

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF OTSO GOLD CORP., OTSO GOLD OY, OTSO GOLD AB, and
2273265 ALBERTA LTD.

PETITIONERS

NOTICE OF APPLICATION

NAME OF APPLICANTS: Pandion Mine Finance Fund LP ("**Pandion Mine Finance**"),
RiverMet Resource Capital LP ("**RiverMet**"), and PFL Raahe
Holdings LP ("**PFL Raahe**") and, together with Pandion Mine
Finance and RiverMet, "**Pandion**")

TO: Service List, attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by Pandion to the Honourable Mister Justice Gomery at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on a date to be set by Trial Scheduling, **via Microsoft Teams videoconference**, for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. Pandion applies to this Court for the following relief:
 - (a) an order terminating the proceedings (the "**CCAA Proceedings**") commenced by Otso Gold Corp. ("**Otso Gold**"), Otso Gold OY ("**Otso OY**"), Otso Gold AB ("**Otso AB**") and 2273265 Alberta Ltd. ("**227 Ltd.**" together with Otso Gold, Otso OY and Otso AB, the "**Otso Group**") pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**") December 3, 2021;
 - (b) to the extent not otherwise covered by (a) above, an order terminating (or refusing a further extension of) the stay of proceedings in favour of the Otso Group provided for under the terms of the initial order pronounced in the CCAA Proceedings on December 3, 2021, and extended pursuant to the terms of the Amended and Restated Initial Order, pronounced in these CCAA Proceedings on December 15, 2021;
 - (c) an order appointing FTI Consulting Canada Inc. ("**FTI**") as receiver and manager of the assets, undertakings and property of the Otso Group, pursuant to, *inter alia*, section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 (the "**BIA**"),

section 39 of the *Law and Equity Act*, RSBC 1996, c 253, section 66 of the *Personal Property Security Act*, RSBC 1996 c 359, Rules 2-1(2)(b), 10-2 and 16-1 of the *Supreme Court Civil Rules* and the inherent jurisdiction of this Court for; and

- (d) such further and other relief as counsel may request and this Honourable Court deems just and equitable.

Part 2: FACTS

1. All capitalized terms not otherwise defined herein, shall have the meaning ascribed to them in the First Affidavit of Joseph Archibald, sworn January 7, 2022 (the “**First Archibald Affidavit**”).

A. Background

2. Otso Gold is a publicly traded mineral exploration and development company, incorporated and existing under the laws of Alberta. Otso Gold is also extra-provincially registered in British Columbia with an attorney’s address of 950, 650 West Georgia Street, Scotia Tower, Vancouver, British Columbia.

First Archibald Affidavit at paras 3 & 4.

First Affidavit of Victor Koshkin, sworn December 3, 2021
(the “**First Koshkin Affidavit**”) at para 6.

3. To the best of Pandion’s knowledge, former names of Otso Gold include 510483 Alberta Ltd., Firesteel Resources Inc., Nordic Gold Corp. and Nordic Gold Inc. All references to Otso Gold herein, include its former names, as applicable.

First Koshkin Affidavit at paras 18 & 57(b).

4. The Respondent, Otso AB, is a wholly owned subsidiary of Otso Gold and is incorporated and existing under the laws of Sweden. To the best of Pandion’s knowledge, Otso AB was formerly known as Nordic Mines Marknad AB. All references to Otso AB herein, include its former name, as applicable.

First Archibald Affidavit at para 5.

First Koshkin Affidavit at para 18.

5. The Respondent, 227 Ltd., is a wholly owned subsidiary of Otso Gold and is incorporated and existing under the laws of Alberta.

First Archibald Affidavit at para 5.

6. The Respondent, Otso OY, is a wholly owned subsidiary of Otso AB and is incorporated and existing under the laws of Finland. To the best of Pandion’s knowledge, Otso OY was formerly known Nordic Gold OY and Nordic Mines OY. All references to Otso OY herein, include its former names, as applicable. Otso OY is the operating entity of a gold mine project in Northern Ostrobothnia, Finland (the “**Otso Gold Mine**”).

First Archibald Affidavit at para 6.

First Koshkin Affidavit at para 57(b).

Fourth Affidavit of Victor Koshkin, sworn December 14, 2021 at Exhibit “B”.

7. PFL Raahe was, at all material times and until December 31, 2020 (at which time it was sold to RiverMet) a wholly owned subsidiary of Pandion Mine Finance.
8. As detailed below, through PFL Raahe, Pandion provided funding to the Otso Group pursuant to a pre-paid gold forward purchase agreement (in multiple tranches), a maintenance loan agreement, and a convertible debenture.
9. In connection with PFL Raahe's advance of the "Gold Prepayment", the Otso Group granted PFL Raahe a first-priority security interest in respect of, *inter alia*, all of its present and after-acquired property. PFL Raahe's first-priority security is duly registered in the Alberta Personal Property Registry and the British Columbia Personal Property Registry.
10. To be clear, PFL Raahe is sole secured creditor of the Otso Group, and as at December 8, 2021, is owed USD\$95,350,406. The calculation of the Otso Group's indebtedness is detailed at paragraph 56 of the First Archibald Affidavit
11. Operations were suspended at the Otso Gold mine on or about December 17, 2021. To-date, the Otso Group has not put forward or proposed a concrete path or timeline for the resumption of these operations, nor have they proposed a timeline or plan for the repayment of the debt due to Pandion.
12. The Otso Group's evidence is that the value of the Otso Gold mine is between \$52 and \$55 million (CAD), which is significantly less than the outstanding debt due to Pandion.
13. For the reasons set out above, and as detailed further below, Pandion does not support the continuation of these CCAA Proceedings, which are prejudicial to its interests and are eroding Pandion's collateral by continuing to sell gold and use the proceeds to pay operating costs in violation of its agreements with Pandion.
14. Pandion has a *prima facie* and contractual right to the appointment of a receiver.
15. Pandion seeks to terminate these CCAA Proceedings and exercise its contractual right to appoint a receiver – which appointment is, as detailed further below, just and convenient in the circumstances.

B. The Pre-Paid Gold Forward Purchase Agreements and Related Security

16. On November 10, 2017, PFL Raahe entered into a pre-paid gold forward purchase agreement (the "**PPF Agreement**") with Otso Gold. Pursuant to the PPF Agreement, PFL Raahe and Otso Gold agreed, *inter alia*, as follows:
 - (a) PFL Raahe would make a cash payment to Firesteel in the amount of USD\$20.6 million as a prepayment for the purchase of 67,155 oz of gold, and pay an additional amount equal to the market price less a fixed discount of USD\$500/oz upon each delivery of gold (as detailed therein);
 - (b) the proceeds of the gold prepayment would be used to fund: (i) an investment in the Finnish OpCo with respect to the Otso Gold Mine; and (ii) the extinguishment of certain liabilities and obligations;
 - (c) Firesteel would sell the Contract Quantity of Gold to PFL Raahe, free and clear of all Liens;

- (d) Firesteel would deliver the Contract Quantity of Gold to PFL Raahe on each Monthly Delivery Date by Delivery of the Scheduled Monthly Quantity, in accordance with the terms thereof;
- (e) failure to Deliver any amount of Gold, as required by the terms thereof, would constitute an "Event of Default"; and
- (f) upon the occurrence of an Event of Default by an Obligor, PFL Raahe was entitled to: (i) demand payment of the Early Termination Amount (calculated in accordance with section 5(8) thereof); and (ii) enforce against the Collateral.

First Archibald Affidavit at paras 7 & 9; Exhibit "C".

17. As security for its obligations under the PPF Agreement, Otso Gold granted Pandion, *inter alia*, a lien over and in respect of any and all of the Otso Group's real and personal property, assets, rights, titles and interests, whether tangible or intangible, presently held or after acquired; and all products and proceeds of the foregoing, including insurance proceeds.

First Archibald Affidavit at para 11.

18. The PPF Agreement also provided that Otso Gold would grant security to Pandion in relation to certain intercompany debts of Otso OY that were to be assigned to Otso Gold.

First Archibald Affidavit at paras 12 & 13.

C. The Second Pre-Paid Forward Gold Purchase Agreement and Related Security

19. As provided for in the PPF Agreement, the following additional agreements were executed on December 8, 2017:

- (a) Otso OY, Otso Gold and PFL Raahe entered into a second pre-paid forward gold purchase agreement (the "**PPF2 Agreement**"); and
- (b) PFL Raahe, Otso Gold and Otso OY entered into a direct agreement (the "**Direct Agreement**") as a condition of the PPF2 Agreement.

First Archibald Affidavit at para 14; Exhibit "D".

20. The effect of the PPF2 Agreement was to create back-to-back obligations between Otso OY and Otso Gold that corresponded to the pre-existing obligations between Otso Gold and PFL Raahe arising under the PPF Agreement (i.e. Otso OY could satisfy its obligations by delivering gold to Otso Gold or to PFL Raahe directly). The Direct Agreement also provided that in the event of a default under the PPF Agreement, PFL Raahe could step into Otso Gold's shoes and exercise any and all rights available to Otso Gold arising under and pursuant to the PPF2 Agreement.

First Archibald Affidavit at para 14; Exhibit "D".

21. As security for the obligations arising under the PPF2 Agreement, Otso OY irrevocably and unconditionally pledged to Otso Gold as a first priority pledge, the mining right and a

business mortgage. Otso Gold pledged the same assets to Pandion as security for Otso Gold's obligations under the PPF Agreement.

First Archibald Affidavit at para 17; Exhibit "E".

D. Pandion's Security

22. Pandion holds the following security (the "**Security**") in connection with the funding Pandion provided to Otso Gold:

- (a) security agreement (PPF Agreement) between Otso OY and Pandion, dated December 8, 2017;
- (b) security agreement between Otso Gold and Pandion, dated December 8, 2017;
- (c) security agreement (PPF2 Agreement) between Otso OY and Otso Gold, dated December 8, 2017;
- (d) share pledge agreement among Otso AB, Otso Gold and Pandion, dated February 5, 2018;
- (e) direct agreement among Otso OY, Otso Gold and Pandion, dated December 8, 2017;
- (f) general security agreement between Otso Gold and Pandion, dated December 8, 2017;
- (g) second priority security agreement (Royalty Agreement) between Otso Gold and Pandion, dated November 8, 2018 ("**SPS Agreement No. 1**");
- (h) second priority security agreement (Royalty Agreement) between Otso OY and Pandion, dated November 8, 2018 ("**SPS Agreement No. 2**");
- (i) second priority security agreement II (Royalty Agreement) between Otso OY and Pandion dated November 8, 2018 ("**SPS Agreement No. 3**");
- (j) second priority share pledge agreement (Royalty Agreement) between Otso AB, Otso Gold and Pandion, dated November 8, 2018 ("**SPSP Agreement**" and together with SPS Agreement No. 1, SPS Agreement No. 2 and SPS Agreement No. 3, the "**SPS Agreements**");
- (k) a mining right certificate issued October 12, 2009 by the Finland Ministry of Employment and the Economy concerning registration of a mining patent in relation to the Otso Gold Mine in the Mining Register of Laiva;

First Archibald Affidavit at paras 18 & 19; Exhibits "F", "G", "H", "O", "P", "Q", "R", "S", "T", "U", "V", "W", "X" & "Y".

23. In addition to the Security noted above, Otso Gold also entered into a general security agreement with Pandion, dated December 2017, pursuant to which Pandion was granted a first-priority security in all of Otso Gold's present and after-acquired real and personal

property (the “**GSA**”), as well as pledge agreements relating to the shares of [Otso AB], certain options and a loan, each of which is dated December 8, 2017.

24. Pandion’s security interests have been duly registered in the relevant jurisdictions, including in the Alberta Personal Property Registry and the British Columbia Personal Property Registry.

First Archibald Affidavit at para 20; Exhibit “I”.

E. Default under the PPF Agreement and Forbearance of Pandion

25. Otso Gold subsequently defaulted on certain of its obligations under the PPF Agreement (the “**Defaults**”).

First Archibald Affidavit at para 22.

26. As a result of the Defaults, on October 15, 2018, PFL Raahe agreed to permit Otso Gold to defer the payment of the amounts (the “**Deferred Payment Amount**”) owed to PFL Raahe by Otso Gold by way of entering into an amendment and forbearance agreement (the “**Amendment & Forbearance to PPF Agreement**”) to the PPF Agreement, pursuant to which Otso Gold and Pandion agreed, *inter alia*, to the following:

- (a) PFL Raahe would provide additional funding of USD\$7 million, in two supplemental tranches, as prepayment for the purchase of 25,960 oz of gold (for a total purchase of 93,115 oz of gold for all three tranches), and pay an additional amount equal to the market price less a fixed discount of USD\$500/oz upon each delivery of gold (as detailed therein);
- (b) PFL Raahe would shift the start date of gold deliveries under the PPF Agreement to Jan-2020 from May-2019; and
- (c) PFL Raahe would remove Section 23 from the PPF Agreement, the Contract Quantity Exchange Option concept;
- (d) In return, the parties agreed to the following:
 - (i) 19.9% of the outstanding common shares provided to PFL Raahe;
 - (ii) a USD\$1.5m Buyer Fee paid to PFL Raahe within six months of entering into the Amendment & Forbearance to PPF Agreement; and
 - (iii) a 2.5% net smelter return on gold production from the Otso Gold Mine.

First Archibald Affidavit at paras 23 & 24; Exhibit “J”.

F. The Royalty Agreement

27. As contemplated in the Amendment & Forbearance to PPF Agreement, on November 8, 2018 PFL Raahe, Otso Gold and Otso OY entered into a net smelter returns royalty agreement (the “**Royalty Agreement**”), pursuant to which PFL Raahe was granted a 2.5% royalty on net smelter returns (the “**Royalty**”), which was to be payable on all minerals (as that term is defined in the Royalty Agreement) mined or otherwise recovered.

First Archibald Affidavit at para 26; Exhibit “L”.

28. The Royalty Agreement also provided that Otso Gold would pledge various security to Pandion, including:
- (a) the shares of Otso OY;
 - (b) certain receivables of the Otso Group including those arising under the PPF2 Agreement;
 - (c) bank accounts;
 - (d) real estate insurance proceeds;
 - (e) Otso Gold's mining rights; and
 - (f) business mortgage.

This security was pledged via the SPS Agreements.

First Archibald Affidavit at paras 18(g) to (j) & 28.

G. Otso Gold Mine is Placed in Care and Maintenance / Efforts by PFL Raahe to Protect its Security

29. Following the execution of the Amendment & Forbearance to PPF Agreement and the Royalty Agreement, the Otso Gold Mine was in operation until March 2019, at which time, as a result of various issues (including, *inter alia*, poor management and issues with the mill) Otso Gold ran out of working capital. On April 1, 2019, the Otso Gold Mine was placed into "care and maintenance" status.

First Archibald Affidavit at para 30.

First Koshkin Affidavit at para 20.

30. In order to protect its security interest in the Otso Gold Mine, PFL Raahe entered into a maintenance loan agreement (the "**MLA**") with Otso Gold on April 17, 2019, pursuant to which PFL Raahe agreed to provide Otso Gold with additional funding for care and maintenance of the Otso Gold Mine in the principal sum of up to EUR €350,000 per month.

First Archibald Affidavit at para 31.

31. PFL Raahe provided Otso Gold with care and maintenance funding for the Otso Gold Mine under the MLA until December 3, 2019 in the total amount of \$5,849,030, for the purposes of maintaining the Otso Gold Mine site and to enable the Otso Group to pay down its liabilities.

First Archibald Affidavit at para 32.

H. The PFL Raahe Sale Process and Lionsbridge/Westech Services Agreement

32. In March 2019, Pandion engaged Cutfield Freeman (independent global mining finance advisors) ("**Cutfield**") to market and sell PFL Raahe's claims and rights in the Otso Gold Mine (the "**PFL Raahe Sale Process**").

First Archibald Affidavit at para 33.

33. The PFL Raahe Sale Process ran for approximately 6 months and included over 100 target companies, which resulted in expressions of interest from approximately 10 companies and 2 non-binding offers from mining companies. However, after conducting site visits, both companies indicated they were not interested in pursuing the opportunity further at that time.

First Archibald Affidavit at paras 34 to 36.

34. In connection with the PFL Raahe Sale Process, on May 7, 2019 Lionsbridge Capital Ltd. ("**Lionsbridge**"), an arm's length party to both Pandion and the Otso Group, executed a confidentiality agreement provided by Pandion, in order to obtain access to the PFL Raahe Sale Process data room that had been created by Cutfield.

First Archibald Affidavit at paras 37 & 38.

35. On May 23, 2019, Lionsbridge advised Pandion it was unlikely it would be able to buy out PFL Raahe's claims and rights in the Otso Gold Mine, but during its review of the data room, it had identified a path forward that would enable production to resume and indicated its interest in assisting with this process.

First Archibald Affidavit at para 39.

First Affidavit of Clyde Wesson, sworn December 12, 2021 at para 12.

36. On July 2, 2019, Otso Gold, Lionsbridge and Westech International Pty Ltd. ("**Westech**") entered into a services agreement (the "**Services Agreement**"), pursuant to which the parties agreed, *inter alia*, that:

- (a) Lionsbridge would provide Otso Gold with corporate management services; and
- (b) Westech would, subject to certain independent approvals, provide Otso Gold with certain technical services Otso Gold had previously identified as necessary in order to return the Otso Gold Mine back to production.

First Archibald Affidavit at para 40.

First Koshkin Affidavit at Exhibit "C".

37. Pandion introduced Westech and Lionsbridge to Otso Gold, but did not negotiate, nor is it a party to, the Services Agreement. The Services Agreement was negotiated by Lionsbridge, Westech, and Otso Gold, and was subsequently approved by Otso Gold's board of directors (the "**Otso Board**") on July 2, 2019. Both the Services Agreement, and the election of Brian Wesson and Clyde Wesson (both Principals of Lionsbridge), as well as Yvette Harrison, to the Otso Board were subsequently approved by Otso Gold's shareholders.

First Archibald Affidavit at paras 41 & 42; Exhibits "M" & "N".

I. Debt Restructuring and Additional Funding Provided by Pandion

38. After further negotiations between Otso Gold and Pandion regarding a further restructuring of Otso Gold's liabilities, on October 7, 2019, Otso Gold and Pandion entered into a consent and agreement to pre-paid forward gold purchase agreement and maintenance loan agreement (the "**Consent & Agreement**").

First Archibald Affidavit at para 43; Exhibit "O".

39. The purpose of entering into the Consent & Agreement was to, *inter alia*:
- (a) permit Otso Gold to move forward with raising funds to restart operations of the Otso Gold Mine;
 - (b) recapitalize the Otso Group;
 - (c) permit the Otso Group to perform certain drilling, technical work and complete a mine feasibility study; and
 - (d) ensure that the value created by successfully restarting operations at the Otso gold Mine would not be consumed by the Otso Group's existing liabilities.

First Archibald Affidavit at para 47.

40. Pursuant to the terms of the Consent & Agreement, Otso Gold and Pandion agreed, *inter alia*, as follows:
- (a) the sum of USD\$23 million, the Deferred Payment Amounts, payable in two equal instalments of USD\$11.5 million within eighteen and twenty-four months of entering into the Consent & Agreement (April 7, 2021 and October 7, 2021, respectively), would be paid to PFL Raahe in full satisfaction of the amounts otherwise due under the PPF Agreement and Maintenance Loan Agreement;
 - (b) a contingent payment of USD\$1.56 million, payable in common shares of Otso Gold, pro rata upon the completion of up to CAD\$7 million equity raise for purposes of providing PFL Raahe with ownership of Otso Gold common shares not to exceed 19.9%;
 - (c) permit Otso Gold to repurchase the Royalty for USD\$15 million; and
 - (d) PFL Raahe would provide additional amounts not exceeding USD\$900,000 pursuant to the MLA in order to fund maintenance expenditures relating to the site during the three months following execution of the Consent & Agreement.

First Archibald Affidavit at para 46.

41. On March 26, 2020, PFL Raahe agreed to provide additional funding to Otso Gold in the amount of USD\$1.5 million, in the form of unsecured convertible debentures with a maturity date of March 26, 2023 (the "**Convertible Debentures**") pursuant to the terms of a debenture agreement, dated March 26, 2020 (the "**Debenture Agreement**"), as well as a "put option", pursuant to a put agreement dated March 26, 2020 (the "**Put Agreement**"), to require Otso Gold to purchase the Convertible Debentures on or after September 25, 2020.

First Archibald Affidavit at para 49; Exhibit "P".

42. In consideration of PFL Raahe subscribing for the Convertible Debentures, each of Lionsbridge and Brian Wesson absolutely, unconditionally and irrevocably guaranteed, on a joint and several basis to PFL Raahe the full and timely payment of all debts and liabilities, present and future, matured and unmatured, owing by Otso Gold to PFL Raahe

under the Convertible Debenture, including the Put Option and the Call Right arising therefrom (and as such terms are defined in the Debenture Agreement), together with all costs and disbursements incurred by PFL Raahe in order to recover such amounts, pursuant to a Guarantee and Call Agreement, dated March 26, 2020.

First Archibald Affidavit at para 50; Exhibit "Q".

43. On December 13, 2020, PFL Raahe agreed to amend the Consent & Agreement to, *inter alia*, provide that the Deferred Payment Amounts would be payable in one lump sum due on December 7, 2021 (the "**Amended Consent & Agreement**").

First Archibald Affidavit at para 51; Exhibit "R".

44. The Amended Consent & Agreement was negotiated directly between Vladimir Lelekov and a representative of Pandion in October 2020.

J. Commencement of the CCAA Proceedings and Default

45. On December 3, 2021, Otso Gold commenced these CCAA Proceedings and, thereafter, failed to pay the Deferred Payment Amount that was otherwise due on December 7, 2021.
46. Otso Gold therefore defaulted under the terms of the Amendment & Forbearance to PPF Agreement, as amended by the Consent & Agreement and Amended Consent & Agreement (collectively, the "**Forbearance Agreements**").
47. As a result of its default under the Forbearance Agreements, the debt due to Pandion has reverted to the total amount that was otherwise due (i.e., the Early Termination Amount, which totals USD\$95,350,406).

First Archibald Affidavit at para 56.

K. Immediate Concerns of Pandion / Reasons Pandion does not Support Continuing the CCAA Proceedings

48. It is undisputed in these proceedings that Otso Gold is in default of its obligations to Pandion.
49. Notwithstanding Pandion's willingness to forbear from enforcing on its security and efforts to restructure the obligations owed to it by Otso Gold for over 3 years, and notwithstanding the fact that Pandion held off on exercising its rights under the Put Agreement, Otso Gold failed to pay the Deferred Payment Amount when due on December 7, 2021.
50. On December 8, 2021, and as a result of this default, and pursuant to the terms of the Consent & Agreement and the Amended Consent & Agreement, the debt owed by Otso Gold to Pandion increased from USD\$23 million to USD\$95,350,406 (i.e., the Early Termination Amount).
51. Notice of this default, and the reversion of Otso Gold's debts to Pandion, was provided to the Otso Group on December 8, 2021.
52. Prior to Pandion providing notice of default to the Otso Group, and in connection with its application for the Initial Order (and other relief pursuant to the CCAA), the Otso Group submitted cash-flow forecasts that contemplated significant equity injections would be

extended by Brunswick Gold Ltd. ("**Brunswick**"), Otso Gold's majority shareholder and equity investor, in order to fund operations at the Otso Gold Mine.

First Archibald Affidavit at para 57(e).

First Koshkin Affidavit at Exhibit "BBBB".

Second Affidavit of Victor Koshkin, sworn December 3, 2021 at Exhibit "A".

Third Affidavit of Victor Koshkin, sworn December 8, 2021 at Exhibit "D".

53. On December 8, 2021, the same day as notice of the default was provided (and the day after the Deferred Payment Amount was due), the Otso Group submitted a revised cash-flow that no longer contemplated equity injections, or any other kind of equity investment into Otso, from Brunswick to fund operations at the Otso Gold Mine.

54. Operations were thereafter suspended at the Otso Gold Mine on December 17, 2021, and to date the Otso Group has not presented a concrete plan or timeline to bring the Otso Gold Mine back into operation, nor has it presented any short-term mining plan for the period after December 15, 2021. Further, Otso Gold's current management is uncertain whether the existing safety measures are sufficient to resume operations notwithstanding they were found to be sufficient when operations at the mine were restarted in November 2021.

First Archibald Affidavit at para 57(c) & (d).

55. Due to the suspension of operations at the Otso Gold Mine, Otso Group does not have sufficient revenue to fund the restart of mining operations without additional funding. Pandion is not aware of any party who has committed to providing financing to restart operations at the Otso Gold Mine. Although the Otso Group has solicited interim financing proposals, it is clear that this financing will not be sufficient to fund an operational restart at the Otso Gold Mine.

First Archibald Affidavit at para 57(f).

56. Without funding, the Otso Group risks eroding the value of its most significant asset: the Otso Gold Mine. In this respect:

- (a) it is unclear whether the Otso Group has sufficient funding to do necessary maintenance or upkeep of the Otso Gold Mine and equipment through a further stay period;
- (b) the use of proceeds of the sale of gold mined at the Otso Gold Mine to fund operational expenses (which appears to be the case, based on the Otso Group's evidence), is prejudicial to Pandion: the gold was pledged to Pandion as security for the Otso Group's obligations, and the sale of the gold and use of proceeds to fund operational expenses is therefore dissipation of Pandion's collateral; and
- (c) the lack of funding indicates two things: (i) Brunswick does not have confidence that the value of the assets (i.e., the Otso Gold Mine) exceeds the obligations owed to Pandion; and (ii) the Otso Group does not have a strategic plan or sense of how to successfully exit these CCAA Proceedings and repay its senior secured creditor (Pandion).

First Archibald Affidavit at para 57(h).

57. There have been significant disputes among the directors and officers of Otso Gold (some of whom are affiliated with Brunswick and others with Lionsbridge) and the composition of the Otso Gold board of directors has recently changed. The board of directors also recently decided to change management and has jettisoned Otso Gold's pre-existing mine plans. The Otso Group has claimed that these changes have been prejudicial because they have had a destabilizing effect, but these internal affairs of the companies should not result in Pandion bearing the cost consequences through a continuation of these CCAA Proceedings – which have not provided a timeline or plan for repayment of the Otso Group's obligations to Pandion.

First Archibald Affidavit at para 57(g).

58. In this respect, and to date, the Otso Group has not submitted or filed materials in these CCAA Proceedings that contemplate or provide for:

- (a) the repayment of the amounts owed to PFL Raahe;
- (b) funding to restart and continue operations at the Otso Gold Mine;
- (c) the sale of Otso Gold's interest in the Otso Gold Mine; and/or
- (d) the sale of the Otso Group's assets for the purposes of realizing value to creditors.

First Archibald Affidavit at para 57(f) & (i).

59. The obligations owed to Pandion appear to significantly exceed the value of the Otso Gold Mine (the Otso Group's only significant asset) based on the listed value provided by the Otso Group in the CCAA Proceedings. As a result, it is unlikely that the Otso Group will be capable of putting forward any plan that will be acceptable to Pandion.

First Archibald Affidavit at para 57(j) & (k).

First Koshkin Affidavit at para 52.

60. Further, prior to and since the commencement of the CCAA Proceedings, there has been a significant breakdown between Pandion and Otso Gold/Brunswick. This breakdown has been further exacerbated by the commencement of legal proceedings by Brunswick against Pandion (and others) in the United States, which contains numerous unfounded allegations.

First Archibald Affidavit at paras 59 & 60; Exhibit "V".

61. As a result of the concerns outlined above, Pandion has lost confidence in the ability of the Otso Group to restructure their liabilities and restart operations at the Otso Gold Mine. Accordingly, Pandion cannot support the continuation of the CCAA Proceedings.

L. The Indebtedness

62. As detailed above, as at December 8, 2021, Otso Gold is indebted to Pandion in the total amount of USD\$95,350,406.

First Archibald Affidavit at paras 56 & 57(k).

M. The Appointment of a Receiver

63. The GSA expressly provides Pandion with the ability to appoint a receiver over the assets, undertakings and property of the Otso Group.

First Koshkin Affidavit at Exhibit "T", Article 7.22.

64. The appointment of a receiver is necessary to preserve the collateral securing Pandion's interests, and to realize on the Otso Group's assets in a fair and reasonable manner that balances the interests of all of the Otso Group's stakeholders.

65. The Otso Group has no realistic prospect of facilitating an acceptable compromise or arrangement within the CCAA Proceedings. Such a plan will require the support of Pandion (as the senior secured and fulcrum creditor) to be successful, which Pandion is not willing to provide for the reasons outlined above.

66. If appointed, it is expected that a receiver will, *inter alia*, complete the following steps:

- (a) take control or possession and preserve or otherwise protect the Otso Group's assets;
- (b) assess the viability of a sale process to value and sell the Otso Group's business and assets; and
- (c) if viable, conduct a sale process for the benefit of the creditors of the Otso Group.

67. FTI has consented to act as receiver and manager of the Otso Group, if appointed.

Part 3: LEGAL BASIS

68. At the hearing of this Petition, Pandion intends to rely on:

- (a) Rules 2-1, 10-2 and 16-1 of the *Rules of Court*;
- (b) section 243 of the BIA; and
- (c) section 39 of the LEA.

69. The BIA provides that, on application by a secured creditor, this Honourable Court may appoint a receiver where it is just and convenient to do so.

BIA, s 243(1).

70. The LEA provides that the Court may appoint a receiver where it is just and convenient to do so.

LEA, s 39.

71. The *Supreme Court Civil Rules* provide that the court may appoint a receiver in any proceeding either unconditionally or on terms.

Rule 10-2 of the *Supreme Court Civil Rules*.

72. Pandion submits that the appointment of a receiver and manager is just and convenient in the circumstances.
73. Pursuant to the GSA, Pandion is expressly provided with the ability to appoint a receiver in order to enforce its security and the amounts due and owing under it.

Factors Considered by the Court

74. Courts have consistently applied the following factors when determining whether it is just and convenient to appoint a receiver:
 - (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed;
 - (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
 - (c) the nature of the property;
 - (d) the apprehended or actual waste of the debtor's assets;
 - (e) the preservation and protection of the property pending judicial resolution;
 - (f) the balance of convenience to the parties;
 - (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
 - (h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
 - (i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
 - (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
 - (k) the effect of the order upon the parties;
 - (l) the conduct of the parties;
 - (m) the length of time that a receiver may be in place;
 - (n) the cost to the parties;
 - (o) the likelihood of maximizing return to the parties; and
 - (p) the goal of facilitating the duties of the receiver.

Maple Trade Finance Inc. v CY Oriental Holdings Ltd.,
2009 BCSC 1527 at para 25.

75. Once the moving party has established a *prima facie* right to a receivership, the issue becomes whether a receivership or a CCAA proceeding is preferable. In choosing between a receivership or a CCAA process, a court must balance the competing interests of the various stakeholders to determine which process is more appropriate and in doing so, the court will consider the following factors:
- (a) payment of the receivership applicants;
 - (b) reputational damage;
 - (c) preservation of employment;
 - (d) speed of the process;
 - (e) protection of all stakeholders;
 - (f) cost; and
 - (g) nature of the business.

BCIMC Construction Fund Corporation et al. v The Clover on Yonge Inc.,
2020 ONSC 1953 (“**BCIMC Construction**”) at para 61.

Contractual Right to Appoint a Receiver

76. A creditor’s right to appoint a receiver under its security is an important consideration. Receivers will be appointed where there is a serious apprehension about the safety of the assets.

Callidus Capital Corp. v Carcap Inc. (2012), 84 CBR 5th 300
(ONSC) at para 43.

77. The objective sought to be achieved where a receiver is appointed is to safeguard the property for the benefit of those ultimately entitled to it.

Toronto Dominion Bank v First Canadian Land Corp. (1989),
77 CBR NS 189 (BCSC) at paras 8 & 9.

Interests of the Fulcrum Creditor

78. The authorities consistently demonstrate that a court must give serious consideration to the wishes of the creditor(s) holding the most significant economic interests in the proceeding.

Royal Bank v Soundair Corp. (1991), 7 CBR 3d 1 (ONCA) at paras 39 & 40.

79. Pandion has the most significant economic interest in these CCAA Proceedings and accordingly, its preference should be given significant weight. To the extent that the Otso Group suggests that Pandion’s view is not worthy of such weight, Pandion submits that the Otso Group must show through credible evidence that Pandion’s concerns are not justified and that its interests will be protected, notwithstanding its concerns.

80. The Otso Group has contractually agreed to give Pandion the right to control the process through the appointment of a receiver. It is therefore not appropriate, and unjust, to require Pandion to participate in insolvency proceedings *without* having any control of the process.

BCIMC Construction at paras 64 to 71.

Factors that have been found to weigh in favour of a receivership over a CCAA proceeding

81. When faced with competing applications to commence or continue a stay under a CCAA proceeding and appoint a receiver, courts have found the following factors to weigh in favour of the appointment of a receiver and/or against the commencement or continuation of a CCAA proceeding:

- (a) where the receivership applicants have a blocking position to any CCAA plan;

BCIMC Construction at para 101.

- (b) where the debtors are unable to put forward any credible evidence to suggest that they are anywhere close to finding sources of funding sufficient to operate, let alone resolving issues to get a project back up and running;

Romspen Investment Corp. v 6711162 Canada Inc., 2014 ONSC 2781
 (“*Romspen*”) at para 75.

- (c) where the debtors’ initial cash flow statement rested heavily on the receipt of certain contemplated funds, but the debtors’ then do not provide any further evidence that such funds will be received in the contemplated time frame – or, as in this case, the proposed funds have been withdrawn by the equity holder (i.e., Brunswick);

Romspen at para 76.

- (d) where there is no prospective purchaser and meaningful financing;

BCIMC Construction at paras 107 & 108.

- (e) where the debtors have had a more than adequate opportunity (e.g. more than a year) to canvass the market for refinancing and restructuring options and the debtors are most likely facing a liquidating CCAA, in addition to the receivership applicant’s lack of confidence and the existence of adversarial relationships between the debtors and their major secured stakeholder(s);

Alberta Treasury Branches v Tallgrass Energy Corp.,
 2013 ABQB 432 at para 21.

- (f) where there is evidence that the assets and property subject to the secured creditor’s security are in jeopardy of material deterioration; and

I.F. Propco Holdings (Ontario) 36 Ltd. v 1228851 Ontario Ltd.,
 2002 OJ No 1667 (ONSC) at para 7 (referencing an earlier oral decision).

- (g) where the creditor has accommodated financial difficulties of the debtor and “forborne” from enforcement for 2.5 years. Further, it is reasonable for a creditor

to have lost faith in the debtor when it has repeatedly failed to meet its commitments to make balloon payments coupled with concerns of good faith.

Affinity Credit Union 2013 v Vortex Drilling Ltd., 2017 SKQB 228
at paras 4, 23, 24 & 37(h).

Risk of Deterioration of Collateral

82. A risk of deterioration of a lender's security was found to be sufficient where projects were overbudget and where the debtors acknowledged the projects had become economically unviable, work had stopped, trades were not being paid and there were significant amounts overdue with interest continuing to accrue.

BCIMC Construction at para 47.

Risk of Reputational damage

83. Where the debtor asserts that a CCAA process is preferable to receivership because it would cause less reputational damage, but the reputational damage would be caused by that party's own doing, this consideration is irrelevant.

BCIMC Construction at para 72.

Protection of Stakeholders

84. When considering the protection of all stakeholders, a court should scrutinize a debtor's submission that the CCAA proceeding will protect jobs where the employees will not have jobs until new financing has been arranged or if the employees will be replaced in any event (e.g. such as where a new contractor or operator will be hired).

BCIMC Construction at para 87.

Other Considerations

85. The Supreme Court of British Columbia has also found that seeking CCAA protection to buy time to continue attempts to raise new funding at the expense of the debtor's creditors is not an appropriate use of the extraordinary remedy offered under the CCAA.

BCIMC Construction at para 112.

86. Should a receiver be appointed, in the event the Otso Group is able to make arrangements that address Pandion's interests more quickly, the Otso Group would then have the option to bring an application to terminate those receivership proceedings.

BCIMC Construction at para 86.

87. Otso Gold is in default of its obligations owed to Pandion pursuant to the Agreements. As a result of the numerous defaults, listed above, the total amount of its indebtedness is USD\$95,350,406, and Pandion is entitled to enforce on the Security (including by, *inter alia*, seeking the appointment of the Receiver pursuant to the GSA).

First Archibald Affidavit at paras 18 & 19.

First Koshkin Affidavit at para 60.

88. The Otso Group does not dispute Pandion's security interests or that Otso Gold is in default of its obligations under the agreements. On the contrary, the Otso Group has acknowledged the following in its evidence filed in the CCAA Proceedings:
- (a) the Otso Group is indebted to Pandion;
 - (b) the debt is secured;
 - (c) Pandion is Otso Gold's only secured creditor; and
 - (d) Pandion is the Otso Group's "largest lender".

First Koshkin Affidavit at paras 57, 58 and 60.

89. Otso Gold is eroding Pandion's collateral in the CCAA Proceedings by selling gold and using the proceeds to pay operating costs in violation of its agreements with Pandion.
90. Pandion has a contractual right to appoint a receiver pursuant to the Security and, for the reasons and law set out above, Pandion submits that an order appointing the Receiver is just and convenient in the circumstances.

Part 4: MATERIAL TO BE RELIED ON

- 1. First Affidavit of Joseph Archibald, sworn January 7, 2022;
- 2. First Affidavit of Victor Koshkin, sworn December 3, 2021;
- 3. Second Affidavit of Victor Koshkin, sworn December 3, 2021;
- 4. Third Affidavit of Victor Koshkin, sworn December 8, 2021;
- 5. First Report of the Monitor, dated December 11, 2021;
- 6. First Affidavit of Clyde Wesson, sworn December 12, 2021;
- 7. Fourth Affidavit of Victor Koshkin, sworn December 14, 2021;
- 8. Amended and Restated Initial Order granted by the Honourable Justice Gomery on December 15, 2021; and
- 9. Such further affidavits and other documents as counsel may advise, including a further and/or supplemental affidavit in response to a further application by the Petitioners for an order, *inter alia*, extending the stay of proceedings (which application materials have not been served as at the date of the within application).

The applicant estimates that the Application will take 2 hours.

- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master, and arrangements will be made through Trial Scheduling to have this matter heard by the Honourable Mister Justice Gomery, who is seized of these proceedings.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this Application is brought under Rule 9-7, within 8 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 of record 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: January 7, 2022



Signature of Lawyer for the Applicant
Cassels Brock & Blackwell LLP
(Mary I.A. Buttery, Q.C. and Jared Enns)

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
- other

SCHEDULE "A"

NO. S-2110503
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 OTSO GOLD CORP., OTSO GOLD OY, OTSO GOLD AB, and 2273265
ALBERTA LTD.

PETITIONERS

SERVICE LIST
As of December 10, 2021

<p>Farris LLP 25th Floor, 700 W Georgia Street Vancouver, BC V7Y 1B3</p> <p>Tel: (604) 661-1712</p> <p>Attention: Rebecca Morse Matthew Pierce Tim Louman-Gardiner</p> <p>Email: rmorse@farris.com mpierce@farris.com tlouman-gardiner@farris.com</p> <p>Counsel for the Petitioners</p>	<p>Deloitte Restructuring Inc. 939 Granville Street Vancouver BC V6B 3V7</p> <p>Tel: (604) 669-4466</p> <p>Attention: Melinda McKie Naomi McGregor</p> <p>Email: MMcKie@deloitte.ca NaoMcGregor@deloitte.ca</p> <p>The Monitor</p>
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and Lionsbridge Capital Pty Ltd.***