

Court File No.: CV-20-00649558-00CL

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 WITH RESPECT TO
EXPRESS GOLD REFINING LTD.

THIRTEENTH REPORT OF THE MONITOR

March 10, 2023

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INTRODUCTION

1. On October 15, 2020, Express Gold Refining Ltd. (“**EGR**” or the “**Applicant**”) filed for and obtained protection under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”). Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on October 15, 2020 (the “**Initial Order**”), Deloitte Restructuring Inc. was appointed as the Monitor in these proceedings (in such capacity, the “**Monitor**”). The proceedings commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”. The Initial Order also provided for, among other things, a stay of proceedings with respect to the Applicant until and including October 19, 2020 (the “**Stay Period**”). In his endorsement, Justice Hainey scheduled the comeback hearing (the “**Comeback Hearing**”) for October 19, 2020.
2. At the Comeback Hearing, Justice McEwen amended the Initial Order to, among other things, order that the stay of proceedings shall not apply to the Tax Litigation (as defined herein) and extend the Stay Period until and including October 27, 2020. The Initial Order was amended and restated on October 19, 2020, and again on October 27, 2020 (the “**SARIO**”). The Stay Period in these CCAA Proceedings has been extended numerous times by further Orders, most recently up to and including March 16, 2023.
3. The following provides a summary of select orders and endorsements of the Court that are material to the CCAA Proceedings:
 - (a) On March 8, 2021, the Court granted an Order approving an amendment to the Monitoring Protocol dated March 1, 2021, among the Applicant, Canada Revenue Agency (“**CRA**”) and the Monitor (the “**Amended Monitoring Protocol**”);
 - (b) on May 20, 2021, the Monitor filed a motion (the “**Production Motion**”) for an Order granting the Monitor unfettered access to all documents in EGR’s possession and control that have been provided to EGR or its tax counsel, Baker McKenzie LLP (“**EGR’s Tax Counsel**”), by CRA in connection with all GST/HST assessments and reassessments that have been issued or will be issued by CRA (the “**Tax Documents**”), including all Tax Documents produced by CRA

to EGR or EGR's Tax Counsel in connection with the appeal commenced by EGR at the Tax Court of Canada ("**Tax Court**") bearing Court File No. 2020-1214(GST)G (the "**Tax Litigation**"). The Production Motion was heard on June 8, 2021. CRA opposed the Production Motion;

- (c) on June 9, 2021, the Court issued an endorsement (the "**June 9 Endorsement**") in respect of the Production Motion. In summary, the June 9 Endorsement provided reasons supporting the Court's jurisdiction to direct the delivery of the Tax Documents by EGR to the Monitor and further directed an additional hearing, if necessary, to determine any restrictions to be imposed upon certain documents, as identified by CRA;
 - (d) on August 17, 2021, the Court issued a Production and Confidentiality Order, dated June 8, 2021, ordering EGR to produce and make available to the Monitor all Tax Documents (the "**Production Order**");
 - (e) on December 15, 2021, EGR, CRA and the Monitor agreed to amend the Amended Monitoring Protocol (the "**Second Amended and Restated Monitoring Protocol**") to account for current business volumes and reduce the costs associated with implementing the Amended Monitoring Protocol;
 - (f) on January 18, 2022, the Court issued an Order, dated December 14, 2021, approving the Second Amended and Restated Monitoring Protocol; and
 - (g) on August 17, 2022, the Court issued an endorsement in respect of a case conference held to discuss the Monitor's intention to attend the examinations for discovery (the "**Examinations**") that were scheduled to begin on September 6, 2022.
4. Copies of all orders and endorsements granted in the CCAA Proceedings are located on the Monitor's website accessible at: <https://www.insolvencies.deloitte.ca/en-ca/pages/ExpressGoldRefiningLtd.aspx> (the "**Monitor's Website**"). The Monitor encourages interested stakeholders to review the Monitor's Website for a complete history of the CCAA Proceedings, including the various orders and endorsements issued.

PURPOSE

5. The purpose of this thirteenth report of the Monitor (the “**Thirteenth Report**”) is to provide the Court with information and updates on the following:
 - (a) the activities of EGR and the Monitor from December 12, 2022, the date of the Twelfth Report of the Monitor (the “**Twelfth Report**”), a copy of which is attached hereto as Appendix “A”, filed in connection with the previous motion to extend the Stay Period granted in the CCAA Proceedings, to the date of this Thirteenth Report;
 - (b) EGR’s cash flow results for the 12-week period from November 28, 2022 to February 17, 2023, with a comparison to forecast amounts;
 - (c) EGR’s revised cash flow forecast (the “**Revised Cash Flow Forecast**”) for the 17-week period from February 20, 2023 to June 16, 2023, and the Monitor’s comments thereon;
 - (d) the status of the Tax Litigation, including the Examinations and the Monitor’s access to the transcripts generated at the Examinations (the “**Transcripts**”), as described herein;
 - (e) the status of the Third Party Mareva Injunction; and
 - (f) an extension of the Stay Period up to and including June 16, 2023 (the “**Stay Extension**”).
6. This Thirteenth Report should be read in conjunction with the Affidavit of Atef Salama sworn March 9, 2023 in support of the Applicant’s motion for the extension of the Stay Period (the “**Salama Affidavit**”).

TERMS OF REFERENCE AND DISCLAIMER

7. In preparing this Thirteenth Report and making the comments herein, the Monitor has been provided with, and has relied upon the following information (collectively, the “**Information**”): unaudited financial information, books and records and financial

information prepared by EGR, and discussions with management of the Applicant (**“Management”**).

8. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards (**“Canadian GAAS”**) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.
9. Some of the information referred to in this Thirteenth Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
10. Future oriented financial information referred to in this Thirteenth Report was prepared based on Management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
11. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

ACTIVITIES OF EGR SINCE THE TWELFTH REPORT

12. The activities of EGR since the Twelfth Report are set out at paragraphs 9 to 18 of the Salama Affidavit, and such activities of EGR that are related to or arising out of these CCAA Proceedings include:
 - (a) complying with the terms of the Second Amended and Restated Monitoring Protocol;

- (b) continuing to manage its relationships with customers and suppliers to minimize business disruption;
- (c) continuing to provide regular updates and information to the Monitor with respect to the business and the Tax Litigation; and
- (d) continuing its efforts to advance the Tax Litigation. A status update of the Tax Litigation is provided in paragraphs 9 to 17 of the Salama Affidavit.

ACTIVITIES OF THE MONITOR SINCE THE TWELFTH REPORT

13. Since the Twelfth Report, the Monitor has undertaken the following activities:

- (a) monitored EGR's business in accordance with the Second Amended and Restated Monitoring Protocol;
- (b) reviewed EGR's GST/HST filings and communicated with CRA regarding the processing status. In this regard, CRA processed and released net tax refunds for GST/HST filings for the periods from October 16, 2020 to December 31, 2022. The GST/HST filing for the January 31, 2023 period is currently under review by CRA;
- (c) communicated with EGR's restructuring counsel regarding developments in the CCAA Proceedings and Tax Counsel regarding the status of the Tax Litigation;
- (d) communicated with CRA regarding developments in these CCAA Proceedings;
- (e) communicated with EGR and CRA in relation to the Tax Litigation timeline and the Examinations; and
- (f) assisted EGR in preparing the Revised Cash Flow Forecast and cash flow variance reporting.

CASH FLOW FORECAST AND RESULTS RELATIVE TO FORECAST

14. Summarized in the following table are EGR’s actual cash receipts and disbursements for the 12-week period ended February 17, 2023 (the “**Reporting Period**”), as compared to the corresponding weeks in the cash flow forecast included in the Twelfth Report.

Express Gold Refining Ltd.				
Summary of Actual versus Forecast Cash Flows				
For the 12-week period from November 28, 2022 to February 17, 2023				
(\$CAD '000s)				
Unaudited				
	Actual	Forecast	Variance	Note
Receipts				
Collection from Sales and Accounts Receivable	12,453	10,950	1,503	A
HST refunds	909	700	209	B
Interest income	12	5	7	
Other	6	-	6	
Total Receipts	13,380	11,655	1,725	
Disbursements				
Purchases	(11,279)	(10,512)	(767)	C
Customer accounts and hedging	(677)	-	(677)	D
Salaries and wages	(173)	(182)	9	
Consulting and professional fees	(48)	(26)	(22)	E
General Administrative Expenses	(43)	(53)	10	F
Insurance	(20)	(34)	14	G
Rent	(50)	(50)	-	
Advertising and promotion	(58)	(30)	(28)	H
Vehicle	(7)	(7)	-	
Freight	(32)	(26)	(6)	
Income Tax	(30)	(70)	40	I
Total Disbursements	(12,417)	(10,990)	(1,427)	
Litigation Costs	(581)	(450)	(131)	J
Restructuring Costs	(313)	(380)	67	K
Total Litigation and Restructuring Costs	(894)	(830)	(64)	
Intercompany loan	(40)	-	(40)	L
Total Intercompany loan	(40)	-	(40)	
Net Cash Flow	29	(165)	194	
Opening Cash	1,813	1,813	-	
Ending Cash	1,842	1,648	194	

15. EGR's actual net cash inflow for the Reporting Period was \$29,000 compared to a forecast net cash outflow of \$165,000, resulting in a favourable variance of \$194,000. The following are the reasons for the major variances, identified by the Notes in the table above:
- A** A favourable variance of \$1.5 million in sales receipts is a permanent difference due to increased customer traffic as a result of the increase in gold price during the Reporting Period;
 - B** A favourable variance of \$209,000 in HST refunds is a permanent difference due to higher than expected receipts from the November 2022 net tax refund;
 - C** An unfavourable variance of \$767,000 in purchases is a permanent difference due to increased customer traffic as a result of the increase in gold price during the Reporting Period;
 - D** An unfavourable variance of \$677,000 in customer accounts and hedging is primarily due to transfers out totaling \$849,000 related to advances to customers against the customers' gold held at EGR offset slightly by funds withdrawn from EGR's FXDD account of \$173,000. EGR takes positions in the gold futures markets using the FXDD hedging/trading account to hedge against short and long-term fluctuations in the price of gold;
 - E** An unfavourable variance of \$22,000 is a permanent difference due to higher than expected activity as a result of the third party *Mareva* order;
 - F** A favourable variance of \$10,000 in general and administrative expenses is primarily a permanent difference due to Management's efforts to conserve cash;
 - G** A favourable variance of \$14,000 in insurance is a timing difference that will reverse in the future;
 - H** An unfavourable variance of \$28,000 in advertising and promotion expenses is a permanent difference due to higher than expected payments in December 2022 from holiday promotional activities;

- I** A favourable variance of \$40,000 in income tax is a timing difference that will reverse in the future;
- J** An unfavourable variance of \$131,000 in litigation costs is a permanent difference due to higher than expected activity in the Tax Litigation;
- K** A favourable variance of \$67,000 in restructuring costs is a timing difference that will reverse in the future; and
- L** An unfavourable variance of \$40,000 in intercompany loan is a timing difference that arose due to borrowing funds from a related party for working capital needs in March 2022. EGR repaid \$40,000 during this Reporting Period and expects the remainder to be repaid the week ending June 16, 2023, at which point the timing difference will reverse.

APPLICANT'S REVISED CASH FLOW FORECAST

- 16. The Applicant, with the assistance of the Monitor, has prepared the Revised Cash Flow Forecast, which covers the period from February 20, 2023 to June 16, 2023 (the “**Revised Cash Flow Period**”) for the purposes of projecting the cash position of the Applicant’s planned operations and other activities during the Revised Cash Flow Period. A copy of the Revised Cash Flow Forecast is attached hereto as **Appendix “B”**.
- 17. The Revised Cash Flow Forecast has been prepared by Management, using the probable and hypothetical assumptions set out in the notes to the Revised Cash Flow Forecast (the “**Assumptions**”), and is presented on a weekly basis during the Revised Cash Flow Period.
- 18. EGR’s opening cash balance on February 20, 2023 was \$1.8 million. The forecast cash flow surplus for the Revised Cash Flow Period before litigation and restructuring costs is estimated to be approximately \$1.0 million. Litigation and restructuring costs in connection with the Tax Litigation and these CCAA proceedings are estimated to be approximately \$600,000 and \$800,000, respectively, over the Revised Cash Flow Period. As a result, the forecast cash flow deficit for the Revised Cash Flow Period after litigation

and restructuring costs is estimated to be \$446,000, resulting in an estimated ending cash balance of \$1.4 million on June 16, 2023.

19. Accordingly, the Applicant is expected to have sufficient liquidity to operate during the proposed Stay Extension Period. However, with all of its costs considered, including all operating costs, litigation costs and restructuring costs, EGR continues to experience an overall deteriorating liquidity position.
20. The Monitor has reviewed the Revised Cash Flow Forecast to the standard required of a Court-appointed monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the monitor's findings. The Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice include a standard for monitors fulfilling their statutory responsibilities under the CCAA in respect of a monitor's report on a cash flow statement.
21. In accordance with the standard, the Monitor's review of the Revised Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to the Information. Since the Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Revised Cash Flow Forecast. The Monitor also reviewed the support provided by Management for the Assumptions and the preparation and presentation of the Revised Cash Flow Forecast.
22. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material aspects, that:
 - (a) the Assumptions are not consistent with the purpose of the Revised Cash Flow Forecast;
 - (b) as at the date of this Report, the Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Revised Cash Flow Forecast, given the Assumptions; or

- (c) the Revised Cash Flow Forecast does not reflect the Assumptions.
23. Since the Revised Cash Flow Forecast is based on Assumptions regarding future events, actual results will vary from the information presented even if the Assumptions occur, and the variations could be material. Accordingly, the Monitor expresses no assurance as to whether the Revised Cash Flow Forecast will be achieved. In addition, the Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Revised Cash Flow Forecast or relied upon by the Monitor in preparing this Thirteenth Report.
24. The Revised Cash Flow Forecast has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.

TAX LITIGATION UPDATE

25. As discussed in the Monitor’s prior reports, CRA’s re-assessments and potential enforcement against EGR was the catalyst for EGR’s filing for creditor protection under the CCAA. The Tax Litigation (which is EGR’s appeal against such re-assessments) is a central component of the CCAA Proceedings.
26. The timetable for the Tax Litigation is set out in an order of the Tax Court dated March 23, 2022 (the “**Timetable Order**”), and is summarized as follows:

Step	Deadline for Completion
Examinations for Discovery	October 31, 2022
Fulfill undertakings	November 30, 2022
Follow-up questions arising from undertakings	December 19, 2022
Responses to follow-up questions	January 27, 2023
Status update to court re: readiness for hearing	February 28, 2023

27. EGR advises the Monitor that the Tax Litigation is generally proceeding in accordance with the Timetable Order, with the Examinations beginning on September 6, 2022, and

concluding on or about October 31, 2022, and that undertakings, follow-up questions and responses to such follow-up questions have also been completed.

28. The Monitor did not attend the Examinations but has been provided with, and reviewed, all Transcripts, answers to undertakings and other documents exchanged between the parties during and after the Examinations.
29. As detailed at paragraphs 27 to 49 of the Twelfth Report, the Monitor's access to the Transcripts was interpreted on October 7, 2022, following receipt of a Directive of the Tax Court regarding the Monitor's proposed participation at the Examinations. On December 20, 2022, following various discussions between the Monitor and CRA's counsel ("**DOJ**"), the Monitor and DOJ entered into an Agreement and Acknowledgment (the "**Transcript Agreement**"), pursuant to which:
 - (a) EGR, without objection from CRA, will provide to the Monitor the Transcripts (including all answers to undertakings, under advisements and refusals in connection thereto) arising from the Examinations;
 - (b) the parties agreed that the Transcripts shall be treated as a "Subject Document" as such term is defined in the Production Order; and
 - (c) the Monitor agreed to use the Transcripts for the sole purposes of developing an understanding the Tax Litigation and discharging its duties pursuant to the SARIO and the CCAA.
30. A copy of the Transcript Agreement is attached hereto as **Appendix "C"**.
31. The Monitor understands that the next step in the Tax Litigation is for EGR and CRA to provide the Tax Court with an update regarding whether the Tax Litigation will settle, whether a settlement conference would be beneficial or whether a trial date should be set. Pursuant to the Timetable Order, the parties were to advise the Tax Court regarding their readiness for trial by February 28, 2023. As discussed in paragraph 15 of the Salama Affidavit, EGR served CRA with a written offer to settle the Tax Litigation on February 23, 2023. On the same date, the parties' have mutually requested an extension of the

February 28 deadline to March 31, 2023. On March 1, 2023, the Tax Court amended the Timetable Order in accordance with the parties' joint request.

32. The Monitor understands the parties continue to have settlement discussions. The Monitor will discuss the status of settlement discussions with the parties and assist in facilitating a settlement as required.

THIRD PARTY MAREVA INJUNCTION

33. On December 19, 2022, the parties, including the Monitor and its counsel, attended before Justice Myers regarding, among other matters, whether EGR should have been added as a defendant to the action that Chicago Title Insurance Company ("CTIC") had initiated in June 2022 (see para. 52-54 of the Twelfth Report), and whether the *Mareva* relief should have been extended against EGR. Justice Myers set aside the prior orders that added EGR as a defendant and extended the *Mareva* relief against it. Justice Myers also indicated that CTIC and EGR should cooperate regarding the former's request for certain documents and that the Monitor should provide assistance if necessary. A copy of Justice Myers' Endorsement dated December 19, 2022 as attached as **Appendix "D"**.
34. Following Justice Myers' Endorsement, counsel to CTIC and EGR have been collaborating on a proposed form of production order pursuant to which the scope of EGR's document production would be circumscribed. While certain issues remain to be resolved, the Monitor is hopeful that a resolution can be achieved without the need for advice and directions from this Court.

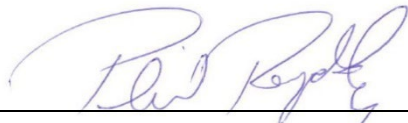
STAY EXTENSION

35. The current Stay Period expires on March 16, 2023. EGR is seeking an extension of the Stay Period up to and including June 16, 2023 in order to allow EGR, with the assistance of the Monitor, to:
 - (a) preserve the *status quo* and continue to maintain the stability of operations;
 - (b) work towards a resolution of the Tax Litigation with CRA; and

- (c) determine next steps in respect of the CCAA Proceedings.
36. As described above, the Revised Cash Flow Statement indicates that EGR will have sufficient liquidity during the Stay Extension Period.
37. In the Monitor's view, EGR has acted and continues to act in good faith and with due diligence in these CCAA Proceedings.
38. The Monitor supports EGR's request for the extension of the Stay Period to June 16, 2023.

All of which is respectfully submitted this 10th day of March, 2023.

**Deloitte Restructuring Inc., solely in its
capacity as Court-appointed Monitor of
Express Gold Refining Ltd.**



Phil Reynolds, LIT
Senior Vice-President



Warren Leung, LIT
Senior Vice-President

Appendix “A”
to the Vjktvggpyj Report of the Monitor

Court File No.: CV-20-00649558-00CL

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 WITH RESPECT TO
EXPRESS GOLD REFINING LTD.

TWELFTH REPORT OF THE MONITOR

December 12, 2022

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Appendices

- A **Appendix “A”**: Fourth Report of the Monitor (without appendices)
- B **Appendix “B”**: June 9 Endorsement
- C **Appendix “C”**: Production Order
- D **Appendix “D”**: Tenth Report of the Monitor (without appendices)
- E **Appendix “E”**: Eleventh Report of the Monitor (without appendices)
- F **Appendix “F”**: Revised Cash Flow Forecast
- G **Appendix “G”**: July 25 Letter
- H **Appendix “H”**: August 10, 2022 Correspondence from the DOJ to Monitor’s Counsel
- I **Appendix “I”**: August 10, 2022 Correspondence from the DOJ to the Tax Court
- J **Appendix “J”**: August 15, 2022 Correspondence from the DOJ to the Tax Court
- K **Appendix “K”**: August 19, 2022 Correspondence from the DOJ to the Tax Court

- L **Appendix “L”**: August 22, 2022 Correspondence from Monitor’s Counsel to the Tax Court
- M **Appendix “M”**: October 7, 2022 Correspondence from the DOJ to Monitor’s Counsel
- N **Appendix “N”**: Directive of the Tax Court dated September 8, 2022
- O **Appendix “O”**: November 15, 2022 Correspondence from Monitor’s Counsel to DOJ
- P **Appendix “P”**: November 16, 2022 Correspondence from the DOJ to Monitor’s Counsel
- Q **Appendix “Q”**: November 18, 2022 Correspondence from EGR’s Tax Counsel to DOJ
- R **Appendix “R”**: Order of Justice Koehnen dated July 22, 2022
- S **Appendix “S”**: Order to Justice Myers dated October 6, 2022
- T **Appendix “T”**: CTIC Amended Statement of Claim

INTRODUCTION

1. On October 15, 2020, Express Gold Refining Ltd. (“**EGR**” or the “**Applicant**”) filed for and obtained protection under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”). Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on October 15, 2020 (the “**Initial Order**”), Deloitte Restructuring Inc. was appointed as the Monitor in these proceedings (in such capacity, the “**Monitor**”). The proceedings commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”. The Initial Order also provided for, among other things, a stay of proceedings with respect to the Applicant until and including October 19, 2020 (the “**Stay Period**”). In his endorsement, Justice Hainey scheduled the comeback hearing (the “**Comeback Hearing**”) for October 19, 2020.
2. At the Comeback Hearing, Justice McEwen amended the Initial Order to, among other things, order that the stay of proceedings shall not apply to the Tax Litigation (as defined herein) and extend the Stay Period until and including October 27, 2020. The Initial Order was amended and restated on October 19, 2020, and again on October 27, 2020 (the “**SARIO**”). The Stay Period in these CCAA Proceedings has been extended numerous times by further Order, most recently up to and including December 16, 2022.
3. The following provides a summary of select orders and endorsements of the Court that are material to the CCAA Proceedings:
 - (a) On May 20, 2021, the Monitor filed a motion (the “**Production Motion**”) for an Order granting the Monitor unfettered access to all documents in EGR’s possession and control that have been provided to EGR or its tax counsel, Baker McKenzie LLP (“**EGR’s Tax Counsel**”), by Canada Revenue Agency (“**CRA**”) in connection with all GST/HST assessments and reassessments that have been issued or will be issued by CRA (the “**Tax Documents**”), including all Tax Documents produced by CRA to EGR or EGR’s Tax Counsel in connection with the appeal commenced by EGR at the Tax Court of Canada (“**Tax Court**”) bearing Court File No. 2020-1214(GST)G (the “**Tax Litigation**”). The Production Motion was heard on June 8, 2021. CRA opposed the Production Motion. The Monitor’s

report to the Court regarding the Production Motion (the “**Fourth Report**”) is attached hereto as **Appendix “A”**.

- (b) On June 9, 2021, the Court issued an endorsement (the “**June 9 Endorsement**”) in respect of the Production Motion. In summary, the June 9 Endorsement provided reasons supporting the Court’s jurisdiction to direct the delivery of the Tax Documents by EGR to the Monitor and further directed an additional hearing, if necessary, to determine any restrictions to be imposed upon certain documents, as identified by CRA. A copy of the June 9 Endorsement is attached hereto as **Appendix “B”**.
- (c) On August 17, 2021, the Court issued a Production and Confidentiality Order, dated June 8, 2021, ordering EGR to produce and make available to the Monitor all Tax Documents (the “**Production Order**”). A copy of the Production Order is attached hereto as **Appendix “C”**.
- (d) On August 16, 2022, the Monitor issued its tenth report (the “**Tenth Report**”), a copy of which is attached hereto as **Appendix “D”**. The purpose of the Tenth Report was to provide the Court with information and updates on the following:
 - (i) the status of the Tax Litigation and the next steps in the CCAA Proceedings; and
 - (ii) the Monitor’s proposed attendance at the examinations for discovery in the Tax Litigation (the “**Examinations**”), which commenced on September 6, 2022, and were completed on October 31, 2022.
- (e) On August 17, 2022, the Court held a case conference (the “**August Case Conference**”) at the request of the Monitor to discuss the Monitor’s attendance at the Examinations. On that same day, Justice McEwen issued an endorsement reserving the scheduling of a motion to address the Monitor’s attendance at the Examinations, to a date to be determined.

4. Copies of all orders and endorsements granted in the CCAA Proceedings are located on the Monitor's website accessible at: <https://www.insolvencies.deloitte.ca/en-ca/pages/ExpressGoldRefiningLtd.aspx> (the "**Monitor's Website**"). The Monitor encourages interested stakeholders to review the Monitor's Website for a complete history of the CCAA Proceedings, including the various orders and endorsements issued.

PURPOSE

5. The purpose of this twelfth report of the Monitor (the "**Twelfth Report**") is to provide the Court with information and updates on the following:
 - (a) the activities of EGR and the Monitor from September 12, 2022, the date of the Eleventh Report of the Monitor (the "**Eleventh Report**"), a copy of which is attached hereto as **Appendix "E"**, filed in connection with the previous motion to extend the Stay Period granted in the CCAA proceedings, to the date of this Twelfth Report;
 - (b) EGR's cash flow results for the 14-week period from August 22, 2022 to November 25, 2022, with a comparison to forecast amounts;
 - (c) EGR's revised cash flow forecast (the "**Revised Cash Flow Forecast**") for the 17-week period from November 28, 2022 to March 24, 2023, and the Monitor's comments thereon;
 - (d) the status of the Tax Litigation;
 - (e) the status of the Examinations, and the Monitor's access to the transcripts generated at the Examinations (the "**Transcripts**"), as described herein; and
 - (f) the Monitor's recommendations.
6. This Twelfth Report should be read in conjunction with the Affidavit of Atef Salama sworn December 6, 2022 in support of the Applicant's motion for the extension of the Stay Period (the "**Salama Affidavit**").

TERMS OF REFERENCE AND DISCLAIMER

7. In preparing this Twelfth Report and making the comments herein, the Monitor has been provided with, and has relied upon the following information (collectively, the “**Information**”): unaudited financial information, books and records and financial information prepared by EGR, and discussions with management of the Applicant (“**Management**”).
8. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards (“**Canadian GAAS**”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.
9. Some of the information referred to in this Twelfth Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
10. Future oriented financial information referred to in this Twelfth Report was prepared based on Management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
11. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

ACTIVITIES OF EGR SINCE THE ELEVENTH REPORT

12. The activities of EGR since the Eleventh Report are set out at paragraphs 24 to 28 of the Salama Affidavit, and such activities of EGR that are related to or arising out of these CCAA Proceedings include:

- (a) complied with the terms of the Second Amended and Restated Monitoring Protocol;
- (b) continued to manage its relationships with customers and suppliers to minimize business disruption;
- (c) continued to provide regular updates and information to the Monitor with respect to the business and the Tax Litigation; and
- (d) continued its efforts to advance the Tax Litigation. A status update of the Tax Litigation is provided in paragraphs 9 to 15 of the Salama Affidavit.

ACTIVITIES OF THE MONITOR SINCE THE ELEVENTH REPORT

13. Since the Eleventh Report, the Monitor has undertaken the following activities:

- (a) monitored EGR's business in accordance with the Second Amended and Restated Monitoring Protocol;
- (b) reviewed EGR's GST/HST filings and communicated with CRA regarding the processing status. In this regard, CRA processed and released net tax refunds for GST/HST filings for the periods from October 16, 2020 to August 31, 2022. The GST/HST filings for the September 2022 and October 2022 periods are currently under review by CRA;
- (c) communicated with EGR's restructuring counsel regarding developments in the CCAA Proceedings and Tax Counsel regarding the status of the Tax Litigation;
- (d) communicated with CRA regarding developments in these CCAA Proceedings;
- (e) communicated with EGR and CRA in relation to the Tax Litigation timeline and the Examinations; and
- (f) assisted EGR in preparing the Revised Cash Flow Forecast and cash flow variance reporting.

CASH FLOW FORECAST AND RESULTS RELATIVE TO FORECAST

14. Summarized in the following table are EGR's actual cash receipts and disbursements for the 14-week period ended November 25, 2022 (the "**Reporting Period**"), as compared to the corresponding weeks in the cash flow forecast included in the Eleventh Report.

Express Gold Refining Ltd.				
Summary of Actual versus Forecast Cash Flows				
For the 14-week period from August 22, 2022 to November 25, 2022				
(\$CAD '000s)				
Unaudited				
	Actual	Forecast	Variance	Note
Receipts				
Collection from Sales and Accounts Receivable	13,184	15,408	(2,224)	A
HST refunds	1,089	1,078	11	B
Interest income	9	2	7	
Other	(88)	-	(88)	C
Total Receipts	14,194	16,488	(2,294)	
Disbursements				
Purchases	(10,633)	(14,791)	4,158	D
Customer accounts and hedging	(1,996)	-	(1,996)	E
Salaries and wages	(233)	(234)	1	
Consulting and professional fees	(40)	(40)	-	
General Administrative Expenses	(63)	(66)	3	
Insurance	(13)	(92)	79	F
Rent	(67)	(50)	(17)	G
Advertising and promotion	(36)	(37)	1	
Vehicle	(7)	(10)	3	
Freight	(26)	(30)	4	
Income Tax	-	(20)	20	H
Total Disbursements	(13,114)	(15,370)	2,256	
Litigation Costs	(412)	(694)	282	I
Restructuring Costs	(267)	(470)	203	J
Total Litigation and Restructuring Costs	(679)	(1,164)	485	
Intercompany loan	-	-	-	
Total Intercompany loan	-	-	-	
Net Cash Flow	401	(46)	447	
Opening Cash	1,391	1,391	-	
Ending Cash	1,792	1,345	447	

15. EGR's actual net cash inflow for the Reporting Period was \$401,000 compared to forecast net cash outflow of \$46,000, resulting in a favourable variance of \$447,000. The following are the reasons for the major variances, identified by the notes in the above table:

- A** An unfavourable variance of \$2.2 million in sales receipts is a permanent difference due to what Management has advised is decreased customer traffic as a result of the decrease in gold price during the first 11 weeks of the Reporting Period;
- B** A favourable variance of \$11,000 in HST refunds is due in part to a permanent difference from i) \$153,000 in higher than expected receipt from the August 2022 net tax refund, and ii) a \$40,000 reversal of a timing difference from the November 2020 GST/HST return, offset by an unfavourable timing difference from the forecast receipt of the September 2022 net tax refund of \$181,000 which has not yet been received.
- C** An unfavourable variance of \$88,000 in other disbursements is a permanent difference due to the exchange rate differences between the average actual foreign exchange rate during the Reporting Period of 1.34 compared to the forecast foreign exchange rate of 1.29 used when converting from Canadian to US dollars.
- D** A favourable variance of \$4.2 million in purchases is a permanent difference due to what Management has advised is decreased customer traffic as a result of the decrease in gold price during the first 11 weeks of the Reporting Period;
- E** An unfavourable variance of \$2.0 million in customer accounts and hedging is primarily due to transfers out totaling i) \$419,000 to EGR's hedging/trading accounts held at Saxo Bank and FXDD and, ii) \$1.6 million related to advances to customers against the customers' gold held at EGR. EGR takes positions in the gold futures markets using the Saxo Bank and FXDD hedging/trading account to hedge against short and long-term fluctuations in the price of gold;
- F** A favourable variance of \$79,000 in insurance is a timing difference that will reverse in the future;
- G** An unfavourable variance of \$17,000 is a timing difference that will reverse in the future;

- H** A favourable variance of \$20,000 in income tax is a timing difference that will reverse in the future;
- I** A favourable variance of \$282,000 in litigation costs is a timing difference that will reverse in the future as a result of a delay in receipt and payment of invoices; and
- J** A favourable variance of \$203,000 in restructuring costs is a timing difference that will reverse in the future as a result of a delay in receipt and payment of invoices.

APPLICANT'S REVISED CASH FLOW FORECAST

16. The Applicant, with the assistance of the Monitor, has prepared the Revised Cash Flow Forecast, which covers the period from November 28, 2022 to March 24, 2023 (the “**Revised Cash Flow Period**”) for the purposes of projecting the cash position of the Applicant’s planned operations and other activities during the Revised Cash Flow Period. A copy of the Revised Cash Flow Forecast is attached hereto as **Appendix “F”**.
17. The Revised Cash Flow Forecast has been prepared by Management, using the probable and hypothetical assumptions set out in the notes to the Revised Cash Flow Forecast (the “**Assumptions**”), and is presented on a weekly basis during the Revised Cash Flow Period.
18. EGR’s opening cash balance on November 28, 2022 was \$1.8 million. The forecast cash flow surplus for the Revised Cash Flow Period before litigation and restructuring costs is estimated to be approximately \$830,000. Litigation and restructuring costs in connection with the Tax Litigation and these CCAA proceedings are estimated to be approximately \$600,000 and \$540,000, respectively, over the Revised Cash Flow Period. As a result, the forecast cash flow deficit for the Revised Cash Flow Period after litigation and restructuring costs is estimated to be \$400,000, resulting in an estimated ending cash balance of \$1.4 million on March 24, 2023.
19. Accordingly, the Applicant is expected to have sufficient liquidity to operate during the proposed Stay Extension Period. However, with all of its costs considered, including all operating costs, litigation costs and restructuring costs, EGR continues to experience an overall deteriorating liquidity position.

20. The Monitor has reviewed the Revised Cash Flow Forecast to the standard required of a Court-appointed monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the monitor's findings. The Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice include a standard for monitors fulfilling their statutory responsibilities under the CCAA in respect of a monitor's report on a cash flow statement.
21. In accordance with the standard, the Monitor's review of the Revised Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to the Information. Since the Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Revised Cash Flow Forecast. The Monitor also reviewed the support provided by Management for the Assumptions and the preparation and presentation of the Revised Cash Flow Forecast.
22. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material aspects, that:
 - (a) the Assumptions are not consistent with the purpose of the Revised Cash Flow Forecast;
 - (b) as at the date of this Report, the Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Revised Cash Flow Forecast, given the Assumptions; or
 - (c) the Revised Cash Flow Forecast does not reflect the Assumptions.
23. Since the Revised Cash Flow Forecast is based on Assumptions regarding future events, actual results will vary from the information presented even if the Assumptions occur, and the variations could be material. Accordingly, the Monitor expresses no assurance as to whether the Revised Cash Flow Forecast will be achieved. In addition, the Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial

information presented in the Revised Cash Flow Forecast or relied upon by the Monitor in preparing this Twelfth Report.

24. The Revised Cash Flow Forecast has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.

TAX LITIGATION UPDATE

The Examinations

25. As discussed in the Monitor’s prior reports, CRA’s re-assessments and potential enforcement against EGR was the catalyst for EGR’s filing for creditor protection under the CCAA. The Tax Litigation (which is EGR’s appeal against such re-assessments) is a central component of the CCAA Proceedings.
26. The timetable for the Tax Litigation is set out in an order of the Tax Court dated March 23, 2022 (the “**Timetable Order**”), and is summarized as follows:

Step	Deadline for Completion
Examinations for Discovery	October 31, 2022
Fulfill undertakings	November 30, 2022
Follow-up questions arising from undertakings	December 19, 2022
Responses to follow up questions	January 27, 2023
Status update to court re: readiness for hearing	February 28, 2023

27. On July 25, 2022, the Monitor’s counsel wrote to EGR’s CCAA counsel and CRA’s counsel (the “**DOJ**”) advising of the Monitor’s intention to attend the Examinations “as an observer” (the “**July 25 Letter**”). In the July 25 Letter, the Monitor’s counsel was clear regarding the scope of the Monitor’s attendance stating that “the Monitor does not seek to actively participate in the Examinations by making any statements on the record, posing

any questions to the witnesses or their counsel(s) or otherwise interfering with the parties' processes, including scheduling". A copy of the July 25 Letter is attached hereto as **Appendix "G"**.

28. EGR did not take any issue with the Monitor's attendance at the Examinations.
29. On August 10, 2022, the DOJ delivered a responding letter indicating its opposition to the Monitor's request. A copy of DOJ's letter is attached hereto as **Appendix "H"**.
30. On the same date, August 10, 2022, the DOJ sent a separate letter to the case management judge in the Tax Litigation (the "**Case Management Judge**"), a copy of which is attached hereto as **Appendix "I"**, requesting a case management call on an urgent basis to discuss the Monitor's request.
31. On August 15, 2022, the DOJ sent a second letter to the Case Management Judge, a copy of which is attached hereto as **Appendix "J"**. Soon after, EGR's Tax Counsel advised the Monitor that the Case Management Judge convened a conference call during the afternoon of August 16, 2022. The Monitor was not invited to attend the call and has no direct knowledge of the submissions or representations made during the call regarding the Monitor's request to attend the Examinations.
32. As noted above, on August 17, 2022, counsel for the Monitor, EGR and the DOJ, attended the August Case Conference before this Court regarding the Monitor's attendance at the Examinations. In advance of the August Case Conference, the Monitor prepared and delivered the Tenth Report.
33. As set out in paragraphs 15-21 of the Tenth Report, the alleged basis for CRA's objection to the Monitor's in-person attendance at the Examinations was twofold:
 - (a) CRA believed that the parties to the Tax Litigation have absolute control as to whether and how an adverse party's examination evidence is used and the Monitor's reporting obligations in the CCAA Proceeding could interfere with the parties' control of "information gleaned from observing" the Examinations; and

- (b) CRA believed that the cause of EGR's financial difficulties should by now be known to the Monitor.
- 34. The Monitor's response to CRA's objections was as follows:
 - (a) there is no credible concern regarding control of information because the Monitor's attendance to observe the Examinations would be subject to the strict confidentiality provisions contained in the Production Order (as may be amended or supplemented by this Court); and
 - (b) regarding the cause of EGR's financial difficulties, the Monitor was (and is) only aware of the allegations asserted by CRA against EGR. Based on the documentary evidence it has reviewed, the Monitor is unable to understand or consider the validity or invalidity of the allegations. The Examinations provided an important opportunity to supplement the documentary evidence and provide crucial insight into the credibility of the allegations and witnesses, the causes of EGR's insolvency and whether EGR has been acting in good faith and with due diligence prior to and during the CCAA Proceedings. Such information could, as appropriate, facilitate the use of these CCAA Proceedings as a means of resolving the issues between EGR and CRA without the need for (potentially) years of further litigation.
- 35. The scheduling of a motion to address the Monitor's attendance was reserved and the parties continued their discussions with a view to resolving the issue before the scheduled start of the Examinations on September 6, 2022.
- 36. On August 19, 2022, the DOJ delivered a further letter to the Tax Court requesting a direction or order to exclude the Monitor from attendance at the Examinations. A copy of the DOJ's letter is attached hereto as **Appendix "K"**.
- 37. On August 22, 2022, counsel for the Monitor delivered correspondence to the Tax Court outlining its concerns with the CRA's request, in particular the lack of procedural fairness with respect to the rights of the Monitor without (i) any formal motion from the CRA, or

- (ii) giving the Monitor an opportunity to make submissions on the issue. A copy of counsel for the Monitor's letter is attached hereto as Appendix "L".
38. One of the Monitor's primary concerns in relation to the Tax Litigation is that it proceeds on an expedited basis within EGR's financial capabilities and consistent with the objectives of the CCAA. As such, rather than risk any delays to the Timetable, the Monitor did not schedule a motion prior to the start of the Examinations and instead concentrated its efforts on receiving and reviewing the Transcripts in accordance with the Production Order and paragraph 24(e) of the SARIO.
39. By September 6, 2022, the Monitor understood that all parties were in agreement that EGR would provide the Monitor with the Transcripts on a rolling basis. EGR's Tax Counsel advised the Monitor that on September 6, 2022, being the first day of Examination, they raised the issue directly with the DOJ and the DOJ expressly agreed to the Monitor receiving the Transcripts. As such, EGR's Tax Counsel began delivering the Transcripts to the Monitor and its counsel on a rolling basis beginning on September 8, 2022.
40. This practice continued until approximately October 7, 2022, when DOJ forwarded to the Monitor a Directive from the Case Management Judge dated September 8, 2022 (the "**Directive**"), but which had not been delivered to EGR or the CRA until October 6, 2022.
41. The Directive provided that "each party's discovery examination in this matter is to be conducted without the CCAA Monitor and or its counsel present or in any other way observing or listening, particularly given that, unlike typical hearings and trials, discovery examinations including in this Court are not public proceedings". Of note, the Monitor was not provided an opportunity to respond to the Tax Court prior to the issuance of the Directive.
42. In a covering email to EGR's Tax Counsel, the DOJ stated that the Directive "would contradict any written agreement that parties to the CCAA matter may enter into pertaining to the transcripts". A copy of the DOJ's covering email sent October 7, 2022 is attached hereto as Appendix "M" and a copy of the Directive is attached hereto as Appendix "N".

43. The DOJ subsequently inquired with EGR's Tax Counsel as to whether EGR had stopped delivering Transcripts to the Monitor and whether it requested that the Monitor "return" the Transcripts in its possession.
44. In the Monitor's view, the Directive does not prohibit the Monitor from receiving and reviewing the Transcripts as it only contemplates the Monitor "observing or listening" to the live Examinations and not receiving a copy the Transcripts afterwards. Furthermore, EGR's obligation to deliver the Transcripts is expressly set forth in the Production Order and the Monitor is empowered to have access to the Transcripts under paragraph 24(e) of the SARIO.
45. Notwithstanding the foregoing and in order to avoid any delays under the Timetable, the Monitor agreed to a temporary moratorium on the delivery of the Transcripts until the Examinations were completed, while reserving all rights for further Court determination, if required. As a result, EGR's Tax Counsel stopped delivering the Transcripts to the Monitor, with the most recent Transcript in the Monitor's possession being dated October 6, 2022. EGR's Tax Counsel advised the Monitor that the Examinations were completed on October 31, 2022, subject to each party answering their outstanding undertakings, under advisements and refusals.
46. On November 15, 2022, counsel to the Monitor delivered correspondence to the DOJ requesting its position in relation to the delivery of the balance of the Transcripts (for the period of October 7, 2022 to October 31, 2022) (the "**Remaining Transcripts**"). A copy of the November 15, 2022 correspondence is attached hereto as **Appendix "O"**.
47. On November 16, 2022, the DOJ delivered further correspondence to the Monitor indicating that the delivery of the Remaining Transcripts is guided by the Directive and, as a result, a Tax Court issue. This position conflicts with the SARIO and the Production Order. A copy of the DOJ's November 16, 2022 correspondence is attached hereto as **Appendix "P"**.
48. On November 18, 2022, counsel to the Monitor were copied on an email exchange between EGR's Tax Counsel and the DOJ in relation to the delivery of the Remaining Transcripts.

In short, EGR's Tax Counsel communicated to the DOJ that: (i) EGR suspended the delivery of Transcripts to the Monitor effective October 6, 2022, and that the delivery of the Transcripts up to that date were disclosed with the "clear and unequivocal agreement" of the CRA/DOJ, (ii) EGR has not requested the return of the Transcripts delivered to date, and (iii) EGR does not oppose the delivery of the Remaining Transcripts to the Monitor which is consistent with EGR's obligations in the CCAA Proceedings. A copy of the November 18, 2022 correspondence is attached hereto as **Appendix "Q"**.

49. At the time of issuing this Twelfth Report, the Monitor continues to engage in ongoing discussions with the CRA/DOJ and EGR regarding the Monitor's access to the Remaining Transcripts. The Monitor's position remains that it is entitled to all Transcripts pursuant to the Production Order and reserves its right to bring a motion for further relief from this Court should discussions with the CRA/DOJ reach an impasse.

THIRD PARTY MAREVA INJUNCTION

50. On November 28, 2022, the Monitor learned through counsel that EGR had on November 7, 2022 been notified by its banker, the Canadian Imperial Bank of Commerce ("CIBC"), that its accounts containing approximately \$860,000 had been frozen. CIBC had done so as it apparently had received notice of a *Mareva* order dated November 2, 2022, issued by Justice Myers.
51. Upon learning of this development, the Monitor, through counsel, immediately began to investigate the underlying circumstances, including through discussions with EGR's counsel and counsel to the plaintiff who had obtained the *Mareva* order. To date the investigation has revealed the following.
52. On June 14, 2022, Chicago Title Insurance Company ("CTIC") commenced an action bearing court file number CV-22-682646 against a number of parties (the "**Initial Defendants**"), seeking damages of \$2.75 million for, among other things, fraud. The core allegation is that the defendants, or some of them, engaged in a mortgage fraud and subsequently "laundered" the fraudulently obtained proceeds through various transactions and parties.

53. On July 22, 2022, CTIC obtained a *Mareva* order from Justice Koehnen against the Initial Defendants, a copy of which is attached hereto as Appendix “R”. Justice Koehnen’s order was extended by further orders of Justices Vermette (August 2, 2022), Black (August 12, 2022), and Myers (September 7, and October 6, 2022). A copy of Justice Myers’ order dated October 6, 2022 is attached hereto as Appendix “S”.
54. On November 2, 2022, Justice Myers issued a further order that granted CTIC leave to add a number of additional defendants (the “**Additional Defendants**”) to the original claim. EGR was included among the Additional Defendants. A copy of the Amended Statement of Claim is attached hereto as Appendix “T”. It was apparently this order and the Amended Statement of Claim that caused CIBC to freeze the Company’s accounts.
55. Counsel to the Monitor spoke to CTIC’s counsel on December 6, 2022, to obtain further background information. EGR’s counsel, on learning of the freezing of its accounts, discussed the matter with CTIC’s counsel, including the pending CCAA proceeding. CTIC’s counsel was apparently unaware that EGR had been, since 2020, subject to these CCAA Proceedings. None of the various Judges who issued the orders described above was aware of the CCAA proceeding or the pending stay of proceedings. Consequently, CTIC’s counsel directed CIBC to release EGR’s accounts from the freeze and to effectively disregard Justice Myers’ order of November 2, 2022. It appears from discussions with CTIC’s counsel that the principal purpose of adding EGR to CTIC’s action has been to obtain disclosure documents in EGR’s possession that are relevant to the transactions in issue. Counsel to the Monitor has, to date, not been made aware of any facts or circumstances implying that EGR in fact participated in the alleged fraud, as opposed to having been an arm’s length *bona fide* counterparty without any actual knowledge of the alleged scheme.
56. The Monitor is continuing to investigate matters but is currently of the view that the *Mareva* order issued against EGR has no effect in light of the CCAA stay of proceedings. To the extent the issue cannot be resolved between EGR and CTIC, the Monitor intends to seek the Court’s directions once all available information has been considered.

57. Further information regarding the *Mareva* injunction is contained in the Salama Affidavit at paragraphs 16 to 23.

STAY EXTENSION

58. The current Stay Period expires on December 16, 2022. EGR is seeking an extension of the Stay Period up to and including March 16, 2023 in order to allow EGR, with the assistance of the Monitor, to:

- (a) preserve the *status quo* and continue to maintain the stability of operations;
- (b) work towards a resolution of the Tax Litigation with CRA; and
- (c) determine next steps in respect of the CCAA Proceedings.

59. As described above, the Revised Cash Flow Statement indicates that EGR will have sufficient liquidity during the Stay Extension Period.

60. In the Monitor's view, EGR has acted and continues to act in good faith and with due diligence in these CCAA Proceedings.

61. The Monitor supports EGR's request for the extension of the Stay Period to March 16, 2023.

All of which is respectfully submitted this 12th day of December, 2022.

**Deloitte Restructuring Inc., solely in its
capacity as Court-appointed Monitor of
Express Gold Refining Ltd.**



Phil Reynolds, LIT
Senior Vice-President



Warren Leung, LIT
Senior Vice-President

**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 WITH RESPECT TO EXPRESS GOLD REFINING LTD.**

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

TWELFTH REPORT OF THE MONITOR

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Appendix “D”
to the Vj kt vggpj Report of the Monitor

Express Gold Refining Ltd.
17-week cash flow forecast for the period February 20, 2023 to June 16, 2023
Amounts in CAD, unaudited

Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	TOTAL		
Notes	24-Feb	3-Mar	10-Mar	17-Mar	24-Mar	31-Mar	7-Apr	14-Apr	21-Apr	28-Apr	5-May	12-May	19-May	26-May	2-Jun	9-Jun	16-Jun			
Receipts																				
1 Sales	864,471	1,080,588	1,080,588	1,080,588	1,080,588	1,080,588	864,471	1,080,588	1,080,588	1,080,588	1,080,588	1,080,588	1,080,588	864,471	1,080,588	1,080,588	1,080,588	1,080,588	17,721,651	
2 HST refunds	316,773	-	-	-	-	340,936	-	-	-	-	-	-	-	-	-	-	-	-	-	1,081,135
3 Interest income	4,354	4,354	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	17,224
Total Receipts	1,185,598	1,084,942	1,080,588	1,080,588	1,080,588	1,421,524	868,725	1,080,588	1,080,588	1,292,312	1,084,942	1,080,588	1,080,588	1,080,588	864,471	1,296,566	1,080,588	1,080,588	1,080,588	18,819,921
Disbursements																				
4 Purchases	(829,892)	(1,037,365)	(1,037,365)	(1,037,365)	(1,037,365)	(1,037,365)	(829,892)	(1,037,365)	(1,037,365)	(1,037,365)	(1,037,365)	(1,037,365)	(1,037,365)	(829,892)	(1,037,365)	(1,037,365)	(1,037,365)	(1,037,365)	(1,037,365)	(17,012,785)
5 Salaries and wages	(17,621)	(17,687)	(17,687)	(17,687)	(17,687)	(17,687)	(17,687)	(17,687)	(17,687)	(17,687)	(17,687)	(17,687)	(17,687)	(17,687)	(17,687)	(17,687)	(17,687)	(17,687)	(17,687)	(16,680)
6 Consulting and professional fees	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(5,357)	(48,217)
7 General Administrative Expenses	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(5,416)	(92,078)
8 Insurance	(4,577)	(3,561)	(3,561)	(3,561)	(3,561)	(3,561)	(4,577)	(3,561)	(3,561)	(4,577)	(3,561)	(3,561)	(3,561)	(4,577)	(3,561)	(3,561)	(3,561)	(3,561)	(3,561)	(133,184)
9 Rent	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(16,653)	(66,614)
10 Advertising and promotion	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(2,723)	(46,286)
11 Vehicle	(226)	(226)	(226)	(226)	(226)	(226)	(226)	(226)	(226)	(226)	(226)	(226)	(226)	(226)	(226)	(226)	(226)	(226)	(226)	(1,114)
12 Freight	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(2,195)	(10,398)
13 Income Tax	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(37,323)
Total Disbursements	(863,432)	(1,087,843)	(1,086,844)	(1,213,814)	(1,070,905)	(1,068,613)	(867,040)	(1,116,742)	(1,070,905)	(1,066,613)	(1,074,513)	(1,099,174)	(1,070,851)	(1,070,851)	(876,361)	(1,074,513)	(1,065,613)	(1,074,513)	(1,074,513)	(17,815,586)
Net Cash Flow Before Litigation and Restructuring Costs	317,812	(3,001)	23,744	(133,225)	9,684	353,911	1,684	(361,153)	9,684	225,699	10,329	(18,585)	9,737	(12,230)	222,052	14,976	6,176	6,176	1,004,233	
14 Litigation Costs	-	-	-	(150,000)	-	(100,000)	-	(100,000)	(150,000)	-	-	-	(150,000)	-	-	-	-	-	(150,000)	(600,000)
15 Restructuring Costs	-	-	-	(100,000)	-	(100,000)	-	(100,000)	(100,000)	-	-	(100,000)	-	-	-	-	-	-	(800,000)	(800,000)
Total Litigation and Restructuring Costs	-	(100,000)	-	(250,000)	-	(100,000)	-	(100,000)	(150,000)	(100,000)	-	(100,000)	(150,000)	(100,000)	(100,000)	(100,000)	(100,000)	(150,000)	(1,400,000)	
Intercompany loan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(50,000)	
Total Intercompany Loan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(50,000)	
Net Cash Flow	317,812	(103,001)	23,744	(383,225)	9,684	255,911	1,684	(136,153)	(140,216)	125,699	10,329	(118,585)	(140,263)	(112,230)	222,052	(85,024)	(85,024)	(85,024)	(445,767)	
17 Opening Cash	1,840,817	2,158,629	2,055,628	2,079,373	1,696,147	1,705,831	1,961,742	1,965,427	1,827,273	1,686,957	1,812,656	1,822,985	1,704,399	1,564,137	1,451,846	1,451,846	1,673,898	1,588,874	1,588,874	1,840,817
Ending Cash	2,158,629	2,055,628	2,079,373	1,696,147	1,705,831	1,961,742	1,965,427	1,827,273	1,686,957	1,812,656	1,822,985	1,704,399	1,564,137	1,451,846	1,451,846	1,673,898	1,588,874	1,588,874	1,395,050	

Notes
General Receipts and disbursements denominated in U.S. Dollars have been converted into Canadian Dollars using an exchange rate of CND\$1.35 = USD\$1.00.

- Projected disbursements include GST and HST charged for purchases of goods and services.
- EBX fee charged for statutory holidays on February 20, 2023, April 07, 2023 and July 22, 2023.
- Projected tax refunds are estimated based on input tax credits claimed on GST and HST paid to vendors.
- Receipts from interest income earned on deposits.
- These projected disbursements represent payments to suppliers of precious metals such as gold, silver, platinum and palladium bullion in the form of bars. The Company also purchases unrefined bars and scrap gold for refining and salaried employees are paid twice a month. Payroll disbursements include all employee source deductions, employee and employer portions of CPP and EI, and other payroll-related taxes.
- These projected disbursements include payments to EGRS advisors for corporate matters.
- These projected disbursements include premium payments for general, property and liability insurance, employee and employer portions of CPP and EI, and other payroll-related taxes.
- These projected disbursements include rent payments to Farag Properties Inc., a related party.
- These projected disbursements include telephone and networking, bank charges, travel, software and utilities.
- These projected disbursements represent vehicle lease and other vehicle-related expenses.
- These projected disbursements represent freight expenses to transport inventory for refining or for delivery to customers.
- These projected disbursements represent corporate income tax instalments.
- These projected disbursements include payments to legal advisors for litigation matters.
- These projected disbursements include payments to EGRS's legal advisor for specialist restructuring advice and the fees and costs of the Monitor and its counsel.
- These projected disbursements include payments to related parties for working capital purposes.
- The opening cash balance reflects the bank balance and cash on hand balance at the start of the cash flow forecast.

**SCHEDULE TO APPENDIX B – LETTER FROM EXPRESS GOLD REFINING LTD. TO THE
MONITOR, DATED MARCH 9, 2023**

See attached.



March 09, 2023

Deloitte Restructuring Inc.
Bay Adelaide East
8 Adelaide Street West
Suite 200
Toronto, Ontario M5H 0A9
Canada

Attention: Phil Reynolds

Dear Sirs:

**Re: Proceedings under the *Companies' Creditors Arrangement Act* ("CCAA")
Responsibilities/Obligations and Disclosure with Respect to Cash Flow Projections**

In connection with the CCAA proceedings in respect of Express Gold Refining Ltd. ("EGR"), the management of EGR ("**Management**") has prepared the attached Cash Flow Statement and the assumptions on which the Cash Flow Statement is based.

EGR confirms that:

1. The Cash Flow Statement and the underlying assumptions are the responsibility of EGR;
2. All material information relevant to the Cash Flow Statement and to the underlying assumptions has been made available to Deloitte Restructuring Inc., in its capacity as Monitor of EGR;
3. Management has taken all actions that it considers necessary to ensure:
 - a. That the individual assumptions underlying the Cash Flow Statement are appropriate in the circumstances;
 - b. That the individual assumptions underlying the Cash Flow Statement, taken as a whole, are appropriate in the circumstances; and



- c. That all relevant assumptions have been properly presented in the Cash Flow Statement or in the notes accompanying the Cash Flow Statement.

4. Management understands and agrees that the determination of what constitutes a material adverse change in the projected cash flow or financial circumstances, for the purposes of our monitoring the on-going activities of EGR, is ultimately at your sole discretion, notwithstanding that Management may disagree with such determination;

5. Management understands its duties and obligations under the CCAA and that a breach of these duties and obligations could make EGR's Management liable to fines and imprisonment in certain circumstances; and

6. The Cash Flow Statement and assumptions have been reviewed and approved by the EGR's board of directors or Management has been duly authorized by EGR's board of directors to prepare and approve the cash flow assumptions.

Yours truly,

Atef Salama
Vice President

Appendix “E”
to the Vjktvggpyj Report of the Monitor

AGREEMENT AND ACKNOWLEDGMENT

TO: Department of Justice (“**DOJ**”), on behalf of the Canada Revenue Agency (the “**CRA**”)

RE: In the Matter of a Plan of Compromise or Arrangement of Express Gold Refining Ltd.
Court File No. CV-20-00649558-00CL (the “**CCAA Proceedings**”)

Deloitte Restructuring Inc., in its capacity as Court-appointed monitor (the “**Monitor**”) in the CCAA Proceedings of Express Gold Refining Ltd. (“**EGR**”), and the CRA hereby agree, acknowledge and confirm that:

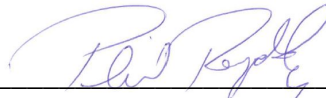
- (a) EGR, without objection from CRA, will provide the transcripts (including all answers to undertakings, under advisements and refusals in connection thereto) arising from the examinations for discovery conducted in the tax litigation (the “**Tax Litigation**”) between the CRA and EGR (Court File No. 2020-1214 (GST)) (the “**Transcripts**”) to the Monitor (and its legal counsel);
- (b) The Transcripts shall be treated as a “Subject Document” as such term is defined in the Production and Confidentiality Order dated June 8, 2021 (the “**Production Order**”) issued in the CCAA Proceedings, and for greater certainty:
 - i. shall be used solely by the Monitor for the sole purpose of the Monitor developing an understanding of the Tax Litigation, including for the purposes of discharging its duties as Monitor pursuant to the Second Amended and Restated Initial Order dated October 27, 2020 and the *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”);
 - ii. the Monitor will not use the Transcripts for any other purposes and will not share / disclose the Transcripts (or the contents of the Transcripts) with / to anyone else, unless: (A) the Monitor provides 14 days’ advance written notice to DOJ/CRA of its intention to disclose, in which case the parties shall attempt to consensually resolve the disclosure and use of the Transcripts, failing which the Monitor may seek leave of the Court upon an additional 14 days’ advance notice to each of EGR and DOJ/CRA, or (B) a material adverse change (“**MAC**”) has occurred in the CCAA Proceedings and the Monitor is obligated to report on such MAC pursuant to its duties and obligations under the CCAA, in which case the Monitor shall provide four business days’ advance written notice to EGR and DOJ/CRA before reporting to the Court. For greater certainty, a MAC shall mean a

material adverse change in the business, assets, properties, liabilities (actual or contingent), operations, condition (financial or otherwise) of EGR, or the occurrence of an event that has a significant adverse effect on the CCAA Proceedings, as determined by the Monitor;

- iii. the Monitor undertakes and agrees to preserve and maintain the confidentiality of the Transcripts, and will not use or disclose any contents of the Transcripts within any pleadings, public documents or reports of the Monitor in Court File No. CV-20-00649558-00CL (the “**Court**”) or any other court proceeding, except as set out in clause (b)(ii), above; and
- iv. the timelines reflected in this agreement supersede the timelines in the Production Order to the extent that there is disagreement between this Agreement and the Production Order relating to the disclosure of Transcripts.

DATED: December 20, 2022

DELOITTE RESTRUCTURING INC., solely in its capacity as Court-appointed Monitor of Express Gold Refining Ltd.



Per:

Name: Phil Reynolds

CANADA REVENUE AGENCY

Per:

Name:

material adverse change in the business, assets, properties, liabilities (actual or contingent), operations, condition (financial or otherwise) of EGR, or the occurrence of an event that has a significant adverse effect on the CCAA Proceedings, as determined by the Monitor;

- iii. the Monitor undertakes and agrees to preserve and maintain the confidentiality of the Transcripts, and will not use or disclose any contents of the Transcripts within any pleadings, public documents or reports of the Monitor in Court File No. CV-20-00649558-00CL (the “**Court**”) or any other court proceeding, except as set out in clause (b)(ii), above; and
- iv. the timelines reflected in this agreement supersede the timelines in the Production Order to the extent that there is disagreement between this Agreement and the Production Order relating to the disclosure of Transcripts.

DATED: December 20, 2022

DELOITTE RESTRUCTURING INC., solely in its capacity as Court-appointed Monitor of Express Gold Refining Ltd.

Per:

Name:

CANADA REVENUE AGENCY



Per: Diane Winters, General Counsel

Name: Department of Justice

Appendix “F”
to the Vjktvggpyj Report of the Monitor

CITATION:

ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)
CIVIL ENDORSEMENT FORM
(Rule 59.02(2)(c)(i))

BEFORE	Judge: Myers J	Court File Number: CV-22-682646
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Title of Proceeding:

CHICAGO TITLE INSURANCE COMPANY Plaintiff(s)

-v-

JOHN DOE, WILLIAM SURIANI, AUSTIN PERSICO a.k.a AGOSTINO-AUSTIN PERSICO a.k.a. AGOSTINO PERSICO carrying on business as AAP LAW, MARCELLO CODISPOTI a.k.a MARCEL CODISPOTI, 2723217 ONTARIO INC., LYNX EQUITY LIMITED and LYNX EQUITY INTERNATIONAL INC., ARMOURD SECURITY CANADA INC., ODANIEL CAMPBELL, BERKSHIRE ENTERPRISES INC., DAO MY VUONG, ELAINE PERSICO, ASTORO PERSICO, FIRST CANADIAN ALUMINUM LTD., DUNG HUE THAI, KTI CORPORATION, NICHOLAS DISCOLA a.k.a. NICK DISCOLA, DAVID COLLIA a.k.a. DAVE COLLIA, PETER COLLIA, YA PING WANG, MAX MA, MA WAN MIN, 9898565 CANADA INC., EXPRESS GOLD REFINING LTD., CHRIS GAROFALO, KOSMOS GATE INC., GEORGIOS GALANOS, DEMETRIOUS TORIS, NOVA DIAMONDS INC., 1271470 ONTARIO INC., JEREMY WILTSHIRE, MARIA ANNA BABIOLAKIS, GEORGIOS BABIOLAKIS, ANNETTE BABIOLAKIS, TORONTO RESERVE GOLD INC., THE GOLD SPOT REFINERY LTD., 2733287 ONTARIO INC., EDI SAPIR and MASTER LOGISTICS CANADA CORP.

Defendants(s)

Case Management: Yes If so, by whom: No

Participants and Non-Participants: *(Rule 59.02(2)(vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) Plaintiff	Michael A. Katzman	mkatzman@katzmanlitigation.com ;		Y
2) Deloitte Restructuring Inc. as Monitor of Express Gold Refining Ltd.	Michael Schafler and Robert Kennedy	robert.kennedy@dentons.com michael.schafler@dentons.com		Y
3) Ed Sapir	Peter Carey as counsel to challenge jurisdiction only	pcarey@levittllp.com		Y
4) Nicol Discola and KTI Corporation	Sabrina Wariach and Avin Persad-Ford	sabrina@hcohen.law		Y
5) Nova Diamonds Inc.	Dale Denis	dale@dlitigation.com		Y

6)	Toronto Gold Reserve Inc.	Andrew Ostrom	andrew@debousquet.com		Y
7)	Ya Ping Wang and Max Ma	Meryl Morant	mmorant@cambridgellp.com		Y

Date Heard: (Rule 59.02(2)(c)(iii)) **Dec 19, 2022**

Nature of Hearing (mark with an "X"): (Rule 59.02(2)(c)(iv))

<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Appeal	<input type="checkbox"/> Case Conference	<input type="checkbox"/> Pre-Trial Conference	<input type="checkbox"/> Application
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Format of Hearing (mark with an "X"): (Rule 59.02(2)(c)(iv))

<input type="checkbox"/> In Writing	<input type="checkbox"/> Telephone	<input checked="" type="checkbox"/> Videoconference	<input type="checkbox"/> In Person
-------------------------------------	------------------------------------	---	------------------------------------

If in person, indicate courthouse address:

Relief Requested: (Rule 59.02(2)(c)(v))
Extend *Mareva* and *Norwich* orders; Schedule motions to set aside the order adding the moving parties; Schedule a motion to contest jurisdiction over a party in Israel.

Disposition made at hearing or conference (operative terms ordered): (Rule 59.02(2)(c)(vi))

Order to go extending the *Mareva* and *Norwich* orders as asked. But the order is not extended against Nova Diamonds Inc. Rather, Nova Diamonds Inc. is prohibited from dissipating its assets and entering into any transaction outside the ordinary course of business except upon providing thirty (30) days written notice to the plaintiff. This term continues until the hearing of any motion brought by Nova Diamonds Inc. to set it or the *Mareva* injunction aside. Nova Diamonds Inc. is to attend Civil Practice Court to schedule any motion it chooses to bring to set aside the *Mareva* injunction or the term imposed today. Any other defendant who seeks the same relief shall also schedule it at Civil Practice Court with Nova Diamonds Inc. Mr. Carey's client may move to challenge this court's jurisdiction or in the alternative, for summary judgment. That motion too shall be scheduled at CPC with the other motions regardless of whether they will all ultimately be heard together.

My order granting the plaintiff leave to add Express Gold Refining Ltd. as a defendant to this proceeding and extending any relief against it are set aside.

Costs: On a **N/A** indemnity basis, fixed at \$ _____ are payable
by _____ to _____ [when]

Brief Reasons, if any: (Rule 59.02(2)(b))

1. I was expecting another *ex parte* motion to extend the *Mareva* and *Norwich* orders. I was met with counsel seeking to oppose the extensions vis-à-vis their clients and to schedule motions to set the order(s) aside. There was no material filed or uploaded to Caselines before me today although I understand that Mr. Denis may have delivered material. No cross-motion was scheduled to be heard today. I am dealing only with requests then to oppose extension of the *ex parte* orders made previously pending scheduling of other motions as may be brought.
2. Mr. Denis takes great umbrage at the order adding his client as a defendant and extending the pre-existing orders to it. He says the plaintiff had only a single cheque showing that Nova Diamonds sold some jewellery to KTI. He accuses Mr. Katzman of having misled the court in his client's prior affidavits and factum as well as today during oral submissions. He isolates one cheque to say that there it provides no evidence at all to establish the propriety of the orders made against his client Nova Diamonds. He wants to move to set the order(s) aside. He views Mr. Katzman's request to cross-examine and examine witnesses referred to in Mr. Denis's material, but whose names are undisclosed, and his request to extend the orders pending a full evidentiary hearing as abusive. He submits that his client should be entitled to an apology from the plaintiff for having injured his client's standing with its bank by obtaining an unjust order.
3. This action did not start with Mr. Denis' client. Before I became involved, Justices Koehnen and Vermette granted and then extended the initial orders respectively given the powerful evidence of mortgage fraud against the principal defendants. The *Norwich* order was aimed in part to find others who may have participated in the fraud by receiving and laundering proceeds among other things. The plaintiff presented extensive and particularized evidence of its large-scale effort to follow money that has been dissipated by alleged fraudsters. Without getting into details here, I read about the involvement of KTI and others who the plaintiff says are the first level of money-movers. Some funds seemed to have been moved through cheque-cashing businesses. KTI appears to have distributed considerable funds to jewellery businesses. While Mr. Denis says that his client is a substantial enterprise with a deep reputation in the industry, I know nothing of its net equity or ties to Canada. What I do know is that it received funds that appear to have been part of a fraudulent scheme and it exchanged them for unparticularized "assorted diamond jewelry". Was that jewelry worth \$10 or or \$75,000? And what did Nova Diamonds know about the funds and what did it do with the money it received? These questions cannot be answered except by asking Nova Diamonds. It is a defendant. This is not about extending *Norwich* orders.

4. Mr. Denis says, rightly, the burden is on the plaintiff. He says there is no untoward inference available from a single transaction. He says and relies on a case that apparently finds that the lack of particularity in his client's invoices is just how things are done in the industry. That may be so. It fills me with little confidence in the righteousness of the transactions, however. Taking an example that is not closely analogous, but just to make the point, it may be that people who fence stolen goods work for cash only and don't give invoices at all in their industry. That tells me little about the righteousness of those transactions either. The point is that when businesses choose to do business in a way that makes their financial affairs opaque, one can infer a less than transparent motivation.
5. I read the very extensive evidence delivered by the plaintiff. It was aware that it asked me to freeze funds of people who simply received proceeds. In the case of the jewellery dealers, I did draw an inference that was open on the evidence that the plaintiff seemed to be using them as a ready source of exchange for cash into a less traceable form of asset. The test for knowing receipt and knowing assistance is not a difficult one to assert. Proof of the risk of dissipation is always going to be by inference by the very nature of a fraud. There is ample case law on that point. Moreover, the plea of abuse by the extraordinary *Mareva* injunction and the inference of damage to the defendant's banking relationships by being besmirched by a *Mareva* injunction sounded decidedly from another century. We deal today with sophisticated internet and other frauds that continue to defy government regulators. Then we add money movement through the ether with a few strokes on a keyboard. As a result, statements like those from cases like *2092280 Ontario Inc. v. Voralto Group Inc.*, 2018 ONSC 2305 (CanLII) are also apt.
6. I am not finding that the prior orders should not be limited or set aside by a court with a full evidentiary record. But I did not hear today any allegation that Nova Diamonds is not able to conduct its business or has actually had its banking facilities impaired. I agree with Mr. Denis, the time to prove that will be in a proceeding to enforce the plaintiff's undertaking on damages.
7. I was also aware that the plaintiff was dealing responsibly with defendants and others affected by the orders who came forward and cooperated.
8. I also do not accept that the plaintiff's request of Nova Diamonds and others to undertake not to dissipate assets or engage in transactions outside the ordinary course of business until thirty (30) days' notice is given to the plaintiff, seeks an admission of fraud that will taint a defendant's banking relationships. The banks are sophisticated litigants. Their in-house and external counsel can read and understand "without

prejudice” reservations of rights. They know that a “serious issue to be tried” is not “proof on a balance of probabilities”. The fact that other defendants in this case in seemingly analogous positions to Nova Diamonds have managed to find a *modus vivendi* with the plaintiff prevents me from generalizing Mr. Denis’ submission. That is not to say that his client is required to accept any imposition from the plaintiff before having its fullest day in court. I agree with Mr. Denis that the costs to be incurred will likely be not too far below the \$75,000 +/- quantum in issue. Nova Diamonds may take this as a serious attack on its reputation and be willing to pay any price to protect itself. Or, if it was acting solely with economic rationality, it could find a way to help show the plaintiff that no matter what others may be doing to help the alleged fraudsters hide ill-gotten booty, Nova Diamonds was a *bona fide* vendor of commodities for fair market value and without notice. The evidence will come out in the motion lead-up in any event.

9. The plaintiff does not ask me to continue the *Mareva* injunction against Nova Diamonds. I do not do so therefore. But I do agree with Mr. Katzman that as a term of scheduling Nova Diamond’s motion(s) it is just to make an interim order prohibiting Nova Diamonds from dissipating its assets and engaging in any transactions outside the ordinary course of business except after giving thirty (30) days’ notice to the plaintiff. This direction is given wholly without prejudice to Nova Diamonds’ entitlement to move to set aside at the hearing of its motion(s). It covers the interim period until the hearing only.

10. Nova Diamonds can tell its bank that the court’s order is not based on finding that Nova Diamonds has engaged in any wrongdoing. Rather, I am satisfied that as each dollar leaks from the transparent financial system, the plaintiff effectively loses the ability to recover it and is thereby irreparably harmed. The plaintiff has established a serious issue to be tried that Nova Diamonds could be liable to it for knowing receipt or assistance given the breadth of KTI’s engagement in the jewelry business to move funds, the apparent long-term relationship between KTI and Nova Diamonds, and the lack of specificity to the defendant’s invoice(s). It may be true that this is how it invoices generally. Examination of witnesses with relevant knowledge will likely tell. But even if true, it seems a strange artifice for someone whose counsel was animated in pleading how honest and righteous his client’s business is. That too may prove to be 100% correct on examination of witnesses with relevant knowledge and documents. But it is counter-intuitive to think the jewellery buyers do not want particularized invoices (for insurance purposes for example) and that a jewellery vendor does not want particularized invoices (for tax and inventory control purposes for example). This leads me to infer that there is some other purpose being served. It is sufficiently unusual and contrary to sound

accounting and management expectations, that it does throw up at least a *prima facie* question i.e. a serious issue to be tried.

11. Mr. Denis chose not to deliver material some weeks ago. He did not go to Civil Practice Court to schedule a motion. Unfortunately whatever he may have filed recently was not before me. He was fully entitled to attend today to try to oppose the extension of the order. The *Mareva* injunction is not extended against Nova Diamonds. In my view however, looking at the position advanced by Nova Diamonds in the context of all of the evidence before the court, the much more limited interim terms is appropriately imposed pending any motion(s) Nova Diamonds may wish to bring.
12. I also agree with Mr. Katzman that a full airing of the facts and issues will reasonably require examinations. It seems to me as well that it will not be a short motion. Nova Diamonds may need to reformulate its proposed motion(s) in light of the change of the order today and also given disclosure of the motions proposed by others discussed below.
13. Once counsel have had a chance to discuss any motions Nova Diamonds plans to bring, they should agree on a schedule and attend Civil Practice Court for scheduling preferable with all others so that the judge can deal with all matters as efficiently and affordably as circumstances allow.
14. Mr Schafler and Mr. Kennedy attended today for the Monitor appointed in the CCAA proceedings for Express Gold. The plaintiff did not know there was a stay outstanding under the CCAA when it sought relief against Express Gold. The plaintiff consents and I order that the order adding Express Gold as a party and extending *Mareva* relief against it are set aside. No other terms of the earlier order concerning others are affected.
15. I did mention to Mr. Schafler and Mr. Kennedy that the plaintiff is seeking information about specific transactions. If it is a creditor of Express Gold then it should have the *prima facie* right to ask for production and to request the assistance of the Monitor if necessary. While it is always the hope that a debtor who obtains approval of the court to hold its creditors at bay will operate transparently and cooperatively with the creditors, I agree with Mr. Schafler and Mr. Kennedy that in the event that issues arise, they will have to be addressed in the CCAA court first.

16. Mr. Carey advises that his client is in Israel and wishes to move to set aside service on the basis that the court lacks jurisdiction over him. He curiously adds that in the alternative the client will seek summary judgment dismissing the claim. I may be wrong, but I typically don't think a defendant who denies the jurisdiction of the court wants in the same breath to address the merits of the claim. The defendant has to defend before it can move for summary judgment typically. It is a motion on the merits that presumes the court has jurisdiction.
17. I do not preclude Mr. Carey's client from bringing any motion it seeks to bring. He should discuss the schedule with Mr. Katzman and attend Civil Practice Court – hopefully with Mr. Denis' motion. Even if they are not scheduled for a common hearing, the scheduling court would benefit in my view from hearing all that is proposed in the action at the same time.
18. Ms. Morant attended to oppose the extension of the motion on behalf of her clients whom, she advises, sold jewellery to KTI. As discussed above, I was satisfied to make the order based on the evidence when I heard it in November. If her clients wish to oppose, they too should discuss among counsel bringing a motion and schedule it at CPC.
19. Ms. Wariach acts for KTI and its principal. They too want to move to set aside the order adding them to the purview of the *Mareva* injunction. I suspect the motions by Ms. Wariach's client, Ms. Morant's client, and Mr. Denis' client may have much in common.
20. Mr. Ostrom's client does not oppose the extension of the order today as his client has resolved interim matters with the plaintiff. He asks to be kept informed of further motions.
21. Mr. Denis asks for Mr. Katzman to provide him with contact details of all other defendants' counsel. Mr. Katzman asks Mr. Denis to provide him with the name and contact details for the assistant referred to in para. 12 of his client's affidavit. Better

still, if Mr. Denis can accept service of a summons for her, then the plaintiff will not need her address or to send a process server bother her at home. It seems apparent that cooperative counsel would agree to this type of exchange of information rather readily. I therefore leave it to them to surmount their client's positions and cooperate as colleagues on opposite sides of a case

Additional pages attached: Yes No

December 19 , 20 **22**

Date of Endorsement (*Rule 59.02(2)(c)(ii)*)

Signature of Judge/Associate Justice(*Rule 59.02(2)(c)(i)*)

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 WITH RESPECT TO EXPRESS GOLD REFINING LTD.

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

THIRTEENTH REPORT OF THE MONITOR

DENTONS CANADA LLP

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