

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

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

BEFORE THE HONOURABLE) _____, 2023
MADAM JUSTICE FITZPATRICK)
)

THE APPLICATION of Michael Demmer, Rodney Brunk, Tim Kempter and William Williamson ("**Ad Hoc Committee of Trevali Shareholders**") coming for a hearing at Vancouver, British Columbia, on _____ day of _____, ~~2022~~; ON HEARING Sage Nematollahi Counsel to the Ad Hoc Committee of Trevali Shareholders, _____; UPON READING the materials filed, including Affidavit No. 1 of Michael Demmer and Affidavits Nos. 1 & 2 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; AND UPON BEING ADVISED that the Monitor, the

Deleted: 2022

Petitioners and the Directors and Officers of Trevali Mining Corporation ("Trevali") either consent, or otherwise do not object, to this Order.

THIS COURT ORDERS AND DECLARES THAT:

JURISDICTION

1. This Court has jurisdiction to grant this CCAA Shareholder 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, as amended, and is hereby deemed proper, adequate and sufficient, and hereby dispenses with further notice thereof.

APPOINTMENT OF SHAREHOLDER REPRESENTATIVES AND SHAREHOLDER REPRESENTATIVE COUNSEL

4. This Court orders that, subject to paragraphs 11-13 hereof, members of the Ad Hoc Committee of Trevali Shareholders (hereinafter, "**Shareholder Representatives**") are hereby appointed to represent the interests of the Securities Claimants (as defined in **Schedule "A"** to this Order) 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 the 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 Shareholder Representatives in these CCAA Proceedings in relation to, and for all purposes of, carrying out the terms of this Order, including the Shareholder 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 Shareholder Representatives' Mandate (collectively, "**Shareholder Representative Counsel**").
7. This Court orders that the Shareholder Representatives and the Shareholder 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 Shareholder 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 Shareholder Representatives and the Shareholder 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 Shareholder 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 Shareholder 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 “B” of this Order with such modifications as may be agreed upon between the Shareholder Representative Counsel and the Monitor;
 - b. a copy of this Order shall be posted by Shareholder 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 Shareholder 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 Shareholder Representative Counsel’s website on its own website.
- 10. The Monitor shall refer any inquiries that it may receive from the Securities Claimants to the Shareholder Representative Counsel.

Deleted: under the section titled “Status Update”.

EXCLUSION FROM THE DEFINITION OF SECURITIES CLAIMANTS

- 11. This Court orders that the following persons and entities are excluded from the definition of the Securities Claimants:
 - 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 definition of the Securities Claimants must send a written request to Shareholder 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 9(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 and 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 Shareholder Representatives and the Shareholder 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 Shareholder Representative Counsel pursuant to this Order shall not prevent any of the individual lawyers from Shareholder Representative Counsel from acting as trustee(s) of any trust that may be established for the benefit of the Securities Claimants 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 Shareholder Representatives and the Shareholder Representative Counsel are hereby authorized to collect, use and disclose personal information of the Securities Claimants 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 Shareholder 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, as amended.
19. This Court declares that this Order shall be without prejudice to any argument that any of the defendants in the proceeding styled *Demmer et al v Trevali Mining Corp et al*, S-228113 ("**Class Action**") may raise in the event that the Class Action proceeds towards an application for certification under the *Class Proceedings Act*, RSBC 1996, c 50 ("**CPA**"), and its existence would not be binding, relied upon or be deemed informative in determining whether any of the criteria under the CPA are met.
20. 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 Shareholder Representatives and the Shareholder

Representative Counsel in carrying out the terms of this Order, including the Shareholder 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 Shareholder Representatives and the Shareholder Representative Counsel as may be necessary or desirable to give effect to this Order, or to assist the Petitioners, the Monitor, the Shareholder Representatives and the Shareholder Representative Counsel in carrying out the terms of this Order.

21. This Court orders that each of the Petitioners, the Monitor, the Shareholder Representatives and the Shareholder 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.
22. Endorsement of this Order by Counsel appearing on this application is hereby dispensed with.
23. 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"
Definition of Securities Claimants

The term "**Securities Claimants**" is defined as follows:

All persons and entities, wherever they may reside or may be domiciled, who purchased or otherwise acquired the common shares of Trevali in the primary market and/or in the secondary market during the Class Period, and held some or all of such common shares as of the close of trading on April 14, 2022 and/or August 15, 2022, except the Excluded Persons;

The term "**Class Period**" is defined as follows:

The period from October 9, 2020 through to August 15, 2022, inclusive.

The term "**Excluded Persons**" shall include the persons and entities identified in paragraphs 11-12 of this CCAA Shareholder Representation Order.

SCHEDULE “B”

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

VANCOUVER, BC and TORONTO, ON, _____, 2023 – The Supreme Court of British Columbia has granted a CCAA Shareholder Representation Order subject to proceedings under Canada’s *Companies’ Creditors Arrangement Act* (“CCAA”) in the matter of Trevali Mining Corporation.

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BRUNSWICK) LTD.**

NOTICE OF CCAA SHAREHOLDER REPRESENTATION ORDER

TAKE NOTICE THAT, on _____, 2023, the Supreme Court of British Columbia granted the CCAA Shareholder Representation Order, pursuant to which, subject to certain limited exceptions:

1. Members of an Ad Hoc Committee of Trevali Shareholders have been appointed as the Shareholder Representatives on behalf of a group of persons and entities who purchased or acquired the common shares of Trevali Mining Corporation

between October 9, 2020 and August 15, 2022, and held some or all of such common shares as of the close of trading on April 14, 2022 and/or August 15, 2022 (“Securities Claimants”).

2. KND Complex Litigation has been appointed as Shareholder Representative Counsel.
3. The Shareholder Representatives and the Shareholder 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 definition of Securities Claimants must submit a written request to Shareholder Representative Counsel by email at sn@knd.law by no later than _____, 2023.

Information concerning these proceedings is available on the website of the Shareholder 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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