

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

WEST FACE CAPITAL INC., as agent

**Applicant**

**-and-**

CHIEFTAN METALS INC. AND  
CHIEFTAIN METALS CORP.

**Respondents**

IN THE MATTER OF THE APPLICATION PURSUANT TO SECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND  
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43, AS  
AMENDED

**SUBMISSIONS**

**Overview**

1. The Taku River Tlingit First Nation (“Taku River Tlingit”) does not oppose the discharge of the receiver but submits that the receiver should be discharged without the benefit of the proposed “without prejudice” provision set out in the order sought by the receiver.<sup>1</sup> This court should not exercise its discretion in a way so as to give the secured creditor rights that it would not normally have under the *Bankruptcy and Insolvency Act*, particularly given the prejudice to innocent third parties like Taku River Tlingit.

**Taku River Tlingit**

2. Since the 1990s, Taku River Tlingit has taken considerable steps to protect its lands. The protection and stewardship of Taku River Tlingit Territory is fundamental to Taku River Tlingit way of life, or *khustiyxh*, and who Taku River Tlingit are as a people.<sup>2</sup> Taku River Tlingit is opposed to the Project as it views the mine as a threat to their lands and waters as well as to their way of life.<sup>3</sup>

---

<sup>1</sup> Draft Revised Discharge Order, at para. 14.

<sup>2</sup> Affidavit of John D. Ward [“Ward Affidavit”], at para. 6.

<sup>3</sup> Ward Affidavit, at para. 86.

3. The Project is located in the traditional territory of the Taku River Tlingit. It is situated in the Tulsequah Valley at a remote, mountainous site on the banks of the Tulsequah River, about 14 kilometres upstream from its confluence with the Taku River.<sup>4</sup> The Taku River is a vitally important habitat for a variety of Pacific salmon species upon which Taku River Tlingit rely for their way of life.<sup>5</sup> The Project pollutes the waters of the Tulsequah River and threatens migratory salmon populations in the Taku.<sup>6</sup>
4. The name Tulsequah comes from a Tlingit word meaning “root garden river”.<sup>7</sup> The Tulsequah Valley is a core traditional use area for the Taku River Tlingit as it contains many culturally important wildlife, plants, campsites, and settlement areas.<sup>8</sup>
5. Taku River Tlingit people are not currently able to exercise their Aboriginal rights at or around the mine site due to unsafe conditions and fears that plants and animals harvested from the area would be unhealthy to consume because of environmental contamination from the mine.<sup>9</sup>
6. The environmental risk posed by the Project has been a central motivating factor in Taku River Tlingit taking active steps to protect their Territory and to become active decision makers regarding their lands.<sup>10</sup> These steps have included challenging the mine approvals through litigation, concluding a government-to-government agreement with British Columbia regarding how decisions about Taku River Tlingit land will be made, and establishing a land use plan for the management and protection of Taku River Tlingit Territory.<sup>11</sup>

---

<sup>4</sup> Ward Affidavit, at Ex. 1.

<sup>5</sup> Ward Affidavit, at paras. 18 & 23.

<sup>6</sup> Ward Affidavit, at para. 45.

<sup>7</sup> Ward Affidavit, at para. 17.

<sup>8</sup> Ward Affidavit, at para. 19-20.

<sup>9</sup> Ward Affidavit, at para. 25.

<sup>10</sup> Ward Affidavit, at para. 7.

<sup>11</sup> Ward Affidavit, at paras. 34-37, 51.

7. More recently, Taku River Tlingit has partnered with the Province to develop a remediation plan for the Project and has taken steps to designate the Tulsequah Valley as an Indigenous Protected and Conserved Area.<sup>12</sup>
8. The Taku River Tlingit community also passed a mandate directing leadership to take all steps necessary to ensure that the Tulsequah Mine is not developed.<sup>13</sup>
9. Apart from the acid mine drainage, Taku River Tlingit's opposition to the Tulsequah mine's operation centres on the need for an access road connecting Atlin to the mine site. Currently, the site is accessible only by barge or by air. The proposed road would traverse the Tulsequah Valley's sensitive habitat and run along an historical Taku River Tlingit trail. These areas of untouched wilderness are of considerable importance to Taku River Tlingit and the plants and animals on which it relies. Further, Taku River Tlingit is concerned that a road would allow more access to Taku River Territory and would threaten Taku River Tlingit's efforts to develop and manage the land in accordance with Taku River Tlingit's way of life.<sup>14</sup>
10. Taku River Tlingit is not opposed to economic development in its Territory. However, Taku River Tlingit has little confidence that the mine is economically viable or that the mine can be operated in a way that would be acceptable to them.<sup>15</sup>

## **Submissions**

11. Taku River Tlingit has had to live with the environmental degradation of the mine since the 1950s and has been actively fighting the mine through litigation and protection efforts since the 1990s. Time has shown that the mine is not a feasible economic endeavor. This court should not make an extraordinary order that would jeopardize the remediation of the mine site.
12. The *Bankruptcy and Insolvency Act* makes no provision for a without prejudice discharge of a receiver.

---

<sup>12</sup> Ward Affidavit, at paras. 70-72.

<sup>13</sup> Ward Affidavit, at para. 42, Ex. 6.

<sup>14</sup> Ward Affidavit, at paras. 18, 35.

<sup>15</sup> Ward Affidavit, at para. 46.

13. If there is any authority for the court to make an order granting an unlimited period of time to move for the reappointment of a receiver in this proceeding, it lies in the discretionary powers of the court in managing insolvency proceedings.
14. In the exercise of its discretion, the court should take into account all interests, particularly the interests of innocent third parties such as Taku River Tlingit.
15. Taku River Tlingit has a substantial interest in having the status of the Project clarified once and for all given the history of Taku River Tlingit's relationship to the mine and the work that is currently being undertaken by the Province and by Taku River Tlingit to remediate the Project area.
16. This is an area that both the Province and Taku River Tlingit have identified as requiring remediation and restoration. Permitting West Face to move for the reappointment of a receiver will have a chilling effect on the remediation plan as the Province will be reluctant to engage in an expensive environmental clean up to benefit West Face and future purchasers.
17. The Receiver submits that after balancing competing interests, no one stands to be prejudiced by the relief sought and that any prejudice would be minimal and temporary.<sup>16</sup> Taku River Tlingit disagrees.
18. The order the sought is highly prejudicial to Taku River Tlingit. The order would not only jeopardize the remediation efforts, it would leave the status of the Project indeterminate, for an unknown number of years.
19. The only interests served by the order sought would be those of the Secured Creditor. The order sought appears to be an attempt by the Secured Creditor to circumvent certain temporal limitations on the exercise of security rights, including provincial limitations laws. Given that it is in the interests of everyone except the Secured Creditor to resolve the status of the mine once and for all, this Court should decline to exercise its jurisdiction to provide the without prejudice order.

---

<sup>16</sup> Factum of the Receiver, at para. 43.

20. Such a result will not leave the Secured Creditor with no choices. West Face can:

- a. Maintain the receivership (and accept the costs and responsibilities associated with that, including the ongoing supervision of the court);
- b. Take possession of the property; or
- c. Discharge the receiver (and accept the consequences flowing from that decision).

21. Given the ongoing environmental liabilities and the remote chance of operations resuming, the balance does not weigh in favour of allowing the receivership to be revived at a later date. The Taku River Tlingit and British Columbia are entitled to know the future plans of the secured creditor with respect to the facility to allow this to be factored into their planning. Leaving them hanging frustrates this reasonable expectation.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

August 7, 2020

---

**Dated**

---

**Robert Janes, QC and  
Robin A. Dean,**  
Counsel for Taku River Tlingit First  
Nation