



No. S-226670
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, SBC 2002, C 57, AS
AMENDED AND THE *BUSINESS CORPORATIONS ACT*, SNB 1981, C B-9.1, AS
AMENDED**

AND

**IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
TREVALI MINING CORPORATION AND TREVALI MINING (NEW BRUNSWICK)
LTD.**

PETITIONERS

**NOTICE OF APPLICATION
(CCAA Representation)**

**NAME OF APPLICANTS: Michael Demmer, Rodney Brunk and Tim Kempter
(hereinafter, the Ad Hoc Committee of Trevali Shareholders)
c/o KND COMPLEX LITIGATION
1186 Eglinton Ave West
Toronto, ON M6C 2E3
T: (416) 537-3529**

Eli Karp (he/him)
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TO: The Petitioners, the Monitor, and the Service List

TAKE NOTICE that an application will be made by the Ad Hoc Committee of Trevali Shareholders to the Honourable Madam Justice Fitzpatrick via Microsoft Teams, on August 29, 2022 at 10:00 a.m., or on such other date, at such other time and by such other means as the Court may direct, for the orders set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. granting an Order substantially on the terms attached hereto as **Appendix “A”** (hereinafter, the **“CCAA Representation Order”**); and
2. granting such further orders, relief and directions as Counsel may request and as this Honourable Court deems just.

PART 2: FACTUAL BASIS

1. At the relevant time, Trevali was a publicly traded mining company incorporated under the laws of British Columbia and headquartered in Vancouver, B.C.
2. Trevali is a reporting issuer in British Columbia and all other Canadian provinces and territories, and its main securities regulator is the British Columbia Securities Commission.
3. At the relevant time, Trevali’s securities traded on the Toronto Stock Exchange, the United States OTC market, and the Frankfurt Stock Exchange.
4. After the close of trading on August 15, 2022, Trevali filed its disclosures with respect to the second quarter of fiscal year 2022 (**“Q2 2022”**) announcing, among other things, that:
 - a. it had experienced production challenges and/or suspension of its operations at its major mining properties, the Perkoa mine and the Caribou mine;
 - b. its Q2 2022 revenue had declined 44% on a year-over-year basis;

- c. it was taking a non-cash, after-tax impairment of \$23.7 million against the Perkoa and Caribou operations and/or assets; and
 - d. it would be unable to make a mandatory prepayment of approximately \$7.5 million on its revolving credit facility.
5. On this announcement, the market price of Trevali's common shares on the TSX dropped by approximately 52%, from \$0.46 as of the close of trading on August 15, 2022 to \$0.22 as of the close of trading on August 16, 2022. The below chart illustrates the price of Trevali's common shares on the TSX from January 1, 2021 through to the present time.



- 6. After the close of trading on August 19, 2022, Trevali announced by way of a news release that it had sought and obtained an initial order for CCAA protection.
- 7. Before the open of the market on August 22, 2022, Trevali issued a news release, reporting among other things that:
 - a. the trading in its common shares had been halted on the Toronto Stock Exchange, and it was expected to be halted also on the United States OTC market, the Lima Stock Exchange and the Frankfurt Stock Exchange;

- b. the company expects that the common shares may be delisted from trading on the Toronto Stock Exchange and the other exchanges in due course; and
 - c. two of its directors, Mr. Nick Popovic and Ms. Aline Cote, had resigned from the board of directors of Trevali.
- 8. As a result of these developments, Trevali's shareholders incurred millions of dollars in financial losses and damages in their investments.
- 9. Messrs. Michael Demmer, Rodney Brunk and Tim Kempter are members of an ad hoc committee of Trevali's shareholders, which has been established to represent the interests of common shareholders of Trevali in the within CCAA Proceedings ("**Ad Hoc Committee of Trevali Shareholders**").
- 10. The Ad Hoc Committee of Trevali Shareholders seeks to be appointed as the representative for the shareholders of record of Trevali as of the close of trading on the Toronto Stock Exchange on August 15, 2022, or such other group of common shareholders of Trevali as this Honourable Court may approve.
- 11. Mr. Demmer is a former shareholder of Trevali and he resides in New Brunswick. Mr. Demmer has incurred approximately \$197,343 in losses in his investments in Trevali's common shares.
- 12. Mr. Brunk resides in North Dakota, United States of America, and he has incurred a significant loss in his investments in Trevali's common shares.
- 13. Mr. Kempter resides in Zürich, Switzerland, and he has incurred a significant loss in his investments in Trevali's common shares.
- 14. The Ad Hoc Committee's composition is intended to include representation of shareholders located in the main jurisdictions in which Trevali's common shares traded, namely Canada, United States and Europe.

15. The Ad Hoc Committee of Trevali Shareholders makes major decisions upon consultation with Counsel, based on a simple majority of votes, and bearing in mind the best interests of the common shareholders of Trevali.
16. Members of the Ad Hoc Committee of Trevali Shareholders do not believe that they would have any conflicting interests with the interests of the other common shareholders of Trevali as of the close of trading on August 15, 2022.
17. The Ad Hoc Committee of Trevali Shareholders are represented by KND Complex Litigation.
18. KND is a boutique law firm based in Toronto, Ontario, focusing on investor and consumer rights litigation and class actions.
19. Lawyers of KND have significant experience with multidirectional and cross-border securities litigation, including joint proceedings brought under the CCAA and class proceedings legislation.
20. KND has significant experience in communicating with shareholders of Canadian public issuers.

PART 3: LEGAL BASIS

A. THIS COURT HAS JURISDICTION TO GRANT THE ORDER REQUESTED

1. As this Honourable Court noted in *Mountain Equipment*, this Court has jurisdiction to grant the CCAA Representation Order.¹ Section 11 of the CCAA and the *Supreme Court Civil Rules* provide the Court with broad jurisdiction in respect of the granting of a CCAA representation order.²
2. Section 11 of the CCAA grants a court broad discretion to “make any order that it considers appropriate in the circumstances”. An order will be appropriate where it furthers efforts to achieve the remedial purpose of the CCAA – namely allowing

¹ *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 2037 at para 22 ([CanLII](#)) (“*Mountain Equipment*”).

² *Fraser Papers Inc. (Re)*, 2009 CanLII 55115 at para 7 (ON SC) ([CanLII](#)).

the debtor company to emerge from the CCAA Proceedings as a going concern and avoiding the social and economic losses resulting from a liquidation.³

3. Pursuant to Rule 20-3(6), “In a proceeding concerning ... (b) property subject to a trust, or (c) the construction of a written instrument, including an enactment, the Court may appoint one or more persons to represent a person, including ... the members of a class of persons who have a present, future, contingent or unascertained interest in, or who may be affected by, the proceeding, and who, or some of whom, cannot readily be ascertained or found.”

B. THE TEST FOR GRANTING THE CCAA REPRESENTATION ORDER

4. The test for a representation order is a “simple balance of convenience test;” “the onus is on the party seeking a representation order to prove that the balance of convenience favours the granting of the order. In analyzing the balance of convenience, the judge should consider the inconvenience that would be experienced by each party if a representation order was or was not granted.”⁴
5. The relevant factors to be considered were noted by this Court in *Mountain Equipment*, and they include:
 - a. the vulnerability and resources of the group sought to be represented;
 - b. any benefit to the companies under CCAA protection;
 - c. any social benefit to be derived from representation of the group;
 - d. the facilitation of the administration of the proceedings and efficiency;
 - e. the avoidance of a multiplicity of legal retainers;
 - f. the balance of convenience and whether it is fair and just including to the creditors of the Estate;

³ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 70 ([CanLII](#)).

⁴ *Bellan v. Fillmore Riley LLP*, 2012 MBCA 84 at paras 54-55 ([CanLII](#)).

- g. whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and
- h. the position of other stakeholders and the Monitor.⁵

C. ANALYSIS

6. The relevant factors strongly favour the granting of the CCAA Representation Order.
7. The Ad Hoc Committee of Trevali Shareholders seeks to represent the common shareholders of Trevali as of the close of trading on the Toronto Stock Exchange on August 15, 2022, or such other group as this Honourable Court may approve (“**Trevali Shareholders Class**”). The affairs, interests and/or claims of the members of the Trevali Shareholders Class will inevitably be affected, arranged or compromised within these proceedings. The members are the Trevali Shareholders Class cannot be readily ascertained or found. Most of the members of the Trevali Shareholders Class are retail investors who likely lack the financial resources to appear in this proceeding to represent their own interests, or to otherwise individually advance their own claims. They are also scattered across Canada, United States, Europe and elsewhere, making it impractical, disproportionately costly or otherwise impossible for them to appear in these proceedings to represent their interests.
8. The Petitioners, the Monitor and their stakeholders will equally benefit from the granting of the proposed CCAA Representation Order. The appointment of the proposed CCAA representatives and Counsel will help minimize or avoid a multiplicity of proceedings. It will also help provide the certainty that would benefit the Petitioners in the resolution of this proceeding, including in the process leading up to the sanctioning of a Plan of Compromise and Arrangement.

⁵ *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 2037 at para 23 ([CanLII](#)).

9. The appointment of the proposed CCAA representatives and Counsel will also help streamline the process, and minimize or avoid inconsistencies and inefficiencies in the conduct of these proceedings.
10. The appointment of the proposed CCAA representatives and Counsel will accordingly help fulfill the objectives of the CCAA, namely to facilitate the restructuring or re-arranging the affairs of the Petitioners. It is, as such, consistent with the remedial purposes of the CCAA.
11. The appointment of the proposed CCAA representatives and Counsel would help avoid a multiplicity of legal retainers. The members of the Trevali Shareholders Class share substantially overlapping interests. The granting of the proposed CCAA Representation Order will ensure that those interests will be represented through one set of Counsel.
12. The proposed CCAA representatives have stepped forward to represent the interests of the other shareholders, are prepared to act in that representative capacity, and do not have a conflict of interests with the other members of the Trevali Shareholders Class.
13. On a consideration of the relevant factors, the balance of convenience favours the granting of the CCAA Representation Order. The appointment of the proposed CCAA representatives and Counsel will benefit vulnerable equityholders as well as the Petitioners and their stakeholders, provides access to justice, streamline the process, help avoid inconsistencies, achieve efficiencies and reduce administrative and other costs and expenses of this process on the Court, the Petitioners, the Monitor and the other stakeholders.
14. Time is of the essence. The Petitioners are engaged in the complex operations of three significant mining assets, as described in the affidavit of Trevali's Chief Financial Officer, Mr. Brendan Creaney, dated August 19, 2022. In these circumstances, it is in the best interests of all stakeholders, and consistent with the goals of the CCAA, to advance and conclude these CCAA Proceedings without undue delay.

PART 4: MATERIAL TO BE RELIED ON

1. The pleadings and proceedings filed herein;
2. Affidavit No. 1 of Michael Demmer, affirmed August 23, 2022;
3. Affidavit No. 1 of Hadi Davarinia, affirmed August 24, 2022;
4. Affidavit No. 1 of Brendan Creaney, affirmed on August 19, 2022;
5. Such further and other material as counsel may advise and this Honourable Court may permit

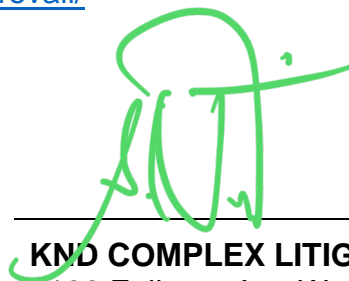
The applicant estimates that the application will take 15 minutes.

This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must comply with the procedure set out in the Initial Order of Madam Justice Fitzpatrick made on August 19, 2022, a copy of which is available at <http://cfcanada.fticonsulting.com/trevali/>

Date: August 25, 2022



KND COMPLEX LITIGATION

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To be completed by the court only:

Order made

[] in the terms requested in paragraph _____ of Part 1 of this Notice of Application

[] with the following variations and additional terms:

Dated:

**APPENDIX “A”
PROPOSED, DRAFT CCAA REPRESENTATION ORDER**

No. S-226670
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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LTD.**

PETITIONERS

**[PROPOSED, DRAFT] ORDER MADE AFTER APPLICATION
(CCAA REPRESENTATION ORDER)**

BEFORE THE HONOURABLE) _____, 2022
MADAM JUSTICE FITZPATRICK)
)

THE APPLICATION of Michael Demmer, Rodney Brunk and Tim Kempter (“**Ad Hoc Committee of Trevali Shareholders**”) coming for a hearing at Vancouver, British Columbia, on _____ day of _____, 2022; ON HEARING Eli Karp, Counsel to Ad Hoc Committee of Trevali Shareholders; AND UPON READING the materials filed, including Affidavit No. 1 of Michael Demmer and Affidavit No. 1 of Hadi Davarinia; AND pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended, the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

JURISDICTION

1. This Court has jurisdiction to grant this CCAA Representation Order pursuant to section 11 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended, and the *Supreme Court Civil Rules*.

SERVICE AND NOTICE

2. This Court declares that the time for service and filing of the Notice of Application and the affidavits in support of this application is hereby abridged and validated, so that this application is properly returnable today, and hereby dispenses with further service thereof.
3. This Court declares that notice of this application has been provided to affected persons in compliance with this Court's Initial Order dated August 19, 2022 and is hereby deemed proper, adequate and sufficient, and hereby dispenses with further notice thereof.

APPOINTMENT OF CCAA REPRESENTATIVES AND CCAA REPRESENTATIVE COUNSEL

4. This Court orders that, subject to paragraphs 11-13 hereof, the Ad Hoc Committee of Trevali Shareholders (hereinafter, "**CCAA Representatives**") is hereby appointed to represent the interests of all common shareholders of Trevali as of the close of trading on the Toronto Stock Exchange on August 15, 2022 ("**Trevali Shareholders Class**") in these CCAA Proceedings with respect to any claims against Trevali and/or its current and/or former directors and officers arising out of or relating to their transactions in common shares of Trevali ("**Securities Claims**"), including in relation to, and for all purposes of, the filing of any claims, proofs of claims, participation in negotiations or mediations with respect to the settlement of any part or the whole of the

Securities Claims, and the development, drafting, preparation and execution of the Plan of Compromise and Arrangement, if any, and any similar or related definitive documentation (“**Mandate**”).

5. This Court orders that, subject to paragraphs 11-13 hereof, the law firm of KND Complex Litigation (“**KND**”) is hereby appointed as Counsel to the CCAA Representatives in these CCAA Proceedings in relation to, and for all purposes of, carrying out the terms of this Order, including the CCAA Representatives’ Mandate.
6. This Court orders that KND is hereby authorized to collaborate with other Counsel, wherever they may be located, as necessary or desirable to give effect to this Order and in carrying out the terms of this Order, including the CCAA Representatives’ Mandate (collectively, “**CCAA Representative Counsel**”).
7. This Court orders that the CCAA Representatives and the CCAA Representative Counsel are authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including the CCAA Representatives’ Mandate, including dealing with any other Court, regulatory body and government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.
8. The CCAA Representatives and the CCAA Representative Counsel are hereby authorized and empowered to apply to this Court for advice and directions as necessary or desirable to give effect to this Order, and in carrying out the terms of this Order, including the CCAA Representatives’ Mandate.

NOTICE PROCEDURE

9. This Court orders that notice of the granting of this Order shall be provided, within 5 business days from the date of this Order, as follows:

- a. the CCAA Representative Counsel shall issue electronically, through the facilities of Canada Newswire or a similar service provider, a press release substantially in the form set out in Schedule “A” of this Order with such modifications as may be agreed upon between the CCAA Representative Counsel and the Monitor;
 - b. a copy of this Order shall be posted by CCAA Representative Counsel on its website at <https://www.knd.law/class-actions/trevali-mining-corp/>
 - c. a copy of this Order shall be provided by CCAA Representative Counsel to any person who requests it;
 - d. a copy of this Order shall be posted on the Monitor’s website; and
 - e. the Monitor shall provide a link to the CCAA Representative Counsel’s website on its own website.
10. The Monitor shall refer any inquiries that it may receive from members of the Trevali Shareholders Class to the CCAA Representative Counsel.

EXCLUSION FROM THE TREVALI SHAREHOLDERS CLASS

11. This Court orders that the following persons and entities are excluded from the Trevali Shareholders Class:
- a. Trevali and any of its subsidiaries, partners, affiliates, legal representatives, predecessors, successors and assigns;
 - b. Trevali’s current or former directors and officers, and any entity in which they hold a controlling interest;
 - c. Glencore plc, Glencore International AG, Glencore AG and Glencore Canada Corporation, and their officers, directors, affiliates, subsidiaries, partners, successors and assigns; and

- d. any person who opts to exclude themselves in accordance with the procedure set out in paragraph 12 hereof.
12. Any person who wishes to be excluded from the Trevali Shareholders Class must send a written request to CCAA Representative Counsel by email at sn@knd.law by no later than 30 calendar days from the date of the publication of the press release described in paragraph 10(a) hereof.
13. This Court orders that, notwithstanding paragraphs 11 and 12 hereof, the treatment of the Securities Claims of the excluded persons pursuant to any Plan of Compromise an Arrangement or similar or related definitive document is not changed, limited or otherwise affected by their status as excluded persons.

PROTECTIONS

14. This Court orders that the CCAA Representatives and CCAA Representative Counsel shall have no liability as a result of their appointment or the fulfilment of their duties in carrying out the provisions of this Order or any further Order of the Court in these CCAA Proceedings, save and except for any gross negligence or wilful misconduct on their part.
15. This Court orders that the appointment of CCAA Representative Counsel pursuant to this Order shall not prevent any of the individual lawyers from CCAA Representative Counsel from acting as trustee(s) of any trust that may be established for the benefit of the Trevali Shareholders Class pursuant to a Plan of Compromise and Arrangement or similar or related definitive document.

MISCELLANEOUS

16. This Court orders that this Order shall have full force and effect in all provinces and territories of Canada and outside Canada, and against all persons against whom it may be enforceable.
17. This Court orders that this Order is effective from the date that it is made, and is enforceable without any need for entry and filing.
18. This Court orders that the Petitioners, the Monitor, the CCAA Representatives and the CCAA Representative Counsel are hereby authorized to collect, use and disclose personal information of the members of the Trevali Shareholders Class amongst one another, but to the extent necessary or desirable to give effect to this Order, or in carrying out the terms of this Order, including the CCAA Representatives' Mandate. The personal information to be as such collected shall be treated in accordance with the terms of paragraph 15 of this Court's Initial Order made on August 19, 2022.
19. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or elsewhere, to give effect to this Order and to assist the Petitioners, the Monitor, the CCAA Representatives and CCAA Representative Counsel in carrying out the terms of this Order, including the CCAA Representatives' Mandate. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners, the Monitor, the CCAA Representative and CCAA Representative Counsel as may be necessary or desirable to give effect to this Order, or to assist the Petitioners, the Monitor, the CCAA Representatives and CCAA Representative Counsel in carrying out the terms of this Order.
20. This Court orders that each of the Petitioners, the Monitor, the CCAA Representatives and CCAA Representative Counsel shall be at liberty and are

hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

21. Endorsement of this Order by Counsel appearing on this application is hereby dispensed with.

22. There shall be no costs to any party in relation to this application.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT.

Lawyer for the Ad Hoc Committee of
Trevalli Shareholders

BY THE COURT

REGISTRAR

SCHEDULE “A”

**Trevali Mining Corporation: Supreme Court of British Columbia Appoints
CCAA Representatives and Representative Counsel**

VANCOUVER, BC and TORONTO, ON, _____, 2022 – The Supreme Court of British Columbia has granted a CCAA Representation Order subject to proceedings under Canada’s *Companies’ Creditors Arrangement Act* (“CCAA”) in the matter of Trevali Mining Corporation (TSX: TV) (BVL: TV) (OTCQX: TREVF) (Frankfurt: 4TI).

IN THE SUPREME COURT OF BRITISH COLUMBIA

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AMENDED**

AND

**IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
TREVALI MINING CORPORATION AND TREVALI MINING (NEW BRUNSWICK)
LTD.**

NOTICE OF CCAA REPRESENTATION ORDER

TAKE NOTICE THAT, on _____, 2022, the Supreme Court of British Columbia granted the CCAA Representation Order, pursuant to which, subject to certain limited exceptions:

1. An Ad Hoc Committee of Trevali Shareholders has been appointed as the CCAA Representatives on behalf of the shareholders of record of Trevali as of the close of trading on the Toronto Stock Exchange on August 15, 2022 (“Trevali Shareholders Class”).

2. KND Complex Litigation has been appointed as CCAA Representative Counsel.
3. The CCAA Representatives and the CCAA Representative Counsel are authorized and empowered to act in relation to, and for all purposes of, the filing of any claims, proofs of claims, participation in negotiations or mediations with respect to the settlement of any part or the whole of the Securities Claims, and the development, drafting, preparation and execution of the Plan of Compromise and Arrangement, if any, and any related or similar definitive documentation.
4. Any person who wishes to be excluded from the Trevali Shareholders Class must submit a written request to CCAA Representative Counsel by email at sn@knd.law by no later than _____, 2022.

Information concerning these proceedings is available on the website of the CCAA Representative Counsel at <https://www.knd.law/class-actions/trevali-mining-corp/> and on Monitor's website at <http://cfcanada.fticonsulting.com/trevali/>.

Inquiries:

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