

COURT FILE NUMBER 1903-24389  
 COURT COURT OF QUEEN'S BENCH OF ALBERTA  
 JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE COMPANIES'  
 CREDITORS ARRANGEMENT ACT, RSC, 1985,  
 C-36

AND IN THE MATTER OF A PLAN OF  
 COMPROMISE OR ARRANGEMENT OF TLI  
 CHO LANDTRAN TRANSPORT LTD., 1456998  
 ALBERTA LTD., and 1456982 ALBERTA LTD.

APPLICANT TLI CHO INVESTMENT CORPORATION

RESPONDENTS TLI CHO LANDTRAN TRANSPORT LTD.,  
 1456998 ALBERTA LTD., and 1456982  
 ALBERTA LTD.

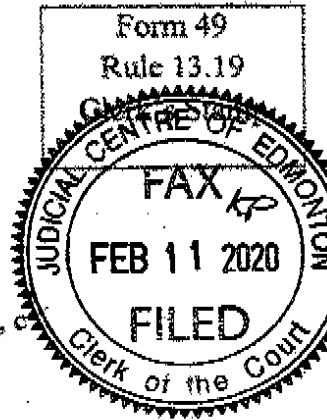
DOCUMENT AFFIDAVIT

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File No. 261496



**AFFIDAVIT OF MARK BRAJER****Sworn February 10, 2020**

I, Mark Brajer, of the City of Yellowknife, in the North West Territories, MAKE OATH AND SAY THAT:

**A. INTRODUCTION**

1. I am employed by the Applicant, Tli Cho Investment Corporation (“**TIC**”) as its Chief Executive Officer. I am authorized to make this affidavit on behalf of the Applicant, and have personal knowledge of the facts hereinafter deposed except where such facts are stated to be on information and belief, and in such cases, I verily believe them to be true.
2. I am also an officer of the Respondents and have personal knowledge of the operations and financial position of the Transport Companies (as defined below).
3. TIC is a creditor and the ultimate parent company of the Respondent, Tli Cho Landtran Transport Ltd. (“**Tłıchǫ Landtran**”). TIC is also the majority shareholder of the Respondents of 1456998 Alberta Ltd. (the “**General Partner**”), and 1456982 Alberta Ltd. (the “**Limited Partner**”), which companies are the general partner and the limited partner of Ventures West Transport LP (“**Ventures West LP**” and together with Tłıchǫ Landtran, the General Partner and the Limited Partner, the “**Transport Companies**”). In my capacity as the Chief Executive Officer of TIC and as an officer of the Transport Companies, I am familiar with each of the Transport Companies.

**B. RELIEF SOUGHT**

4. This Affidavit is sworn in support of an application by TIC for an Order (the “**Stay Extension Order**”) extending the Stay Period (as defined below) up to and including March 31, 2020.

### C. BACKGROUND

5. On November 29, 2019, proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") were commenced by TIC in respect of the Transport Companies and an Initial Order was obtained (the "**Initial Order**") appointing MNP Ltd. as monitor of the Transport Companies in the CCAA proceedings (the "**Monitor**") and granting a stay of proceedings in respect of the Transport Companies and their businesses and property until December 8, 2019.
6. On December 6, 2019, TIC sought and obtained a First Amending and Extension Order (the "**Amended Order**") extending the stay of proceedings to February 21, 2020 (the "**Stay Period**") and approving a sales process (the "**Sales Process**") of the assets of the Transport Companies.
7. As described in greater detail in the Affidavit of Mark Brajer sworn November 27, 2019 (the "**Initial Affidavit**"), TIC commenced these proceedings in order to stabilize the businesses of the Transport Companies and to work with the Monitor to develop and oversee the Sales Process in order to maximize the value of the assets of the business.
8. The Transport Companies require an extension of the Stay Period at this time to complete the Sales Process in order to close one or more transactions for the sale of the assets of the Transport Companies and to distribute the proceeds of such sale to creditors of the Transport Companies pursuant to a plan of compromise or arrangement or otherwise in accordance with applicable law.

### D. UPDATE SINCE THE INITIAL ORDER

9. Since the CCAA proceedings were commenced, the Transport Companies, in consultation with and with the assistance of the Monitor, has been working diligently to, among other things:
  - (a) locate, secure and transport the assets of the Transport Companies at the Edmonton yard of the Transport Companies;

- (b) disclaim the majority of the contracts of the Transport Companies;
- (c) complete ongoing reporting on receipts and disbursements and variances;
- (d) advance discussions and negotiations with one stakeholder on the termination of certain cement hauling contracts;
- (e) address claims from certain customers regarding the performance of certain transport contracts;
- (f) work with the Monitor to implement the Sales Process;
- (g) work with the Monitor to respond to due diligence requests from prospective bidders;
- (h) provide access to the Edmonton yard space of the Transport Companies to allow prospective bidders to inspect the assets;
- (i) respond to requests from stakeholders;
- (j) provide regular updates to the senior secured creditor of the Transport Companies, Canadian Imperial Bank of Commerce; and
- (k) continue to pay expenses and satisfy obligations incurred in the ordinary course of business subject to the Amended Order.

10. The Transport Companies have acted and continue to act in good faith and with due diligence during the course of these CCAA proceedings.

#### **E. SALE PROCESS**

11. The Sales Process includes the following milestones:

<b>Action</b>	<b>Estimated Timing</b>
Sending information summary to prospective purchasers	Beginning December 9, 2019

<b>Action</b>	<b>Estimated Timing</b>
Newspaper notice published	On or before December 13, 2019
Data room access provided to those who sign non-disclosure agreement	On or before February 14, 2020
Viewings for interested parties	On or before February 14, 2020
Deadline for binding offers	February 14, 2020
Target closing date	February 28, 2020

12. The Transport Companies require an extension of the Stay Period in order to continue and conclude the Sales Process.

#### **F. CONTRACT DISPUTES**

13. I am advised that on January 3, 2020, counsel for Diavik Diamond Mines (2012) Inc. (“**Diavik**”) wrote to counsel for TIC, McMillan LLP, to advise that Diavik would not consent to any assignment of the ongoing cement haul Services Contract No. CW2137902 between Diavik and Tịchq Landtran (the “**Landtran Cement Contract**”) in the Sales Process. In the same letter, Diavik’s counsel also alleged that Tịchq Landtran had breached the terms of the Landtran Cement Contract by engaging the services of lease operators to perform the Landtran Cement Contract. Diavik is unilaterally withholding approximately \$463,772.01 owing to Tịchq Landtran under the Landtran Cement Contract on account of this alleged pre-CCAA breach.
14. For many years Tịchq Landtran has engaged the services of lease operators as subcontractors to perform transport contracts. The engagement of lease operators as subcontractors is a regular part of the business of Tịchq Landtran. I believe that employees of Diavik were aware of the use of lease operators at all relevant times and I am not aware of any instance in which Diavik or any of its employees or agents objected to such practice.
15. On January 14, 2020, TIC received a letter from Diavik terminating effective February 29, 2020 the Surface Mining Operations Contract (CW2115104) between Diavik and Tịchq Logistics Inc. (the “**Logistics Contract**”) dated November 1, 2017. Tịchq Logistics Inc.

is a subsidiary of TIC and an affiliate of the Transport Companies. It is not a party to these CCAA proceedings.

16. The Transport Companies continue to investigate and respond to the alleged breaches of contract.

**G. SUMMARY**

17. The Transport Companies have worked diligently and in good faith in respect of all matters relating to the CCAA proceedings, including the steps taken in furtherance of the Sales Process.
18. The ongoing benefit provided by the CCAA stay of proceedings is critical to the Transport Companies' ability to continue advancing the Sales Process and to work to implement any potential sale or restructuring transaction that may result from the Sales Process.
19. I believe that the extension of the CCAA stay of proceedings is in the best interests of the Transport Companies and their stakeholders in the circumstances, and understand that the Monitor is supportive of the proposed extension of the Stay Period.
20. For the reasons set out herein, the Company respectfully requests that this Court grant the Stay Extension Order.

SWORN (OR AFFIRMED) BEFORE ME at )  
Edmonton, Alberta, this 10<sup>th</sup> day of February, )  
2020 )

Glenn Stewart

(Commissioner for Oaths for the Province of )  
Alberta)

M. Brajer  
(Signature)

Glenn Stewart

PRINT NAME AND EXPIRY/LAWYER )  
/STUDENT AT LAW

MARK BRAJER.  
(Print Name)

