

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 #5 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 <b>DUNCAN CRAIG LLP</b> LAWYERS MEDIATORS 2800 Rice Howard Place 10060 Jasper Avenue Edmonton, Alberta T5J 3V9
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**AFFIDAVIT OF DANIEL KLEMKE  
AFFIRMED ON THE 4<sup>th</sup> DAY OF MAY, 2026**

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

1. 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:
  - a) stated to be based upon information and belief and where so stated I do believe the information to be true; or
  - b) 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.
2. I am authorized to make this Affidavit on behalf of KMC.
3. Unless otherwise stated, all monetary references in this Affidavit are references to Canadian dollars.

**A. Relief Sought and Introduction**

4. 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 June 30, 2026, to and including June 30, 2028 (or such other date as the Monitor may recommend).

5. This Affidavit provides an overview of the CCAA proceedings and is focused on germane updates since my Affidavit sworn in February 2026 (“**Klemke Affidavit #4**”) 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 four times by Orders of the Court dated May 23, 2025, July 30, 2025, November 28, 2025 and February 24, 2026.
18. The present stay of proceedings expires on June 30, 2026.

19. KMC seeks an extension of the stay of proceedings as well as the enhancement of the Monitor's powers in this matter.

**C. Extension of the Stay of Proceedings Continues to be Appropriate as is Enhancement of Monitor's Powers**

20. While substantially all the assets and equipment of KMC were sold in the Transaction, there remain 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 cancelation of the 2024 Fort Hills Overburden scope of work for convenience (the "**Overburden Cancellation Claim**");
  - d) a claim for damages arising from the cancelation 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. For much of 2026, KMC has been engaged with litigation funders in assessing its options for pursuit of the claims against Suncor. As part of that process, KMC engaged separate legal counsel to provide a second opinion on the potential claims against Suncor. That has concluded and it has been reviewed.

27. As noted, 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.
28. Ultimately, in order to maximize value in the most cost-efficient manner, KMC has determined that it is in its best interest to seek the certain enhanced Monitor's powers in these CCAA proceedings, part of which will include MLT Aikins LLP being retained by the Monitor for the purposes of pursuing the Suncor litigation (the "**Litigation Services Retainer**").
29. If successful, even in part, the claims against Suncor, and recovery therefrom, would have a material, positive outcome for KMC's stakeholders.
30. KMC's main goal at this time is to maximize its remaining assets for the benefit of its stakeholders, and this litigation is the main, material asset remaining. Having an orderly process for KMC to pursue that litigation is integral, and a prerequisite, to maximizing any further value.

#### ii. Current Operations and Miscellaneous Items

31. At present, KMC has approximately 5 employees working full-time and part-time.
32. Three mechanics were previously working under a subcontracting agreement with the Purchaser, though that arrangement has now been completed. Those three mechanics are temporary foreign workers who are issued under a labour market assessment obtained by KMC prior to its insolvency proceedings. 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.
33. Other employees and heavy equipment technicians (HETs) under KMC work permits have now been concluded and permits cancelled with notification to Service Canada.
34. KMC otherwise has no further existing ongoing operations.
35. KMC has taken steps and wound up its pension plan with Canada Life/London Life for non-union staff. KMC 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. The majority of KMC Non-Union Employee Pension accounts have been moved to individual accounts except for a few pension accounts that require transference. Active work is underway to locate former employees and transfer remaining pension plan assets belonging to specific plan members who are former KMC employees.
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 in February 2026. KMC is evaluating the potential to advance insurance or litigation claims for the benefit of stakeholders.

37. KMC has been working with the Purchaser on a couple of outstanding cure cost items from the Transaction.
38. KMC is finalizing remaining WEPPA claims and outstanding financial obligations relating to Service Canada's processing of WEPPA claims for KMC non-union staff personnel.
39. KMC is managing and effecting wind-up activities including 2026 ROE and T4 filings, systems, website, CRA and payroll accounts.
40. KMC has been generally complying with statutory and record-keeping obligations and preserving critical information required to continue evaluation and advancement of potential claims for the benefit of the Company's stakeholders.

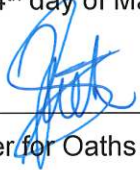
#### **D. Sealing Order**

41. There were a number of Sealing Orders granted in these proceedings, and in the NOI Proceedings (Court File No. 24-3162620) ("**NOI Proceedings**") which were taken up in these proceedings. All Sealing Orders originally had an expiry of December 31, 2025.
42. Most of the Sealing Orders relate to prior valuation of KMC assets, the Transaction or a key employee retention plan. With the Transaction closed and the assets sold, the Sealing Orders have served their purpose for those matters.
43. However, there are two Affidavits, or portions thereof, which by Order of November 28, 2025, sealing was extended to June 30, 2026, and which KMC believes a further extension of the applicable Sealing Orders to June 30, 2028 (or to whatever date the stay of proceedings is extended to) is appropriate, due to the fact they contain commercially sensitive information related to, among other things, KMC's contracts with Suncor. KMC is unaware of any reason why the continued sealing would be prejudicial to any party.
44. Additionally, KMC also seeks to seal the Litigation Services Retainer due to the fact it contains confidential information of a solicitor and client nature, for litigation purposes and which, but for wanting the Court to be permitted to review the agreement, would otherwise not be disclosed to any party.

**E. Conclusions**

- 45. The maintenance of the stay, and the enhancement of the Monitor's powers, is important to enable KMC to continue to effectively wind down its operations and importantly, maximize all potential value to stakeholders. This will allow KMC to:
  - a) pursue the litigation claims against Suncor, and have counsel retained for that purpose; 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.
- 46. 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.
- 47. In the circumstances the extension of the stay of proceedings is appropriate.

AFFIRMED BEFORE ME at Edmonton, )  
 Alberta, this 4<sup>th</sup> day of May, 2026. )  
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 Commissioner for Oaths in and for Alberta



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 DANIEL KLEMKE

Zachary Soprovich  
 Barrister & Solicitor