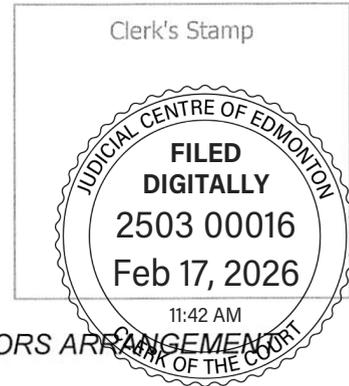


COURT FILE NO. 2503 00016
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON



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

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

DOCUMENT **AFFIDAVIT #4 OF DANIEL KLEMKE**

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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**AFFIDAVIT OF DANIEL KLEMKE
SWORN ON THE 15 DAY OF FEBRUARY, 2026**

I, Daniel Klemke, of the City of St. Albert, in the Province of Alberta, SWEAR AND SAY THAT:

- I am the President and CEO of KMC Mining Corporation ("**KMC**" or the "**Applicant**"), and as such, have personal knowledge of the matters hereinafter deposed to save where:
 - stated to be based upon information and belief and where so stated I do believe the information to be true; or
 - I have informed myself from books or records maintained by KMC, and where I have done so, these books or records were part of KMC's ordinary books or records and any entries in these books or records were made in the usual and ordinary course of KMC's business.
- I am authorized to make this Affidavit on behalf of KMC.
- Unless otherwise stated, all monetary references in this Affidavit are references to Canadian dollars.

A. Relief Sought and Introduction

- I swear this Affidavit in support of an application by KMC for an order extending the stay of proceedings against KMC, which currently expires on February 28, 2026, to and including June 30, 2026.

5. This Affidavit provides an overview of the CCAA proceedings and is focused on germane updates since my Affidavit sworn November 16, 2025 (“Klemke Affidavit #3”) and all prior Affidavits sworn in this proceeding.

B. Status of Proceedings

6. On January 10, 2025, Justice 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-36 as amended (“CCAA”) (the “Initial Order”).
7. 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.
8. At the time of the granting of the initial order, KMC’s total indebtedness to secured creditors and equipment lessors exceeded \$200 Million Dollars. Primary lender consisted of a Syndicate including ATB Financial (“ATB”), Canadian Western Bank (“CWB”)(now National Bank of Canada “NBC”), Export Development Canada (“EDC”), and Laurentian Bank of Canada (collectively, the “Syndicate”) were owed approximately \$104 Million Dollars and were in first general secured position.
9. Secondary lending was provided by the Klemke Foundation, which is owed approximately \$54 Million Dollars..
10. On January 20, 2025, Justice 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 and amended Key Employee Retention Plan (“KERP”).
11. 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”).
12. The SISP ran for several months and resulted in an ultimate sale transaction being concluded with 212256 Alberta Ltd. o/a Heavy Metal Equipment & Rentals (the “Purchaser”) for essentially all of the assets of KMC (the “Transaction”). The sale was approved by order of the Court on April 17, 2025 and closed on May 2, 2025. The sale proceeds were slightly more than \$100 Million Dollars.
13. Sale proceeds were distributed in accordance with authorizations made by the Court in the Sale Approval and Vesting Order and in a subsequent Order of the Court granted May 23, 2025 which, concurrently, granted a further stay extension.
14. All of the net sale proceeds have been distributed to the applicable secured creditors whose collateral was sold as part of the Transaction.
15. There remains a significant shortfall owing to the Syndicate and the Klemke Foundation has not received any funds.
16. The Syndicate has received approximately \$68,653,000.
17. The stay of proceedings has been extended a total of three times by Orders of the Court dated May 23, 2025, July 30, 2025, and November 28, 2025.
18. The present stay of proceedings expires on February 28, 2026.

19. KMC seeks an extension of the stay of proceedings.

C. Extension of the Stay of Proceedings Continues to be Appropriate

20. While substantially all the assets and equipment of KMC were sold in the Transaction, there remain a number of items which KMC is actively working on prior to conclusion of the CCAA proceedings. Those are detailed below:
- i. Suncor Claims**
21. As described within previous affidavits, 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.
22. 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.
23. Suncor's contracting practice generally, and with KMC specifically, utilizes a master Multiple Use Agreement ("**MUA**") which sets out general terms and conditions, and allows for the entering of multiple sub-agreements, contracts or purchase orders under the umbrella of the MUA for any number of different projects or scopes of work.
24. The outline of the issues between KMC and Suncor have been presented in previous affidavits sworn in these proceedings, and particularly Jones Affidavit #1. 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**").
25. KMC's legal counsel conducted a high-level overview of the potential claims against Suncor for, *inter alia*, the circumstances described above. That evaluation has concluded and it has been reviewed. The combined damage estimate at this time is in the tens of millions of dollars, with further evaluation ongoing that could materially increase said estimate.
26. KMC has been engaged with litigation funders in assessing its options for pursuit of the claims against Suncor. As part of that process, KMC has engaged separate legal counsel to provide a second opinion on the potential claims against Suncor. That has concluded and it has been reviewed.
27. KMC has been engaged with the Syndicate, as well as potential litigation funders, to best determine the next course of action with respect to the potential claims against Suncor. KMC is currently engaged in discussion with four potential litigation funders. With respect to one of those four, preparation of a term sheet is underway which KMC is expecting to receive for its review next week.

With respect to the other three, KMC has had discussions with them this week to move the process along.

28. If successful, even in part, the claims against Suncor, and recovery therefrom, would have a material, positive outcome for KMC's stakeholders. KMC's main goal at this time is to maximize its remaining assets for the benefit of its stakeholders.

ii. Current Operations and Miscellaneous Items

29. At present, KMC has approximately 5 employees working full and part-time. Three mechanics were previously working under a subcontracting agreement with the Purchaser, though that arrangement has now been completed.
30. Those three mechanics are temporary foreign workers who are issued under a labour market assessment obtained by KMC prior to its insolvency proceedings.
31. The mechanics in question are no longer working for the Purchaser and are continuing to look for employment elsewhere for an employer with the required permits.
32. KMC otherwise has no further existing ongoing operations.
33. KMC has taken steps to wind up its non-union staff pension plan with Canada Life/London Life and has received approvals from the Alberta Superintendent of Pensions in respect to the wind up of the plan. The necessary packages for transfer of funds have been mailed out to plan members.
34. KMC's accounts with Work Safe BC have been finalized and closed. A small refund cheque was received by KMC in January 2026. Worker's Compensation Board (Alberta) account reconciliation is ongoing. It is anticipated that there may be a further small refund due to KMC in the next few months of approximately \$3,000.
35. KMC is finalizing discussions with its heavy equipment and light duty equipment insurer with respect to refunds from certain insurance policies. Six figure refunds are expected.
36. KMC is a Plaintiff and Defendant in actions related to a fire loss associated with a new Komatsu 830E haul truck which was rented from SMS Equipment ("SMS"). The fire took place within 10 hours of the unit being put to work. While the action of SMS against KMC is currently stayed by these proceedings, KMC has received a legal opinion regarding the potential monetary benefit which KMC may have if it pursues a claim. Losses are approximately \$600,000 related to the loss of tires that were the property of KMC which were affixed to the vehicle and lost during the fire, plus the cost of removing burned materials from the site where the fire occurred. Steps have been taken to preserve the claim both by commencing litigation to preserve limitation periods and entering into standstill agreements and tolling arrangements with the insurer regarding any insurance claims. The latest of such agreements were signed recently.
37. KMC has been working with the Purchaser on a couple of outstanding items from the Transaction, namely certain cure costs payable by the Purchaser related to the Aostra Lease (Wood Buffalo) and Syncrude Shop Sublease (Mildred Lake). These have been largely completed within the past month.
38. There remains an equipment lessor that KMC and the Monitor are working on reconciliation of amounts realized by the equipment lessor through the Lease Equipment Return Process.
39. KMC is also taking steps to file its 2024 and 2025 corporate tax filings as well as a reconciliation of GST with the Canada Revenue Agency.

D. Conclusions

- 40. The maintenance of the stay is important to enable KMC to continue to effectively wind down its operations and develop a plan to exit from these proceedings in an effort to:
 - a) pursue the litigation claims against Suncor; and
 - b) without having to advance defences in respect of claims or collection efforts of creditors which are unlikely to yield results for those creditors in any event.
- 41. KMC continues to, and has throughout these proceedings, act in good faith and with due diligence and it does not believe that a further extension of the stay will result in any material prejudice to any creditors.
- 42. In the circumstances the extension of the stay of proceedings is appropriate.

SWORN BEFORE ME at Edmonton,)
 Alberta, this 15 day of February, 2026.)
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 Commissioner for Oaths in and for Alberta



 DANIEL KLEMKE

Zachary Soprovich
 Barrister & Solicitor