

2022 01G 0994

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

GENERAL DIVISION

IN THE MATTER OF the receivership of the Excluded AR of Canada Fluorspar (NL) Inc. ("CFNI") pursuant to section 105 of the *Judicature Act*, RSNL 1990, c J-4, as amended and Rule 25.01 of the *Rules of Supreme Court, 1986*

NOTICE OF MOTION

| SUMMARY OF CURRENT DOCUMENT | |
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| Court File Number(s): | 2022 01G 0994 |
| Date of Filing Document | September 23, 2022 |
| Name of Party Filing or Person | Deloitte Restructuring Inc., in its capacity as Receiver of the Excluded AR of Canada Fluorspar (NL) Inc. |
| Application to which Document being filed relates: | Notice of Motion for an Order authorizing and directing interim distribution to HSBC Bank Canada and related matters |
| Court Sub-file No. | N/A |

TO the Supreme Court of Newfoundland and Labrador, or one of the Honourable Judges thereof:
Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as receiver, without security, of the Excluded AR (as defined herein) (the "**Receiver**") will make a motion (the "**Motion**") before the presiding judge on the 12 day of October, 2022, at 10 AM, or soon thereafter as the motion can be heard at the courthouse located at 309 Duckworth Street in St. John's, Newfoundland and Labrador.

Filed Sept 29/22 (R)

1. On the hearing of the Motion, the Receiver intends to seek the following Order, attached as **Schedule “A”**:
 - (a) abridging the time for service of this Notice of Motion, and the First Report of the Receiver dated September 16, 2022 (the “**First Report**”) so that the Motion is properly returnable on October _____, 2022 and dispensing with further service thereof;
 - (b) authorizing and directing an interim distribution to HSBC Bank Canada (“**HSBC**”) in the amount of \$5,200,000 (the “**Interim Distribution**”) from the Trust Funds (as defined herein);
 - (c) granting a sealing order in respect of the Confidential Supplement to the First Report dated September 16, 2022 (the “**Confidential Supplement**”);
 - (d) approving the fees and disbursements of the Receiver, its legal counsel, Dentons Canada LLP (“**Dentons**”), and independent legal counsel, Goodland Buckingham Barristers and Solicitors (“**Goodland**”), as set out in the First Report, the fee Affidavit of James Foran sworn September 15, 2022 (the “**Foran Affidavit**”), the fee Affidavit of Robert Kennedy sworn September 15, 2022 (the “**Kennedy Affidavit**” and together with the Foran Affidavit, the “**Fee Affidavits**”);
 - (e) approving the First Report, and the activities of the Receiver as set out therein; and
 - (f) such further and other grounds as counsel may advise and this Supreme Court of Newfoundland and Labrador General Division (the “**Court**”) may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

2. On February 21, 2022, upon application by PricewaterhouseCoopers Inc. (“**PwC**”), in its capacity as Court-appointed receiver and manager of Bridging Finance Inc. and Bridging Income Fund LP, the Supreme Court of Newfoundland and Labrador General Division (the “**Court**”) granted an order (the “**Interim Receivership Order**”) appointing Grant Thornton Limited (“**GT**”) as the interim receiver (the “**Interim Receiver**”) of the assets,

properties and undertakings (save and except for the excluded property as described herein) of CFNI and Canada Fluorspar Inc. (“CFI”).

3. CFNI operated an open pit fluorspar mine located in St. Lawrence, Newfoundland and Labrador that mined high-quality fluorspar ore for the purpose of producing acid-grade fluorspar concentrate. At the time of the Interim Receivership Order, CFNI was serving customers located in North America, Europe and Southeast Asia.
4. On March 11, 2022, upon application by the Interim Receiver, the Court granted an order (the “**Initial Order**”) commencing a court-supervised restructuring proceeding under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA Proceedings**”) for CFNI, CFI and Newspar (a General Partnership).
5. The Initial Order, similar to the Interim Receivership Order, excluded specific assets of CFNI from the CCAA Proceedings including: (i) any and all Receivables and/or Financed Receivables, as such terms are defined pursuant to the Trade Invoice Recourse Financing Facility Agreement between HSBC and CFNI dated May 25, 2018 (as amended), together with all rights and remedies arising thereunder, insurance policies and proceeds resulting therefrom, and proceeds generally, and (ii) all Export Development Canada (“**EDC**”) insurance policies or support delivered in favor the HSBC (collectively the “**Excluded AR**”).
6. On March 25, 2022 (the “**Appointment Date**”), upon the application of HSBC, the Court issued an order (the “**Receivership Order**”) appointing the Deloitte as receiver, without security, over the Excluded AR.
7. As of August 17, 2022, the total indebtedness due and owing to the HSBC by CFNI was approximately CAD10,827,051.
8. The Receiver has collected CAD6,665,709, being approximately 56% of the Excluded AR. The Receiver will continue with collection efforts, which may include (i) negotiating payment agreements, (ii) pursuing collection and/or settlement of other balances, and (iii) filing insurance claims with EDC where appropriate. The details of the Receiver’s efforts to recover and settle the various Excluded AR balances are contained in the Confidential

Supplement. This recovery effort was of an international nature, requiring negotiations with CFNI's customers and considerable effort by the Receiver and Dentons. Currently, there remains approximately CAD5,200,000 of Excluded AR to collect.

9. The Receiver engaged Goodland to complete a legal opinion regarding the validity and enforceability of HSBC's security (the "**Security Opinion**"). The Security Opinion confirms that the security held by HSBC in respect of the Excluded AR is valid and enforceable.

Interim Distribution

10. The Receiver currently holds the total amount of CAD6,260,103 in trust (the "**Trust Funds**"). There is sufficient cash in the receivership estate to complete the Interim Distribution to HSBC.
11. The Receiver seeks Court approval and authorization to complete an Interim Distribution to HSBC in the amount of \$5,200,000, while holding back approximately \$1,060,000 to provide for various competing claims that may be asserted in priority to HSBC's security ("**Claims**"). Such Claims include *Wage Earner Protection Program Act* claims, employee withholding tax claims, and claims against the Retention Amounts (as defined in the First Report), which are further detailed in the First Report.
12. The Receiver is of the view that the proposed Interim Distribution is appropriate and reasonable in the circumstances.

Approval of Sealing Order

13. The information contained in the Confidential Supplement contains confidential and sensitive information in relation to collections, corresponding negotiations and other agreements that would impair the Receiver's administration of the receivership and continued collections of the Excluded AR if such information were made available to the public. The Receiver is of the view that granting the granting of a sealing order in respect of the Confidential Supplement is appropriate in the circumstances.

Fees and Disbursements

14. The Receiver has provided services and incurred disbursements during the period of March 25 to July 31, 2022 which are described in the Foran Affidavit.
15. The Receiver has also incurred legal fees of its legal counsel, Dentons, in respect of these proceedings, as more particularly set out in the Kennedy Affidavit.
16. The Receiver and Dentons have implemented reasonable measures to control the time spent and costs incurred in these proceedings.
17. The Receiver requests that this Court approve: (i) its interim accounts for the period of March 25 to July 31, 2022 in the amount of \$135,040, inclusive of disbursements and HST, together with the fees of its independent legal counsel in the amount of \$3,579, and (ii) the interim accounts of its legal counsel for the period of March 25 to July 31, 2022 in the amount of \$266,800 inclusive of disbursements and HST (collectively, the “**Professional Fees**”).
18. The Receiver submits that the Professional Fees, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order;

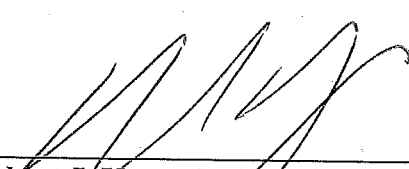
THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

19. The First Report;
20. The Confidential Supplement; and
21. Such further and other material as counsel may advise and this Honourable Court may permit.

DATED at Toronto, in the Province of Ontario, this 21st day of September, 2022

DENTONS CANADA LLP

Toronto Dominion Centre
77 King St. W., Suite 400
Toronto, Ontario M5K 0A1



Robert J. Kennedy (LSO #474070)

Tel: (416) 367-6756

Fax: (416) 863-4592

robert.kennedy@dentons.com

Daniel Loberto (LSO #79632Q)

Tel: (416) 863-4760

daniel.loberto@dentons.com

Lawyers for the Receiver

TO: SERVICE LIST
(see attached Schedule "B")

ISSUED AT St. John's in the
Province of Newfoundland and Labrador,
this 29 day of Sept, A.D., 2022.
J. Howe

court officer

SCHEDULE "A"
FORM OF DISTRIBUTION ORDER

2022 01G 0994
SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

HSBC BANK CANADA

APPLICANT

AND:

CANADA FLUORSPAR (NL) INC.

RESPONDENT

INTERIM DISTRIBUTION ORDER

THIS MOTION made by Deloitte Restructuring Inc., in its capacity as receiver (the **“Receiver”**), without security, of any and all Receivables and/or Financed Receivables, as such terms are defined pursuant to a Trade Invoice Recourse Financing Facility Agreement between HSBC Bank Canada (**“HSBC”**) and Canada Fluorspar (NL) Inc. dated May 25, 2018, as amended, together with all rights and remedies arising thereunder, insurance policies and proceeds resulting therefrom, and proceeds generally (the **“Excluded AR”**) for an order,

- (a) abridging the time for service of the Motion Record dated • (the **“Motion Record”**), the Notice of Motion dated • (the **“Notice of Motion”**), the First Report of the Receiver dated September 16, 2022 (the **“First Report”**), and the Confidential Supplement dated September 16, 2022 (the **“Confidential Supplement”**) so that this Motion is properly returnable on •, 2022 and dispensing with further service thereof;
- (b) authorizing and directing an interim distribution to HSBC in the amount of \$5,200,000.00 (the **“Interim Distribution”**);
- (c) approving a sealing order for the Confidential Supplement;
- (d) approving the First Report, Confidential Supplement, and the activities of the Receiver as set out therein;

- (e) approving the fees and disbursements of the Receiver, and its legal counsel, Dentons Canada LLP (“**Dentons**”), as set out in the First Report, the fee Affidavit of James Foran sworn September 15, 2022 (the “**Foran Affidavit**”), and the fee Affidavit of Robert Kennedy sworn September 15, 2022 (the “**Kennedy Affidavit**”, and collectively with the Foran Affidavit, the “**Fee Affidavits**”);
- (f) approving the interim statement of receipts and disbursements dated ●, 2022 (the “**R&D**”); and
- (g) such further and other grounds as counsel may advise and this Supreme Court of Newfoundland and Labrador General Division (the “**Court**”) may permit.

was heard this day ●.

ON READING the Motion Record, Notice of Motion, First Report, and Confidential Supplement, and on hearing the submissions of counsel for the Receiver, and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of ● sworn ●, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record, Notice of Motion, First Report, and Confidential Supplement is abridged and validated such that this Motion is properly returnable today, and further service of the Motion Record, Notice of Motion, First Report, and Confidential Supplement is hereby dispensed with.

DISTRIBUTION

2. **THIS COURT ORDERS** that the Receiver is authorized and directed to make the Interim Distribution, as described in the First Report.

SEALING ORDER

3. **THIS COURT ORDERS** that the Confidential Supplement shall be sealed and kept confidential and not form part of the public record, but shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title to

these proceedings and a statement that the contents are subject to a sealing order, up and until a further Order of the Court.

RECEIVER'S ACTIVITIES

4. **THIS COURT ORDERS** that the First Report, the Confidential Supplement, and the activities described therein, are hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and Dentons, as set out in the First Report and the Fee Affidavits, are hereby approved.

6. **THIS COURT ORDERS** that the R&D is hereby approved.

DATED at St. John's, in the Province of Newfoundland and Labrador, this ● day of ●, 2022.

SCHEDULE "B"
SERVICE LIST

Service List
as at September 21, 2022

| | |
|---------|---|
| TO: | <p>MARTIN WHALEN HENNEBURY STAMP PLC INC. 15 Church Hill PO Box 5910 St. John's, NL A1C 5X4 Geoffrey Davis-Abraham Tel: 709-754-1828 gdavis-abraham@mwhslaw.com</p> <p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto, ON M5K 0A1 Dennis R. Wiebe Tel: 416-863-4475 dennis.wiebe@dentons.com</p> <p>Robert J. Kennedy Tel: 416-367-6756 robert.kennedy@dentons.com</p> <p>Daniel A. Loberto Tel: 416-863-4760 daniel.loberto@dentons.com <i>Counsel for Deloitte Restructuring Inc., in its capacity as Receiver of Canada Fluorspar (NL) Inc.</i></p> |
| AND TO: | <p>COX AND PALMER 235 Water Street, Suite 1100 St. John's, NL A1C 1B6 Darren O'Keefe Tel: 709-570-5509 dokeefe@coxandpalmer.com</p> <p>Allison Philpott Tel: 709-570-5591 aphilpott@coxandpalmer.com <i>Counsel for the Respondent</i></p> |

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| AND TO: | <p>DELOITTE RESTRUCTURING INC. 1741 Lower Water Street, Suite 800 Halifax, NS B3J 0J2</p> <p>James Foran Tel : 902-721-5661 jforan@deloitte.ca <i>The Receiver</i></p> |
| AND TO: | <p>MCINNES COOPER 5th Floor, 10 Fort Williams Place PO Box 5939 St. Johns, NL A1C 5X4</p> <p>Geoffrey Spencer Tel: 709-724-5675 geoffrey.spencer@mcinnescooper.com</p> <p>Meghan King Tel: 709-724-8228 meghan.king@mcinnescooper.com <i>Counsel for Grant Thornton</i></p> |
| AND TO: | <p>GRANT THORNTON Nova Centre, North Tower, Suite 1000 Halifax, NS B3J 0E9</p> <p>Phil Clarke Phil.Clarke@ca.gt.com</p> <p>Sean MacNeil Sean.MacNeil@ca.gt.com <i>The Monitor / Interim Receiver</i></p> |

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| AND TO: | <p>STEWART McKELVEY PO Box 5038 11th Floor, Cabot Place 100 Bew Gower Street St. Johns, NL A1C 5V3</p> <p>Joe Thorne Tel: 709-570-8850 joethorne@stewartmckelvey.com</p> <p>Liam Murphy Tel: 902.629.4558 mmurphy@stewartmckelvey.com</p> <p><i>Counsel for PricewaterhouseCoopers, on behalf of Bridging Finance Inc.</i></p> |
| AND TO: | <p>PRICEWATERHOUSE COOPERS INC., on behalf of Bridging Finance Inc. 18 York Street, Suite 2600 Toronto, ON M5J 0B2</p> <p>Graham Page graham.page@pwc.com</p> <p>Michael McTaggart michael.mctaggart@pwc.com</p> |
| AND TO: | <p>GOODMANS LLP Bay Adelaide Centre – West Tower 333 Bay Street, Suite 3400 Toronto, ON M5H 2S6</p> <p>Brendan O’Neill Tel: 416-849-6017 boneill@goodmans.ca</p> <p><i>Counsel for Golden Gate Capital</i></p> |

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| AND TO: | GOVERNMENT OF NEWFOUNDLAND AND LABRADOR Department of Industry, Energy and Technology Natural Resources Building 50 Elizabeth Avenue PO Box 8700 St. John's, NL A1B 4J6 David Rodgers davidrodgers@gov.nl.ca Julia Thomson juliethomson@gov.nl.ca |
| AND TO: | ACOA John Cabot Building, 11 th Floor PO Box 1060, Station C St. John's, NL M1C 5M5 bonnie.christie@acoa-apeca.gc.ca |
| AND TO: | KOMATSU INTERNATIONAL (CANADA) INC. 3755 blvd Matte Suite E Brossard, QC J4Y 2P4 Judy.langlais@global.komatsu.com |
| AND TO: | HICKMAN LEASING LIMITED 85 Kenmount Road St. John's, NL A1B 3P8 Sonya Warren (Credit Manager) swarren@hickmanmotors.ca |
| AND TO: | FORD CREDIT CANADA LEASING, DIVISION OF CANADIAN ROAD LEASING COMPANY PO Box 2400 Edmonton, AB T5J 5C7 bbanktup@ford.ca |
| AND TO: | CATERPILLAR FINANCIAL SERVICE LIMITED 3457 Superior Court, Unit 2 Oakville, ON L6L 0C4 nabc.customerservice@cat.com |

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| AND TO: | DE LAGE LANDEN FINANCIAL SERVICES CANADA INC. 3450 Superior Court, Unit 1 Oakville, ON L6L 0C4 corporateca@gllgroup.com |
| AND TO: | BENSON BUFFET 215 Water Street St. John's, NL A1C 5N8 Sean Pittman Tel: 709-570-7225 spittman@bensonbuttet.com <i>Counsel for Equipment SMS Inc.</i> |
| AND TO: | TORYS LLP 79 Wellington Street West, 30 th Floor, Box 270 TD South Tower Toronto, ON M5K 1N2 Scott Bomhof Tel: 416-865-7370 sbomhof@torys.com <i>Counsel for Arkema France</i> |
| AND TO: | MCINNES COOPER 10 Fort Williams Place 5 th Floor, Baine Johnston Centre St. Johns, NL A1C 5X4 Beth McGrath Tel: 709-570-7342 beth.mcgrath@mcinnescooper.com <i>Counsel for Newfoundland Power</i> |
| AND TO: | WESTERN PETROLEUM NEWFOUNDLAND LIMITED PO Box 1167 7 Main Street Corner Brook, NL A2H 6T2 David L. Hounsell david@hounsell.ca |

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| AND TO: | PENNECON GRAND BANKS WATERHOUSING INC. 1309 Topsail Road Paradise, NL A1L 1N8 penneconlimited@pennecon.com |
| AND TO: | PARDY'S WASTE MANAGEMENT AND INDUSTRIAL SERVICES LIMITED West End Industrial Park 25 Stentafor Avenue Pasadena, NL A01 1K0 Derek Pardy derekpardy@pardyswaste.com |
| AND TO: | VALMIN FIRE PROTECTION LIMITED 1338 Random Island Road Weybridge, NL A5A 3A1 info@valminfireprotection.com |
| AND TO: | HITECH COMMUNICATIONS LTD. 15 Glencoe Drive, Mount Pearl NL c/o MURPHY & WATTON 17 West Street, PO Box 815 Corner Brook, NL A2H 2Y6 Tel: 709-634-3231 bmurphy@monmar.nf.net dwatton@monmar.nf.net |
| AND TO: | EPIROC CANADA 1025 Tristar Drive Mississauga, ON L5T 1W5 raluca.pop@epiroc.com |
| AND TO: | BROWNE FITZGERALD MORGAN AVIS & WADDEN Terrace on the Square, Level 2 P.O. Box 23135 St. John's, NL A1B 4J9 Keith Morgan Tel: 709-724-3800 Fax: 709-754-3800 kmorgan@bfma-law.com <i>Lawyers for TrajectorE Engineering Inc.</i> |

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| AND TO: | CANADA REVENUE AGENCY Sudbury Tax Centre Post Office Box 20000, Station A Sudbury, ON P3A 5C1 Fax: 705-671-3994 |
| AND TO: | WORKPLACE NL PO Box 9000 St. John's, NL A1A 3B8 Fax: 709-738-1714 |
| AND TO: | BANK OF MONTREAL 100 King Street West, 11 th Floor Toronto, ON M5X 1A1 |
| AND TO: | BANK OF MONTREAL TRANSPORT FINANCE 5750 Explorer Drive 2 nd Floor, Mississauga, ON L4W 0A9 |
| AND TO: | MERIDIAN ONECAP CREDIT CORP. Suite 1500, 4710 Kingsway Burnaby, BC V5H 4M2 Fax: 1-604-646-2222 |
| AND TO: | mitsubishi hc capital Canada Leasing, Inc. 301-3390 South Service Rd. Burlington, ON L7N 3J5 |
| AND TO: | TOROMONT INDUSTRIES LTD./INDUSTRIES TOROMONT LTEE 3131 Highway 7 West Concord, ON L4K 1B7 Jeffrey S. Chisholm Fax: 1-416-667-5555 |
| AND TO: | DORMODY ENGINEERING INCORPORATED 47 Veitch Crescent St. John's, NL A1A 0B8 |

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