

Court File No. CV-23-00707394-00CL

Tacora Resources Inc.

**SIXTH REPORT OF FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS COURT-APPOINTED MONITOR**

April 9, 2024

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**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 OF
TACORA RESOURCES INC.**

(Applicant)

**SIXTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 10, 2023, Tacora Resources Inc. (“**Tacora**” or the “**Applicant**”) was granted protection under the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCA**” and in reference to the proceeding, the “**CCA Proceeding**”) and FTI Consulting Canada Inc. was appointed monitor of the Applicant (in such capacity the “**Monitor**”).
2. As described in the Monitor’s prior reports to Court,¹ pursuant to an Order granted on October 30, 2023, the Court approved the Solicitation Process² and on February 2, 2024, the Applicant served and filed a motion (the “**Sale Approval Motion**”) seeking *inter alia* approval of the Subscription Agreement entered into between Tacora and the Investors as the Successful Bid.
3. On February 5, 2024, Cargill filed a motion (the “**Preliminary Threshold Motion**”) seeking an order *inter alia* prohibiting Tacora from obtaining relief set out in the Sale Approval Motion as it relates to the Cargill Offtake Agreement (as defined therein) absent a valid disclaimer of the Cargill Offtake Agreement.
4. Cargill, the Investors and the Applicant were unable to consensually agree on a litigation schedule to address the Sale Approval Motion and Preliminary Threshold Motion and on February 9, 2024,

¹ The Monitor has filed the Pre-Filing Report of the Monitor dated October 9, 2023, the First Report of the Monitor dated October 20, 2023, the Second Report of the Monitor dated January 18, 2024, the Third Report of the Monitor dated March 13, 2024, the Fourth Report dated March 14, 2024 (the “Fourth Report”), the Supplement to the Fourth Report dated March 26, 2024 (the “**Supplemental Report**”), and the Fifth Report dated April 7, 2024 (collectively, the “**Prior Reports**”).

² Capitalized terms not defined herein are defined in the Fourth Report and the Supplemental Report.

the Court issued an endorsement which (among other things) scheduled the hearing of the Sale Approval Motion for April 10, 11 and 12, 2024 and set a timetable for pre-hearing steps (the “**Litigation Schedule**”).

5. In accordance with the Litigation Schedule, notices of examination were issued and documents were produced. Examinations were held the week of March 18, 2024 (the “**Examinations**”).
6. As noted in the Supplemental Report, over the course of the documentary production process there were disputes regarding assertions of privilege as well as, confidentiality with respect to certain documents. The parties ultimately agreed on working resolutions of those issues that allowed the Examinations to proceed on schedule.
7. Following a case conference on March 26, 2024, Justice Kimmel issued an endorsement (the “**March 2024 Endorsement**”) directing the Monitor to co-ordinate with all counsel regarding a proposal to address confidentiality concerns in respect of certain evidence in the record for the upcoming Sale Approval Motion and the request by Cargill for certain documents to be sealed. A copy of the March 2024 Endorsement is attached as **Appendix “A”**.
8. Following consultation with the parties the Monitor, on April 4, 2024 served its notice of motion (the “**Notice of Motion**”) seeking an order (the “**Sealing Order**”) temporarily sealing the following documents until the end of April 26, 2024 (the “**Sealed Period**”):
 - (a) the exhibits marked as confidential during the Examinations, listed at Schedule “A” to the Notice of Motion;
 - (b) the transcripts from the Examinations, listed at Schedule “B” to the Notice of Motion;
and
 - (c) the confidential responses to undertakings, listed as Schedule “C” to the Notice of Motion.

(collectively, the “**Confidential Documents**”)
9. On April 4, 2024, Justice Kimmel issued an endorsement providing for the temporary treatment of the Confidential Documents on CaseLines, pending the hearing of this motion. A copy of the April 4 Endorsement is attached as **Appendix “B”**.
10. Further background of the CCAA Proceeding is set out in the Prior Reports. Copies of the Prior Reports, as well as other materials publicly filed and orders issued in the CCAA Proceeding, are

available on the Monitor's website at <http://cfcanada.fticonsulting.com/tacora/> (the "**Monitor's Website**").

TERMS OF REFERENCE AND DISCLAIMER

11. The Monitor has prepared this Sixth Report to provide information to the Court in connection with the motion to seal the Confidential Documents and this Sixth Report should not be relied on for any other purpose.

SEALING

12. The Monitor recommends that the Confidential Documents be filed with the Court on a confidential basis and remain sealed until the expiry of the Sealed Period. Following the expiry of the Sealed Period, the parties intend to notify the Court through the Monitor of any portions of the Confidential Documents for which continued confidentiality is sought and will provide further ground at that time for such documents or categories of documents for which on-going sealing is sought.
13. The Confidential Documents were produced and received in accordance with the Litigation Schedule and subject to general undertakings of confidentiality to give the parties an opportunity to seek potential sealing orders and the Confidential Documents were subsequently marked as confidential exhibits to the Examinations.
14. The Monitor has been advised by the parties that have asserted confidentiality over the Confidential Documents that the grounds of confidentiality are that:
 - (a) the Confidential Documents contain commercially sensitive information relevant to the Solicitation Process which should not be disclosed until the conclusion of the Investor Transaction, if approved;
 - (b) the Confidential Documents delivered to the producing parties, including documents involving or referencing third parties not party to this litigation, under non-disclosure agreements or other expectations of confidentiality, which require the producing parties to take all steps available to maintain the confidentiality thereof including in accordance with applicable legal processes. It is the producing parties' understanding that the documents contain commercially sensitive information and that the original authors of the documents believe it is against their interest to have this information divulged, and would not have otherwise delivered these documents to the producing parties without an expectation of confidentiality; and

- (c) the Confidential Documents disclose aspects of the producing parties' businesses that are commercially sensitive and disclosure would impair the parties' abilities to conduct their operations without risk of competitors, customers or other interested persons as applicable using this information to their advantage.
15. The Monitor understands that due to the timing constraints associated with redacting the Confidential Documents and to effect an efficient hearing, it is preferable and acceptable to the parties to seal the Confidential Documents in their entirety during the Sealed Period. The Monitor also understands that sealing of this type of sensitive information is consistent with the approach taken in other CCAA proceedings for sensitive information of this nature.
16. The salutary effects of sealing the Confidential Documents from the public record and stipulated period for these restrictions greatly outweigh the deleterious effects of inclusion in the public record under the circumstances. The Monitor is not aware of any party that will be prejudiced if the information is sealed or any public interest that will be served if such details are disclosed in full. The Monitor is of the view that the sealing of the confidential exhibits and related transcripts in the manner proposed is consistent with the decision in *Sherman Estate v Donovan*, 2021 SCC 25.
17. Accordingly, the Monitor believes the proposed sealing is appropriate in the circumstances.


CONCLUSION

18. At this time and based on current information available to the Monitor and for the reasons discussed above, the Monitor is of the view that the Confidential Documents should be sealed until the expiry of the Sealed Period and recommends that the Sealing Order be granted.

The Monitor respectfully submits this Sixth Report to the Court dated this 9th day of April, 2024.

FTI Consulting Canada Inc

in its capacity as Court-appointed Monitor of
Tacora Resources Inc. and not in its personal or
corporate capacity



TO
MARTIN

By:

Paul Bishop
Senior Managing Director



Jodi Porepa
Senior Managing Director

APPENDIX "A"



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00707394-00CL DATE: March 26, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: **IN THE MATER OF**
Tacora Resources Inc.

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE KIMMEL :

1. This case conference was convened at the request of counsel for the company to seek procedural directions regarding the factums to be filed in connection with the four motions being heard on April 10, 11 and 12, 2024 (in this order):
 - a. Cargill's preliminary motion;
 - b. The Company's sale/RVO approval motion;
 - c. Cargill's cross-motion to the sale/RVO approval motion (anticipated that submissions on this will be combined with submissions on sale/RVO approval); and
 - d. The DIP replacement motion.
2. Factums have already been exchanged for the DIP replacement motion and the parties were directed by my endorsement released on March 25, 2024 to file supplementary submissions, if needed, in respect of that motion of up to no more than 3 pages double spaced each.
3. In terms of the other three motions, leave was granted today for some of the factums to be delivered in connection with these motions to exceed the 25 page limit, if necessary, based on the general parameters discussed among counsel for participating parties, as follows:
 - a. The Company will have up to 75 pages double spaced for its factums plus one reply factum of up to 5 pages if necessary;
 - b. The consortium of noteholders will have up to 75 pages double spaced for their joint factums;
 - c. Cargill will have up to 75 pages double spaced for its factums (but will also have up to an additional 15 pages if necessary for its factum responding to the two sale/RVO approval factums of the Company and the consortium of noteholders) and one reply factum of up to 5 pages if necessary.
4. If any party is unable to adhere to these parameters a further case conference may be scheduled. All parties are strongly encouraged to try to avoid duplication and to use less than the allotted number of pages if possible.
5. This is being recorded for the benefit of the court office so that factums exceeding the usual 25 page limit will be accepted for filing. Counsel may return for further directions if they are unable to stay within the parameters indicated today.
6. The Monitor will co-ordinate with all counsel regarding:
 - a. A proposed schedule for the time allocated to each of the four motions (three if sale/RVO and cross-motion are heard together as anticipated) and the time allotted for each counsel who will be making submissions on each motion so that all motions can be concluded within the three days allotted;
 - b. A proposal regarding the confidentiality concerns and requested sealing order by Cargill, with respect to the management of the CaseLines bundles to ensure that there is both a comprehensive publicly accessible bundle of material for this motion as well as a confidential bundle to contain, in addition to all of the publicly available material, the material over which a sealing order is being sought, keeping in mind the open court principle and the need to minimize that which will not be in the public court file pending the court's determination of the request for a sealing order. Based on the Monitor's recommendations the court will convene a further case conference if necessary or provide the appropriate directions to the Commercial List Office regarding the two bundles for this hearing and permitted access. The court will need to be provided with a comprehensive list (including names and email addresses) of who is proposed to be given access to the confidential bundle.



KIMMEL J.

APPENDIX "B"



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00707394-00CL DATE: April 4, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: **IN THE MATER OF**
Tacora Resources Inc.

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

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Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE KIMMEL :

1. The court's March 26, 2024 endorsement contemplated that the Monitor would co-ordinate with all counsel regarding a proposal to address confidentiality concerns in respect of certain evidence in the record for the upcoming motions (scheduled to be heard on April 10, 11 and 12, 2024) and an anticipated requested sealing order.
2. The Monitor has advised the court as follows:
 - a. The Monitor has consulted with the parties and undertaken to prepare and deliver the motion for a sealing order, as each participating party has identified certain documents over which it wishes to preserve confidentiality.
 - b. The materials over which confidentiality is sought are generally the exhibits from cross-examinations and the associated transcripts. While it might be feasible to seek sealing over

redacted portions of those documents and transcripts, the parties are concerned that redacting those documents will be difficult in the short time available. As a result, it is proposed that the documents and transcripts be sealed as a whole pending the hearing. The parties could then, post-hearing, engage in an exercise of redacting the individual documents and transcripts in order to additionally tailor the sealing order.

3. The court has accepted this proposal, and has now been provided with a copy of the Monitor's Notice of Motion for the requested sealing order that has been served on the service list.
4. For purposes of the hearing next week, there will be two separate cases for this matter in CaseLines.
 - a. The existing case (under the case name Tacora Resources Inc.) will remain as it is and all public (non-confidential/redacted) materials for the upcoming hearing next week shall be served, filed and uploaded into that bundle in CaseLines in the normal course (and in accordance with the court's previous directions).
 - b. A new restricted access case has been created in CaseLines that is called: **Tacora Resources Inc. *RESTRICTED ACCESS*CONFIDENTIAL MATERIAL***. Any material that is designated as confidential and that is the subject of the sealing order request in the Monitor's Notice of Motion shall be included in this case in its unredacted form (with all redactions remaining subject to the court's decision on the sealing order motion and the court's further direction). This "restricted access case" must also include all material filed for the upcoming motions (e.g. even material that is not subject to a sealing order request) so that hyperlinks will work. The individuals who shall be granted access to this restricted access case (in addition to the judge, judicial law clerk and court staff) are listed on Schedule "A" to this endorsement, based on the list provided by the Monitor as of April 4, 2024.
5. This endorsement is being sent to counsel for the Monitor, who shall be responsible for ensuring that it is circulated to all participating counsel and the service list.



KIMMEL J.

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 OF TACORA RESOURCES INC.

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SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT
TORONTO

SIXTH REPORT OF THE MONITOR

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