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 92834 Newfoundland and Labrador Inc. ("**92834**" 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 Wednesday, the 25 day of October 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, *inter alia:*

   (a) pursuant to the CCAA;

      (i) Approving the Claims Identification Order (the "**Claims Identification Order**") substantially in the form of the draft order attached as Schedule "B" hereto, establishing a process (the "**Claims Identification Process**") for the identification and submission of claims again the Company;

      (ii) Approving an extension to the stay of proceedings until the 31st day of March, 2024;

      (iii) Approving the activities, fees and disbursements of the Monitor as described in the Monitor's Tenth Report, including without limitation the steps taken by the Monitor pursuant to the Interim Receivership Order, the Initial CCAA Order and the ARIO as amended and the fees of the Monitor's legal counsel;

(iv) Approving the Monitor's Interim Statement of Receipts and Disbursements from a period March 1, 2022 to August 29, 2023;

(v) Approving the first interim distribution to Bridging Finance Inc., Bridging Income Fund LP, Bridging Private Debt Institutional LP, Bridging Mid-Mark Debt Fund LP, Bridging Private Debt Lending Master Fund I.LP (Cayman), Bridging SMA 1 LP., and Bridging SMA 2 LP (hereinafter collectively referred to as "**Bridging**") in an amount of $13,500,000.00 as described in paragraphs 29- 34 of the Monitor's Tenth Report;

(b) 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;

(c) 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

(d) Such further and other relief as this Honourable Court deeds just and equitable.

THE GROUNDS FOR THE APPLICATION ARE AS FOLLOWS:

BACKGROUND

2. 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**").

3. 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.

4. 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**").

5. Following the 18th day of March 2022, the Monitor conducted a Sales and Investment Solicitation Process ("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.

6. 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.

7. 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.

8. 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 amended 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.

9. 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.

10. As outlined in the Monitor's 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.

11. 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.

12. 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**").

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

14. 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.

15. 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**").

16. On the 7th day of June, 2023, the court issued the Approval and Reverse Vesting Order (the "**ARVO**") (i) approving the sale to the Purchaser and (ii) issuing the 6th Amended ARIO extending the CCAA stay period until the 31st day of October, 2023.

17. Pursuant to the ARVO, all the Excluded Liabilities, Claims and Encumbrances (except for the Permitted Encumbrances) as defined in the Share Purchase Agreement between CFI and the Purchaser were vested out to ResidualCo, being 92834, and 92834 was added as an applicant in these CCAA proceedings.

18. On the 13th day of June, 2023 the share transaction with the Purchaser closed and the sale proceeds were paid by the Purchaser to the Monitor.

CLAIMS IDENTIFICATION PROCESS

19. At this time, the Monitor does not expect there to be any distribution available to any unsecured creditor from the net sale proceeds of the ARVO transaction. Nonetheless, it is necessary and appropriate for the Monitor to: (i) implement a process to identify all creditors of the Company, (ii) assess which creditors are priority creditors, secured creditors, and unsecured creditors, and (iii) determine the appropriate distribution scheme in accordance with the priorities applicable to the CCAA.

20. The Monitor has developed a Claims Identification Process set out in the Claims Identification Order. The Claims Identification Process is intended to provide a fair and efficient means of identifying the totality of claims against the Company and permits the Monitor to accept, modify, disallow, or resolve any Claim (as defined in the Claims Identification Order), subject to other determination by the Court in the event of a dispute.

21. Pursuant to the proposed Claims Identification Process, the Monitor will provide a claims package to all known creditors of the Company within ten (10) days of granting of the Claims Identification Order. This claims package will include a form of Proof of Claim, which the Monitor will also post on the Monitor's website for these CCAA Proceedings. The Monitor will also publish a notice of the Claims Identification Process in the Globe and Mail and the Telegram (Newfoundland and Labrador) to ensure sufficient notice is made to all potential claimants.

22. The proposed Claims Identification Order provides for a Pre-Filing Claims Bar Date and a Restructuring Claims Bar Date (each a "Bar Date" and collectively, the "Bar Dates"). The Bar Dates are set out immediately below:

(a) **Pre- Filing Claims Bar Date**- 5:00 PM (Eastern Time) on November 8, 2023; and

(b) **Restructuring Claims Bar Date**- the later of the Pre- Filing Claims Bar Date and 5:00 (Newfoundland Time) on the date which is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Claim in accordance with the Claims Identification Order.

23. Any person who wishes to assert a Pre- Filing Claim, a Restructuring Claim and/or a Priority claim (as these claims are defined in the proposed Claims Identification Order), must deliver to the Monitor on or before the applicable Bar Date, a completed Proof of Claim. Any person who does not file a Proof of Claim in accordance with the Claims Identification Order by the applicable Bar Date will, among other things, not be entitled to participate as a Claimant or creditor in the Claims Identification Process or the CCAA Proceedings in respect to such Claim, and will be forever barred, estopped and enjoined from asserting or enforcing such claim and any such claim will be extinguished.

24. The Monitor believes that the proposed Claims Identification Process is fair, reasonable and appropriate in these circumstances to ensure that all potential claims are identified and to permit the Monitor to make distributions to the appropriate creditors in accordance with the applicable priority scheme. Such distributions will only be made with the Court's approval pursuant to a final distribution order, to be sought by the Monitor at a later date.

EXTENSION TO STAY

25. The Stay of Proceedings will currently expire on the 31st day of October 2023.

26. The Applicant is requesting the Stay Period be extended until the 31st day of March, 2024.

27. Additional time is required to conduct the Claims Identification Process and to seek court approval for the final distribution of the sale proceeds.

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

INTERIM DISTRIBUTION

29. All current funds held by the Monitor are held in trust for the Company. The Monitor currently holds approximately $16,612,409.00 in its trust account after addressing various fees and expenses.

30. Pursuant to the Interim Receivership Order, the Initial CCAA Order and the ARIO as amended, the Monitor paid to the DIP Lenders, on June 21, 2023, the amount of $8,013,429.00 to repay the Interim Receivers Borrowing Charge and the DIP Loan.

31. The Monitor proposes to make an interim distribution of approximately $13,500,000.00 to Bridging as outlined in the Monitor's Tenth Report. Bridging is the first ranking secured creditor of the Company. As noted at paragraph 29 of the Monitor's Tenth Report, the Monitor is of the view that there is a possibility of eleven (11) claims that could potentially rank ahead of Bridging. Based on the books and records of the Company, these claims have a total value of approximately $1,962,371.00. The Monitor intends to holdback $3,000,000.00 to address these priority claims and any other claims that may arise.

32. As further outlined in the Monitor's Tenth Report at paragraph 34, the Monitor has prepared a distribution worksheet that illustrates the holdback for priority claimants and other potential claimants that may arise through the Claims Identification Process.

ROLE OF THE MONITOR

33. From the date of the Interim Receivership Order, the Monitor has been fulfilling its role as Monitor as such role is described in the Interim Receivership Order, the Initial CCAA Order, the Enhanced Monitors Power Order and as prescribed by the CCAA.

34. As a result of the contemplated sale of the business of CFI and the fact that all directors and officers of CFI had resigned, the Court granted an Amended and Restated Order that expanded the Monitor's role and powers to include, *inter alia*, the ability;

(i) take any and all actions and steps to manage, operate and carry on the business of CFI including, without in any way limiting the generality of the foregoing;

A. any actions or steps the Monitor considered necessary or desirable to proceed with an orderly restructuring or liquidation of CFI's business;

B. permanently or temporarily ceasing, downsizing or shutting down of any of CFI's operations;

C. pursuing all avenues of refinancing of CFI's business or property, except the Excluded Property (as defined therein), in whole or part, subject to prior approval of this Court being obtained before any material refinancing;

D. preparing a Plan of Compromise and Arrangement on behalf of CFI;

E. settling, extending or compromising any indebtedness owing to or by CFI; and

F. initiating, prosecuting and continuing the prosecution of any and all proceedings and defending all proceedings now pending or hereafter instituted with respect to CFI, CFI's business, CFI's property or the Monitor and to settle or compromise any such proceedings.

35. The Monitor has exercised the original and expanded powers granted to it by the Interim Receivership Order, the Initial CCAA Order, and the ARIO as amended and has fulfilled its duties thereunder.

36. The changing circumstances of the CCAA proceedings, the granting of the expansion of the Monitor's powers, the federal court hearing, the material adverse change that resulted in the termination of the Successful Bidder, have all contributed to the Monitor and its counsel undertaking a scope of work that is beyond the typical role of a monitor in CCAA proceedings. In addition, as a result of CFI's directors and officers resigning, essentially all activities on behalf of CFI were undertaken by the Monitor's professionals or the Monitor's counsel.

37. The CCAA proceedings were complex in terms of the size of the proceedings, the marketing efforts involved and the competing interests at play.

38. The Monitor has had extensive involvement in all aspects of the CCAA proceedings and the Monitor's counsel has represented the Monitor throughout the proceedings.

39. The Monitor has filed ten (10) reports, three (3) confidential reports and a material adverse change report, all of which outlined the tasks completed by the Monitor in these CCAA proceedings.

FEES AND DISBURSEMENTS OF THE MONITOR AND ITS LEGAL COUNSEL

40. Pursuant to paragraph 27 of the 6th Amended ARIO, the Monitor and its legal counsel are to be paid their reasonable fees and disbursements at their standard rates and charges incurred both before and after the ARIO. The accounts of the Monitor from March 1, 2022 to August 29, 2023 and its legal counsel for the period from March 1, 2022 to August 31, 2023 that are the subject of the within motion total approximately $2,481,328.97 inclusive of applicable taxes.

41. The Monitor and its counsel have sought to ensure that the work required to be performed in these CCAA proceedings have been undertaken in the most efficient manner possible, including utilizing consistent core personnel throughout the proceedings and by having work performed by junior and/or lower cost professionals to the extent appropriate.

42. The Monitor and its legal counsel have significant knowledge, experience and skill in complex restructuring matters.

43. The total number of hours worked by the Monitor's professionals during the period of March 1, 2022, to August 29, 2023 is approximately 5300 hours at an average billing rate of $287.00;

44. The total number of hours worked by the Monitor's counsel during the period of March 1, 2022 to August 31, 2023 is approximately 810 at an average billing rate of $364.45;

45. The fees and disbursements charged by the Monitor and its legal counsel are consistent with market professional rates for significant commercial restructuring matters.

46. The Monitor is of the opinion that the accounts of the Monitor and its legal counsel are fair and reasonable in the circumstances of these CCAA proceedings.

OTHER GROUNDS

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

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

   (a) The affidavit of Phil Clarke, sworn as of the 26th day of September 2023;

   (b) The affidavit of Meghan King, sworn as of the 28th day of September, 2023;

   (c) The Monitor's Tenth 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, in the Province of Newfoundland and Labrador, this 28th day of September, 2023.

Geoffrey Spencer
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TO: O'KEEFE & COMPANY
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Whose address for service is:
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AND TO: **The Service List attached as Schedule "A" to the Application**

SCHEDULE "A"
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11. Court Appointed Receiver for HSBC

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    nabbot@newfoundmechanical.com

58. Mario Walsh Mechanical Services Ltd.
    5 Kaetlyn Osmond Drive
    Marystown, NL
    A0E 2M0
    mario.d.walsh@gmail.com
    EMAIL and MAIL

59. Mikan Scientific Incorporated
    1173 Topsail Road
    St. John's, NL
    A1N 2C3
    jsloan@mikan.ca

60. Mineral Licenses
    Department of Natural Resources – Mineral Lands Division
    50 Elizabeth Avenue
    PO Box 8700
    St. John's NL A1A 1W6
    mlassessments@gov.nl.ca
    Justin Lake – justinwlake@gov.nl.ca
    Kevin Sheppard – kevinsheppard@gov.nl.ca

61. Mine Leases
    Department of Natural Resources – Mineral Lands Division
    50 Elizabeth Avenue
    PO Box 8700
    St. John's NL A1A 1W6
    mlassessments@gov.nl.ca
    Justin Lake – justinwlake@gov.nl.ca
    Kevin Sheppard – kevinsheppard@gov.nl.ca

62. Surface Leases
    Department of Natural Resources
    7th Floor Natural Resources Building
    50 Elizabeth Avenue
    St. John's NL A1A 1W6

63. Minister
    Municipal Affairs
    Lands Branch
    Howley Building, Higgins Line
    St. John's NL A1B 4J6
    davidrodgers@gov.nl.ca

64. Department of Municipal Affairs and Environment
    Department of Environment, Climate Change and Municipalities
    Water Resources Management Division
    Water Rights, Investigations and Modelling Section
    PO Box 8700
    St. John's NL A1B 4J6

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.
    4494 Highway 1
    Woodvale, NS
    B5A 5B1

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
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    333 Bay Street, Suite 3400
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74. Bill Dobbs
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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
    261 Buckingham Drive
    Paradise, NL
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    leopower61@icloud.com

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

79. Casey Walsh
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    Toronto Ontario M4G 1S7
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