

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 **SECOND AFFIDAVIT OF BRYN JONES**

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 Canada T5J 3V9
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**AFFIDAVIT OF BRYN JONES
SWORN ON THE 14th DAY OF JANUARY, 2025**

I, Bryn Jones, of the City of Edmonton, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am the Chief Financial Officer 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.

Relief Sought and Introduction

4. I swear this Affidavit in support of an application by KMC for an Order (the “**Amended and Restated Initial Order**” OR “**ARIO**”) in respect of KMC pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), granting, among other things, the following relief:
 - a) an Order abridging time for service and deeming service of the Application for the Initial Order to be good and sufficient;
 - b) extending the stay of proceedings to June 16, 2025 in respect of all proceedings, rights and remedies against or in respect of the Applicant including their respective businesses and property, or the Monitor, except as otherwise set for the in the ARIO;
 - c) an Order approving a Key Employee Retention Plan (“**KERP**”) and granting a charge in favour of the KERP participants over the property of KMC to secure the proposed payments under the KERP to a maximum of \$745,000; and
 - d) an Order approving a protocol for the return of certain leased equipment leased by KMC which KMC has determined has no available surplus equity.
5. Unless otherwise defined herein, capitalized terms used in the affidavit shall have the meanings ascribed to them in my affidavit sworn in these proceedings on December 31, 2024 (the “**Jones Affidavit #1**”).

Background

6. The background on KMC’s circumstances is set forth in the Jones Affidavit #1 and the affidavit of Dan Klemke sworn on December 6, 2024, in the NOI Proceedings.
7. On January 10, 2025, Justice Lema granted KMC’s requested relief, in all respects, to have the NOI Proceedings taken up and continued under the CCAA (the “**Initial Order**”).
8. Concurrently with the granting of the Initial Order, Justice Lema granted an Order approving a Sales and Investment Solicitation Process (“**Order – Approve SISP**”).

9. In accordance with the provisions of the Initial Order, and as I am informed by KMC's legal counsel the provisions of the CCAA, the stay of proceedings in in place for an initial period of 10 days.

Cash Flow Forecast

10. KMC's cash flow forecast for the period expiring March 31, 2025 ("**Cash Flow Statement**") is appended to the Proposal Trustees/ Proposed Monitor's Third Report. KMC's principal use of cash during these proceedings will consist of ongoing operating expenses, including employee compensation, trade creditors, general administrative expenses, and payment of the professional advisors engaged to assist with its restructuring efforts.
11. The Jones Affidavit #1 inadvertently referenced a period end date of June 30th.
12. The Cash Flow Statement estimates cash receipts of approximately \$6.1 million over the forecast period. That does not consider the estimated revenue from new purchase orders entered with Suncor which may result in additional monthly revenue of up to \$1.2 million. Once these are finalized the Cash Flow Statement will be revised.

Payments During the Proceedings

13. KMC made payments for goods and services supplied to KMC post-filing and certain other post-filing expenses and obligations relating to the business as set out in its Cash Flow Statement and as permitted by the BIA whilst under the NOI Proceedings.
14. KMC intends to continue to make payment of its post-filing expenses and obligations relating to the business as set out in its Cash Flow Statement and as authorized by the court and the CCAA. This includes paying equipment lessors under the terms of their agreements but only for those pieces of equipment which KMC continues to utilize in its operations.

Key Employee Retention Plan

15. KMC has several key employees who have specialized knowledge of the industry and the business operations of KMC. The loss of these employees, even though KMC is commencing a liquidation process as part of its debt reduction strategy, would be detrimental to the business of KMC and detrimental to the stakeholders.

16. The industry in which KMC operates is a specialized, niche industry and the equipment which is operated and is proposing to sell through the SISP is also very specialized.
17. Certain employees have specialized knowledge of the business and operations, specialized knowledge of the equipment and its condition and in certain instances a broad depth of knowledge in all aspects of the business of KMC.
18. In the main, these selected employees have other employment options available to them and are sought after. Due to their specialized knowledge and skills, they are not replaceable in the near term. Given the stringent timelines KMC is operating under within these proceedings, replacing these employees would be a significant challenge and losing them may have detrimental effects on operations and the SISP process.
19. KMC is therefore proposing a key employee retention plan ("**KERP**") with an ancillary charge to secure payment for the selected employees. The redaction is in respect of the names of the employees and their respective retention payments. Attached and marked as **Exhibit "A"** to this my Affidavit is a copy of the redacted KERP. A complete copy of the KERP is an exhibit to my Confidential Supplementary Affidavit sworn January 14, 2025, for which a temporary sealing order will be sought.
20. The KERP was developed in consultation with the Monitor, the Interim Lender, the Syndicate and The Klemke Foundation. In total, payments are anticipated to be \$745,000 however those payments are payable in stages and to different groupings of employees. In that regard:
 - a) The first payment is time based to the end of May, 2025;
 - b) The second payment group is tied to the conclusion of the SISP and that process yielding gross sale proceeds of \$70,000,000 from KMC owned equipment and inventory;
 - c) The final payment is to be made on final approval of a Plan of Arrangement.

Equipment Lessors and Possible Returns

21. As set out in the Jones Affidavit #1, KMC has entered several leases for both heavy and light duty equipment ("**Equipment Leases**") with the equipment subject to the Equipment Leases being "**Leased Equipment**"). The combined indebtedness owing by KMC under those Equipment Leases is approximately \$55 million.
22. KMC's intention is to include all the equipment in its possession in SISP including equipment subject to Equipment Leases.

23. Notwithstanding the foregoing, KMC has reviewed the list of equipment subject to Equipment Leases and has determined that in some instances there may be no available equity in that equipment for the benefit of KMC.
24. KMC therefore seeks approval of the following protocol for the return of the certain leased equipment it identifies as having little equity:
- a) KMC will notify the Equipment Lessor and the Monitor in writing of any Leased Equipment that KMC seeks to return to the Equipment Lessor;
 - b) within 5 days of receipt of such notice from KMC, the Equipment Lessor shall provide a payout statement ("**Payout Statement**") to KMC and the Monitor in respect of each individual unit of Leased Equipment KMC has requested to return;
 - c) within 5 days of receipt of the Monitor shall review the applicable Lease and the Payout Statement and shall advise KMC and the Equipment Lessor if it approves such return and which of the Leased Equipment the Monitor approves being returned to the Equipment Lessor ("**Returnable Equipment**"). There may be some costs of KMC attributable to the Returnable Equipment which may need to be addressed prior to its release;
 - d) the Equipment Lessor shall, after Monitor approval, demobilize and remove the Returnable Equipment, at the Equipment Lessor's sole cost and expense. KMC will use commercially reasonable efforts to facilitate such demobilization and removal as may be necessary;
 - e) after removal of the Returnable Equipment, the Equipment Lessor is at liberty to sell or dispose the Returnable Equipment (a "**Disposition**") following the procedure set forth in section 60 of the Personal Property Security Act ("**PPSA**");
 - f) within 30 days following a Disposition, the Equipment Lessor is required to provide a written accounting to KMC and the Monitor pursuant to section 61(3) of the PPSA;
 - g) if there is any deficiency owing to the Equipment Lessor after the Disposition, such deficiency claim will be considered an unsecured claim against KMC provable as such in any claims process which may be established in these proceedings;
 - h) if there is a surplus after any Disposition, the Equipment Lessor shall forthwith remit the surplus to KMC's legal counsel or the Monitor, to be held in trust pending further Order of this Honourable Court; and
 - i) notwithstanding receipt of a notice from the Monitor approving return of any Leased Equipment, an Equipment Lessor may elect to have any Leased Equipment remain in the sales and investment solicitation process ("**SISP**"), as set out the Order – Approve SISP.

25. Leased Equipment included in the SISP, whether the subject of an election to keep the Leased Equipment in the SISP or otherwise, would remain subject to the charges authorized and continued by the Court in each of the Initial Order and the AIRO and, subject to paragraph 47 of the AIRO, would be allocated a percentage of costs of the proceedings calculated based on the total pro rata share of gross sale proceeds to be determined by the Monitor once the SISP is complete.
26. The proposed protocol is a fair and reasonable method of addressing return of equipment and has been reviewed and developed in consultation with the Monitor, the Interim Lender, The Syndicate and The Klemke Foundation.

Sealing

27. The Confidential Supplementary Affidavit ("**Fourth Confidential Affidavit**") sworn concurrently with this Affidavit contains detailed information regarding certain of KMC's employees and the proposed payments to them under the KERP.
28. KMC has a legal obligation to keep such information private and confidential and having the information disclosed serves no purpose in the CCAA proceedings. The stakeholders know the total anticipated payments and the timing for such payments and that is the only information they will need to address any concerns they might have with the KERP and the requested charge to secure same for the benefit of the specified employees.
29. For that reason, KMC requests that the Fourth Confidential Affidavit be sealed on the Court file and not revealed without either the consent of KMC or further Order of the Court.

Conclusion

30. KMC has acted and continues to act in good faith and with due diligence in both proceeding with the NOI Proceedings, and now in these proceedings under the CCAA.
31. I do verily believe that given protection from enforcement of any loans or security and any lawsuits from creditors, the core business and affairs of KMC can be restructured or liquidated in an orderly manner in these CCAA proceedings, and that this is in the best interests of KMC's stakeholders.

- 32. KMC requests an extension of the stay of proceedings to June 16, 2025, which will afford sufficient time to complete the SISP, obtain necessary Sale Approval and Vesting Orders and close approved transactions.

SWORN BEFORE ME at Edmonton,
Alberta, this 14th day of January, 2025

A Commissioner for Oaths in and for the
Province of Alberta

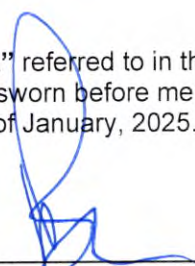
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Bryn Jones

BRYN JONES

DARREN R. BIEGANEK, KC
BARRISTER & SOLICITOR

This is **Exhibit "A"** referred to in the Affidavit
of BRYN JONES sworn before me
on the **14TH** day of January, 2025.



A Commissioner for Oaths in and for
the Province of Alberta

DARREN R. BIEGANEK, KC
BARRISTER & SOLICITOR

KEY EMPLOYEE RETENTION PLAN

- 1) This Key Employee Retention Program (“**KERP**”) sets out the retention plan proposed by KMC Mining Corporation (“**KMC**”) or (the “**Company**”) on behalf of employees currently employed by KMC.
- 2) Capitalized terms not herein defined shall have the meaning ascribed to them in the Amended and Restated Initial Order (“**ARIO**”) granted in the *Companies’ Creditors Arrangement Act* (“**CCAA**”) proceedings with respect to KMC.

KERP

- 3) The primary objective of the proposed KERP is to motivate key employees who are vital to the ongoing operations of KMC to continue in their current roles during these challenging times and to aid in the preservation of enterprise value. The proposed KERP recipients are instrumental to servicing current client commitments, assisting in the monetization of assets for the reduction of the overall debt load of KMC and possibly to deliver on future contracts in circumstances where the business may be allowed to continue as a going concern.

Key Employees

- 4) A list of key employees can be found in **Appendix A** of this KERP along with the proposed payout (the “**Retention Pay**”) to each employee.
- 5) The employees selected for this Retention Program have the skills, knowledge and capabilities to serve in the present ongoing business needs of KMC, engage in direct specific work teams, keep the business running to preserve maximum value for all stakeholders including assisting in the sales and investment solicitation process (“**SISP**”) which was approved by Order of the Court in the CCAA proceedings on January 10, 2025.
- 6) The selected employees have other employment options available to them and are not replaceable in the near term due to their specialized skill and role with KMC, relationships with clients, their specific knowledge of the business and affairs of KMC and the stringent deadlines that KMC must comply with under the terms of the Orders pronounced in the CCAA proceedings. Any replacements for the key employees would face a steep learning curve in this specialized industry and may require additional training to develop a thorough understanding of KMC’s business which would pose a challenge given the time constraints under which KMC is presently operating.
- 7) The KERP recipients perform the following functions collectively:
 - a) Direction and leadership on assets, sales prospects, equipment condition and location;
 - b) Financial due diligence, accuracy of financial evaluations and transactions;
 - c) Specific financial reporting and specifically reporting as required under the auspices of the CCAA proceedings;
 - d) Ensuring ongoing contract management with key stakeholders is undertaken and managed to ensure continuity and service;
 - e) Maintenance of operational support, employee communications, maintenance of morale and ensuring ongoing consistency of labour supply through union contact and negotiation;

- f) Data security and IT systems infrastructure maintenance and support including supporting commercial activities in data or management;
 - g) Preparation of financial records and support of audits, due diligence, processes, contract, profitability and payroll support.
- 8) Attention to all of these items is especially important to the ongoing success of KMC and the CCAA process.
- 9) The proposed KERP provides Retention Pay based on the individual's position and impact and value to the business. The Company believes that the proposed KERP properly incentivizes key employees as it demonstrates KMC's ability to reward employees financially for their commitment to stay and ensure the processes put into place are successful.

Retention Period in terms of Payment

- 10) The retention period covers the period from the date of filing to the following retention payment dates (the "**Retention Period**"):
 - a) Group 1: the earlier of May 31, 2025, or termination without cause;
 - b) Group 2:
 - i) Tranche 1: upon completion of the SISP and a threshold of \$70,000,000 in gross sale proceeds from the sale of KMC owned equipment and inventory; and
 - ii) Tranche 2: the final approval by the Court of a Plan of Arrangement to KMC's creditors.
- 11) Payments to those entitled to receive them will be made in one lump sum on the first payroll following each of the respective milestones. The lump sum will be subject to the required tax withholdings and source deductions. The KERP and the Retention Pay is subject to the following terms and conditions:
 - a) The employee must remain employed in their current position, or as otherwise by KMC, through to the end of the relevant Retention Period to be eligible to receive the Retention Pay;
 - b) The employee must fulfill their performance expectations and work their regular schedule throughout the Retention Period;
 - c) Unscheduled absences, for any reason, for more than five (5) cumulative days, in any month, throughout the Retention Period will result in a pro rata reduction of the Retention Pay for the days that exceed the allowable five;
 - d) If, during the Retention Period, employees do not meet performance expectations, voluntarily resign or retire, or involuntarily separate for any reason, other than total disability, death or termination without cause, they will not receive any Retention Pay, prorated or otherwise;
 - e) If at any point during the Retention Period the company decides to extend the Retention Period, it will be presented to employees by way of a revised Retention Letter which is required to be signed by the employee. The financial terms of any revised Retention Letter will be consistent with the original Retention Letter. The employee may choose to agree to the new terms by signing the revised letter or they may decide, without penalty, to continue under the terms of the original Retention Letter. If an employee continues under the term of the original Retention Letter and none of the conditions upon which an obligation to pay the Retention Pay are achieved, then the KERP will expire and the

employee will not be entitled to any payment under any revised Retention Letter or otherwise.

KERP Charge

- 12) The Retention Pay contemplated herein shall be secured by a Court-ordered charge against all of the property (as defined in the ARIO) of KMC, which charge will rank in the order established in paragraph 41 of the ARIO. The charge will be in the aggregate amount of \$745,000.

APPENDIX A – Key Employees

Position	KERP Candidate Proposed	Value - Group 1	Value - Group 2 - Tranche 1	Value - Group 2 - Tranche 2	Cumulative Total if paid in full
President	██████████			██████████	██████████
Chief Finance Officer	██████████		██████████	██████████	██████████
General Manager/SR. Leader	██████████		██████████	██████████	██████████
General Manager/SR. Leader	██████████		██████████	██████████	██████████
General Manager/SR. Leader	██████████		██████████	██████████	██████████
Director/Manager	██████████	██████████	██████████		██████████
Director/Manager	██████████	██████████	██████████		██████████
Finance and technical leader	██████████	██████████	██████████		██████████
Finance and technical leader	██████████	██████████			██████████
Technical Leader	██████████	██████████	██████████		██████████
Payroll and Benefits Supervisor	██████████	██████████			██████████
Totals:		\$75,000	\$230,000	\$440,000	\$745,000