

COURT FILE NUMBER 1903-24389

Clerk's Stamp

COURT COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE EDMONTON

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 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 **APPLICATION**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION
OF PARTY
McMillan LLP
Suite 1700, 421 – 7th Avenue S.W.
Calgary, Alberta T2P 4K9
File No.: 269237

FILING THIS
DOCUMENT
Attention: Adam Maerov
Telephone: (403) 215-2752
Facsimile: (403) 531-4720
Email: adam.maerov@mcmillan.ca

Attention: Kourtney Rylands
Telephone: (403) 531-4700
Facsimile: (403) 531-4720
Email: kourtney.rylands@mcmillan.ca

NOTICE TO RESPONDENTS

This application is made against you. You are the respondents.

You have the right to state your side of this matter before the judge.

To do so, you attend Court by videoconference or phone when the application is heard as shown below:

Date: June 11, 2020
 Time: 2:00 pm
 Where: Virtual Courtroom 10:

<https://albertacourts.webex.com/meet/virtual.courtroom10>

Please see instructions attached hereto as Appendix “A”.

Before Whom: The Honourable Justice Dunlop

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. Tlicho Investment Corporation seeks an order (the “**Order**”) substantially in the form attached hereto as Schedule “A”:
 - a. extending the Stay Period as defined in the Order of this Court granted on December 6, 2019 (the “**Amended Order**”) up to and including September 15, 2020;
 - b. disallowing certain claims asserted under the *Garage Keepers’ Lien Act* against assets of the respondents; and
 - c. directing that Diavik Diamond Mines (2012) Inc. (“**Diavik**”) pay to Tłıchq Landtran the net amount of \$738,960.42 to Tli Cho Landtran Transport Ltd. (“**Tłıchq Landtran**”) for services rendered pursuant to a Supply of Freight Transportation Services Contract No. CW2137902 between Diavik and Tłıchq Landtran (the “**Cement Contract**”), without prejudice to Tłıchq Landtran’s right to recover additional amounts at a later date (if any).
2. Such further relief as counsel may request and this Honourable Court may grant.

Grounds for making this application:

A. Background

1. Tlicho Investment Corporation (“**TIC**” or the “**Applicant**”) is a creditor and the ultimate parent company of Tłıchq Landtran. TIC is also the majority shareholder of the respondents 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**”).

2. The Applicant is wholly owned by the Tłıchǫ Government. The Tłıchǫ are an aboriginal people of Canada that have traditionally used and occupied lands in and adjacent to the Northwest Territories.

B. Court Proceedings

3. 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.
4. On December 6, 2019, the Court granted 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.
5. On February 28, 2020, the Court granted three orders to, among other things, approve the successful bids resulting from the Sale Process. Specifically, the Court granted:
 - (a) an approval and vesting order (the “**Auction Order**”) approving the transaction (the “**Auction Transaction**”) entered into between the Transport Companies and IronPlanet Canada Ltd. (“**IronPlanet**”). Pursuant to the Auction Order, IronPlanet is authorized to market and sell certain assets of the Transport Companies.
 - (b) an approval and vesting order (the “**ARS Order**”) approving the sale transaction (the “**ARS Transaction**”) entered into between the Transport Companies and ARS Trucking & Welding Ltd. (“**ARS**”) for the sale of certain assets to ARS.
 - (c) a distribution and stay extension order extending the Stay Period to June 16, 2020, and authorizing the Monitor to make distributions from the proceeds of the ARS Transaction to the Canadian Imperial Bank of Commerce (“**CIBC**”), as the Monitor determined that the security held by CIBC is valid and enforceable and creates a first priority charge against the Transport Companies’ assets.

C. Extension of Stay

6. The Transport Companies require an extension of the Stay Period in order to:
 - (a) complete the steps remaining in respect of the Auction Transaction and distribute the proceeds of such sales to creditors of the Transport Companies;
 - (b) sell one remaining vehicle inadvertently left off of the list of auction assets and a second vehicle inadvertently left out of the auction by IronPlanet;

- (c) distribute the remaining proceeds of the ARS Transaction and the Auction Transaction to creditors, including *Garage Keepers' Lien Act* claimants with lien claims determined to be valid by the Monitor and its counsel;
 - (d) resolve the dispute with Diavik regarding the balance owing by Diavik under the Cement Contract to the extent such dispute is not resolved by the within application; and
 - (e) investigate and pursue an appeal of a pre-filing GST ruling from the Canada Revenue Agency for the period from April 1, 2015 to November 30, 2017, which, if successful, would result in the Transport Companies receiving a refund of approximately \$201,984.00.
7. The Transport Companies have acted and continue to act in good faith and with due diligence.
 8. The proposed extension of the stay is in the best interests of the Transport Companies and their stakeholders.
 9. The Monitor is supportive of the proposed extension.
- D. Diavik Dispute
10. In early January 2020, a dispute arose between Diavik and T̄h̄ch̄q Landtran regarding the Cement Contract.
 11. As of June 3, 2020, Diavik is withholding approximately \$856,895.42 from T̄h̄ch̄q Landtran for services rendered to Diavik under the Cement Contract.
 12. Diavik has not disputed that it owes \$856,895.42 on account of the Cement Contract Services save and except for an alleged set-off claim.
 13. The set-off claim is based on allegations that third party operators engaged by T̄h̄ch̄q Landtran as subcontractors (the “**Subcontractors**”) under the Cement Contract may assert claims against Diavik for payment of their subcontractor invoices under the *Bills of Lading Act* (the “**Potential Subcontractor Claims**”).
 14. TIC and the Transport Companies, with the assistance of the Monitor, have determined that the Potential Subcontractor Claims which could be made against Diavik in respect of the Cement Contract Services ought not to exceed approximately \$117,935.00.
 15. Diavik therefore continues to withhold \$738,960.42, which does not under any reasonably foreseeable circumstance appear to be subject to any valid set-off claim by Diavik.
 16. TIC seeks an Order requiring Diavik to pay to T̄h̄ch̄q Landtran the amount of \$738,960.42, being \$856,895.42 owing by Davik to T̄h̄ch̄q Landtran for services rendered pursuant the Cement Contract net of the amount \$117,935.00.

E. Invalid Lien Claims

17. A number of claimants have submitted lien claims under the *Garage Keepers' Lien Act* against assets being sold in the Auction Transaction.
18. The Monitor and its legal counsel have investigated each of the claims and determined the validity of same.
19. On May 28, 2020, the Court granted an order authorizing the Monitor to make distributions from the proceeds of the Auction Transaction to CIBC, as first secured creditor of the Transport Companies, and to certain *Garage Keepers' Lien Act* lien claimants (the "**Auction Distribution Order**") that rank senior in priority to CIBC.
20. The Auction Distribution Order confirmed the validity of certain lien claims to the extent described therein.
21. The Monitor has determined that the remaining lien claims are invalid due to the claimants' failure to comply with the requirements of the *Garage Keepers' Lien Act* or due to the lien claims being outside the scope of the *Garage Keepers' Lien Act*.
22. TIC seeks an Order disallowing such invalid lien claims and providing that any such claims do not attach to the proceeds of sale paid to the Transport Companies in relation to the Auction Transaction or the ARS Transaction.

Material or evidence to be relied on:

3. The Amended Order;
4. The Affidavit of Mark Brajer, sworn June 3, 2020;
5. The Affidavit of Mark Brajer, sworn February 10, 2020;
6. The Fourth Report of the Monitor; and
7. Such further evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

8. Rules 1.3, 1.4, 6.3 of the *Alberta Rules of Court*; and
9. Section 11 of the *Companies' Creditors Arrangement Act*;
10. Such further material as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

11. The CCAA and this Court's equitable and statutory jurisdiction thereunder; and
12. Such further authority as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

13. None.

How the application is proposed to be heard or considered.

14. In person.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

Schedule "A"

(See Attached)

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, R.S.C. 1985, c.
C-36, as amended

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

TLICHO INVESTMENT CORPORATION

RESPONDENTS

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

DOCUMENT

ORDER

CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT:

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Kourtney Rylands
Phone: 403-355-3326
Email: kourtney.rylands@mcmillan.ca

File No. 261496

DATE ON WHICH ORDER WAS PRONOUNCED: June 11, 2020

LOCATION OF HEARING: Virtual Courtroom 10

NAME OF JUDGE WHO MADE THIS ORDER:

UPON the application of Tłıchq Investment Corporation; AND UPON reviewing the initial order of this Court granted by the Honourable Justice Graesser on November 29, 2019; the first amending and extension order granted by the Honourable Justice Graesser on December 6, 2019 (the “**First Amending and Extension Order**”); the sale approval order granted by the Honourable Justice Mah on February 28, 2020, as varied by an order granted by the Honourable Justice Mah on March 6, 2020 (collectively, the “**ARS Order**”); the auction approval order granted by the Honourable Justice Mah on February 28, 2020, as varied by an order granted by the Honourable Justice Mah on March 6, 2020 and further varied by an order granted by the Honourable Justice Renke on May 15, 2020 (collectively, the “**Auction Order**”); and the auction distribution order granted by Honourable Justice Feth on May 28, 2020; AND UPON having read the Affidavit of Mark Brajer sworn June 3, 2020, filed; and the affidavit of service of David Tsumagari, sworn June ____, 2020, filed; AND UPON reviewing the Fourth Report of the Monitor, dated May 19, 2020, filed; AND UPON hearing counsel for the Applicant, counsel for the monitor, MNP Ltd. (the “**Monitor**”), counsel for The Canadian Imperial Bank of Commerce and such other counsel as were present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

EXTENSION OF THE STAY OF PROCEEDINGS

2. The Stay Period (as defined in the First Amending and Extension Order) shall be and is hereby extended to and including 11:59 p.m. on September 15, 2020, and all other terms of the First Amending and Extension Order shall remain in full force and effect, unamended, except as may be required to give effect to this paragraph.

INVALID LIEN CLAIMS

3. The Garage Keepers' liens described in Schedule "A" are hereby declared to be invalid to the extent of the amounts described in Schedule "A" (the "**Invalid Lien Claims**").
4. The Invalid Lien Claims shall not attach to, encumber or otherwise form a charge, security interest or lien against the proceeds of assets sold pursuant to the ARS Order and the Auction Order.

DIAVIK RECEIVABLE

5. Diavik Diamond Mines (2012) Inc. ("**Diavik**") is forthwith directed to pay to Tli Cho Landtran Transport Ltd. ("**Tli Cho Landtran**") the amount of \$738,960.42 on account of amounts due and owing by Diavik to Tli Cho Landtran pursuant to the Supply of Freight Transportation Services Contract No. CW2137902 between Diavik and Tli Cho Landtran (the "**Cement Contract**").
6. This Order is made without prejudice to any right of recovery Tli Cho Landtran may have in respect of additional amounts owing under the terms of the Cement Contract.

SERVICE

7. Service of this Order shall be deemed good and sufficient by:
 - (a) Serving the same on the persons listed on the service list created in these proceedings;
 - (b) Posting a copy of this Order on the Monitor's website at: <https://mnpdebt.ca/en/corporate/Engagements/ventures-west-transport-limited-partnership>and service on any other person is hereby dispensed with.
8. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of Queen's Bench of Alberta

Schedule "A"

Invalid Lien Claims

Lien Claimant	Personal Property Registry Registration Numbers	Collateral Description	Amount Declared Invalid
Blue Diamond Enterprises Ltd.	19120510097	2C9LAA3S571026017, 2007 COLUMBIA SUPER B LEAD DEBT OWED FROM VENTURES WEST TRANSPORT TO BLUE DIAMOND FOR UNPAID INVOICES FOR MAINTENANCE ON EQUIPMENT AS WELL AS TRUCKING.	\$34,854.00
Hart Transmission Repair Ltd.	N/A	N/A	\$5,682.00
High level Truck & Trailer (2001) Ltd.	19120921404 19120922029	29LAA3S571026017, 2007 Columbia Super B Lead 2C9LBA2R271026018, 2007 Columbia Super B Rear 4V4NC9KK5CN547812, 2012 Volvo Tractor	\$36,777.00
Kal Tire	19121940332	1XKDD40X5DJ962597, 2013 Kenworth, RD20191218968	\$4,565.00
New North Truck and Equipment	N/A	N/A	\$803.00
Tremcar West Inc.	N/A	N/A	\$52,707.00
Truck Zone	N/A	N/A	\$15,099.00
True North Truck & Diesel Repair Ltd.	19120229589	5KJJALAV67PX24938, 2006 WESTERN STAR 4900	\$14,842.00

Winfield Heavy Truck & Collision Repair	19120624959	1XKDP4EX0CR951247, 2012 KENWORTH T800	\$6,440.00 plus any additional amounts claimed for storage fees
Full Tilt Auto & Tuning Ltd.	N/A	N/A	All amounts claimed for storage fees

Appendix "A"

(See Attached)

From: [RemoteHearings QB](#)
To: [Preet Saini](#)
Subject: TLICHO INVESTMENTS CORP v. TLI CHO LANDTRAN TRANSPORT - 1903-24389
Date: Wednesday, June 3, 2020 7:43:18 AM

Virtual Courtroom 10 has been assigned for the following matter:

Date: June 11, 2020 at 2:00 PM
Style of Cause: TLICHO INVESTMENTS CORP v. TLI CHO LANDTRAN TRANSPORT - 1903-24389
Presiding Justice: Dunlop, J.

Virtual Courtroom Link:
<https://albertacourts.webex.com/meet/virtual.courtroom10>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. Note: Recording or rebroadcasting of the video is prohibited.

If you are a non-lawyer attending this hearing remotely, please complete this undertaking located here:
<https://www.albertacourts.ca/qb/resources/announcements/undertaking-and-agreement-for-non-lawyers>

For more information relating to Webex protocols and procedures, please visit:
<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

Thank you,
George Farmer



COURT OF QUEEN'S BENCH OF ALBERTA

Commercial Scheduling Confirmation

Action Number(s): 1903 24389

Style of Cause: TLICHO INVESTMENT CORP. v. TLI CHO LANDTRAN TRANSPORT LTD.;

The above noted matter has been scheduled on the Commercial List as follows:

Date and Duration: Jun 11, 2020 02:00 PM Total: 30 Minute(s)

Time: Jun 11, 2020 02:00 PM Total: 30 Minute(s)

Presiding: DUNLOP, J

Purpose: Commercial Hearing - STAY EXTENSION

Location: EDMONTON COURT OF QUEEN'S BENCH, Edmonton Law Courts, 1A Sir Winston Churchill Square, Edmonton, AB, T5J 0R2

Special Requirements: WEBEX: Virtual Courtroom 10 Virtual Courtroom Link:
<https://albertacourts.webex.com/meet/virtual.courtroom10> +1-780-851-3573 Canada Toll (Edmonton) Access code: 960 356 115, Video Conferencing

Filing Deadlines:

Unless this matter was booked on an urgent basis and relief from normal filing deadlines has been authorized by a Justices of the Commercial Practice Group, the deadlines outlined in QB Commercial Practice Note No. 1, Part VII: Materials for the use of the Court:

- Moving party/applicant material must be filed by noon on the Monday that precedes the week of the hearing.
- All responding material must be filed by noon on the Thursday that precedes the week of the hearing.

Effective August 1, 2016, all parties with matters booked on the Commercial Duty List are directed to provide courtesy electronic (pdf) copies of all material that will be relied upon, including copies of any materials filed in an earlier application, in the event that you intend to rely upon those materials at the hearing. Filed electronic copies are to be delivered to the presiding Justice **c/o Commercial Coordinator Edmonton**. Electronic copies of the material must be provided to the Commercial Coordinators at the following e-mail addresses by noon on the Friday preceding the hearing:

In Edmonton CommercialCoordinator.QBEdmonton@albertacourts.ca

Note: Failure to provide any required information to the Court may result in delays or rescheduling.

Scheduling Notes: