

**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 CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH RESPECT TO HORSEHEAD HOLDING
CORP., HORSEHEAD CORPORATION, HORSEHEAD METAL PRODUCTS, LLC,
THE INTERNATIONAL METALS RECLAMATION COMPANY, LLC AND
ZOCHEM INC. (collectively, the "Debtors")**

**APPLICATION OF ZOCHEM INC.
UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT***

**FOURTH REPORT OF THE INFORMATION OFFICER
RICHTER ADVISORY GROUP INC.**

SEPTEMBER 9, 2016

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Appendix “A” – Copy of Notice published in Globe and Mail on July 26, 2016

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SEPTEMBER 9, 2016

I. INTRODUCTION

1. On February 2, 2016 (the "**Petition Date**"), Horsehead Holding Corp. ("**Horsehead Holding**"), Zochem Inc. ("**Zochem**")¹, Horsehead Corporation, Horsehead Metal Products, LLC and the International Metals Reclamation Company, LLC (collectively, the "**Debtors**") commenced voluntary reorganization proceedings (the "**Chapter 11 Proceedings**") in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") by each filing a voluntary petition for relief under chapter 11 of title 11 of the *United States Code*, 11 U.S.C. 101-1532 (the "**Bankruptcy Code**").

¹ Zochem is the only Debtor that is incorporated in Canada.

2. Also on the Petition Date, the Debtors filed various motions (the “**First Day Motions**”) for interim and/or final orders in the Chapter 11 Proceedings to permit the Debtors to continue to operate their business in the ordinary course. The First Day Motions included a motion for entry of an order authorizing Horsehead Holding to act as foreign representative on behalf of the Debtors for the within proceedings, which motion was amended at the hearing before the U.S. Court such that Zochem was appointed as the foreign representative of the Debtors for the within proceedings (in such capacity, the “**Foreign Representative**”).
3. Also on the Petition Date, Horsehead Holding, as the then proposed foreign representative, commenced these proceedings (the “**CCAA Recognition Proceedings**”) by notice of application pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (R.S.C. 1985, c. C-36, as amended) (the “**CCAA**”). The Ontario Superior Court of Justice (Commercial List) (the “**Court**” and together with the U.S. Court, the “**Courts**”) granted an order in these proceedings providing certain interim relief to the Debtors, including an interim stay of proceedings in respect of the property, business and directors and officers of the Debtors in Canada, and providing for the continuation of services required by the Debtors in Canada.
4. On February 3, 2016, the U.S. Court entered various orders sought on the First Day Motions, and on February 4, 2016, the U.S. Court entered various amended Orders (together with the orders entered on February 3, 2016, the “**First Day Orders**”), including an Order authorizing Zochem to act as the Foreign Representative.

5. On February 5, 2016, this Court granted an initial recognition order in these proceedings which, among other things, (i) declared that Zochem is a “foreign representative” pursuant to Section 45 of the CCAA; (ii) declared that the centre of main interest for the Debtors is the United States and the Chapter 11 Proceedings are recognized as a “foreign main proceeding” under the CCAA; and (iii) granted a stay of proceedings against the Debtors.

6. Also on February 5, 2016, this Court granted a supplemental order in these proceedings (the “**Supplemental Order**”), which, among other things, (i) appointed Richter Advisory Group Inc. (“**Richter**”) as the information officer in respect of this proceeding (the “**Information Officer**”); (ii) stayed any proceeding, rights or remedies against or in respect of the Debtors, the business and property of the Debtors, the directors and officers of the Debtors, and the Information Officer; (iii) restrained the right of any person or entity to, among other things, discontinue or terminate any supply of products or services to the Debtors; (iv) granted a super-priority charge up to a maximum amount of \$100,000 over the Debtors’ property in Canada in favour of the Information Officer and its counsel as security for their professional fees and disbursements incurred in respect of these proceedings (the “**Administration Charge**”); (v) granted a super-priority charge over the Debtors’ property in Canada in favour of the DIP Agent (as defined in the Supplemental Order); and (vi) recognized and gave full force and effect in Canada to certain of the First Day Orders of the U.S. Court.

7. On March 1, 2016, the U.S. Court entered various orders sought by the Debtors at their “second day hearings”, and on March 3, 2016, the U.S. Court entered a Final Order (A) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant to Section

364 of the Bankruptcy Code, (B) Authorizing The Debtors to Use Cash Collateral, (C) Granting Adequate Protection to the Prepetition Secured Parties and (D) Granting Related Relief (the “**Final U.S. DIP Order**”). On March 3, 2016, this Court granted an order in these proceedings, which, among other things, recognized and gave full force and effect in Canada to certain of the “second day” Orders of the U.S. Court and the Final U.S. DIP Order.

8. On March 22, 2016, the U.S. Court entered an Order (A) Setting a Bar Date for Filing Proofs of Claim, Including Claims Arising Under Section 503(B)(9) of the Bankruptcy Code, (B) Setting a Bar Date for the Filing of Proofs of Claim By Governmental Units, (C) Setting a Bar Date for the Filing of Requests for Allowance of Administrative Expense Claims, (D) Setting an Amended Schedules Bar Date, (E) Setting a Rejection Damages Bar Date, (F) Approving the Form of and Manner for Filing Proofs of Claim, (G) Approving Notice of the Bar Dates, and (H) Granting Related Relief (the “**Claims Bar Date Order**”). On April 13, 2016, this Court granted an order in these proceedings, which, among other things, recognized and gave full force and effect in Canada to the Claims Bar Date Order.
9. On April 13, 2016, the Debtors filed with the U.S. Court a Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (as amended and supplemented from time to time, the “**Plan**”) and the Disclosure Statement for the Debtors’ Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (as amended and approved by the U.S. Court, the “**Disclosure Statement**”). The Disclosure Statement was approved by Order of the U.S. Court dated July 11, 2016 (the “**Disclosure Statement**”).

Order”), which Order was recognized and given full force and effect in Canada pursuant to an Order of this Court dated July 12, 2016.

II. PURPOSE OF THIS REPORT

10. The purpose of this fourth report of the Information Officer (the “**Fourth Report**”) is to:

- (a) provide the Court with information concerning:
 - (i) the motion of the Foreign Representative returnable September 12, 2016, for recognition in Canada of the Plan Confirmation Order and the UPA Approval Order (each as defined below);
 - (ii) an update on other matters relating to the Chapter 11 Proceedings;
 - (iii) an update on matters relating to Zochem;
 - (iv) the activities of the Information Officer since its third report dated July 8, 2016 (the “**Third Report**”); and

- (b) to recommend this Court issue an Order:
 - (i) recognizing the Plan Confirmation Order and the UPA Approval Order;
 - (ii) approving the conduct and activities of the Information Officer as described in this Fourth Report;
 - (iii) discharging the Information Officer upon delivery to the Debtors of a certificate by the Information Officer certifying the Effective Date (as defined in the Plan) has occurred (the “**Information Officer’s Certificate**”);

- (iv) terminating the CCAA Recognition Proceedings and the Stay Period (as defined in the Supplemental Order) upon the delivery of the Information Officer's Certificate to the Debtors;
- (v) discharging the Administration Charge upon the delivery of the Information Officer's Certificate to the Debtors; and
- (vi) upon the Information Officer's discharge, releasing the Information Officer from any and all liability that it now has, or may hereafter have, by reason of, or in any way arising out of, its acts or omissions while acting as Information Officer, save and except for any gross negligence or wilful misconduct on the Information Officer's part.

III. TERMS OF REFERENCE

11. In preparing this Fourth Report, Richter has relied solely on information and documents provided by the Debtors and their advisors and public filings in the Courts (the "**Information**"). Richter has not audited, reviewed or otherwise attempted to independently verify the accuracy or completeness of the Information. Accordingly, Richter expresses no opinion or other form of assurance in respect of the Information.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.
13. The Information Officer has established a website at <http://www.richter.ca/en/folder/insolvency-cases/h/horsehead-holdings> to make available copies of the orders granted in the CCAA Recognition Proceedings as well as motion materials and reports of the Information Officer. In addition, there is a link on the

Information Officer's website to the Debtors' restructuring website maintained by Epiq Bankruptcy Solutions, LLC, as Claims and Noticing Agent for the Debtors (the "**Claims Agent**"), which includes copies of the U.S. Court materials and orders, notices and additional information in respect of the Chapter 11 Proceedings.

IV. RECOGNITION OF THE PLAN CONFIRMATION ORDER AND UPA APPROVAL ORDER

A. Plan Solicitation Process

14. As noted above, on July 11, 2016, the U.S. Court approved the Disclosure Statement and related solicitation procedures for voting on the Plan. As noted in the Third Report, there was no separate Plan voting process for Canadian holders of claims or interests in the Debtors and, as such, Canadian holders were subject to the voting process set out in the Disclosure Statement Order, which process was conducted by the Claims Agent.
15. As holders of general unsecured claims against Zochem (Class 8-A) are "unimpaired" under the Plan within the meaning of section 1124 of the Bankruptcy Code, they were conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and were not entitled to vote on the Plan.
16. The chart below provides a summary of the timeline for the Plan solicitation and confirmation process as set out in the Disclosure Statement:

| Event | Date |
|-----------------------------|---------------------------------|
| Voting Record Date | July 7, 2016 |
| Solicitation Date | July 14, 2016 |
| Plan Objection Deadline | August 19, 2016 |
| Plan Voting Deadline | August 19, 2016 |
| Confirmation Brief Deadline | August 26, 2016 |
| Confirmation Hearing | August 30-31, 2016 ² |

17. Based on its review of the Affidavit of Paul C. Mesches sworn August 10, 2016, the Information Officer understands notice of the solicitation and voting procedures, the Plan confirmation hearing and the Plan objection deadline were published in the Globe and Mail (National Edition) on July 26, 2016. A copy of the notice is attached as **Appendix “A”** hereto.

18. In addition, based on its review of the Affidavit of Service of Solicitation Materials of Jane Sullivan (an executive vice president of the Claims Agent) sworn July 28, 2016, the Information Officer understands the appropriate Disclosure Statement materials and Plan solicitation and voting materials (as prescribed by the Disclosure Statement Order) were mailed to holders of claims and interests in the Debtors, including holders of general unsecured claims against Zochem, on or about July 18, 2016.

19. The Plan voting deadline was August 19, 2016. The voting results, as reported by the Claims Agent, are set forth in the Declaration of Joseph Arena on behalf of the Claims

² As discussed below, the confirmation hearing continued through September 1, 2016 and Judge Sontchi delivered his ruling on September 2, 2016.

Agent sworn August 26, 2016, a copy of which is attached as **Appendix “B”** hereto. All voting classes except Class 6 (claims of holders of 3.80% convertible senior notes due 2017 issued by Horsehead Holding) (the “**Convertible Notes Claims**”) voted to approve the Plan in the requisite majorities required under the Bankruptcy Code. As discussed further below, the Debtors elected to seek confirmation of the Plan and “cram down” Class 6 (Convertible Notes Claims) and certain classes deemed to have rejected the Plan pursuant to Section 1129(b)(2)(B) of the Bankruptcy Code.

B. Plan Confirmation Hearing

20. From August 30 to September 1, 2016, the U.S. Court conducted a contested confirmation hearing in respect of the proposed Plan. In light of the global settlement (the “**Global Settlement**”) previously reached by the Debtors and certain of their key stakeholders as described in the Third Report and the Disclosure Statement, the Official Committee of Equity Holders of Horsehead Holding (the “**Equity Committee**”) was the main stakeholder that opposed confirmation of the Plan.³ The Equity Committee alleged, among other things, that the Plan was unconfirmable because the Debtors had not satisfied their duty to maximize value and the Plan did not fairly value the Debtors’ business and assets, and was otherwise unfair and inequitable, including in that it violated the absolute priority rule.
21. The evidence submitted at the confirmation hearing included competing expert valuation reports prepared by the financial advisors to the Debtors and the Equity Committee and testimony by, and cross-examination of, the Debtors’ chief executive officer as well as

³ Certain construction lien claimants filed objections to the Plan, which objections were subsequently overruled by the U.S. Court.

the financial advisors to each of the Debtors, the Official Committee of Unsecured Creditors and the Equity Committee.

22. On September 2, 2016, the U.S. Court, in detailed oral reasons outlining the valuation and other evidence it had considered, found (amongst other things) that the Plan did not violate the absolute priority rule and overruled the Equity Committee's objections and confirmed the Plan. A copy of the transcript of the U.S. Court's reasons is attached as **Appendix "C"** hereto.
23. On September 8, 2016, the Debtors filed under certification of counsel with the U.S. Court a proposed Findings of Fact, Conclusions of Law, and Order Confirming Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (the "**Plan Confirmation Order**"), which the U.S. Court is expected to sign on or about September 9, 2016.
24. Among other things, the Plan Confirmation Order⁴:
 - (a) confirms the Plan;
 - (b) approves the Global Settlement Agreement and the various other transactions contemplated by or in connection with the Plan;
 - (c) provides for the payment in full of the DIP Facility on the Effective Date; and

⁴ As noted, as at the writing of this Fourth Report, the Plan Confirmation Order had not been entered by the U.S. Court. The Information Officer and its counsel will review the Plan Confirmation Order as entered by the U.S. Court and advise this Court of any material changes relative to the version included in the Debtors' motion record. Reference should be made directly to the terms of the Plan Confirmation Order as entered by the U.S. Court for a complete understanding of its terms.

(d) approves and authorizes the Plan releases given by the Debtors and their estates in favour of various specified parties, the third party releases contained in the Plan, and the injunctions, exculpations and discharges contemplated by the Plan.

25. As noted above, Class 6 (Convertible Notes Claims) voted to reject the Plan, and classes 9, 10, 11, and 12 (the “**Deemed Rejecting Classes**”) were deemed to have rejected the Plan pursuant to Section 1129(b)(2)(B) of the Bankruptcy Code. As such, the Plan was confirmed pursuant to section 1129(b) of the Bankruptcy Code (the so-called “cram down” provision) as it was found to not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to Class 6 and the Deemed Rejecting Classes because there is no class of equal priority receiving more favourable treatment, no junior class that is receiving or retaining any property under the Plan, and holders of claims against the Debtors that are senior to Class 6 and the Deemed Rejecting Classes are receiving distributions that are less than 100% of the allowed amount of their claims.

C. The Plan and Treatment of Zochem Unsecured Creditors

26. The Plan provides for a comprehensive balance sheet restructuring of the Debtors, including a debt-for-equity exchange whereby holders of the Debtors’ 10.50% senior secured notes due 2017 will receive a pro rata share of up to 93.29% of the new equity in the reorganized Debtors, subject to dilution in certain instances.⁵

⁵ Detailed disclosure by the Debtors of the terms of the Plan and the proposed treatment of claims and interests thereunder is provided in the Disclosure Statement. Reference should be made to the Disclosure Statement and the Plan for a complete understanding of the Plan’s terms.

27. With respect to unsecured creditors of Zochem, the Plan provides that holders of allowed general unsecured claims against Zochem (Class 8-A) shall have their claims Reinstated (as defined in the Plan), provided that all allowed Zochem general unsecured claims shall be paid in full in cash (in U.S. dollars) within 45 days of the Effective Date of the Plan. Distributions to general unsecured creditors of Zochem will be made by the Disbursing Agent (as defined in the Plan), which could include the Debtors or their agent. The Information Officer will not hold or disburse funds pursuant to the Plan, whether to Zochem's creditors or otherwise.
28. Effectiveness of the Plan remains subject to the satisfaction or waiver of certain conditions precedent specified in the Plan, including the Plan Confirmation Order being a Final Order (as defined in the Plan), this Court issuing a recognition order in respect of the Plan Confirmation Order on the terms specified in the Plan, the transactions contemplated by the UPA (as defined below) having been consummated, the funding and/or payment of various professional expenses, and the funding of an \$11.875 million cash pool for the benefit of general unsecured creditors of the Debtors (excluding Zochem).
29. Based on discussions with the Debtors' professional advisors, the Information Officer understands the Debtors are currently targeting to consummate the Plan and the transactions contemplated thereby on or before September 19, 2016. Based on this estimated timing (which is subject to change), and subject to the effectiveness of the Plan, distributions to Zochem's general unsecured creditors are expected to be made no later than early November 2016.

D. The UPA Approval Order

30. The Debtors intend to fund distributions under the Plan as well as their post-emergence working capital with the issuance of new common equity of reorganized Horsehead Holdings (“**Reorganized Holdings**”) pursuant to the terms of the Unit Purchase and Support Agreement dated July 11, 2016 (the “**UPA**”) entered into by Horsehead Holding, on behalf of itself and the other Debtors (but excluding Zochem) and certain creditor sponsors of the Plan (the “**Plan Sponsors**”).
31. The UPA contemplates that the Plan Sponsors will subscribe for \$160 million of new common equity in Reorganized Holdings, and also contemplates the Plan Sponsors having the option to subscribe for up to an additional \$100 million of new common equity in Reorganized Holdings. The UPA also provides for expense reimbursement by the Debtors in favour of the Plan Sponsors and, in the event the UPA is terminated in certain circumstances, the payment of a \$7.5 million termination fee by the Debtors to the Plan Sponsors. The closing of the transactions contemplated by the UPA are subject to certain conditions precedent, including the granting of an Order of the U.S. Court approving the UPA, the granting of an Order of this Court recognizing such Order, and the effectiveness of the Plan.
32. Zochem has no liability to any person under or relating to the UPA.
33. On September 2, 2016, the U.S. Court indicated it would enter an order approving the UPA, and on September 8, 2016, the Debtors filed under certification of counsel with the U.S. Court a Revised Order on the Debtors’ Motion for Entry of an Order (I) Approving Unit Purchase and Support Agreement and Authorizing the Debtors to Honor their

Obligations thereunder, and (II) Granting Related Relief (the “**UPA Approval Order**”).⁶

The Foreign Representative seeks recognition of the UPA Approval Order by this Court.

V. UPDATE ON CERTAIN OTHER MATTERS IN THE CHAPTER 11 PROCEEDINGS

A. Waivers and Amendments under DIP Facility

34. As discussed in prior reports, the Debtors and the lenders under their post-petition super priority senior secured credit facility (the “**DIP Facility**” and the “**DIP Lenders**”, respectively) have previously entered into certain amendments and waivers with respect to certain events of default arising under the DIP Facility.
35. On or about August 1, 2016, the Debtors and the DIP Lender entered into Amendment No. 4 and Waiver to Senior Secured Superpriority Debtor-in-Possession Credit, Security and Guaranty Agreement to, among other things, waive certain specified events of default relating to the timing of the entry of the order approving the Disclosure Statement by the U.S. Court, and a failure by the Debtors to disclose a promissory note on a schedule to the DIP Facility credit agreement.
36. The other case “milestone” dates specified in the DIP Facility remain unchanged as follows:

⁶ As with the Plan Confirmation Order, the Information Officer understands the UPA Approval Order will be entered by the U.S. Court on or about September 9, 2016. The Information Officer and its counsel will review the UPA Approval Order as entered by the U.S. Court and advise this Court of any material changes relative to the version filed in the Debtors’ motion record. Reference should be made directly to the terms of the UPA Approval Order as entered by the U.S. Court for a complete understanding of its terms.

| Milestone | Milestone Date |
|--|-----------------------|
| The date by which the U.S. Court must enter an order approving the Plan | August 31, 2016 |
| The date by which this Court must enter an order recognizing such order of the U.S. Court approving the Plan | September 2, 2016 |
| The date by which the Plan must be implemented | September 19, 2016 |

37. The Information Officer understands the DIP Lenders have agreed not to oppose a delay in the hearing of the recognition motion for the Plan Confirmation Order until September 12, 2016.

VI. UPDATE ON CERTAIN MATTERS RELATING TO ZOICHEM

38. Subsequent to the granting of the Supplemental Order, the Debtors have provided weekly reporting to the Information Officer with respect to the cash flows of Zochem. For the period from the Petition Date to September 3, 2016, Zochem had total cash receipts of approximately \$74.6 million (excluding intercompany transfers) as compared to forecast cash receipts of \$80.0 million, and total operating disbursements (i.e. excluding financing cash flows) of \$78.2 million as compared to forecast operating disbursements of \$79.6 million, for a net operating cash outflow of \$3.6 million over the period.
39. As at September 3, 2016, the Information Officer understands that the Debtors collectively had approximately \$21.1 million of cash on hand, of which \$0.9 million was related to Zochem. Based on the information provided to the Information Officer,

Zochem is projected to have a cash outflow of approximately \$1.4 million during the period from September 4, 2016 to October 1, 2016.

VII. DISCHARGE OF THE INFORMATION OFFICER AND TERMINATION OF THE CCAA RECOGNITION PROCEEDINGS

40. With the Plan now confirmed, the relief sought by the Foreign Representative on the within motion includes:

- (a) the discharge of the Information Officer and related customary relief, including a release of claims against the Information Officer;
- (b) the discharge of the Administration Charge;
- (c) the termination of the stay granted in the CCAA Recognition Proceedings; and
- (d) the termination of these CCAA Recognition Proceedings,

all to be effected upon the delivery to the Debtors of the Information Officer's Certificate certifying as to the occurrence of the Effective Date under the Plan.

41. The Information Officer intends to deliver the Information Officer's Certificate to the Debtors upon: (i) receipt of written notice from the Foreign Representative of the occurrence of the Effective Date; and (ii) payment of all amounts owing to the Information Officer and its counsel.

42. As noted previously, it is presently expected the Effective Date of the Plan will occur on or about September 19, 2016.

43. In accordance with the Supplemental Order, the Information Officer intends to bring a motion to this Court seeking approval of its fees and disbursements and that of its counsel in advance of the occurrence of the Effective Date under the Plan.

VIII. ACTIVITIES OF THE INFORMATION OFFICER

44. The activities of the Information Officer since the Third Report include:
- (a) responding to creditor inquiries regarding the Chapter 11 Proceedings and CCAA Recognition Proceedings;
 - (b) communicating with the Debtors' advisors and the Information Officer's counsel regarding the status of matters related to the Chapter 11 Proceedings and the CCAA Recognition Proceedings;
 - (c) reviewing the Zochem weekly cash flow reporting packages and revised cash flow projections prepared by the Debtors;
 - (d) reviewing materials filed by various parties in the Chapter 11 Proceedings; and
 - (e) preparing this Fourth Report.
45. The Foreign Representative is seeking approval of this Fourth Report and the activities of the Information Officer set out herein in respect of this proceeding.

IX. INFORMATION OFFICER'S RECOMMENDATION

46. Based on the Information received and reviewed to date, the Information Officer is of the view that it is reasonable to recognize the Plan Confirmation Order and the UPA

Approval Order, and respectfully recommends that this Court grant the recognition order sought by the Foreign Representative.

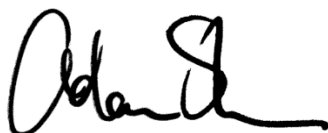
47. The Information Officer also respectfully recommends this Court grant the relief sought by the Foreign Representative with respect to the discharge of the Information Officer and the termination of these CCAA Recognition Proceedings upon the delivery of the Information Officer's Certificate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

at Toronto, Ontario this 9th day of September, 2016.

RICHTER ADVISORY GROUP INC.
in its capacity as Information Officer
of Horsehead Holding Corp. and Zochem Inc. *et al.*
and not in its personal capacity

Per:



Adam Sherman, MBA, CIRP, LIT
Senior Vice President



Pritesh Patel, MBA, CFA, CIRP
Vice President

APPENDIX A

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|----------------------------------|---|-------------------------|
| In re: |) | Chapter 11 |
| |) | |
| HORSEHEAD HOLDING INTERNATIONAL) |) | Case No. 16-10287 (CSS) |
| |) | |
| Debtor |) | |

AFFIDAVIT OF PUBLICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

I, PAUL C. MESCHES, being duly sworn, depose and say that I am the Marketing Director of Porte Advertising, Inc., and that I arranged for the publication of the attached notice in *The Globe & Mail* on July 26, 2016.

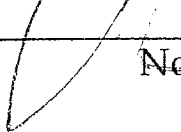
The foregoing statements are true and correct to the best of my knowledge, information and belief.



Paul C. Mesches

Sworn to me this

10th day of August 2016.



Notary Public

| |
|-------------------------------------|
| ELIKREMPA |
| Notary Public, State of New York |
| No. 01KR6175879 |
| Qualified in Suffolk County |
| Commission Expires October 22, 2014 |

APPENDIX B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|-------------------------|
| In re: |) | |
| |) | Chapter 11 |
| HORSEHEAD HOLDING CORP., <u>et al.</u> , ¹ |) | Case No. 16-10287 (CSS) |
| Debtors. |) | (Jointly Administered) |
| |) | |
| |) | |

**DECLARATION OF JOSEPH ARENA ON
BEHALF OF EPIQ BANKRUPTCY SOLUTIONS, LLC
REGARDING VOTING AND TABULATION OF BALLOTS ACCEPTING
AND REJECTING THE DEBTORS' SECOND AMENDED JOINT PLAN OF
REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

I, Joseph Arena, declare, under penalty of perjury to the best of my knowledge, information, and belief:²

1. I am the Manager of Solicitation Services at Epiq Bankruptcy Solutions, LLC (“Epiq”) located at 777 Third Avenue, 12th Floor, New York, New York 10017. I am over the age of 18 years and competent to testify.

2. I submit this Declaration with respect to the *Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1309] (as the same may be amended or modified from time to time in accordance with its terms, the “Plan”). Except as otherwise indicated, all facts set forth herein are based upon my personal knowledge, information supplied to me by the Debtors or their advisors, including Epiq, and my review of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Horsehead Holding Corp. (7377); Horsehead Corporation (7346); Horsehead Metal Products, LLC (6504); The International Metals Reclamation Company, LLC (8892); and Zochem Inc. (4475). The Debtors’ principal offices are located at 4955 Steubenville Pike, Suite 405, Pittsburgh, Pennsylvania 15205.

² Capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Plan, the Disclosure Statement, or the Disclosure Statement Order (each as defined herein), as applicable.

relevant documents. If I were called to testify, I could and would testify competently as to the facts set forth herein on that basis.

3. In accordance with the *Order (I) Approving the Retention and Employment of Epiq Bankruptcy Solutions, LLC as the Administrative Advisor for the Debtors, Effective Nunc Pro Tunc to the Petition Date, and (II) Granting Related Relief* entered at [Docket No. 278], Epiq was authorized to assist the Debtors in connection with, *inter alia*, soliciting, receiving, and tabulating Ballots accepting or rejecting the Plan.

A. Service and Transmittal of Solicitation Packages and Related Information

4. Pursuant to the Plan, holders of Claims in Classes 4, 5, 6, 7, and 8B as of the Voting Record Date were entitled to vote to accept or reject the Plan (collectively, the “Voting Classes”).

| Class | Type of Claim |
|--|--------------------------------------|
| Class 4 (Each Debtor other than Zochem) | Secured Notes Claims |
| Class 5 (Each Debtor other than Zochem) | Unsecured Notes Claims |
| Class 6 (Horsehead Holding) | Convertible Notes Claims |
| Class 7 (Horsehead Holding and Horsehead Corporation) | Banco Bilbao Credit Agreement Claims |
| Class 8B (Each Debtor other than Zochem) | Other General Unsecured Claims |

5. The procedures for the solicitation and tabulation of votes (the “Solicitation Procedures”) regarding the Plan are set forth in the *Order (I) Approving the Debtors’ Second Amended Disclosure Statement for the Debtors’ Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code; (II) Approving Certain Dates Related to Plan Confirmation;*

(III) Approving Procedures for Soliciting, Voting, and Tabulating Votes on, and for Filing Objections to, the Plan and Approving the Forms of Ballots and Notices; and (IV) Granting Related Relief [Docket No. 1274] (the “Disclosure Statement Order”). Pursuant to the Solicitation Procedures, Epiq was instructed to solicit, review, determine the validity of, and tabulate Ballots submitted to vote for the acceptance or rejection of the Plan by the holders of Claims in the Voting Classes in accordance with the Disclosure Statement Order.

6. On July 15, 2016, Epiq posted links on the Debtors’ restructuring website maintained by Epiq at <http://dm.epiq11.com/Horsehead> providing parties with access to, among other documents, copies of the Plan, the *Debtors’ Second Amended Disclosure Statement for the Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1310] (the “Disclosure Statement”), and the *Notice of (A) Solicitation and Voting Procedures; (B) the Confirmation Hearing; and (C) the Plan Objection Deadline* [Docket No. 1311].

B. General Tabulation Process

7. The Disclosure Statement Order established July 7, 2016 (the “Voting Record Date”) as the record date for determining the holders of Claims in the Voting Classes who were entitled to vote to accept or reject the Plan. Epiq relied on the claims register maintained in these chapter 11 cases, in consultation with the Debtors’ advisors and other parties, to identify which Holders of certain Claims were entitled to vote to accept or reject the Plan for purposes of distributing Solicitation Packages (as defined herein). Using this information, and with guidance from the Debtors, their advisors, and other parties, Epiq created a voting database reflecting the name, address, voting amount, and classification of certain Claims in the Voting Classes. Using

this voting database, Epiq generated Ballots for Holders of certain Claims entitled to vote to accept or reject the Plan.

8. As more particularly described in the Solicitation Affidavit (as defined herein), in accordance with the Disclosure Statement Order, on July 18, 2016, Epiq initially caused the documents set forth in section C of the Solicitation Procedures (the “Solicitation Packages”) to be distributed to holders of Claims in the Voting Classes as of the Voting Record Date. On July 29, 2016, Epiq filed the *Affidavit of Service of Solicitation Materials* [Docket No. 1409] (the “Solicitation Affidavit”).

9. Ballots returned by mail, hand delivery, or overnight delivery were received by personnel of Epiq at its offices in Beaverton, Oregon and New York, New York. Ballots received by Epiq were processed in accordance with the Disclosure Statement Order and the Solicitation Procedures.

10. In order for a Ballot to be counted as valid, the Ballot must have been properly completed in accordance with the Disclosure Statement Order and executed by the relevant holder, or such holder’s authorized representative, and must have been actually received by Epiq by 5:00 p.m. (prevailing Eastern Time) on August 19, 2016 (the “Voting Deadline”).

11. All validly executed Ballots cast by holders of Claims in Voting Classes received by Epiq on or before the Voting Deadline were tabulated as outlined in the Disclosure Statement Order and the Solicitation Procedures.

C. The Voting Results

12. The results of the tabulation of properly executed Ballots received on or before the Voting Deadline are set forth below (the “Final Tabulation Results”).

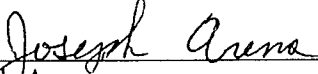
| CLASSES | TOTAL BALLOTS RECEIVED | | | |
|--|-----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| | Accept | | Reject | |
| | AMOUNT (% of Amount Voted) | NUMBER (% of Number voted) | AMOUNT (% of Amount Voted) | NUMBER (% of Number Voted) |
| Class 4 - Secured Notes Claims (each Debtor other than Zochem) | \$192,095,000.00 98.69% | 17 89.47% | \$2,555,000.00 1.31% | 2 10.53% |
| Class 5 - Unsecured Notes Claims (each Debtor other than Zochem) | \$31,950,000.00 88.87% | 13 92.86% | \$4,000,000.00 11.13% | 1 7.14% |
| Class 6 - Convertible Notes Claims (Horsehead Holding Corp.) | \$41,724,000.00 52.08% | 17 9.39% | \$38,391,000.00 47.92% | 164 90.61% |
| Class 7 - Banco Bilbao Credit Agreement Claims (Horsehead Holding Corp.) | \$17,609,845.75 100.00% | 1 100.00% | \$0.00 0% | 0 0% |
| Class 7 - Banco Bilbao Credit Agreement Claims (Horsehead Corporation) | \$17,609,845.75 100.00% | 1 100.00% | \$0.00 0% | 0 0% |
| Class 8B - Other General Unsecured Claims (Horsehead Holding Corp.) | \$11,725,216.26 98.56% | 17 80.95% | \$171,658.98 1.44% | 4 19.05% |
| Class 8B - Other General Unsecured Claims (Horsehead Corporation) | \$21,685,492.60 93.04% | 105 90.52% | \$1,621,160.36 6.96% | 11 9.48% |
| Class 8B - Other General Unsecured Claims (Horsehead Metal Products, LLC) | \$13,076,224.99 99.93% | 44 95.65% | \$8,911.78 0.07% | 2 4.35% |
| Class 8B - Other General Unsecured Claims (International Metals Reclamation Company, LLC) | \$12,004,630.38 100.00% | 43 100.00% | \$0.00 0% | 0 0% |

13. In accordance with the Disclosure Statement Order, any Ballot (a) not bearing an original signature, (b) received via facsimile, email, or any other electronic means, (c) that was illegible or otherwise unidentifiable, (d) improperly submitted to the Debtors instead of to Epiq, (e) that split the Claimant's vote to accept or reject within the same Voting Class, or (f) that lacked necessary information, was excluded from the Final Tabulation Results. Additionally, pursuant to the Disclosure Statement Order, a Ballot was deemed superseded and revoked if Epiq timely received a subsequent properly executed Ballot respective of the same Claim(s). Under these circumstances, the superseded and revoked Ballot was excluded from the Final Tabulation Results. In addition, any Ballot received after the Voting Deadline was excluded from the Final Tabulation Results. A complete list of all Ballots that are defective pursuant to the Solicitation Procedures provided in the Disclosure Statement Order is set forth on **Exhibit A**.

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I declare under penalty of perjury that the foregoing is true and correct and to the best of my knowledge, information and belief.

Dated: August 26, 2016
New York, New York



Joseph Arena
Epiq Bankruptcy Solutions, LLC

Exhibit A

HORSEHEAD HOLDING CORP.
Report of Excluded Ballots

| Claim Number | Schedule Number | Plan Class | Plan Class Description | Name | Voting Amount | Accept/Reject | Opt Out of the Third Party Releases | Ballot Number | Reason for Exclusion |
|--------------|-----------------|------------|---|---|---------------|---------------|-------------------------------------|---------------|--|
| | 290001160 | 8B | GUC CLAIMS AGAINST THE INTERNATIONAL METALS RECLAMATION CO. | GROFF TRACTOR & EQUIPMENT, INC | \$1,371.28 | | | 13 | BALLOT NOT MARKED TO ACCEPT OR REJECT THE PLAN |
| 294 | 288001790 | 8B | GUC CLAIMS AGAINST HORSEHEAD CORPORATION | COUNTRY CLEAR, INC. | \$737.10 | | | 23 | BALLOT NOT MARKED TO ACCEPT OR REJECT THE PLAN |
| 95 | | 8B | GUC CLAIMS AGAINST HORSEHEAD HOLDING CORP. | COUNTRYCLEAR, INC. | \$730.83 | | | 43 | BALLOT NOT MARKED TO ACCEPT OR REJECT THE PLAN |
| 1186 | | 8B | GUC CLAIMS AGAINST THE INTERNATIONAL METALS RECLAMATION CO. | CIVIL & ENVIRONMENTAL CONSULTANTS, INC. | \$33,707.34 | ACCEPT | Y | 52 | BALLOT LACKING SIGNATURE |
| | 290002750 | 8B | GUC CLAIMS AGAINST THE INTERNATIONAL METALS RECLAMATION CO. | THE GYM AT ELLPORT, LLC | \$330.00 | | | 141 | BALLOT NOT MARKED TO ACCEPT OR REJECT THE PLAN |
| 450 | 290001400 | 8B | GUC CLAIMS AGAINST THE INTERNATIONAL METALS RECLAMATION CO. | KMAC RESOURCING, LTD | \$9,398.40 | | | 177 | BALLOT NOT MARKED TO ACCEPT OR REJECT THE PLAN |
| 651 | 288000880 | 8B | GUC CLAIMS AGAINST HORSEHEAD CORPORATION | BLACK'S SUPPLY LLC | \$1.00 | **REJECT** | | 208 | NOT AN ORIGINAL EXECUTED BALLOT |
| 1182 | | 8B | GUC CLAIMS AGAINST HORSEHEAD CORPORATION | YUSELLA, PETER | \$1.00 | ACCEPT | Y | 216 | BALLOT LACKING SIGNATURE |
| 419 | 288004350 | 8B | GUC CLAIMS AGAINST HORSEHEAD CORPORATION | M & C RAILCAR LEASING, LLC | \$9,403.79 | ACCEPT | Y | 218 | NOT AN ORIGINAL EXECUTED BALLOT; SEPARATE VALID BALLOT FOR SAME CLAIM WAS INCLUDED IN TABULATION |
| 418 | 288001190 | 8B | GUC CLAIMS AGAINST HORSEHEAD CORPORATION | CARMATH INC. | \$24,936.16 | ACCEPT | Y | 219 | NOT AN ORIGINAL EXECUTED BALLOT; SEPARATE VALID BALLOT FOR SAME CLAIM WAS INCLUDED IN TABULATION |
| 138 | | 8B | GUC CLAIMS AGAINST HORSEHEAD HOLDING CORP. | MOORE INDUSTRIAL SERVICES LLC | \$113,584.43 | | | 230 | BALLOT NOT MARKED TO ACCEPT OR REJECT THE PLAN |
| | | 6 | CONVERTIBLE NOTES CLAIMS | THE OSAGE NATION | \$150,000.00 | **REJECT** | Y | M015 | BENEFICIAL BALLOT NOT VALIDATED BY NOMINEE |

APPENDIX C

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 16-10287(CSS)

- - - - -x

In the Matter of:

HORSEHEAD HOLDING CORP., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
824 North Market Street
Wilmington, Delaware

September 2, 2016
11:10 AM

B E F O R E:

HON. CHRISTOPHER S. SONTCHI

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: DANA MOORE

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2 **Ruling on Confirmation Hearing**

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BY: BRYA M. KEILSON, ESQ. (TELEPHONICALLY)

ALSO PRESENT:

THOMAS BOSWELL, Boswell Capital Management Limited

(TELEPHONICALLY)

1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Please be seated.

4 Good morning.

5 IN UNISON: Good morning, Your Honor.

6 THE COURT: All right. I'm ready to rule on the
7 objections to confirmation and confirmation in general. I am
8 going to be working off an outline which is a little rough, so
9 I'll do my best and I apologize if I jump around a little bit.

10 Let me start by saying that this is one of the most
11 difficult decisions I've had to make in ten years on the bench
12 and one of the closest calls that I've had to make. I'm in
13 sort of an odd situation, because all of my bankruptcy
14 instincts honed over the years tell me that equity is out of
15 the money in this case, but the evidence makes it a much more
16 difficult call, and frankly, a lot of that rests at the feet of
17 the lenders who've insisted on a no-shop here, and have
18 eliminated market evidence as being a factor in the Court
19 making its decision. And as a result, this is going to come
20 down to the Court's decision based on a battle of the experts
21 on valuation.

22 And had the lenders taken what I believe would have
23 been a more reasonable position and actually allowed for a true
24 market check in this case, I think we'd be in a very different
25 situation, good or bad, but we'd actually have some evidence

1 other than expert valuation testimony that the Court could rely
2 on in making this very important and significant decision.

3 They made their own economic decision based on what
4 they felt was appropriate. It's certainly their call and
5 ability to insist on that. But I think at the end of the day,
6 from an evidentiary standpoint, they shot themselves in their
7 own foot. And that's -- it is what it is.

8 To frame the issues that are actually in front of the
9 Court, and holding aside the objection of the two remaining
10 mechanics' lien claimants, there are three disputed issues
11 relevant to confirmation that the Court has to decide. They
12 are whether the good-faith prong of the confirmation standards
13 is met; whether the plan is fair and equitable to equity, who
14 are obviously impaired; and that rests on whether the
15 absolutely priority rule is being satisfied here, and
16 specifically whether creditors are receiving too much, whether
17 they're receiving more than their fair share of value.

18 The sort of corollary of the fact that junior
19 creditors don't get anything until senior creditors are paid in
20 full, is that senior creditors are only entitled to a one
21 hundred percent recovery, before junior creditors. And if
22 they're getting more than that, that's taking money out of
23 junior creditors' pockets.

24 And the third issue is whether the settlement
25 encompassed in the plan meets the legal standards.

1 Starting with the good-faith issue first, I do find
2 that the plan is proposed in good faith, and I will overrule
3 the equity committee's objection on that point. The fiduciary
4 duties of the estate professionals or specifically -- excuse
5 me -- the fiduciary duties of the debtor, the debtor's
6 management, do not require a market check or shopping of the
7 company either through a plan or under 363 of the Code. In a
8 reorganization setup, where we have a debtor with plan
9 exclusivity who's negotiating with creditors, it is -- Mr.
10 French would you put that down, please? Thank you.

11 It is not required that a sort of 363 shopping of the
12 company occur. Debtors are free to negotiate plans of
13 reorganization with their creditors without being required to
14 take whatever deal they reach out to the market to see if it's
15 valid. To the extent that's inconsistent with what state law
16 fiduciary duty would require in a change-of-control
17 transaction, I believe that the Bankruptcy Code alters that or
18 supersedes that in the context of what reorganizations actually
19 require under the Code.

20 So while I believe that a market check here may have
21 been very positive and helpful, it certainly was not required,
22 and it's not inconsistent with management's fiduciary duties or
23 the debtors' fiduciary duties to go forward as they've gone
24 forward in this case. So there is not a good-faith issue.

25 But again, there was no market check here sufficient

1 to establish value, and the no-shop provision creates an
2 evidentiary issue with regard to what the value is. The DIP
3 financing process was rapid. It had to be rapid. The debtors
4 did their best to shop the DIP as quickly as they could. It
5 certainly wasn't sufficient to be a proxy for value evidence or
6 valuation of the debtors. It was a very specific, focused
7 process. I find it not at all surprising that any competing
8 DIP would want to be on a priming basis. I certainly believe,
9 given the time frames involved, any new DIP lender probably was
10 not in a position to come in and do a take-out loan, and any
11 new loan would clearly be a priming loan. And it certainly
12 wasn't inappropriate for the debtors to decide not to do that,
13 but it simply -- I raise it only with regard to whether or not
14 it's evidence of the value here.

15 Also, the debtors' vigorous response after July 7th to
16 inquiries, including engaging fully with all of the potential
17 purchasers identified by the equity committee -- and I think
18 the evidence is solid that the debtors fully engaged and were
19 vigorous -- but the combination of the time frame involved and
20 the fact they are responding to and not actively shopping the
21 company, in this case, is insufficient to establish value.

22 So what we have here, at the end of the day, is a
23 battle of the experts with Lazard versus SSG, with at least, on
24 a rebuttal basis, the participation of FTI.

25 I believe that the Lazard 435-million-dollar ramp-up

1 value is a relevant inquiry here. I don't think it's
2 reasonable to assume under the facts of this case, that
3 management won't take the committed equity contribution to try
4 to fix the plant. I think the basis of the reorganization
5 thesis here is a ramp-up scenario. And I view a non-ramp-up
6 scenario to be really, in effect, a liquidation analysis.

7 These companies, other than Mooresboro, can be sold in
8 pieces. There are obviously parties that have expressed
9 interest in Zochem, in INMETCO, and in the EAF recycling
10 business. The issue here and the reorganization thesis here is
11 how do you fix Mooresboro and expand this business. So I think
12 that's the appropriate inquiry.

13 Talk a little bit about burden of proof. The question
14 here, as I view it, is whether it's more likely than not that
15 equity is out of the money. If I'm going to confirm this plan,
16 I have to make a finding that it's more likely than not equity
17 is out of the money. If I can't figure that out, if it's a
18 tie, or if equity's thesis is more likely, then the plan can't
19 be confirmed.

20 Talking just briefly about Lazard's valuation, since
21 most of the focus really was on the equity committee's
22 valuation, but talking just a second about Lazard, Lazard used
23 a comparable companies methodology in addition to a discounted
24 cash flow methodology, and there was some back-and-forth about
25 whether that was appropriate.

1 I believe that the evidence supports that use of a
2 comparable companies methodology was not required here, but
3 using it was certainly reasonable. Even though this company
4 had no LTM EBITDA, use of a comparable companies methodology
5 based on forward-looking LTM, forward-looking EBITDA
6 projections, is allowable under the literature, supported by
7 the case law, and reasonable.

8 The flip side of that is the equity committee did not
9 use a comparable companies methodology, and of course neither
10 expert used a precedent transaction methodology. But the
11 equity committee used solely a discounted cash flow method.

12 Now, while it is certainly true that there are
13 advantages and preference to using several different
14 methodologies and to triangulate value, that is not necessarily
15 required. Any valuation professional makes his or her judgment
16 under the unique circumstances of each case. And as Lazard --
17 it was reasonable for Lazard not to use a precedent transaction
18 analysis here, I don't think it was at all unreasonable for SSG
19 to just use a DCF methodology.

20 So let's focus -- wait a minute. I am going to say a
21 little something about Lazard's beta, but I'm going to do that
22 in just the context of talking about the equity committee's
23 valuation. All right. So where we are. So the equity
24 committee came in with an amended, updated valuation with a
25 midpoint value of 842 million dollars. So that's where we'll

1 work from.

2 So taking the issues I already addressed, the DCF
3 methodology only being okay, let's turn to zinc prices. I
4 think it was reasonable for SSG to accept all of the business
5 plan other than the zinc price numbers. I think it's important
6 to note that management didn't pick the zinc data that it used,
7 Lazard picked that data. The use of the MB Apex report was
8 just as reasonable as Lazard's only black-box choice of
9 analysts from their London office.

10 I think that the analyst at Desk 7 that we spent a lot
11 of time on is a red herring for a couple reasons. One,
12 importantly, that analyst was not used in predicting zinc
13 prices for the terminal period, and of course, as in any DCF,
14 but particularly in this one, the terminal period is the 800-
15 pound gorilla in the valuation.

16 I would also point out that this idea that they used
17 the mean and not the median, and clearly that was a problem, I
18 don't think has any weight. Professionals use mean and median
19 in different circumstances at different times, and Lazard used
20 the mean in several instances in its own valuation in various
21 places.

22 At the end of the day, the delta on all of that effort
23 about Analyst number 7 is ten million dollars. While not
24 insignificant -- it's real money -- in the context of the
25 broader valuation, I don't believe that it's problematic. So I

1 think the use of the zinc prices under the MB Apex report was
2 reasonable.

3 Now, we also have -- the next issue is the change in
4 capitalization ratio for the perpetuity period. And I do find
5 that that is not reasonable under the facts and circumstances
6 of this case. Now, this is probably -- this is probably the
7 sub-piece closest call, because based on my experience with
8 hedge funds and private equity firms, I think it is certainly
9 possible to assume that if the debtor meets these projections,
10 that the lenders will ratchet up the debt on this company. And
11 as Mr. Victor said, it happens every day in his business.

12 But based on the evidence here and specifically this
13 business, the history of this business, the weight of the
14 comps, the nature of commodity companies, it is too speculative
15 to switch to a fifty-fifty capital structure in the terminal
16 period. The effect of that is to reduce the valuation of SSG
17 by 95 million dollars, which takes us from 842 to 747.

18 Talking about beta. I think that SSG's use of a 0.99
19 beta is reasonable. Averaging the metals and mining database
20 of Damodaran, which is not stale, given its use of both two-
21 and five-year historical beta, and SSG's comps, most of which
22 are Lazard's comps, is an appropriate way to calculate beta.

23 Here, I would also say that I think Lazard's beta
24 strikes me as being way too high for a commodity company like
25 the debtor; and I'm particularly bothered and troubled and

1 question its use of Barra beta based on the case law and some
2 of the academic literature, which is again, a black box and
3 very suspect.

4 Having said all that, I do think that the use of the
5 Chelyabinsk comp was not reasonable. It was too thinly traded
6 to serve as a proper beta. I believe its R-squared was 0.01,
7 if I remember correctly. And this reduces value by 10 million
8 dollars, to a figure of 737.

9 Turning to the perpetuity growth; and this is a big
10 issue. The perpetuity growth of 3.5 percent is based on the
11 ability to go from 155,000 tons to 170,000 tons in the terminal
12 period, and I think that's not reasonable. Basically, it's not
13 supported by the facts. Notwithstanding debtors' previous
14 statements, which they continue to make, I think it's highly
15 speculative whether they'll be able to achieve that increase.
16 I think the costs involved in achieving that increase are
17 unclear. I think the improvements in efficiency are
18 speculative, and importantly, limited by the science.

19 So I think the facts here belie making it reasonable
20 to use as a basis for future projections, this tick up from
21 155,000 to 170 -- it's not at all clear we're going to get to
22 155,000 tons in this case. The debtors have never gotten
23 close.

24 Now, I have no issue with this academic debate on
25 whether the use of perpetuity growth model for a ten-year

1 increase as opposed to a perpetual increase is appropriate. I
2 think the math, if you do the math, makes this a nonissue. The
3 delta here between having done a perpetuity growth and having
4 done a ten-year DCF for the terminal period is miniscule.
5 However, reducing -- correcting the error on the perpetuity
6 growth reduces the valuation by an additional 84 million to a
7 revised number of 653.

8 So 653 million is roughly equivalent to the 650
9 million dollars in claims, which appears to put the equity
10 committee, at the very least, on the cusp of being in the
11 money, although barely. However, that ignores the 85 to 100
12 million dollars of new capital that's going to be required to
13 achieve the ramp-up scenario, which is the entire basis of the
14 equity committee's valuation. You simply cannot get to the
15 equity committee's conclusion without that new money, and it
16 has to come from somewhere.

17 Thus, in order for the equity committee to be in the
18 money and for the plan to violate the absolute priority rule, I
19 believe the value must exceed at least 735 million dollars,
20 which it does not.

21 So for that reason, I'm overruling the equity
22 committee's objection on the absolutely priority rule.

23 So we turn to the global settlement. At this point,
24 given the valuations, this is the creditors' recovery to
25 forego. They've agreed to the releases and doing so is

1 reasonable under the Martin factors.

2 As an aside, I think that the equity (sic) committee
3 in this case settled on the cheap, but that's not the test;
4 that's not my call. The question is whether that settlement
5 meets the lowest range of reasonableness, and it does.

6 Critically, the class action is fully preserved for
7 equity. That may be worth up to possibly fifty-five million
8 dollars, minus, of course, attorneys' fees. I would not
9 approve a settlement that did not preserve the class action.
10 So I'm going to overrule this portion of the equity committee's
11 objection.

12 That leaves us with the objections of the mechanic
13 liens claimants. I'm going to overrule that. The interest is
14 going to be paid if the claim isn't paid on the effective date.
15 Liens are being preserved. Funds are available to pay the
16 claims. Those creditors are unimpaired. And stay relief at
17 this point is both an empty threat, frankly, but would require
18 a motion. So that's an issue for another day.

19 Now, this is not the result that the shareholders were
20 looking for. However, I believe more than ever that the
21 appointment of an equity committee has been fully vindicated in
22 this case. As I mentioned back in May, the issue here is
23 valuation. Now, the lenders refused to allow for a market
24 check, that's their call. And the creditors' committee
25 settled. Someone had to show up and stand up under the facts

1 and history of this case for the shareholders to challenge the
2 valuation proposition; and appointing an estate funded
3 fiduciary to do that was appropriate.

4 I think that the equity committee professionals have
5 acted within the confines of their mandate and didn't go on any
6 frolics or detours. So I am going to lift the limitation on
7 the equity committee's fees and expenses in this case. I will,
8 of course, evaluate any fee applications under the applicable
9 standards, but I am going to reduce the artificial limit -- or
10 eliminate the artificial limit that I had previously put on
11 their fees and expenses.

12 I think, frankly, they brought tremendous value to the
13 process. This was a difficult case for the Court to decide.
14 At the end of the day, I think that we had something where
15 everyone had a full and fair opportunity to present the facts
16 and law in front of the Court. The Court was presented with
17 tremendous professionalism by all parties, and was put in the
18 position of having to make a decision based on the facts and
19 law. I've done that. And frankly, I think at the end of the
20 day, the process was fair and we get to a fair result. The
21 process cost money, and it's appropriate for that money to be
22 spent in this instance.

23 So that's my ruling. I would open it up to any
24 questions or comments. Mr. Stearn?

25 MR. STEARN: For the record, Bob Stearn from Richards,

1 Layton & Finger, on behalf of the equity committee. Your
2 Honor, thank you very much for ruling so promptly and so
3 thoroughly. We really appreciate it.

4 Just one question or point of clarification. As you
5 were discussing the settlement, I think you said words in word
6 or substance, something about the equity committee settling
7 cheaply. Is that what you meant to say?

8 THE COURT: No, I meant the -- if I said that, I meant
9 the creditors' committee.

10 MR. STEARN: Thank you, Your Honor for the
11 clarification.

12 THE COURT: I apologize. That was absolutely not what
13 I meant.

14 MR. DAHL: Your Honor, for the record, Ryan Preston
15 Dahl. Logistically, we're finalizing some changes to the
16 confirmation order. If it please the Court, we could complete
17 that process and either submit it under certification of
18 counsel. I think it may take a little bit of time today to
19 just wrap up those changes.

20 THE COURT: All right. Well, yes, I will confirm the
21 plan, overrule all objections to the plan. And I will do that
22 subject, obviously, to receiving an order under certification
23 of counsel. It's a holiday weekend. I'm not going to be here
24 any later than absolutely necessary. So if you don't get it to
25 me today, rather promptly, it'll be Tuesday before you get your

1 order. I hope that's okay, because that is what it is. That's
2 what's going to be.

3 MR. DAHL: Certainly, Your Honor.

4 THE COURT: All right.

5 MR. DAHL: Your Honor, may I just confer with counsel
6 to the equity committee briefly?

7 THE COURT: Yes.

8 MR. DAHL: Your Honor, sorry, one additional point.
9 We have related to confirmation, the debtors' motion to enter
10 into the unit purchase agreement, which is part and parcel of
11 the plan. After conferring with counsel to the equity
12 committee, we understand that that's now been resolved as a
13 function of the Court's ruling on confirmation, and we --

14 THE COURT: Right.

15 MR. DAHL: -- could also submit that order as well.

16 THE COURT: Yes. Thank you for clarifying that and
17 bringing that to my attention. Yes, I will, for the reasons
18 already stated, overrule that objection and allow and approve
19 the entry into the unit purchase agreement.

20 MR. DAHL: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 Mr. Stearn, I'm going to ask you a question while Mr.
23 Dahl's talking. I think I built that -- I think I built that
24 limit in your retention order or the -- where did I build that
25 limit? Was it in the committee --

1 MR. STEARN: Retention order, I believe, Your Honor.

2 THE COURT: All right. I'm comfortable with my oral
3 ruling, but if you would like a court order changing that, why
4 don't you submit something under certification of counsel.

5 MR. STEARN: I think that's a good idea. We'll do
6 that, Your Honor.

7 THE COURT: Okay.

8 MR. STEARN: Thank you very much.

9 THE COURT: Okay. Very good. And that should cover
10 Mr. Bifferato and SSG as well.

11 MR. STEARN: Right. And I suppose --

12 THE COURT: And --

13 MR. STEARN: -- Nastasi, too?

14 THE COURT: Yes, although they've resigned.

15 MR. STEARN: Right. But --

16 THE COURT: Yeah.

17 MR. STEARN: -- yes.

18 THE COURT: They have money in the case. I
19 understand. Yeah.

20 Mr. Dahl, I was just -- you may not have heard. I was
21 just -- we were having a colloquy about submitting something
22 under certification of counsel with regard to the retention
23 orders that removes the limit that the Court had previously set
24 on the fees.

25 MR. DAHL: Understood, Your Honor.

1 THE COURT: Okay. Anything you want to talk about
2 after that colloquy?

3 MR. DAHL: No, Your Honor.

4 THE COURT: Okay. All right. Very good. Thank you
5 very much. We're adjourned.

6 MR. DAHL: Thank you, Your Honor. Have a good
7 weekend.

8 (Whereupon these proceedings were concluded at 11:39 AM)

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| Equity committee's objection on the absolutely priority rule is overruled | 16 | 22 |
| Equity committee's objection to global settlement is overruled. | 17 | 11 |
| Objections of mechanics' lien claimants are overruled. | 17 | 13 |
| The Court lifts the limitation on the equity committee's fees and expenses. | 18 | 7 |
| Debtors' plan is confirmed. | 19 | 21 |
| Entry into the unit purchase agreement is approved. | 20 | 19 |

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

September 4, 2016

PENINA WOLICKI

DATE

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED,**

**IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH RESPECT TO THE DEBTORS, AND
APPLICATION OF HORSEHEAD HOLDING CORP. UNDER SECTION 46 OF
THE *COMPANIES' CREDITORS ARRANGEMENT ACT***

Court File No. CV-16-11271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

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