

HEARING DATE AND TIME: AUGUST 29, 2019 AT 11:00 A.M. (EST.)
OBJECTION DEADLINE DATE AND TIME: AUGUST 22, 2019 AT 4:00 P.M. (EST)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)	Chapter 11
)	
MIAMI METALS I, INC., <i>et al.</i> ¹)	Case No. 18-13359 (shl)
)	
Debtors.)	(Jointly Administered)
)	RELATED DOC. NO. 1264

**DECLARATION OF SCOTT AVILA IN SUPPORT OF
DEBTORS' MOTION FOR APPROVAL OF SETTLEMENT WITH
SENIOR LENDERS AND MINAS DE OROCO RESOURCES, S.A. DE C.V.,
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

I, SCOTT AVILA, being duly sworn, depose and say as follows:

1. My name is Scott Avila. I am a principal of Paladin Management Group, LLC (“Paladin”), a financial advisory firm. I submit this declaration (the “Declaration”) in my capacity as Chief Restructuring Officer (“CRO”) of Miami Metals I, Inc. (f/k/a Republic Metals

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation), 15 West 47th Street, Suites 206 and 209, New York, NY 10036 (3194); Miami Metals II, Inc. (f/k/a Republic Metals Corporation), 12900 NW 38th Avenue, Miami, FL 33054 (4378); Miami Metals III LLC (f/k/a Republic Carbon Company), 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833); Miami Metals IV LLC (f/k/a J & L Republic LLC), 12900 NW 38th Avenue, Miami, FL 33054 (7604); Miami Metals V LLC (f/k/a R & R Metals, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (7848); Miami Metals VI (f/k/a RMC Diamonds, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (1507); Miami Metals VII (f/k/a RMC2, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (4696); Miami Metals VIII (f/k/a Republic High Tech Metals, LLC), 13001 NW 38 Avenue, Miami, FL 33054 (6102), 12900 NW 38th Avenue, Miami, FL 33054 (1507); Republic Metals Trading (Shanghai) Co., Ltd., 276 Ningbo Road, Huangpu District, Shanghai, P.R. 200001 China (1639); and Republic Trans Mexico Metals, S.R.L., Francisco I. Madero No. 55 Piso 5, Local 409, Centro Joyero Edificio Central, Delegación Cuauhtémoc, Mexico DF 6000 (2942).

Refining Corporation) ("Miami Metals") and its affiliated debtors and debtors-in-possession (collectively, the "Debtors"), including Miami Metals, II, Inc. f/k/a Republic Metals Corp. ("Miami Metals II"), in the above-captioned chapter 11 cases pending before the United States Bankruptcy Court for the Southern District of New York (the "Court") in support of *Motion for Approval of Settlement Agreement by and Among Debtors, Senior Lenders, and Minas de Oroco Resources, S.A. de C.V., Pursuant to Federal Rule of Bankruptcy Procedure 9019 (ECF No. 1264)* (the "Motion") filed by the above-captioned Debtors and Debtors-in-possession.

2. I am duly authorized to make this declaration on behalf of the Debtors.²

3. A history of the Debtors' businesses and the events leading to these Chapter 11 Cases are set forth in my Declaration, as Chief Restructuring Officer, in Support of Chapter 11 Petitions and First Day Motions (ECF No. 2, the "Avila Declaration"), and can be gleaned from reviewing the entirety of the Court's docket for these Chapter 11 Cases.

4. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify in support of the approval of the settlement set forth in the Motion.

5. Minas and Debtor Miami Metals II, Inc. (f/k/a Republic Metals Corporation) ("RMC") are parties to a certain letter agreement dated August 21, 2017 (as amended, restated, supplemented, or otherwise modified, the "Minas Contract") relating to the refining and forward/spot sales of precious metal produced by Minas' Cerro Colorado mine located in Sonora, Mexico.

6. Minas asserts that it retained title to the precious metals delivered to RMC pursuant to the Minas Contract (the "Disputed Materials") and that such metals and the proceeds thereof are not property of the Debtors' estates.

² Unless otherwise indicated, defined terms herein shall have the meaning as set forth in the Motion.

7. The Debtors and the Senior Lenders assert that the Debtors have title to the Disputed Materials and that such materials and the proceeds thereof are property of the Debtors' estates and are subject to the Prepetition Liens and Adequate Protection Liens of the Senior Lenders.

8. On November 19, 2018, Minas delivered a letter making a reclamation demand to the Debtors [ECF No. 114] (the "Reclamation Demand") and on November 21, 2018, Minas filed an objection to the Cash Collateral Motion [ECF No. 158] (the "Cash Collateral Objection").

9. On January 18, 2019, Minas filed a *Customer Statement Concerning Ownership of Metal* [ECF No. 447] (the "Customer Statement") pursuant to the Uniform Procedures, which asserted, among other things, Minas' ownership claims to the Disputed Materials and incorporated the Cash Collateral Objection by reference.

10. On March 17, 2019, Minas filed (i) proof of claim #97 asserting an administrative priority claim in the amount of \$317,102.96 pursuant to section 503(b)(9) of the Bankruptcy Code, and (ii) proof of claim #98 asserting an administrative priority claim in the amount of \$500,740.19 pursuant to section 503(b)(9) of the Bankruptcy Code.

11. Pursuant to the Settlement Agreement, Minas, RMC, and the Senior Lenders have agreed to the following terms and conditions as to the all of Minas's claims against RMC, including but not limited to the following material terms:

- (a) Settlement Payment. As consideration for the resolution of any and all existing disputes among the Parties, within five (5) business days of the Effective Date, the Debtors shall pay to Minas \$100,000 in immediately available funds from the proceeds of the sale of inventory, to wit, sweeps³.

³ In the Motion, the Debtors proposed to pay the \$100,000 from the Ownership Reserve (as defined in the PSA), however, given that the Court did not approve the PSA, the Debtors and I will make the payment as set forth in this subsection (a).

- (b) Allowed Claims. Upon the Effective Date:
- (i) Minas shall be granted an allowed administrative expense claim against RMC under section 503(b)(9) of the Bankruptcy Code in the amount of \$381,793 (the “Allowed 503(b)(9) Claim”);
 - (ii) Minas shall be granted an allowed general unsecured claim against RMC in the amount of \$336,050 (the “Allowed GUC Claim” and, together with the Allowed 503(b)(9) Claim, the “Allowed Claims”); and
 - (iii) The Debtors shall instruct their claims agent, Donlin Recano & Company, Inc., to enter the Allowed Claims in the claims register and to expunge all other Minas claims from the claims register (including any such claims scheduled by the Debtors).
- (c) Ownership Dispute.
- (i) Upon the Effective Date, the Reclamation Demand and the Customer Statement shall be deemed immediately withdrawn with prejudice.
 - (ii) All deadlines under the Uniform Procedures with respect to Minas shall be stayed pending the Bankruptcy Court’s entry of the Settlement Order.
- (d) PSA Joinder. Within three (3) business days after receiving the Settlement Payment, Minas shall execute and file a joinder to the PSA, in form and substance reasonably satisfactory to the parties to the PSA.⁴
- (e) Consent to Lender Settlement and Final Cash Collateral Order. Upon the Effective Date, the Cash Collateral Objection shall be deemed immediately withdrawn with prejudice and Minas shall support and not, directly or indirectly, object to the Lender Settlement or the Final Cash Collateral Order.
- (f) Effective Date. The Settlement Agreement is conditioned upon occurrence of the “Effective Date,” which means the first date by which each of the following conditions has occurred:
- (i) the Settlement Agreement is executed by each of the Parties;
 - (ii) the Court enters an order approving the Settlement Agreement in a form and substance acceptable to the Parties, provided that such order has not been stayed; and

⁴ I understand from counsel to the Senior Lenders and counsel to Minas that the Senior Lenders have agreed to waive this term of the Settlement Agreement based on the Court’s decision not to approve the PSA

(iii) all conditions precedent to the Lender Settlement⁵ becoming effective shall have been satisfied.

12. I considered the following factors with respect to the Settlement Agreement:

- (a) The amounts at issue in the dispute between the parties.
- (b) The risks and costs inherent in litigation.
- (c) The legal theories of Minas in regards to ownership and other claims asserted.
- (d) The legal theories of the Debtors in regards to ownership and other claims asserted.
- (e) The interests of the bankruptcy estates of the Debtors and its creditors.
- (f) The consent of the Senior Lenders.

13. The Settlement Agreement represents a reasonable resolution of the disputes by and among Minas, the Senior Lenders, and the Debtors for these estates and their creditors.

14. To the best of my knowledge this settlement resulted from arm's length negotiations. Minas has no relation to the Debtors other than as a creditor and customer.

15. I believe that the exercise of my business judgment in consenting to the Settlement was sound and justified.

16. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 21, 2019

/s/Scott Avila

Scott Avila
Chief Restructuring Officer of Debtors

⁵ I understand from counsel to the Senior Lenders and counsel to Minas that the Senior Lenders and Minas have agreed to waive this condition to the effectiveness of the Settlement Agreement based on the Court's decision not to approve the Lender Settlement.