

COURT FILE NO. 2503 00016

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Edmonton

Clerk's Stamp

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC
1985, c C-36, AS AMENDED

AND IN THE MATTER OF **KMC MINING CORPORATION**

DOCUMENT **APPLICATION – Extend Stay of Proceedings and Ancillary Relief**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	DARREN R. BIEGANEK, KC/ ZACHARY SOPROVICH Barrister & Solicitor Phone: 780.441.4386 Fax: 780.428.9683 Email: dbieganeke@dcllp.com	File # 204-219113 DUNCAN CRAIG LLP LAWYERS MEDIATORS 2800 Rice Howard Place 10060 Jasper Avenue Edmonton, Alberta T5J 3V9
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NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.

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

To do so, you must be in Court when the application is heard as shown below:

Date	July 30, 2025
Time	10:00 a.m.
Where	https://albertacourts.webex.com/meet/virtual.courtroom86
Before Whom	Justice D.R. Mah

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

Remedy claimed or sought:

1. KMC Mining Corporation ("**KMC**" or the "**Applicant**") seeks an Order, largely in the form attached within **Schedule "A"**:
 - (a) abridging time for service of notice of this Application or deeming service of the Application to be good and sufficient, as necessary;
 - (b) extending the stay of proceedings ("**Stay Period**") as against KMC to and including November 30, 2025, in respect of all proceedings, rights and remedies against KMC including its respective businesses and property, or the Monitor;
 - (c) declaring that any of KMC's grieving former employees who are members of International Union of Operating Engineers, Local Union No. 955 ("**Union**") are not entitled to further pay, or alternatively, confirming the WEPPA Declaration continues to apply to KMC, including but not limited to any of KMC's grieving former employees who are members of the Union and who are owed eligible wages under WEPPA;
 - (d) ordering Gellarne Holdings (2001) Ltd. to forthwith pay the sum of \$13,125.00 to counsel for KMC, being the security deposit under a former lease of a commercial property located at 5809 – 98 Street, Edmonton between Gellarne Holdings (2001) Ltd. (as landlord) and KMC;
 - (e) assigning all rights and obligations of KMC under the insurance policies and contracts listed below to Deutsche Leasing Canada Corp. ("**Deutsche**"), or affiliate, as related to the 2022 Liebherr PR776 (s/n 25121) (the "**Dozer**"):
 - (i) Starr Insurance & Reinsurance Limited insurance policy #1000598040231 (or such other policy # as related to the Dozer) ("**Policy**");
 - (ii) Liebherr Canada Ltd. warranty as related to the Dozer ("**Warranty**");
 - (iii) ClaimsPro claim #24110-5339; and
 - (iv) any other insurance policy, warranty or insurance claim related to the Dozer and not specifically mentioned above;
 (collectively the "**Assumed Contracts**"); and
 - (f) authorizing KMC, upon request of KMC's primary secured lender, the Syndicate, and upon review of the Monitor, to make periodic interim distributions from cash in its accounts of up to \$3,500,000 in the aggregate ("**Interim Distribution**").
2. Such further and other relief as the circumstances may require and the Court deems appropriate.

Grounds from making this application:*Status of CCAA Proceedings*

3. On January 10, 2025, the Honourable Justice M.J. Lema granted KMC's requested relief, in all respects, to have its Notice of Intention of Proceedings under the provisions of the *Bankruptcy and*

Insolvency Act, RSC 1985, c B-3 (“**BIA**”) taken up and continued under the provisions of the *Companies Creditors Arrangement Act*, RSC 1985, c C-36 as amended (“**CCAA**”) (the “**Initial Order**”). The Initial Order also included a declaration that KMC and its collective former employees meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and are individuals to whom the WEPPA applies (“**WEPPA Declaration**”). FTI Consulting Canada Inc. (“**FTI**”) is the Monitor within these CCAA proceedings (“**Monitor**”).

4. Concurrent with the granting of the Initial order, the Court granted an Order approving a Sales and Investment Solicitation Process (the process is herein called the “**SISP**” and the Order the “**Sales Process Order**”) through which KMC proceeded to attempt to monetize its assets in an effort to pay down its indebtedness.
5. On January 20, 2025, the Honourable Justice J.T. Neilson granted KMC’s application for an Amended and Restated Initial Order (“**ARIO**”), which extended the stay of proceedings until and including June 16, 2025. The ARIO included approval of a Key Employee Retention Plan (“**KERP**”).
6. Concurrent with the granting of the ARIO, the Court granted an Order establishing a process for the sale or return of KMC’s leased equipment (the “**Lease Equipment Return Process Order**”).
7. Pursuant to the SISP, the marketing period was launched by the sales agent, Ernst & Young Orenda Corporate Finance Inc and Ernst & Young Corporate Finance (Canada) Inc.
8. On April 17, 2025, the Court granted a Sale Approval and Vesting Order, which approved the Transaction (the “**SAVO**”).
9. Concurrent with the granting of the SAVO, the Court granted an order authorizing and directing the Monitor to make interim distributions of up to 66 2/3% of the net sale proceeds from the Transaction to those secured creditors whose collateral was sold as part of the Transaction.
10. No party opposed the Transaction. The Transaction had the support of the Syndicate, various equipment lessors whose equipment was included in the Transaction and the Monitor.
11. The Transaction closed on May 2, 2025, and sale proceeds more than \$100 Million were wired to the Monitor upon closing of the Transaction.
12. On May 23, 2025, the Honourable Justice L.K. Harris granted KMC’s application which extended the stay of proceedings to and including July 31, 2025 (the “**Second Extension Order**”).
13. Concurrent with the granting of the Second Extension Order, the Court granted an order approving the Monitor’s proposed cost allocation among the secured creditors and authorized and directed the Monitor to make a further distribution of the funds held by it to the secured creditors whose collateral was sold as part of the Transaction.

Employees and Current Cash-Flow Generating Operations

14. Prior to the Transaction closing, KMC employed 92 full-time employees or subcontractors, of which 14 were located at its head office in Edmonton, Alberta, 40 on a labour supply project in British Columbia, and 38 field employees working in Fort McMurray or a field office location maintained there.

15. At present time KMC has approximately 6 employees full and part time in Edmonton and approximately 20 on labour and supply contracts in British Columbia (Hudbay), and in Alberta with the Purchaser.
16. With respect to one labour and supply contract KMC has in place a purchase order with Hudbay Minerals at its copper mountain mine in British Columbia to supply equipment operators to the site. That purchase order commenced at or around the date of the Initial Order and is for a term which has currently been extended to September 8, 2025, which is the third extension to the Hudbay work. Revenue of approximately \$750,000 respecting the remaining work is anticipated.

Suncor Claims

17. The circumstances necessitating these CCAA proceedings arose due to several factors, though chief among those factors being the sudden and unexpected cancellation of substantial scopes of work under contracts between KMC and Suncor Energy Inc. ("**Suncor**") or affiliates.
18. Prior to these CCAA proceedings, Suncor was KMC's most significant, if not only, customer. KMC had been providing contracting mining services to Suncor for several decades.
19. The vast majority of KMC's debt obligations were incurred to support and facilitate work KMC contracted to perform for Suncor under various agreements. Suncor abruptly cancelled various work with KMC, without known cause.
20. KMC believes it has substantial claims against Suncor which can be broadly characterized as follows:
 - (a) a claim for the impacts of adverse site conditions and extended hauling distances on the 2024 Fort Hills Overburden scope of work (the "**Condition Impact Claim**");
 - (b) a claim for demobilization costs as permitted under the MUA and applicable purchase order for the 2024 Fort Hills Overburden scope of work (the "**Demobilization Claim**");
 - (c) a claim for damages arising from the cancellation of the 2024 Fort Hills Overburden scope of work for convenience (the "**Overburden Cancellation Claim**");
 - (d) a claim for damages arising from the cancellation of the waste stream and rejects scope of work (the "**Rejects Cancellation Claim**"); and
 - (e) a claim for damages for the breach of the Settlement and Release Agreement arising from the cancellation of the 2019 Overburden Removal Contract (the "**Breach of Settlement Claim**").
21. KMC's legal counsel has conducted a high-level overview of the potential claims against Suncor for, *inter alia*, the circumstances described above. That evaluation has commenced and is ongoing. The combined damage estimate at this time is in the tens of millions of dollars, with the damage evaluation continuing.
22. KMC is currently in discussions with litigation funders and is assessing its options for pursuit of the claims against Suncor. If successful, even in part, the claims against Suncor, and recovery therefrom, would have a material, positive outcome for KMC's stakeholders.

WEPPA and Unionized Employees

23. Between January through to June 2025, KMC has received four (4) grievances from the Union.
24. The grievances allege that certain Union-members, and former KMC employees, did not receive termination pay pursuant to the *Employment Standard Code* (or in one case, a claim for four days' pay). The grievances also claim for "redress", which is the Union's claim for Union dues and other fees otherwise payable to the Union while an employee is paid.
25. KMC and the Union were subject to a Collective Bargaining Agreement ("**CBA**") at all relevant times.
26. In KMC's history with the Union, at no time when KMC conducted layoffs of unionized employees was KMC subjected to grievances for payment of termination pay under the *Employment Standards Code*. KMC has always been of the view, backed by historic practices over decades, that it was part of the construction industry, and the CBA is consistent with that view: the Union is the hiring hall. KMC makes a request for workers and the Union dispatches them. A commonly applied rule of the construction industry is that construction employees are not entitled to notice of termination or pay in lieu of notice of termination. When there are layoffs, the workers in effect go back to the hall to seek other work with other employers.
27. The Union is now taking a different position and has issued the grievances.
28. The CBA does not support the claims asserted by the Union as there are no provisions in the CBA for payment of severance or termination pay upon layoff.
29. Alternatively, if said employees are owed eligible wages under WEPPA, they ought to fall within the ambit of the WEPPA Declaration which was granted in these CCAA proceedings as part of the Initial Order and ARIO, and restated via Order of Justice Mah on April 17, 2025.

Security Deposit Return

30. KMC formerly leased the property at 5809 - 98 Street in Edmonton (the "**Lease**"), a commercial building/shop, from Gellarne Holdings (2001) Ltd. ("**Landlord**"). KMC, with the Monitor's approval, issued a Notice of Disclaimer of the Lease on March 24, 2025. The Landlord did not respond to the Notice of Disclaimer and the Lease is disclaimed.
31. At the time of entering into the Lease, KMC provided the Landlord a Deposit in the amount of \$26,250.00 (inclusive of GST). One half of that sum (\$13,125) was for the first month's rent (including GST, being the \$12,500 monthly rent plus GST). The remaining half, \$13,125, was held as a security deposit (the "**Security Deposit**").
32. KMC has demanded return of the Security Deposit from the Landlord. To date, the Landlord has not responded, nor has the Landlord returned the Security Deposit.
33. KMC paid all amounts owing to the Landlord up to the date of Disclaimer and the premises subject to the Lease were left by KMC in substantially the same condition as when KMC first took possession.

Assignment of Insurance and Warranty Claim re: 2022 Liebherr Dozer

34. KMC leased a 2022 Liebherr PR776 (s/n 25121) dozer (the “**Dozer**”) from Deutsche Leasing Canada Corp. (“**Deutsche**”).
35. The Dozer was subject to a fire in January 2024. An insurance claim was made to KMC’s insurer (Starr Insurance) under the Policy. The Dozer also had a Warranty from the manufacturer, Liebherr.
36. The insurer (through the insurance adjuster, ClaimsPro) and Liebherr are discussing whether the claim is to be covered by the Policy or Warranty. The Dozer is expected to be repairable for a few hundred thousand dollars.
37. The amount KMC owes on the Dozer lease to Deutsche is approximately \$997,000. The ultimate outcome of the insurance or warranty claim, best case, is repair of the Dozer (whether through insurance proceeds or manufacturer warranty), or proceeds in lieu of repair.
38. There is no monetary benefit to KMC in continuing to spend resources on the Dozer insurance (or warranty) claim. Under the Dozer lease, insurance proceeds are first payable to Deutsche’s benefit.
39. Deutsche is agreeable to the assignment of the Assumed Contracts related to the Dozer, and any related claims on said Policy or Warranty related to the Dozer.

Interim Distribution

40. The proposed Interim Distribution would be up to the aggregate amount of \$3,500,000 to the Syndicate, after consultation with the Monitor and in consideration of the then-present cash situation of KMC.

Miscellaneous Items

41. KMC is also working on the following as part of its wind down process:
 - (a) winding-up its non-union staff’s pension plan with Canada Life/London Life;
 - (b) working with the Workers’ Compensation Board (“**WCB**”) to reconcile 2024 accounts; and
 - (c) KMC is both a Plaintiff and Defendant in actions related to a new Komatsu 830E that KMC rented from SMS Equipment (“**SMS**”), and KMC is evaluating as to what potential monetary benefit KMC may have, if KMC pursues a claim (whether insurance or litigation). KMC suffered a loss of approximately \$600,000 related to loss of KMC property (tires) as well as cost of removing burned materials from the site where the fire occurred.

Summary

42. KMC continues to, as it has throughout these entire proceedings, act in good faith and with due diligence.
43. The maintenance of the Stay Period is important to enable KMC to continue to effectively wind down its operations and develop a plan for its exit from these proceedings without regard to having to advance defences and collection efforts respecting claims of creditors.

- 44. All relief sought is appropriate in the circumstances and ought to be approved.
- 45. KMC is not aware of any creditor that would be materially prejudiced if the relief herein is granted.
- 46. Such further and other grounds as counsel for KMC may advise and this Honourable Court may permit.

Material or evidence to be relied on:

- 47. This Application and the Draft Order.
- 48. Affidavit of Daniel Klemke sworn July 21, 2025.
- 49. The previously filed Affidavits of Bryn Jones and Daniel Klemke sworn in these proceedings, as necessary.
- 50. The Orders granted in these proceedings, including the Initial Order granted January 10, 2025, the Amended and Restated Initial Order granted January 20, 2025, and the Second Extension Order granted May 23, 2025.
- 51. Fourth Report of the Monitor dated on or about July 24, 2025, to be filed, and all prior Monitor's Reports filed in these proceedings, as necessary.
- 52. Bench Brief of KMC.
- 53. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- 54. Rules 6.11(1)(f), 11.27 and 13.5 of the Alberta *Rules of Court*.
- 55. Such further and other Rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

- 56. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended, and in particular sections 11, 11.02(2) and (3) and 11.3 thereof.
- 57. *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 ("**WEPPA**") and *Regulations*.
- 58. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

- 59. N/A.

How the application is proposed to be heard or considered:

- 60. By way of Webex hearing before the Honourable Justice Mah.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Applicant(s) 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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the Applicant(s) a reasonable time before the application is to be heard or considered.

Schedule “A”

Draft Order – Stay Extension, Interim Distribution, Assignment of Contracts and Ancillary Relief

COURT FILE NO. 2503 00016

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Edmonton

Clerk's Stamp

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF **KMC MINING CORPORATION**

DOCUMENT **ORDER - Extending the Stay Period, Interim Distribution, Assignment of Contracts and Ancillary Relief**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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File # 204-219113
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Edmonton, Alberta T5J 3V9

DATE ON WHICH ORDER WAS PRONOUNCED	JULY 30, 2025
NAME OF JUSTICE WHO MADE THIS ORDER:	D.R. MAH
LOCATION OF HEARING:	EDMONTON, ALBERTA

UPON the Application of KMC Mining Corporation (the "**Applicant**");

AND UPON noting the Initial Order granted in these proceedings (the "**CCAA Proceedings**") on January 10, 2025 ("**Initial Order**"), the Amended and Restated Initial Order granted in these proceedings on January 20, 2025 (the "**ARIO**") and the Order granted in these proceedings on May 23, 2025;

AND UPON having read the Application, the Affidavit of Daniel Klemke sworn July 21, 2025, and the Fourth Report of FTI Consulting Canada Inc., in its capacity as monitor (the "**Monitor**") dated July 24, 2025;

AND UPON noting the stay of proceedings as against the Applicant as referred to and defined in paragraph 15 of the ARIO ("**Stay Period**"); AND UPON noting the extension of the Stay Period via Order – Extending Stay Period of Justice L.K. Harris granted on May 23, 2025;

AND UPON noting the *Wage Earner Protection Program Act* (Canada), SC 2005, c 47 (“**WEPPA**”) declaration in the paragraph 43 of the Initial Order, paragraph 46 of the ARIO and paragraph 2 of the Order of Justice Mah granted April 17, 2025 (collectively the “**WEPPA Declaration**”);

AND UPON noting that the Applicant formerly leased the commercial property at 5809 – 98 Street in Edmonton from Gellarne Holdings (2001) Ltd. (the “**Lease**”);

AND UPON hearing the submissions of counsel for the Applicant, Counsel for the Monitor, counsel for ATB Financial in its capacity as Administrative Agent for the Lenders (collectively the “**Syndicate**”) and others appearing;

IT IS HEREBY ORDERED THAT:

Service of Application

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient and no other persons other than those listed on the service list maintained in these CCAA Proceedings (the “**Service List**”) are entitled to service of the Application.

Extension of Stay

2. The Stay Period is hereby extended to November 30, 2025.

Miscellaneous Matters

3. No grieving former employee who is a member of International Union of Operating Engineers, Local Union No. 955 of the Applicant is owed any further pay (including but not limited to termination or severance pay) by the Applicant.
4. During this further Stay Period, upon the request of the Syndicate, the Applicant is authorized, in consultation with the Monitor, to make periodic distributions to the Syndicate from cash held in the Applicant's accounts up to a maximum amount of \$3,500,000 in the aggregate.
5. Gellarne Holdings (2001) Ltd. shall forthwith pay the sum of \$13,125.00 to counsel for the Applicant, being the security deposit under the Lease.
6. All rights and obligations of the Applicant under the policies and contracts listed below are assigned to Deutsche Leasing Canada Corp. (“**Deutsche**”), or such affiliate as may be instructed by Deutsche, as related to the 2022 Liebherr PR776 (s/n 25121) (the “**Dozer**”):
 - a. Starr Insurance & Reinsurance Limited insurance policy #1000598040231 as related to the Dozer;
 - b. Liebherr Canada Ltd. warranty as related to the Dozer;
 - c. ClaimsPro claim #24110-5339; and
 - d. any other insurance policy, warranty or insurance claim related to the Dozer and not specifically mentioned above;

(collectively the “**Assumed Contracts**”).

7. Deutsche shall account to the Monitor and the Applicant respecting any proceeds received related to the Dozer and the Assumed Contracts. If any proceeds received exceed the amounts required to retire the Deutsch Indebtedness, then the balance shall be remitted to the Applicant for payment to the Syndicate.

Service and Effective Time

8. Service of this Order shall be deemed good and sufficient by:
 - a. serving the same on:
 - i. the persons listed on the Service List created in these proceedings;
 - ii. any other person served with notice of the application for this Order;
 - iii. any other parties attending or represented at the application for this Order;
 - iv. the Purchaser or the Purchaser's solicitors; and
 - b. posting a copy of this Order on the Monitor's website at:
<https://cfcanda.fticonsulting.com/KMCMining/>.

and service on any other person is hereby dispensed with.

9. 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.
10. This Order and all of its provisions are effective as of 12:01 a.m. Edmonton time on the date this Order is signed by a Justice of the Court of King's Bench of Alberta.

Justice of the Court of King's Bench of Alberta