2022 01G 0709

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF an application of Grant Thornton Limited, as Court-Appointed Monitor of Canada Fluorspar (NL) Inc., Canada Fluorspar Inc., Newspar, and CFI Newspar Holdings Inc. (collectively, "**CFI**" or the "**Company**");

AND IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C-36 as Amended (the "**CCAA**")

NOTICE OF MOTION

Grant Thornton Limited, as Court-Appointed Monitor of the Company (hereinafter the "**Applicant**") will make a motion before the presiding Judge in Bankruptcy and Insolvency on Tuesday, the 6th day of June 2023 at 10:00 a.m., or so soon thereafter as the motion can be heard at the Courthouse, Duckworth Street, St. John's, Newfoundland and Labrador.

On the hearing of this Motion, the Applicant intends to apply for the following relief:

1. An order (the "**Approval and Reverse Vesting Order**"), pursuant to the CCAA *inter alia* :

   (i) approving the transactions (collectively the "**Transactions**") contemplated in the Share Purchase Agreement entered into between the Company as referred to as the Acquired Entities as vendor and the new successful bidder as Purchaser (the "**Purchaser**") dated the 26th day of May, 2023 (the "**Share Purchase Agreement**"), and authorizing and directing the Company to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions; and

   (ii) granting a release in favour of the Company employees and advisors, the Monitor and its advisors, the DIP Lenders and its advisors and the Purchaser and its directors, officers and advisors as described in detail below;

   (iii) amending the Amended and Restated Interim Order (the "**ARIO**") dated the 8th, 2022 (the "**ARIO**"), Amendment #1 to the ARIO dated June 10th, 2022 (the "**Amended ARIO**"), Amendment #2 to the ARIO dated August 30th, 2022 (" **2nd Amended ARIO** "), Amendment #3 to the ARIO dated October 12th 2022 (" **3rd Amended ARIO**") Amendment #4 to the ARIO dated February 21, 2023 ("**4th Amended ARIO**") and Amendment #5 to the ARIO dated May 18, 2023 ("**5th Amended ARIO**"), issued pursuant to section 11 of the CCAA, in order to extend the stay of proceedings issued thereunder until the 31st day of October 2023; and

(iv) directing that the Monitor's Third Confidential Report and the Share Purchase Agreement be sealed with the Court and remain under seal until the Closing outlined in the Share Purchase Agreement.

2. An order (the **"Monitor's Power Expansion Order**") pursuant to the CCAA, enhancing the Monitor's powers as they relate to the ResidualCo (as defined below);

3. An order abridging the notice periods pursuant to Section 11 of the CCAA and the Rules of the Supreme Court, 1986, Rule 3.03(1), Rule 6.04(2) and Rule 6.06;

4. An order pursuant to Section 11 of the CCAA directing that the service on the service list set out in Schedule "A" hereto is sufficient for the purposes of this Application; and

5. Such further and other relief as this Honourable Court deems just and equitable.

THE GROUNDS FOR THIS APPLICATION ARE AS FOLLOWS:

BACKGROUND

6. As of February 21, 2022, Canada Fluorspar Inc., and Canada Fluorspar (NL) (hereinafter referred to as the "**Original Entities**") were insolvent and were unable to meet its debt obligations as they became due. As a result, PricewaterhouseCoopers Inc., in its capacity as court-appointed receiver and manager of Bridging Finance Inc., and Bridging Income Fund LP ("**PWC**") applied for an interim receivership order pursuant to s.47(1) of the *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3 (the "**BIA**") over substantially all the assets and undertaking of the Original Entities, which order was issued by this Honourable Court on the 21st day of February, 2022 (the "**Interim Receivership Order**"). Pursuant to the Interim Receivership Order, Grant Thornton Limited ("**GTL**") was appointed as Interim Receiver of all the assets and undertaking of the Original Entities, with the exception of those assets and undertakings that were carved out of the receivership (defined therein as the "**Excluded Property**").

7. On the 8th day of March 2022, GTL as Interim Receiver made an application to this Honourable Court declaring that Canada Fluorspar Inc., Canada Fluorspar (NL) Inc., and Newspar (hereinafter the " **New Entities**") were a company to which the CCAA applied and requesting protection under the CCAA. As a result of that application, the Court granted an initial CCAA Order on the 11th day of March 2022 (the "**Initial CCAA Order**") and the Court subsequently granted the ARIO on the 18th day of March 2022. In both orders, GTL was appointed and confirmed as CCAA Monitor.

8. In the Initial CCAA Order, this Honourable Court authorized the Monitor, on behalf of the New Entities, to enter into a DIP Financing Agreement with the DIP Lenders referenced in the Initial CCAA Order (the "**DIP Lenders**").

9. Following the 18th day of March 2022, the Monitor conducted a SISP as contemplated in the order of this Honourable Court issued on the same day as the ARIO (the "**SISP Order**"). The activities of the Monitor in executing the SISP during this period are outlined generally in the Monitor's Third, Fourth and Fifth Report.

10. On the 31st day of May 2022, the Monitor made an application to this Honourable Court seeking an extension of the stay period until the 2nd day of September 2022 and amending the SISP procedures to extend the dates of the Phase 2 Bid Deadline and each step thereafter in order to correspond with the CCAA stay period (the "**Amended SISP Order**"). The extension was requested to allow the Monitor to arrange the completion of a National Instruments 43-101 Technical Report with the expectation that it would assist in increasing the purchase price for the New Entities' assets. The court granted these amendments by Order dated the 10th day of June 2022.

11. As outlined in the Monitor's Fifth Report, the Monitor received multiple bids for the New Entities' assets through the SISP process. The Monitor made a recommendation to the DIP Lenders as to its preferred choice with respect to the bids received. The DIP Lenders supported the Monitor's recommendation and the Monitor therefore notified the successful bidder (the "**Successful Bidder**") on August 18, 2022.

12. On the 30th day of August 2022, this Honourable Court issued the 2nd Amended ARIO extending the CCAA stay period until the 17th day of October 2022 and amending the SISP procedures in order to allow time to (i) complete the SISP; (ii) enter into a definitive agreement with the Successful Bidder and (iii) obtain court approval.

13. As outlined in the Monitor's Fifth Report, the Monitor completed the SISP and awarded, with the consent and the agreement of the DIP Lenders, the sale of the New Entities' assets to the Successful Bidder.

14. As outlined in the Monitors Sixth Report, the Monitor and the New Entities worked diligently to complete the definitive agreement. However, the Successful Bidder failed to top up the agreed upon deposit as required by the SISP, and therefore failed to complete a key deadline as outlined in the SISP. As a result of this material adverse change, the agreement with the Successful Bidder was then terminated and the Monitor filed with this Court a Material Adverse Change Report.

15. On the 12th day of October 2022, this court issued the 3rd Amended ARIO extending the CCAA stay period until the 26th day of February, 2023 to allow the senior secured creditors and the DIP Lenders time to determine next steps as it related to the New Entities' assets, including the possibility of another SISP or a different type of sale or liquidation process.

16. Following the 12th day of October 2022, the Monitor and the Company worked diligently to solicit bids from parties that previously submitted proposals during the SISP. As of January 26, 2023, the Monitor selected, and the DIP Lenders approved a new successful bidder (the "**Purchaser**").

17. On the 13th day of February 2023, the Monitor entered into a Letter of Intent with the Purchaser.

18. On the 21st day of February 2023, this court issued the 4th Amended ARIO extending the CCAA stay period until the 31st day of May 2023 to allow (i) the Purchaser to complete its due diligence (ii) enter into a definitive agreement; and (iii) obtain court approval.

19. On the 18th day of May, 2023 the court issued the 5th Amended ARIO extending the CCAA stay period until the 16th day of June, 2023 to allow the Purchaser (i) to complete the definitive agreement and (ii) obtain court approval and close the transaction. In addition, the court approved the addition of CFI Newspar Holdings Inc., to these proceedings (CFI Newspar Holdings Inc., the Original Entities and the New Entities are hereinafter referred to as "**CFI**" and /or the "**Company**").

20. The proposed definitive agreement with the Purchaser (the "Definitive Agreement") represents months of diligent work on the part of the Monitor, which successfully solicited additional bids from parties that had previously submitted proposals during the SISP.

21. The SISP was a thorough and broad canvassing of the world-wide market of parties interested in the Company's business and assets. The SISP generated a significant amount of interest in the Company, which resulted in material improvements to the consideration provided under the Transactions for the benefit of the Company's

stakeholders and senior secured creditors. The parties who were engaged in the SISP ultimately became the parties that the Monitor solicited after the agreement with the Successful Bidder was terminated.

22. Based on the Monitor's experience, the nature of the Company, the SISP, the solicitation of additional proposals, and the comparison of offers received, the Monitor is of the view that the Share Purchase Agreement and the Transactions contain commercially reasonable terms and will maximize the available recovery for the Company, its stakeholders and senior secured creditors. Additional reasons and support are included in the Monitor's Third Confidential Report and the Monitor's Ninth Report.

REVERSE VESTING STRUCTURE

23. The Transactions contemplated in the Share Purchase Agreement have been structured as "reverse vesting" transactions whereby:

    (a) The Purchaser will become the sole shareholder of Canada Fluorspar Inc., and as such will acquire its shareholdings in Canada Fluorspar (NL) Inc., Newspar and CFI Newspar Holdings Inc.; and

    (b) All excluded assets, excluded contracts and excluded liabilities will be transferred or "vested out" to a company incorporated by the Monitor (the "**ResidualCo**").

24. The reverse vesting structure will obviate the need for the Company to transfer the permits, licenses, leases or amend the registrations associated with the Company's existing mineral claims, thereby reducing the costs and time associated with closing the Transactions, for the benefit of the Company's stakeholders and senior secured creditors. In addition, the reverse vesting structure will significantly reduce time to restart the mine. Again, a financial benefit to stakeholders and senior secured creditors.

25. The mining industry is heavily regulated and as such it would be a cumbersome process to obtain an assignment of all the mining licenses and permits currently held by the Company. As a result of the complex regulatory environment in which mines operate, reverse vesting structures are commonly used in acquisitions of mines under the CCAA.

26. Further, in the current situation, the reverse vesting structure allows the Purchaser to preserve the Company's tax attributes that would otherwise be lost in an asset sale, and

the Purchaser has expressed the importance of maintaining these attributes as part of the sale. The Cash Consideration is based on, in part, the preservation of those tax attributes.

27. A "reverse vesting" structure will not result in any material prejudice to the creditors of the Company, nor will it impair any of the creditors' rights that they would otherwise have under an asset sale transaction. There will be no funds available for the unsecured creditors through either type of transaction.

THE RELEASE

28. The Applicant is also seeking a court ordered release (the "**Release**") in favour of:

(a) the employees, legal counsel and advisors of the Company and of ResidualCo;

(b) the Monitor and its legal counsel, and their respective present and former directors, officers, partners, employees and advisors;

(c) the DIP Lenders and its legal counsel, and their respective present and former directors, officers, partners, employees and advisors; and

(d) the Purchaser, and its directors, officers, employees, legal counsel and advisors;

(collectively, the **"Released Parties"**).

29. The Release covers any and all present and future claims against the Released Parties based upon any fact or matter of occurrence in respect of the Transactions or the Company, its assets, business or affairs or administration of the Company, except any claim for fraud or willful misconduct or any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

30. The Released Parties have contributed to the successful outcome in these CCAA Proceedings.

31. The Release is being sought, with the support of the Company, the Monitor, the DIP Lenders and the Purchaser, in order to achieve certainty and finality for the Released Parties in the most efficient and appropriate manner given the current circumstances.

32. The Company is unaware of any statutory liabilities in respect of the Released Parties and to date, no stakeholder of the Company has made the Company or the Monitor aware that

they intend to assert a claim against any of the Released Parties in respect of any claims covered by the Release.

Extension of the Stay Period

33. The Stay period will currently expire on the 16th day of June 2023.

34. The Applicant is requesting the Stay Period be extended until the 31st day of October, 2023.

35. The Stay Period will terminate in respect of the Company upon closing of the Transactions, however, the CCAA Proceedings and Stay Period will continue in respect of the ResidualCo following the completion of the Transactions.

36. Additional time is required to complete the Transactions contemplated under the Share Purchase Agreement and to seek court approval of the distribution of the sale proceeds resulting from the Transactions. The Applicant therefore seeks an extension of the Stay Period with respect to the ResidualCo. in order to provide the required stability during that time frame.

37. As set out in the cash flow projection, the Monitor expects that, with the funds to be advanced from the Share Purchase Agreement, it will have sufficient cash to fund its projected costs during the proposed stay extension period.

38. The Company and the Monitor have continued to act in good faith and with due diligence throughout these CCAA Proceedings.

Monitor's Power Expansion

39. The Monitor is seeking the issuance of the Monitor's Expanded Power Order to enhance the Monitor's powers as they relate to the ResidualCo, including:

    (a) to take any and all actions and steps, and execute all documents and writings, on behalf of, and in the name of the ResidualCo in order to facilitate the performance of its obligations, including as contemplated by the Share Purchase Agreement;

(b) to exercise any powers in relation to the transfer of existing shares in Canada Fluorspar Inc. to the Purchaser;

(c) to exercise any powers which may be properly exercised by any board of directors of the ResidualCo; and, ultimately,

(d) to assign the ResidualCo or cause the ResidualCo to be assigned into bankruptcy upon completion of the Transactions.

40. No person, other than the Monitor, will be appointed to act as an officer or director of the ResidualCo, making it logical and cost-effective to enhance the Monitor's powers in order to enable the Monitor to take additional steps for completion of the Transactions and other steps related to the wind-down of these CCAA Proceedings.

Sealing Order

41. The Applicant requests that a Court Order be granted sealing the Monitor's Third Confidential Report and the Share Purchase Agreement and that it remain under seal until the Closing outlined in the Share Purchase Agreement.

42. Any interested party may apply, on notice to the Applicant, to vary the terms of the Sealing Order or to unseal the Monitor's Third Confidential Report and the Share Purchase Agreement.

Other Grounds

43. The provisions of the CCAA, including s. 11, s. 11.02 and s. 36 thereof, and the inherent and equitable jurisdiction of this Honourable Court;

44. The following documentary evidence will be used at the hearing of this Application;

(a) The affidavit of Phil Clarke, sworn as of the 29th day of May, 2023;

(b) The Monitor's Ninth Report;

(c) The Monitor's Third Confidential Report; and

(d) Such further and other evidence as counsel may advise and this Honourable Court may permit;

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at St. John's, Newfoundland and Labrador, this 29th day of May, 2023.

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AND TO: Service List attached hereto as **SCHEDULE "A"**

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65. Government of Newfoundland and Labrador
    Department of Environment, Climate Change and Municipalities
    Pollution Prevention Division
    4th Floor, West Block
    Confederation Building
    PO Box 8700
    St. John's NL A1B 4J6

66. Department of Natural Resources
    Keith Bradbury
    Director, Mineral Development Division
    Department of Industry, Energy and Technology
    Government of Newfoundland and Labrador
    kbradbury@gov.nl.ca

67. Fisheries and Oceans Canada
    Fish and Habitat Protection Program
    PO Box 5667 80 East White Hills Road
    St. John's NL A1C 5X1
    Collins, Natasha <Natasha.Collins@dfo-mpo.gc.ca>
    Roger Johnson - roger.johnson@dfo-mpo.gc.ca

68. Newfoundland Fluorspar Exploration Ltd.
    #5 – 1035 Boychuck Drive
    Saskatoon, SK
    S7H 5B2
    alexh.newfluorex@gmail.com

69. Golden Dory Resources Corp
    50 McCurdy Drive
    Gander, NL
    A1V 1A2
    kkeats@goldendoryresources.com
    EMAIL AND MAIL

70. Export Development Canada
    Contract Insurance & Bonding
    Fax 613-597-8504
    AccountsReceivable@edc.ca

71. Human Rights Commission
    Newfoundland and Labrador
    c/o Human Rights complaint 13862, Brandon Burke v. Canada Fluorspar
    PO Box 8700
    St. John's NL A1B 4J6
    Brianna Bursey, Human Rights Specialist - briannabursey@gov.nl.ca

72. Labour Relations Board File# 5761
    Newfoundland and Labrador Labour Relations Board
    20 Crosbie Place
    St. John's NL A1B 3Y8
    Glenn Branton - glennbranton@gov.nl.ca
    Jennifer Rose - JenniferRose@gov.nl.ca
    Kevin Noble - KevinNoble@gov.nl.ca>

73. CF Investments S.a.r.l (to confirm if Brendon O'Neil will accept service)
    c/o Goodmans LLP
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    333 Bay Street, Suite 3400
    Toronto, ON M5H 2S7
    boneill@goodmans.ca
    EMAIL AND MAIL

74. Bill Dobbs
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    Unites States, 10017
    dobbs@arenacap.com

75. Dr. Andrew Furey (2020) Professional Medical Corporation
    10 Country Garden Road
    St. Philips, NL A1M 2G3

76. George Furey

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77. Leo Power
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leopower61@icloud.com

78. Stifel Nicolaus & Co., Inc. as Custodian of IRA#75368057 FBO Lindsay Gorrill

79. Casey Walsh
158 McCrae Drive
Toronto Ontario M4G 1S7
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