



Capital
Markets
Tribunal

Tribunal
des marchés
financiers

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File No.: 2023-12

**IN THE MATTER OF
KALLO INC., JOHN CECIL and SAMUEL PYO**

**MOTION OF THE ONTARIO SECURITIES COMMISSION
(For Further and Better Witness Summaries under Rule 27(3))**

A. ORDER SOUGHT

The Moving Party requests with notice that the Capital Markets Tribunal (the **Tribunal**) make the following orders:

1. An order that this motion be heard in writing;
2. An order requiring John Cecil (**Cecil**) and Kallo Inc. (**Kallo**) to deliver, within two weeks of the Tribunal's decision on this motion, a witness list and witness summaries which comply with the requirements of Rule 27(3), which shall include:
 - a. A witness list with confirmed and named witnesses, including the two expert witnesses that were not identified; and
 - b. For each of the individuals Cecil and Kallo list in the updated witness list, a witness summary that includes: (i) the substance of the witness's anticipated evidence, and (ii) the identification of the specific documents the witness is expected to refer to, whether or not they are included in the Ontario Securities Commission (**OSC**)'s disclosure.

3. An order requiring Samuel Pyo (**Pyo**) to deliver, within two weeks of the Tribunal's decision on this motion, a witness list and witness summaries which comply with the requirements of Rule 27(3), which shall include:
 - a. A witness list with confirmed witnesses, including the expert witness that was not identified;
 - b. For each of the individuals Pyo lists in the updated witness list, a witness summary that includes: (i) the substance of the witness's anticipated evidence, and (ii) the identification of the specific documents the witness is expected to refer to, whether or not they are included in the OSC's disclosure.
4. An order that no witness shall, without the Panel's permission, testify at the merits hearing unless a witness summary for that witness has been delivered within the timeframes set out above.
5. Such further relief as the Moving Party may advise and the Tribunal may permit.

B. GROUNDS

The grounds for this motion are:

6. On December 18, 2023, counsel for Cecil and Kallo served a witness list (the **Kallo Witness List**) and witness summaries for Cecil, Lloyd Chiotti, and Samuel Baker.
7. The Kallo Witness List does not actually provide a list of witnesses that Cecil and Kallo intend to call at a merits hearing.
 - a. In a letter dated December 18, 2023 provided along with the Kallo Witness List, counsel for Cecil and Kallo explain that they have not contacted five of the eight fact

- witnesses and have not confirmed whether they will be calling these five individuals as witnesses in this matter; and
- b. In addition, the Kallo Witness List provides that two experts will be called, but does not provide their names.
8. Cecil and Kallo also have not provided a witness summary for seven of the ten witnesses in the Kallo Witness List and the three summaries that have been provided are deficient.
- a. No witness summaries were provided for the five unconfirmed fact witnesses, nor the two unnamed expert witnesses;
 - b. The witness summaries provided by Cecil and Kallo do not specify which documents they intend to refer to; and
 - c. The witness summaries provided by Cecil and Kallo only list topics the witness expects to testify about but do not disclose the substance of their testimony on those topics.
9. On December 18, 2023, counsel for Pyo served a witness list (the **Pyo Witness List**) and a witness summary for Pyo. The Pyo Witness List does not include an expert witness, although the Mr. Pyo's witness summary indicates that he intends to call an expert witness.
10. Pyo has not provided a witness summary for the unidentified expert witness and the witness summary provided for Pyo is deficient.
- a. Pyo's witness summary does not specify what documents he will refer to; and
 - b. Pyo's witness summary only lists broad topics he expects to testify about and does not actually disclose the substance of his testimony about any of these topics.

11. OSC counsel wrote to Cecil and Kallo's counsel and Pyo's counsel on January 3, 2024, advising that the witness lists and summaries did not provide disclosure as required by the Tribunal's *Rules of Procedure and Forms* (the **Rules**) or the Tribunal's Order in the matter dated October 31, 2023 (the **October Order**) and asking counsel to provide further and better witness lists and summaries by January 12, 2024;
12. As of the date of this motion, no further and better witness list or summaries have been provided by any of the Respondents;
13. The witness lists and summaries provided do not meet the requirements of the Rules, or the terms of the October Order, and their deficiencies undermine the goal of a just, expeditious and cost-effective hearing;
14. This motion may be conducted in writing, as its only purpose is to deal with procedural matters. It would be more expeditious and cost-effective for this motion to proceed in writing;
15. Rules 1, 23(6), 27(3) and 28; and
16. Such further and other grounds as the Moving Party may advise and the Tribunal may permit.

C. EVIDENCE

The Moving Party intends to rely on the following evidence for the motion:

17. The affidavit of Michelle Spain affirmed January 17, 2024; and
18. Such other evidence as counsel may advise and the Tribunal may permit.

DATED this 17th day of January, 2024

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