Mineral Park Inc.  
The Official Committee of  
Unsecured Creditors of Mineral  
Park Inc.

*EX PARTE:* All others

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1 on December 2, 2014 at 9:45 a.m. for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. The time for and manner of service of this Notice of Application be abridged and approved and service of this Notice of Application upon any interested party who was not actually served be dispensed with;
2. The form of Engagement Letter (the "**Engagement Letter**") between the Trustee and Deloitte Corporate Finance Inc. (the "**Financial Advisor**") attached as Exhibit "C" to the Affidavit # 1 of H. Lee made 25 November, 2014 be approved.
3. The Trustee be authorized and directed to engage the Financial Advisor on the terms set out in the Engagement Letter.

**Part 2: FACTUAL BASIS**

1. Mercator is a base metals natural resource company registered under the laws of the Province of British Columbia engaged in the mining, development and exploration of its subsidiary-owned mineral properties in the United States of America, Mexico and Canada;
2. Creston Moly is one of several wholly owned subsidiaries of Mercator and is registered under the laws of the Province of British Columbia, Canada;
3. Creston Moly is a holding company which owns a 100% interest in three mining properties via its wholly owned subsidiaries:
  - (a) El Creston: a molybdenum/copper exploration and development project located in Sonora, Mexico ("El Creston"). The rights to El Creston are owned by a Mexican registered subsidiary Exploraciones Global SA de CV ("Exploraciones"), which itself is wholly-owned by an intermediary holding company, Creston Mining Corporation ("Creston Mining"). El Creston is the most valuable property owned by Creston Moly;
  - (b) Ajax: an exploration stage molybdenum property located near Alice Arm, British Columbia ("Ajax"). Owned indirectly by Creston Moly via its wholly-owned subsidiary Tenajon Resources Corp. ("Tenajon"); and
  - (c) Molybrook: an exploration stage molybdenum property located on the south coast of Newfoundland ("Molybrook"). Owned indirectly by Creston Moly via its wholly owned subsidiary Tenajon;
4. There are currently no known security interests registered against Creston Moly or its subsidiaries.
5. Excluding inter-company claims there is only one known unsecured claim against Creston Moly, for \$2,124.

6. On August 26, 2014, Mercator and Creston Moly each filed a Notice of Intention to make a Proposal under Part III, Division I of the Bankruptcy and Insolvency Act ("BIA"). Deloitte Restructuring Inc. was appointed as the Proposal Trustee. Mercator and Creston Moly (collectively, the "Debtors") did not make a Proposal to their creditors before the expiry of the statutory period for doing so. Pursuant to Section 50.4(8) of the BIA, the Debtors were deemed to have filed assignments in bankruptcy on September 5, 2014. Deloitte Restructuring Inc. was appointed as trustee in bankruptcy of each of the Debtors by the Official Receiver.
7. The Trustee's appointments as Trustee were affirmed by the creditors of the Debtors' on September 25, 2014. On the same date Kibben Jackson and Tamara Howarth were appointed Inspectors of the estate of Mercator. No inspectors were appointed over the estate of Creston Moly.
8. Creston Moly and its subsidiaries were acquired by Mercator in 2011 at a transaction value of approximately \$195 million by way of a plan of arrangement.
9. The Trustee believes that there is some value for the Debtors' creditors in the shares of or assets in Creston Moly and its subsidiaries although it is not certain how much value.
10. As at October 30, 2014 the estate of Mercator had approximately \$154,000 in cash. Neither the estate of Creston Moly nor its subsidiaries have any material cash balances.
11. Based on the cash flow forecast prepared by Creston Moly, the Trustee estimates that the cost to preserve the Company's ownership interests in Creston Moly and its subsidiaries and properties, particularly the El Creston Property, from September 1, 2014 to January 5, 2015 will amount to approximately \$84,000 (the "Preservation Costs").
12. As authorized by a resolution of the inspectors of Mercator dated October 30, 2014 the Trustee caused the estate of Mercator to loan funds to the estate of Creston Moly in order to cover the majority of the Preservation Costs.
13. The Trustee needs to complete other work with the estates of the Debtors in order to meet all of its statutory obligations to the Debtors' creditors. In addition to basic administration of the Debtors' estates the Trustee must monitor and address issues arising from Mercator's extensive collection of subsidiaries in addition to Creston Moly. Some of these are also subject to distressed sale processes, such as Mineral Park, Inc., a Delaware company currently in Chapter 11 proceedings in the United States, and Stingray Copper Inc., a Canada company that indirectly owns another development property in Sonora, Mexico known as El Pilar ("El Pilar").
14. After account is taken for the Preservation Costs and the Trustee's administration fees and expenses the Trustee has insufficient funds to commence or continue a sales and marketing process of Creston Moly and its assets absent third party arrangements.
15. Based on information received to date the Trustee estimates that, excluding inter-company claims, the claim of Société Générale ("SocGen") and the potential claim of Silver Wheaton (Caymans) Ltd. ("Silver Wheaton") are by far the largest unsecured

claims against Mercator and currently account for more than 95% of all such claims. The Trustee has sought an indemnity for its fees in running a sales process from SocGen and Silver Wheaton but has been unable to secure their agreement. The Trustee is not willing to bear the risk of running a sales process of the Creston Moly shares or assets without assurance that it will be paid for its efforts in doing so.

16. The Trustee therefore wishes to engage Deloitte Corporate Finance Inc. as its advisor (the "Financial Advisor") on terms substantially as set out in the engagement letter attached as Exhibit "C" to the Affidavit # 1 of H. Lee (the "Engagement Letter") in order for the Financial Advisor to conduct a sales process to divest Creston Moly via the sale of:
  - (a) Mercator's Corporate shares in Creston Moly;
  - (b) Creston Moly's corporate shares in its directly and indirectly held wholly owned subsidiaries, namely Creston Mining, Tenajon. and Exploraciones; or
  - (c) The assets of Creston's subsidiaries, El Creston, Ajax and Molybrook.
17. The Engagement Letter contemplates that the Financial Advisor's fees shall be payable upon the closing of a divesting transaction. In the Trustee's view the Financial Advisor's fees contemplated by the Engagement Letter are reasonable market rates given the risks to be borne by the Financial Advisor, risks that the Trustee is unwilling to take, and for which it could not secure an indemnity from Silver Wheaton or SocGen.
18. In the Trustee's view
  - (a) the Financial Advisor is well-qualified to carry out the engagement and benefits from already being involved in the marketing efforts involving the El Pilar property which are ongoing outside of these proceedings;
  - (b) the engagement provides the greatest possibility of selling Creston Moly for the general benefit of the creditors of both Mercator and Creston Moly;
  - (c) the Financial Advisor will be assisted by the knowledge and expertise that can be shared due to the Financial Advisor being at the same firm as the Trustee;
19. The Trustee is aware that engaging a division of its own firm raises a potential appearance of a conflict of interest. However, the Trustee believes that the proposed engagement is the best course of action given the unusual situation.

### **Part 3: LEGAL BASIS**

1. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, in particular section 34(1);
2. *Bankruptcy and Insolvency General Rules*, C.R.C 1978, c. 368, as am., in particular R. 6(4);

3. The Trustee seeks the Court's approval of its entering into an engagement with the Financial Advisor on a success fee basis. The Trustee's entering into contingent fee agreements is permitted where such agreements advance the interests of the creditors: *Orion Trucking Centre Ltd. (Trustee of) v. CIT Financial Ltd.*, 2006 BCCA 418 at para. 11.

**Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of H. Lee sworn 25 November, 2014

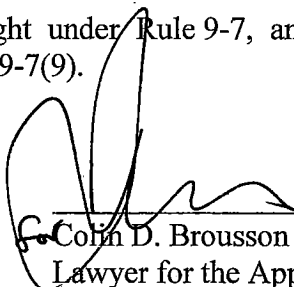
The applicant estimates that the application will take 10 minutes.

This matter is within the jurisdiction of a master if unopposed.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 4 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: November 25, 2014.

  
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Colin D. Brousson  
Lawyer for the Applicants

THIS NOTICE OF APPLICATION was prepared by Colin D. Brousson, of the firm of Gowling Lafleur Henderson LLP, Barristers & Solicitors, whose place of business and address for delivery is 2300 - 550 Burrard Street, Vancouver, B.C. V6C 2B5, Telephone: 604-683-6498; Fax: 604-683-3558.

To be completed by the court only:

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application

with the following variations and additional terms:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Signature of  Judge  Master

**APPENDIX**

**THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts