

COURT FILE NO. 24-3162620

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Edmonton

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC
1985, c B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF **KMC MINING CORPORATION**

DOCUMENT **ORDER (First Stay Extension, Administration Charge, Interim
Financing Charge and Other Relief)**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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DATE ON WHICH ORDER PRONOUNCED:

DECEMBER 9, 2024

NAME OF JUSTICE WHO MADE THIS ORDER:

JUSTICE M.E. BURNS

LOCATION OF HEARING:

EDMONTON, ALBERTA

UPON the Application of **KMC Mining Corporation (“KMC”)**; **AND UPON** having read the Affidavit of Daniel Klemke and the Affidavit of Service, filed, and noting service of this Application on KMC’s first secured lender, being a syndicate of lenders led by ATB Financial and including Canadian Western Bank, Export Development Canada and Laurentian Bank of Canada (collectively the **“Syndicate”**) and KMC’s second priority security lender, The Klemke Foundation; **AND UPON** reading the Report of FTI Consulting Canada Inc. in its capacity as proposal trustee of KMC (**“Proposal Trustee”**) dated December 2024; **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein (the Syndicate and The Klemke Foundation) have been provided notice of this application and do not oppose the relief sought by KMC; **AND UPON** hearing

counsel for KMC, counsel for the Proposal Trustee, counsel for the Syndicate and counsel for The Klemke Foundation; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

EXTENSION OF TIME TO FILE A PROPOSAL

2. The time within which KMC is required to file a proposal to its creditors with the Official Receiver, under section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”) is extended to February 18, 2025 (as extended from time to time, the “**Stay Period**”).

ADMINISTRATION CHARGE

3. The Proposal Trustee, counsel to the Proposal Trustee, and counsel to KMC shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these proceedings), in each case at their standard rates and charges, by KMC as part of the costs of these proceedings. KMC is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee and counsel for KMC on a monthly basis and, in addition, KMC is hereby authorized to pay to the Proposal Trustee, counsel to the Proposal Trustee, and counsel to KMC, if requested retainers in the respective amount[s] of up to \$50,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
4. The Proposal Trustee and its legal counsel shall pass their accounts from time to time.
5. The Proposal Trustee, counsel to the Proposal Trustee, if any, and KMC's counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of **\$500,000 (Five Hundred Thousand Dollars)**, as security for their professional fees and disbursements incurred at the normal rates and charges of the Proposal Trustee and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 12 and 14 hereof.

INTERIM FINANCING

6. KMC is hereby authorized and empowered to obtain and borrow under a credit facility from the Syndicate (the “**Interim Lender**”) to finance KMC's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such

credit facility shall not exceed **\$6,000,000 (Six Million Dollars)** unless permitted by further order of this Court.

7. The Interim Financing Facility shall be on the terms and subject to the conditions set forth in the Interim Financing Commitment Letter ("**Commitment Letter**") attached as Exhibit "L" to the Affidavit of Daniel Klemke sworn December 6, 2024.
8. KMC is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and KMC is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities, and obligations to the Interim Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
9. The Interim Lender shall be entitled to the benefits of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property to secure all obligations under the Definitive Documents incurred on or after the date of this Order which charge shall not exceed the aggregate amount advanced on or after the date of this Order under the Definitive Documents. The Interim Lender's Charge shall not secure any obligation existing before this the date this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 12 and 14 hereof.
10. Notwithstanding any other provision of this Order:
 - (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
 - (b) upon the occurrence of an event of default under the Definitive Documents or the Interim Lender's Charge, the Interim Lender, upon **ten (10) days** notice to KMC and the Proposal Trustee, may exercise any and all of its rights and remedies against KMC or the Property under or pursuant to the Commitment Letter, Definitive Documents, and the Interim Lender's Charge, including without limitation, to cease making advances to KMC and set off and/or consolidate any amounts owing by the Interim Lender to KMC against the obligations of KMC to the Interim Lender under the Commitment Letter, the Definitive Documents or the Interim Lender's Charge, to

make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against KMC and for the appointment of a trustee in bankruptcy of KMC; and

- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of KMC or the Property.
11. The Interim Lender shall be treated as unaffected in any proposal filed by KMC under the BIA or any plan of arrangement or compromise filed by KMC under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 ("**CCAA**") with respect to any advances made under the Definitive Documents.

PRIORITY OF CHARGES

12. The Charges shall constitute a security interest and charge on the Property and shall rank in priority to all and claims of the Syndicate and The Klemke Foundation only. The Charges specifically do not attach to or otherwise apply to affect any other secured creditors, including equipment lessors, of KMC claiming security interests, trusts, liens, charges, deemed trusts, or encumbrances in the Property of KMC, provided however that KMC is at liberty to apply at a subsequent date, on notice to any potentially affected parties, whether under the BIA or such other statute or legislation as applicable, for an order declaring the Charges, or such further and other charges as may be requested by KMC, rank in priority to the claims of any other secured creditor of KMC, or in priority to any other person with a claim in the nature of a secured claim, as may be appropriate in the circumstances.
13. The filing, registration or perfection of the Administration Charge and the Interim Lender's Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
14. The ranking as between the Charges shall be as follows:
- (a) First, the Administration Charge;
 - (b) Second, the Interim Lender's Charge.
15. Except as otherwise provided herein, or as may be approved by this Honourable Court, KMC shall not grant any encumbrances over the Property that rank in priority to, or *pari passu* with, any of the Charges, unless KMC obtains the prior written consent of the beneficiaries of the

Charges (the “**Chargees**”) or further order of this Court.

16. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by:
- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
 - (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications;
 - (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
 - (d) the provisions of any federal or provincial statutes; or
 - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds KMC, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, shall create or be deemed to constitute a new breach by KMC of any Agreement to which they, or any one of them, is a party;
 - (ii) none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, or the execution, delivery or performance of the Interim Financing Facility; and
 - (iii) the payments made by KMC pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

SALE OF PROPERTY

17. During the Stay Period, and if approved by the Proposal Trustee, KMC is authorized to sell and dispose of redundant or non-material assets not exceeding \$1,000,000 in the aggregate provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to KMC (within the meaning of section 4(2) of the BIA), shall require authorization by this Court.

ALLOCATION

18. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge and the Interim Lender's Charge amongst the various assets comprising the Property.

GENERAL

19. 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.
20. Any interested party (including KMC and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
21. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

Justice of the Court of King's Bench of Alberta