

**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 AND ARRANGEMENT INVOLVING
OLYMPUS UNITED FUNDS CORPORATION / CORPORATION DE FONDS UNIS
OLYMPUS**

**OLYMPUS UNITED FUNDS CORPORATION / CORPORATION DE FONDS UNIS
OLYMPUS, BY ITS RECEIVER, RSM RICHTER INC.**

APPLICANT

FACTUM OF THE RECEIVER AND THE MONITOR

April 22, 2026

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Olympus United Funds Corporation /
Corporation de Fonds Unis Olympus

TO: THE SERVICE LIST

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PART I - OVERVIEW

1. The Receiver and the Monitor are seeking an order: (a) extending the stay of proceedings up to and including October 30, 2026; (b) approving the Joint Report of the Receiver and Monitor dated April 17, 2026 (the “**Joint Report**”) and the Receiver’s and Monitor’s activities, decisions and conduct set out therein; and (c) approving the Receiver’s Statement of Receipts and Disbursements for the period June 29, 2005 to April 10, 2026 (the “**R&D Statement**”).¹
2. The relief sought on this motion will advance the administration of these CCAA Proceedings and facilitate the steps required to make additional distributions to creditors of the Norshield Companies holding Proven Claims.
3. The Receiver anticipates that additional funds will be received from the liquidations of three foreign entities that were part of the Norshield investment structure and that are subject to court supervised liquidation proceedings in the Bahamas and Barbados.
4. The Receiver and the Monitor had intended to carry out one final distribution to the creditors of the Norshield Companies holding Proven Claims following receipt of such additional funds. However, since the timing of receipt of those funds remains uncertain, the Receiver is continuing to take the steps necessary to carry out an interim distribution to Proven Creditors of substantially all of the funds in the possession of the Receiver. Once

¹ Each capitalized term used herein that is not otherwise defined has the meaning ascribed thereto in the Joint Report.

funds are received from the liquidation proceedings in the Bahamas, the Monitor intends to carry out a final distribution to Proven Creditors and terminate these CCAA Proceedings.

5. In the circumstances, the Receiver and the Monitor have determined that it is appropriate to extend the stay of proceedings for six months for the purpose of carrying out the foregoing steps. Maintaining the CCAA Proceedings will be more cost effective to carry out a final distribution to Proven Creditors than doing so within the Receivership Proceeding. There would be no prejudice to the Applicant's creditors if the stay is extended.

PART II - THE FACTS

A. Background

6. By orders dated June 29, 2005 (the "**Appointment Order**"), July 14, 2005 (the "**Continuation Order**") and September 9, 2005 and October 14, 2005 (together, the "**Additional Appointment Orders**"), the Court appointed RSM Richter Inc. (now Richter Inc.) ("**Richter**") as the receiver (the "**Receiver**") of Olympus United Funds Corporation/Corporation de Fonds Unis Olympus (the "**Applicant**" or the "**Company**") and certain other related entities (collectively, the "**Norshield Companies**").²
7. By order dated February 7, 2006, the Court appointed Stikeman Elliott LLP as representative counsel ("**Representative Counsel**") to represent the interests of the class

² Joint Report at para. 1, Tab 2 of the Motion Record dated April 20, 2026 (the "**Motion Record**").

comprised of all individual natural persons who invested funds with or through the Norshield Companies (the “**Retail Investors**”).³

8. As part of its Court-ordered mandate to identify and realize upon the assets of the Company, the Receiver determined that the Company had potential claims against KPMG LLP (“**KPMG**”), which reported upon certain of the audited financial statements of the Company.⁴
9. The Receiver and KPMG ultimately settled these claims without an admission of wrongdoing, whereby KPMG paid \$7.5 million to the Company (the “**Settlement Amount**”) for distribution to creditors of the Company holding Proven Claims (“**Proven Creditors**”).⁵
10. The settlement with KPMG was conditional upon, among other things, a full release of KPMG pursuant to a plan of compromise and arrangement to be filed by the Company pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).⁶
11. In accordance with the settlement between the Receiver and KPMG, the Receiver sought and obtained from the Court an order (the “**Initial Order**”) granting the Company protection under the CCAA and appointing Richter as monitor (the “**Monitor**”). The Stay

³ Joint Report at para. 3, Tab 2 of the Motion Record.

⁴ Joint Report at para. 5, Tab 2 of the Motion Record.

⁵ Joint Report at para. 6, Tab 2 of the Motion Record.

⁶ Joint Report at para. 7, Tab 2 of the Motion Record.

Period under the Initial Order has been periodically extended by the Court, most recently to April 30, 2026.⁷

12. The Company's plan pursuant to the CCAA (the "**Plan**") was approved by the requisite majorities of creditors and was sanctioned by order of the Court dated March 19, 2012.⁸
13. The Plan Conditions were satisfied on October 16, 2012. The Monitor distributed the Settlement Amount *pro rata* to all Proven Creditors, with the exception of several creditors who cannot be located by the Monitor despite efforts to do so.⁹
14. Pursuant to Section 5.5 of the Plan, the Monitor shall distribute to the Proven Creditors any amounts available from the receivership of the Company for distribution to the Proven Creditors.¹⁰
15. Pursuant to Section 10.1 of the Plan, the Plan Completion Date shall occur upon receipt by the Monitor of a notice from the Receiver confirming that there is no likelihood of additional funds becoming available for distribution to Proven Creditors. Upon the Plan Completion Date, the Monitor will be discharged and released from further obligations or responsibilities under the Plan.¹¹

B. Norshield Investment Structure

16. At the time the Receiver was appointed, approximately 1900 Canadian Retail Investors, a significant number of whom reside in Ontario, held investments in the Company in the

⁷ Joint Report at para. 8, Tab 2 of the Motion Record.

⁸ Joint Report at para. 9, Tab 2 of the Motion Record.

⁹ Joint Report at paras. 10-11, Tab 2 of the Motion Record.

¹⁰ Joint Report at para. 12, Tab 2 of the Motion Record.

¹¹ Joint Report at para. 13, Tab 2 of the Motion Record.

amount of approximately \$159 million. The investment structure employed by the Company and the other Norshield Companies was complex, costly to maintain and spanned Canada, Barbados and the Bahamas.¹²

17. The Company made significant investments in its wholly-owned subsidiary, Olympus Bank, which is domiciled in Barbados. Olympus Bank held investments in Olympus Univest Ltd. (“**Olympus Univest**”), which is domiciled in the Bahamas. These investments were then co-mingled in Olympus Univest with investments received from Canadian pensions funds, financial institutions and other individuals and entities.¹³
18. Olympus Univest held substantial investments in Mosaic Composite Limited (U.S.), Inc. (“**Mosaic**”), which was also originally domiciled in the Bahamas.¹⁴
19. Given the structure and flow of investments within the Norshield investment structure, the Receiver determined that it would be necessary to take steps to safeguard the assets of Olympus Bank in Barbados and Olympus Univest and Mosaic in the Bahamas.¹⁵
20. In July 2005, the Central Bank of Barbados seized management and control of Olympus Bank. Richter and Brian F. Griffiths & Company, a Barbados accounting firm, were appointed Joint Custodians of Olympus Bank (the “**Joint Custodians**”) by Order of the Barbados High Court of Justice (the “**Barbados Court**”).¹⁶

¹² Joint Report at para. 25, Tab 2 of the Motion Record.

¹³ Joint Report at para. 26, Tab 2 of the Motion Record.

¹⁴ Joint Report at para. 26, Tab 2 of the Motion Record.

¹⁵ Joint Report at para. 27, Tab 2 of the Motion Record.

¹⁶ Joint Report at para. 28, Tab 2 of the Motion Record.

21. Brian Griffiths, the principal of the Joint Custodian Brian F. Griffiths & Company, passed away in 2024. The impact on the Olympus Bank liquidation is discussed below.¹⁷
22. Raymond Massi, then a partner at Richter, and G. Clifford Culmer (“**Culmer**”), a partner at a Bahamas accounting firm, were subsequently appointed by the Bahamas Court as joint official liquidators of each of Olympus Uninvest and Mosaic (the “**JOLs**”).¹⁸
23. In addition to the inherent difficulties posed by the complexity of the Norshield investment structure, the task of identifying and realizing upon the assets of the Norshield Companies, Olympus Bank, Olympus Uninvest and Mosaic has been compounded by incomplete financial records, missing financial information and, in certain cases, the destruction of key books and records.¹⁹
24. The Receiver and/or the JOLs have conducted examinations of key individuals involved with the Norshield investment structure. While those examinations have assisted with the recovery of certain assets, the Receiver has been unable to fully and adequately determine transactions that occurred during the period leading up to the Appointment Order.²⁰

C. Claims Process

25. The Receiver conducted a Court-authorized claims process (the “**Claims Process**”) in respect of the Norshield Companies, other than Olympus Bank. The claims process for Olympus Bank is being administered pursuant to the laws of Barbados.²¹

¹⁷ Joint Report at para. 29, Tab 2 of the Motion Record.

¹⁸ Joint Report at para. 30, Tab 2 of the Motion Record.

¹⁹ Joint Report at para. 31, Tab 2 of the Motion Record.

²⁰ Joint Report at para. 31, Tab 2 of the Motion Record.

²¹ Joint Report at para. 32, Tab 2 of the Motion Record.

26. Proofs of Investment and Proofs of Claim in the amount of approximately \$115,000,000 were delivered to the Receiver pursuant to the Claims Process.²² Following the establishment of a second claims bar date and a late claims process in connection with these CCAA Proceedings, the Receiver received approximately \$5,400,000 of additional claims which were admitted as Proven Claims.²³

D. Receiver's Statement of Receipts and Disbursements

27. The R&D Statement (attached as Exhibit "L" to the Joint Report) reflects only minor changes from the Receiver's Statement of Receipts and Disbursements for the period June 29, 2005 to October 16, 2025 (the "**Prior R&D Statement**"), which was approved pursuant to the October 30, 2025 stay extension order. Since the date of the Prior R&D Statement, total receipts have increased by \$35,634 (interest received), additional disbursements of \$69,495 have been paid (primarily professional fees) and the net cash available has decreased by \$33,861. The professional fees primarily relate to the Olympus Bank liquidation in Barbados (approximately 50%) and general estate administration (approximately 50%), including court attendances and issuing the Retail Investors Update (as defined below).²⁴

E. Interim Distribution to Proven Creditors of the Company

28. Additional funds should become available to the Monitor for distribution to Proven Creditors once distributions are made by the Mosaic JOL's to Olympus Uninvest, by the

²² Joint Report at para. 36, Tab 2 of the Motion Record.

²³ Joint Report at paras. 39-40, Tab 2 of the Motion Record.

²⁴ Joint Report at para. 41, Tab 2 of the Motion Record.

Olympus Uninvest JOL's to the creditors of Olympus Uninvest (including Olympus Bank) and finally by Olympus Bank to the Company.²⁵

29. In accordance with Orders of the Bahamas Court each dated August 6, 2014, the JOLs have conducted and completed claims processes for Olympus Uninvest and Mosaic.²⁶
30. In Barbados, the approval of the Barbados Court must be obtained with respect to the treatment of the claims in the liquidation of Olympus Bank and the distribution of funds to its creditors.²⁷
31. The majority of the funds which the Receiver and the Monitor anticipate will be available for distribution to Proven Creditors will originate from the Mosaic estate.²⁸
32. The Receiver has been working with Culmer to finalize the relative interests of the Norshield Companies, Olympus Uninvest and Mosaic in certain assets as well as the appropriate allocation of realization costs with respect to such assets, all of which must be resolved (and approved by the Bahamas Court) prior to any distribution from Mosaic. Additional time is required to resolve these issues and obtain the necessary approvals from the Bahamas Court.²⁹
33. Since that timing remains uncertain, the Receiver and the Monitor, in conjunction with Richter as the sole remaining Joint Custodian, are taking the steps necessary to carry out an interim distribution as soon as possible of approximately \$3 million from the funds on

²⁵ Joint Report at para. 45, Tab 2 of the Motion Record.

²⁶ Joint Report at para. 46, Tab 2 of the Motion Record.

²⁷ Joint Report at para. 47, Tab 2 of the Motion Record.

²⁸ Joint Report at para. 48, Tab 2 of the Motion Record.

²⁹ Joint Report at para. 48, Tab 2 of the Motion Record.

hand in the Receivership Proceeding. However, since a significant amount of these funds are proceeds of assets held in the name of Olympus Bank (“**OUBT Proceeds**”), the approval of the Barbados Court will be required in order to distribute such funds.³⁰

34. The Receiver and the Monitor have engaged with the Joint Custodians’ local counsel in Barbados regarding the authorization required from the Barbados Court in order to distribute the OUBT Proceeds, as well as to address the passing of Brian Griffiths. In the course of those discussions, the Receiver and the Monitor learned that the Barbados *International Financial Services Act* (“**IFSA**”), under which Olympus Bank was licensed as an offshore bank, was repealed and replaced via the Barbados *Financial Institutions (Amendment) Act 2018-51* (“**FI Amendment**”). In accordance with the FI Amendment, the Barbados *Financial Institutions Act Cap. 324A* (as amended) (the “**FIA**”) now governs entities that were formerly licenced under the IFSA.³¹
35. Neither the FIA nor the FI Amendment specifically address the applicable statutory process for a liquidation proceeding commenced under the IFSA, including the treatment of creditor claims against Olympus Bank. Richter, as the remaining Joint Custodian, brought an application before the Barbados Court seeking confirmation of the applicable statutory process and confirmation that Richter can continue to act as the sole Custodian of Olympus Bank.³²

³⁰ Joint Report at para. 49, Tab 2 of the Motion Record.

³¹ Joint Report at para. 50, Tab 2 of the Motion Record

³² Joint Report at para, 51, Tab 2 of the Motion Record

36. The foregoing application was heard by the Barbados Court on October 14, 2024 and the Barbados Court released its decision on June 2, 2025. The Barbados Court held that (i) the FI Amendment and the FIA govern the winding-up of Olympus Bank; and (ii) additional evidence was required confirming that Brian F. Griffiths & Company does not have the capacity to discharge its duties as Joint Custodian following the passing of Mr. Griffiths.³³
37. Given the ruling by the Barbados Court, Richter, as the remaining Joint Custodian, filed a further application before the Barbados Court in September 2025 (i) seeking an order to address certain procedural requirements under the FIA necessary to complete the winding-up of Olympus Bank, including the claims process for Olympus Bank; and (ii) renewing its motion to be appointed as sole Custodian of Olympus Bank based on additional evidence confirming that Brian F. Griffiths & Company is unable to discharge its duties as Joint Custodian.³⁴
38. A hearing date for the foregoing application has not yet been scheduled by the Barbados Court. The Joint Custodians' local counsel in Barbados continues to follow up with the Barbados Court regarding scheduling of the application. Subject to the terms of the order being sought from the Barbados Court, once the necessary procedural requirements under the FIA in connection with the winding-up of Olympus Bank have been completed, Richter will forthwith seek an order from the Barbados Court confirming that any funds that

³³ Joint Report at para. 52, Tab 2 of the Motion Record.

³⁴ Joint Report at para. 53, Tab 2 of the Motion Record.

originated from Olympus Bank are available for distribution to the Retail Investors and any other stakeholders identified through the claims process for Olympus Bank.³⁵

39. Once this approval is obtained, the Receiver and Monitor will immediately seek approval from the Court to carry out the planned \$3 million interim distribution to Proven Creditors of the Company. Richter's goal is to carry out the \$3 million interim distribution within the next six to nine months, depending on the timing to receive the required court orders both in Barbados and in Canada.³⁶
40. In the circumstances, the Receiver and the Monitor have determined that it is appropriate to extend the Stay Period for a further six months in order to preserve the CCAA Proceedings for the purpose of carrying out an interim distribution and to provide additional time for completion of the distributions from Mosaic, Olympus Uninvest and Olympus Bank.³⁷
41. The Monitor is of the view that maintaining the CCAA Proceedings will be more cost effective to carry out an interim and final distribution to Proven Creditors than doing so within the Receivership Proceeding.³⁸

PART III - THE ISSUES

42. The issues on this motion are as follows:
 - (a) whether this Court should grant the requested extension of the Stay Period; and

³⁵ Joint Report at paras. 54-55, Tab 2 of the Motion Record.

³⁶ Joint Report at para. 55, Tab 2 of the Motion Record.

³⁷ Joint Report at para. 57, Tab 2 of the Motion Record.

³⁸ Joint Report at para. 58, Tab 2 of the Motion Record.

- (b) whether this Court should approve the Joint Report and the activities of the Receiver and Monitor described therein.

PART IV - THE LAW & ANALYSIS

ISSUE 1: The Court Should Grant the Stay Extension

43. The Monitor and the Receiver seek an extension of the Stay Period up to and including October 30, 2026 (given that October 31, 2026 falls on a Saturday).³⁹
44. Pursuant to section 11.02 of the CCAA, the Court may, on an application in respect of a debtor company other than an initial application, grant an extension of a stay of proceedings where: (i) the applicant satisfies the Court that an extension of the stay of proceedings is appropriate in the circumstances; and (ii) the applicant further satisfies the Court that it has acted, and is acting, in good faith and with due diligence.⁴⁰
45. When deciding whether to grant an extension of the stay of proceedings, the Court will focus on whether the above CCAA requirements have been met and whether the extension will further the purposes of the CCAA.⁴¹ The length of the stay extension to be granted is discretionary.
46. When determining the appropriate length of time for the stay of proceedings to be extended, important considerations include the time required to complete remaining activities in the CCAA proceeding, the cost of continuous applications for an extension of the stay and the

³⁹ Joint Report at para. 60(i), Tab 2 of the Motion Record.

⁴⁰ [CCAA, s 11.02\(2\)-\(3\)](#).

⁴¹ [Worldspan Marine Inc. \(Re\), 2011 BCSC 1758 at paras. 12-15.](#)

distraction that shorter stay extensions may cause, which will prejudice stakeholders of the debtor company.⁴²

47. In the present case, since the granting of the Initial Order, the Monitor is of the view that the Company, through the Receiver, has acted, and is continuing to act, in good faith and with due diligence.⁴³
48. The proposed extension will permit the Company (through the Receiver), with the assistance of the Monitor, to take the necessary steps to carry out an interim distribution to the Company's Proven Creditors, as well as a final distribution once funds are received from the Mosaic and Olympus Uninvest liquidations.⁴⁴
49. Maintaining the CCAA Proceedings will be more cost effective to carry out further distributions to the Company's Proven Creditors than doing so within the Receivership Proceeding.⁴⁵
50. For these reasons, the Receiver and the Monitor respectfully submit that the Court should grant the proposed stay extension.

ISSUE 2: The Court Should Approve the Joint Report and Activities

51. In *Target Canada*, the Court noted that a request to approve a Monitor's report is not unusual and that there are good policy and practical reasons to grant the approval of a

⁴² *JTI-Macdonald Corp., Re, Court File No. CV-19-61582-00CL*, endorsement of Justice McEwen released October 18, 2019 at p. 3; *Crystallex International Corp., Re*, 2021 CarswellOnt 17170, 339 A.C.W.S. (3d) 107 (Ont. S.C.J. [Commercial List]) at paras. 8-9.

⁴³ Joint Report at para. 59, Tab 2 of the Motion Record.

⁴⁴ Joint Report at para. 57, Tab 2 of the Motion Record.

⁴⁵ Joint Report at para. 58, Tab 2 of the Motion Record.

Monitor's report and activities, including (a) allowing the Monitor to move forward with the next steps in the CCAA proceedings; (b) allowing the Monitor to bring its activities before the Court; (c) allowing an opportunity for the concerns of stakeholders to be addressed and any problems rectified; (d) enabling the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners; (e) providing protection for the Monitor not otherwise provided by the CCAA; and (f) protecting creditors from delay that may be caused by re-litigation of steps taken to date or potential indemnity claims by the Monitor.⁴⁶

52. These principles were recently reaffirmed by Chief Justice Morawetz in *Laurentian University*.⁴⁷ These principles apply equally to receivership proceedings.⁴⁸
53. The activities of the Receiver and Monitor set out in the Joint Report were necessary and undertaken in good faith pursuant to their duties and powers as set out in the Appointment Order, the Additional Appointment Orders, the Initial Order and other orders made in the Receivership Proceeding and the CCAA Proceedings. Approval of the activities of the Receiver and the Monitor will assist in completing the final phase of the Receivership Proceeding and the CCAA Proceedings, including carrying out further distributions to creditors of the Norshield Companies holding Proven Claims. The Receiver and the Monitor respectfully submit that the principles set out in *Target Canada* have been satisfied in this case.

⁴⁶ *Re Target Canada Co.*, 2015 ONSC 7574 at [paras. 2, 22-23](#) [*Target Canada*].

⁴⁷ *Re Laurentian University of Sudbury*, 2022 ONSC 2927 at [paras. 13-14](#).

⁴⁸ *Re Hanfeng Evergreen Inc.*, 2017 ONSC 7161 at [para. 15](#).

PART V - RELIEF REQUESTED

54. For the reasons outlined herein, the Receiver and the Monitor respectfully request that the Court grant the Order in substantially the form included at Tab 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of April, 2026.

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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. [Worldspan Marine Inc. \(Re\), 2011 BCSC 1758](#)
2. [JTI-Macdonald Corp., Re, Court File No. CV-19-61582-00CL](#)
3. *Crystallex International Corp., Re*, 2021 CarswellOnt 17170, 339 A.C.W.S. (3d) 107
(Ont. S.C.J. [Commercial List])
4. [Re Target Canada Co., 2015 ONSC 7574](#)
5. [Re Laurentian University of Sudbury, 2022 ONSC 2927](#)
6. [Re Hanfeng Evergreen Inc., 2017 ONSC 7161](#)

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date April 22, 2026



Signature

**SCHEDULE “B”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, RSC 1985, c C-36

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Stays, etc. — other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

11.02 (3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

**SCHEDULE “C”
CASELAW NOT IN CANLII**

Crystallex International Corp., Re, 2021 CarswellOnt 17170, 339 A.C.W.S. (3d) 107 (Ont. S.C.J. [Commercial List])

See attached.

2021 CarswellOnt 17170
Ontario Superior Court of Justice [Commercial List]

Crystallex International Corp., Re

2021 CarswellOnt 17170, 339 A.C.W.S. (3d) 107, 95 C.B.R. (6th) 254

**IN THE MATTER OF the Companies' Creditors
Arrangement Act, R.S.C. 1985, c. C-3 as amended**

IN THE MATTER OF a Plan of Compromise or Arrangement of Crystallex International Corporation

Conway J.

Judgment: November 18, 2021

Docket: CV-11-9532-00CL

Counsel: See Attachment, for Counsel

Subject: Civil Practice and Procedure; Insolvency

Related Abridgment Classifications

Bankruptcy and insolvency

[XVII](#) Practice and procedure in courts

[XVII.1](#) Stay of proceedings

Bankruptcy and insolvency

[XIX](#) Companies' Creditors Arrangement Act

[XIX.3](#) Arrangements

[XIX.3.c](#) Miscellaneous

Judges and courts

[XVI](#) Jurisdiction

[XVI.11](#) Jurisdiction of court over own process

[XVI.11.c](#) Sealing files

Headnote

Bankruptcy and insolvency --- Practice and procedure in courts — Stay of proceedings

Company was subject to [Companies' Creditors Arrangement Act](#) proceedings — Company was in process of enforcing large arbitration award, in United States (US) court — Company claimed that stay in place should be extended — Company claimed that amendment to arrangement should be approved, regarding credit agreement — Company finally sought to seal information from public version of monitor's reports — Noteholders opposed extension and amendment, and made cross-motion to have information disclosed — Company moved for above-noted relief — Motion granted; cross-motion dismissed — Stay could be extended, as no material steps were to take place in US litigation for 12-month period — Company would have necessary liquidity for 12-month period, and was acting in good faith and with due diligence.

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Amendment

Company was subject to [Companies' Creditors Arrangement Act](#) proceedings — Company was in process of enforcing large arbitration award, in United States court — Company claimed that stay in place should be extended — Company claimed that amendment to arrangement should be approved, regarding credit agreement — Company finally sought to seal information from public version of monitor's reports — Noteholders opposed extension and amendment, and made cross-motion to have information disclosed — Company moved for above-noted relief — Motion granted; cross-motion dismissed — Amendment would allow for company to receive necessary funding.

Judges and courts --- Jurisdiction — Jurisdiction of court over own process — Sealing files

Company was subject to [Companies' Creditors Arrangement Act](#) proceedings — Company was in process of enforcing large arbitration award, in United States court — Company claimed that stay in place should be extended — Company claimed that amendment to arrangement should be approved, regarding credit agreement — Company finally sought to seal information from public version of monitor's reports — Noteholders opposed extension and amendment, and made cross-motion to have information disclosed — Company moved for above-noted relief — Motion granted; cross-motion dismissed — Information to be sealed was commercially sensitive, and if released could hinder company's enforcement efforts — Information which noteholders sought had been sealed for many years — Releasing this information now could compromise safety of executives.

Table of Authorities**Cases considered by *Conway J.*:**

Sherman Estate v. Donovan (2021), 2021 SCC 25, 2021 CSC 25, 2021 CarswellOnt 8339, 2021 CarswellOnt 8340, 66 C.P.C. (8th) 1, 67 E.T.R. (4th) 163, 458 D.L.R. (4th) 361, 72 C.R. (7th) 223 (S.C.C.) — referred to

Sierra Club of Canada v. Canada (Minister of Finance) (2002), 2002 SCC 41, 2002 CarswellNat 822, 2002 CarswellNat 823, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada*) 211 D.L.R. (4th) 193, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada*) 18 C.P.R. (4th) 1, 44 C.E.L.R. (N.S.) 161, 287 N.R. 203, 20 C.P.C. (5th) 1, 40 Admin. L.R. (3d) 1, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada*) 93 C.R.R. (2d) 219, 223 F.T.R. 137 (note), [2002] 2 S.C.R. 522, 2002 CSC 41 (S.C.C.) — referred to

Statutes considered:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

MOTION by bankrupt company, for relief including extension of stay and approval of amendment; CROSS-MOTION by noteholders for unsealing of records.

***Conway J.*:**

1 Crystallex has been in [CCAA](#) proceedings for years. It is a liquidating [CCAA](#). It is a unique [CCAA](#) as the company's sole objective is to maximize its recovery on a \$1.4 billion (USD) arbitration award against the government of Venezuela. Its enforcement efforts are primarily in the U.S. through the "CITGO Litigation". It has obtained a Writ with respect to key Venezuelan assets located in the U.S. and is trying to obtain a license from OFAC to be able to sell the assets that are subject to the Writ.

2 On this motion, Crystallex, supported by the DIP lender, seeks to extend the stay period for 12 months, approve the 16th amendment to the DIP credit agreement and seal certain information from the public version of the Monitor's reports, in particular the 36th and 38th reports (and the related information in the materials filed on this motion).

3 The Ad Hoc Committee of the Noteholders (Committee) opposes the relief on the motion, except for the sealing of certain strategic information related to the U.S. litigation. It seeks a stay extension of only 3 months. It also brings a cross-motion to disclose the CVR information with respect to Messrs. Fung and Oppenheimer, the key executives that are pursuing the litigation and recovery efforts by Crystallex. It argues that the sealing of the information in question obscures its window into the financial performance of the company.

4 The Monitor recommends the stay extension of 12 months and the 16th amendment to the DIP agreement. The Monitor has offered to meet with stakeholders (including the Committee representatives) every 3 months to keep them up to date on the company's operations and financial position.

5 The Monitor says that there is a benefit to the company of Messrs. Fung and Oppenheimer going to Venezuela. That will be lost to the company if the CVRs are disclosed due to concerns about their personal safety.

6 The Monitor makes no recommendations about the requested sealing order as it is a legal matter for me to determine. However, it notes that the Noteholders have been actively participating in the company's [CCAA](#) proceedings even with the

sealing that has been in place over the years. It also notes that the Committee's counsel has signed a non-disclosure agreement and can obtain any of this information from the company. The Committee can also have access to this information if it signs an NDA.

7 At the conclusion of argument, I told counsel that I was granting the relief sought by Crystallex and the DIP lender and dismissing the cross-motion of the Committee to unseal the CVRs. I provided brief oral reasons and now provide them in writing.

8 I am granting the 12 month extension. The evidence of Mr. Fung is that no material steps will be occurring in the U.S. until late 2022. There will be no distributions in the meantime. The Monitor confirms that the company has sufficient liquidity for 12 months. The company is acting in good faith and with due diligence, as supported by the Monitor's report

9 Significantly, if this stay extension motion is any indication, these motions are battlefields for all sorts of issues that are time consuming and costly. Three months intervals will only consume additional resources and detract from the company's main focus, which is to secure recovery for stakeholders through the US enforcement proceedings.

10 The extension is subject to the condition that the Monitor conduct quarterly update sessions for stakeholders.

11 I approve the 16th amendment to the DIP credit agreement to provide additional funding to the company. I note that the waiver of default re the OFAC decision and related default interest are positive outcomes for the company.

12 The proposed redactions to the Monitor's reports relate to line items on cash flow variances and cash flow forecasts, explanatory notes with respect to the cash flows, and information on Crystallex's litigation strategy.

13 The cash flow information essentially provides details of Crystallex's litigation spend. It proposes to disclose these figures on a six month lag basis. Cash and DIP balances will be disclosed on a current basis.

14 There is very detailed evidence before me from Mr. Fung as to the reasons for the requested redactions. All of it relates to the litigation and the perils of this information getting into the wrong hands, which threaten to disadvantage Crystallex in its enforcement proceedings. He explains quite thoroughly in his affidavit evidence the enforcement process, the steps taken by Crystallex, and the professional advice it has been following in the U.S.

15 Crystallex is fully prepared to make all of this information available to all stakeholders, including the Committee, on a confidential basis. However, the Committee is not prepared to sign a confidentiality agreement and takes the position that the information must be made public.

16 I have considered the test for sealing in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 and *Sherman Estate v. Donovan*, 2021 SCC 25. In my view, the sealing of this information meets the test. There is serious risk to an important public interest if this information is publicly disclosed. Crystallex is engaged in intensive protracted enforcement efforts to seek enforcement of a huge award, all for the benefit of its stakeholders in this CCAA proceeding. The information in question is commercially sensitive, is related directly to these enforcement efforts, and could seriously compromise Crystallex's position in the pursuit of those efforts. As noted by Chief Justice Morawetz in *Cash Store Financial Services Inc.*, 2021 ONSC 7143, at para. 19 and 25, there is a public interest in not placing a CCAA debtor at a tactical disadvantage in its litigation. That applies with equal force here.

17 I have considered the probability and magnitude of the potential harm. This is the one avenue of recovery for Crystallex's stakeholders. The harm in jeopardizing that recovery effort is self-evident.

18 This is the least restrictive alternative. The sealing will consist of only redacting very specific lines items (cash flow variations, cash flow forecasts) and only for a period of six months. That period has been selected because the disclosure of that information after six months will be less damaging to the company.

19 As a matter of proportionality, the benefits of this order outweigh its negative effects. As noted, anyone can obtain this information via its counsel or by signing an NDA. The Monitor will be providing regular updates. And most importantly, the information will become public in six months.

20 I also agree that the strategic information should be sealed. That goes to the core of how the company is trying to enforce its award. The Committee raises an issue with paragraph 13 of the Monitor's 38th report that it says is a factual matter. I find it integrally related to the litigation strategy pursued by Crystallex.

21 The Committee raised an issue with respect to the aggregation of certain line items in the Monitor's 38th Report. It did not bring a motion to challenge this format but said I can take it into account on the motions before me today. The Monitor explains that while it received this information from the company, it was done in this fashion since the information will become public after six months. One of those aggregations is CCAA costs and arbitration costs, which are integrally related since the purpose of the CCAA is to recover the arbitration award. I do not view this as a reason to refuse the relief sought today.

22 Finally, I am not prepared to unseal the CVR information with respect to Messrs. Fung and Oppenheimer. This information has been sealed for years. There is no compelling reason to unseal them now and far more compelling evidence that their lives could be in danger should the amounts now become public. That would in turn obviously disadvantage the company. The Committee's cross-motion is dismissed.

23 I direct counsel to prepare and send me a form of order consistent with these reasons. They may email it to me directly with a copy to the Commercial List office.'

24 Finally, counsel for Crystallex (or the Monitor) is directed to file a hard copy of the unredacted version of the Monitor's reports and all related motion materials. These materials shall be filed in a sealed envelope with a copy of this endorsement and the signed order.

Motion granted; cross-motion dismissed.

Appendix

Participant Information

CASE

INFORMATION

Court File Number

CV-11-9532-00CL

Court Location (e.g. Hamilton)

Toronto

Case Name

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 Crystallex
International Corporation

Date of Hearing

November 18, 2021

PARTICIPANT

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Carlo Mattoni	Ad Hoc Committee		
Nick Brumm	Ad Hoc Committee		
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1 The Participant information Form replaces the Counsel Slip.

2 Please provide a phone number where you can be reached during the hearing, if necessary

End of Document

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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 AND ARRANGEMENT INVOLVING OLYMPUS UNITED FUNDS CORPORATION / CORPORATION DE FONDS UNIS OLYMPUS

OLYMPUS UNITED FUNDS CORPORATION / CORPORATION DE FONDS UNIS OLYMPUS, BY ITS RECEIVER, RSM RICHTER INC.

Court File No. CV-11-00009368-00CL

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

Proceeding commenced at Toronto, Ontario

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