

This is the 1<sup>st</sup> Affidavit of  
Susan Danielisz in this case and  
was made on July 24, 2023

NO. S-226670  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, C. 57, AS AMENDED AND THE *BUSINESS  
CORPORATIONS ACT*, S.N.B. 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

**A F F I D A V I T**

I, **Susan Danielisz**, paralegal, of Suite 2400, 745 Thurlow Street, Vancouver, British Columbia,  
SWEAR THAT:

1. I am a paralegal with the law firm of McCarthy Tétrault LLP ("**McCarthy**"), counsel to Glencore International AG, Glencore AG and Glencore Canada Corporation in this action, and as such have personal knowledge of the matters hereinafter deposed to, save and except where stated to be on information and belief, in which case I verily believe them to be true.
2. Attached hereto and marked as indicated are true copies of the following emails, which were obtained by me from the records of McCarthy:
  - (a) **Exhibit "A"** – Email dated October 2, 2022, from Kibben Jackson ("**Jackson**") of Fasken Martineau DuMoulin LLP to, among others, Peter Rubin ("**Rubin**") and Claire Hildebrand ("**Hildebrand**") of Blake, Cassels & Graydon LLP, and Lance Williams ("**Williams**") of McCarthy;
  - (b) **Exhibit "B"** – Email dated October 2, 2022, from Williams to, among others, Jackson, Rubin and Hildebrand, with attached document entitled "Settlement Financial Terms – McT Comments";



This is **Exhibit "A"** referred to in **Affidavit #1** of **Susan Danielisz**, sworn before me at Vancouver, British Columbia, this 24<sup>th</sup> day of July, 2023.



---

A Commissioner for taking Affidavits  
for British Columbia

**Williams, Lance**

---

**From:** Kibben Jackson <kjackson@fasken.com>  
**Sent:** Sunday, October 02, 2022 8:12 AM  
**To:** Rubin, Peter; Claire.hildebrand@blakes.com  
**Cc:** Stuart Brotman; Glen Nesbitt; Williams, Lance; Langdon, Christopher; Finn, Forrest  
**Subject:** Re: [EXT] RE: Trevali [MT-MTDOCS.FID3712943]

Sorry. Hit send early.

As I was saying: in terms of the status of the negotiations:

- The Lenders' representatives authorized us to present the financial offer and non-financial terms to Glencore. Note that each Lender will still need credit committee approvals as part of seeking same for the DIP facility.
- Glencore has indicated, on a without prejudice basis, that the terms are acceptable subject to certain additions/clarifications to the non-financial terms (set out in Lance's email below) and a description of the financial terms that might be incorporated in a final settlement agreement (see that description in my email below).
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- Glencore needs to confirm the description of the financial terms is consistent with its understanding of the proposed deal.
- As will be apparent, we need Trevali to be a party to the agreement so we wanted to get it to you as soon as it made sense to do so. It may be that a call will assist so that I can explain the deal and answer any questions you have. If you want me to call today please let me know.

I have, I think, fairly captured everything concerning the status of our settlement negotiations though I have no doubt Lance will weigh in if I've got anything wrong or missed anything.

I look forward to discussing this with you and concluding the settlement.

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Peter/Claire:

We (the Agent and Glencore) want to bring Trevali in to the settlement discussions at this time.

You will see from the email chain below where the discussions are at. In terms of the status of the negotiations:

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On correction below. Where it says "The next \$29 million of Net Proceeds are to be paid to the RCF Lenders " it should be \$28 million.

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Here is a description of the financial terms. I would like to bring the debtor into this now to deal with the other terms. Yes?

In its simplest form, the sharing formula would kick in on any proceeds distributed to the Lenders after repayment of the DIP, on account of the RCF. We've tried to take a stab at how definitions might play out below:

1. Gross Proceeds less Realization Costs = Net Proceeds Available for Distribution
2. Net Proceeds Available for Distribution less Outstanding DIP Balance = Net Proceeds

Where:

**Gross Proceeds** means any proceeds realized by Trevali subject to the security of both the Lenders and Glencore, including Trevali's direct or indirect interest in RPZC or the Rosh Pinah Mine, insurance proceeds claimed by Trevali in respect of the Perkoa insurance claim, amounts receivable from Cerro De Pasco Resources Inc. or other assets.

**Realization Costs** mean professional fees (including any success fee to National Bank Financial, fees of the Monitor/Monitors Counsel, Lenders Counsel and Advisors and other fees) not otherwise funded by amounts outstanding under the DIP **plus** a provision for wind-down / additional realization costs after repayment of the DIP **plus** any taxes payable on the sale of Trevali's direct or indirect interest in RPZC or the Rosh Pinah Mine **plus** any other priority charges / costs pursuant to Trevali's ongoing insolvency proceedings.

**Outstanding DIP Balance** means amount outstanding under the DIP including principal, interest, fees and costs.

The first \$1 million of Net Proceeds are to be paid to Glencore

The next \$29 million of Net Proceeds are to be paid to the RCF Lenders

The next \$1 million (i.e. Net Proceeds of \$29 million to \$30 million) will be paid to Glencore

Net Proceeds in excess of \$30 million will be shared 98% to the RCF Lenders and 2% to Glencore, provided that Glencore's share of Net Proceeds shall not exceed \$3 million until the RCF Lenders are repaid in full.

Illustrative Chart Below:

Net Proceeds	Glencore Share	Recovery on RCF
\$ 1.0	\$ 1.0	\$ -
10.0	1.0	9.0
29.0	1.0	28.0
30.0	2.0	28.0
40.0	2.2	37.8
50.0	2.4	47.6
60.0	2.6	57.4
70.0	2.8	67.2
80.0	3.0	77.0
91.8	3.0	88.8
100.0	11.2	88.8

Once amounts owing to the RCF Lenders are repaid in full, any excess would then go to Glencore up to the balance of Glencore's subordinated debt (less whatever Glencore previously received out of the Net Proceeds – i.e. Glencore's total recovery could not exceed the balance of their subordinated debt).

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*Without Prejudice*

Hi Kibben,

Following up on the below. Have you heard back if these are OK and is language coming for the payments? If the 'other terms' are OK, we should get them over to the debtor so they can sign off on the terms that affect them. I don't think the money concerns them, so don't see needing their sign off there.

Lance



**Lance Williams (he/him)**  
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**Cc:** Langdon, Christopher <CLANGDON@mccarthy.ca>; Finn, Forrest <ffinn@mccarthy.ca>  
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Kibben,

For the "other terms" around the proposed settlement, we've put together the following. I think they are consistent with what was discussed, but happy to talk through any issues/questions. Also we should get the financial terms put into words (including what priority amounts are, gross recoveries, net recoveries, etc.). Is that something your group with A&M can do? I presume we'll do a settlement agreement up, but would be good to get into a formal email settlement before then so we can down-tools on the application.

Thanks,

Lance

- The settlement, and the concessions herein, are conditional on the DIP facility being approved by the Court in the CCAA proceeding.
- Glencore will approve of the terms of the Lenders' DIP facility and will not oppose it in the CCAA proceeding.
- Glencore will formally waive any claim to set off Rosh Pinah payments against non-Rosh Pinah Trevali liabilities (a) during the entire CCAA process and (b) for all time for any purchaser of Rosh Pinah.
- The Lenders and Trevali will acknowledge that, aside from the waiver set forth above, Glencore continues to have rights of set-off under its respective off-take agreements, that those rights are not stayed, will not seek to stay them, and will not challenge any set-offs to date or in the future (including for greater certainty, all set-offs at Caribou). For the avoidance of doubt, Glencore (and its affiliates) shall have the right to set-off any amounts (other than debt subordinated under the intercreditor agreement between, amongst others, the Lenders and Glencore) under the off-take agreements in accordance with the terms thereof and nothing in these settlement terms shall prejudice or limit the rights of Glencore (or its affiliates) under the provisions of the off-take agreements including the right to make, file and enforce any claim against a Trevali off-take counterparty, including for specific performance and/or monetary damages.
- Lenders and Trevali agree that Glencore can pickup the remaining off-take at Caribou and that the sale of the same to Glencore will be set-off under the relevant off-take agreement. Trevali will cooperate to facilitate such transfer and sale.
- The Lenders and Trevali will not contest, challenge or bring into question the validity or enforceability of the off-take agreements.
- The Lenders and Trevali will not, directly or indirectly, propose, seek, approve, consent to, vote in favour of or support (including with any court or any monitor or other court officer appointed in any insolvency proceeding) any

transaction that seeks or purports to eliminate, disclaim, terminate, repudiate, modify or otherwise adversely affect or impact any off-take agreement (including the sale of the assets of a mine free of the relevant off-take agreement), without the express written consent of Glencore.

- The parties will agree to conduct themselves in a commercially reasonable manner in accordance with the agreements among them, including this settlement, and Glencore and the Lenders will offer commercially reasonable cooperation and will provide commercially reasonable assistance in the SISP if requested, including in any discussions with potential bidders. Among other things, neither Glencore nor the Lenders will assert in discussions in the SISP with any prospective investors or purchasers any rights or entitlements in relation to the Trevali assets/business which are not expressly contemplated in its agreements with the relevant Trevali entities/each other. The parties will continue to abide by the terms of the inter-creditor agreement. Nothing herein prevents the Lenders or Glencore from taking positions or making arguments in their interest, provided those positions are consistent with the terms of their agreements (including this settlement).
- The settlement will be approved by the court to the extent the parties consider it advisable.
- The consent of Trevali in the above will include all relevant subsidiaries of Trevali as may be necessary to give effect to this agreement.



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Fasken has a COVID-19 management plan in place. We prioritize maintaining a safe workplace; encourage social distancing and uphold privacy and confidentiality for those we work with. We have reduced the need to attend our offices to necessary visits, and are minimizing in-person meetings. We have enhanced digital communications with you through telephone & web conferencing, secure email, Fasken Edge, etc.

Please do not visit our offices without an appointment in advance; and please excuse us if we do not shake your hand. In the event the risk of COVID-19 increases and affects our ability to provide legal services or



representation, we will make the best arrangements within our power to obtain time extensions and/or adjournments. We appreciate your understanding.

> **COVID-19 Resource Centre for Businesses**

*Ce message contient des renseignements confidentiels ou privilégiés et est destiné seulement à la personne à qui il est adressé. Si vous avez reçu ce courriel par erreur, S.V.P. le retourner à l'expéditeur et le détruire. Une version détaillée des modalités et conditions d'utilisation se retrouve à l'adresse suivante : <https://www.fasken.com/fr/le/ms-01-15c-email>.*

*Fasken dispose d'un plan de gestion de la situation en lien avec la COVID-19. Notre priorité est de maintenir un milieu de travail sécuritaire, d'encourager la distanciation sociale et d'assurer la protection des renseignements personnels et de la confidentialité au nom des personnes pour lesquelles nous travaillons. Nous avons réduit le nombre de visites nécessaires à nos bureaux et réduit au strict minimum les réunions en personne. Nous avons amélioré les communications numériques par téléphone, par vidéoconférence, par courrier électronique sécurisé, par l'intermédiaire de Fasken Plus, etc.*

*Nous vous prions de ne pas vous présenter au bureau sans rendez-vous et veuillez nous excuser d'avance si nous ne vous serrons pas la main. Si le risque de propagation du virus COVID-19 augmente et atteint notre capacité à fournir des services juridiques ou de représenter nos clients, nous ferons tout en notre pouvoir pour prendre les meilleures dispositions afin d'obtenir des reports et/ou des ajournements. Nous vous remercions pour votre compréhension.*

> **Centre de ressources sur la COVID-19 pour les entreprises**

This is **Exhibit "B"** referred to in **Affidavit #1** of **Susan Danielisz**, sworn before me at Vancouver, British Columbia, this 24<sup>th</sup> day of July, 2023.



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**Subject:** RE: [EXT] Trevali [MT-MTDOCS.FID3712943]  
**Attachments:** Settlement Financial Terms - McT Comments(45902930.2).docx

*Without Prejudice*

Kibben,

Please find attached our proposed revisions to the financial terms language. It doesn't change the terms themselves – just seeks to add more clarity around them (I don't expect controversially).

Happy to discuss. Please note these remain subject to Glencore's final confirmation, but I don't expect there to be an issue.

If there are any issues, give me a call and I'm happy to chat through.

Lance



**Lance Williams**  
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 Litigation | Litige  
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**Lance Williams (he/him)**

Partner | Associé

Bankruptcy and Re-structuring | Fiduciaire et réorganisation

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Vancouver BC V6B 0C9

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- The settlement, and the concessions herein, are conditional on the DIP facility being approved by the Court in the CCAA proceeding.
- Glencore will approve of the terms of the Lenders' DIP facility and will not oppose it in the CCAA proceeding.
- Glencore will formally waive any claim to set off Rosh Pinah payments against non-Rosh Pinah Trevali liabilities (a) during the entire CCAA process and (b) for all time for any purchaser of Rosh Pinah.
- The Lenders and Trevali will acknowledge that, aside from the waiver set forth above, Glencore continues to have rights of set-off under its respective off-take agreements, that those rights are not stayed, will not seek to stay them, and will not challenge any set-offs to date or in the future (including for greater certainty, all set-offs at Caribou). For the avoidance of doubt, Glencore (and its affiliates) shall have the right to set-off any amounts (other than debt subordinated under the intercreditor agreement between, amongst others, the Lenders and Glencore) under the off-take agreements in accordance with the terms thereof and nothing in these settlement terms shall prejudice or limit the rights of Glencore (or its affiliates) under the provisions of the off-take agreements including the right to make, file and enforce any claim against a Trevali off-take counterparty, including for specific performance and/or monetary damages.
- Lenders and Trevali agree that Glencore can pick up the remaining off-take at Caribou and that the sale of the same to Glencore will be set-off under the relevant off-take agreement. Trevali will cooperate to facilitate such transfer and sale.
- The Lenders and Trevali will not contest, challenge or bring into question the validity or enforceability of the off-take agreements.
- The Lenders and Trevali will not, directly or indirectly, propose, seek, approve, consent to, vote in favour of or support (including with any court or any monitor or other court officer appointed in any insolvency proceeding) any transaction that seeks or purports to eliminate, disclaim, terminate, repudiate, modify or otherwise adversely affect or impact any off-take agreement (including the sale of the assets of a mine free of the relevant off-take agreement), without the express written consent of Glencore.
- The parties will agree to conduct themselves in a commercially reasonable manner in accordance with the agreements among them, including this settlement, and Glencore and the Lenders will offer commercially reasonable cooperation and will provide commercially reasonable assistance in the SISP if requested, including in any discussions with potential bidders. Among other things, neither Glencore nor the Lenders will assert in discussions in the SISP with any prospective investors or purchasers any rights or entitlements in relation to the Trevali assets/business which are not expressly contemplated in its agreements with the relevant Trevali entities/each other. The parties will continue to abide by the terms of the inter-creditor agreement. Nothing herein prevents the Lenders or Glencore from taking positions or making arguments in their interest, provided those positions are consistent with the terms of their agreements (including this settlement).
- The settlement will be approved by the court to the extent the parties consider it advisable.

- The consent of Trevali in the above will include all relevant subsidiaries of Trevali as may be necessary to give effect to this agreement.



**Lance Williams (he/him)**

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**[COVID-19 Resource Centre for Businesses](#)**

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*Nous vous prions de ne pas vous présenter au bureau sans rendez-vous et veuillez nous excuser d'avance si nous ne vous serrons pas la main. Si le risque de propagation du virus COVID-19 augmente et atteint notre capacité à fournir des services juridiques ou de représenter nos clients, nous ferons tout en notre pouvoir pour*



*prendre les meilleures dispositions afin d'obtenir des reports et ou des ajournements. Nous vous remercions pour votre compréhension.*

> [Centre de ressources sur la COVID-19 pour les entreprises](#)

In its simplest form, the sharing formula would kick in on any proceeds distributed to the Lenders after repayment of the DIP, on account of the RCF. We've tried to take a stab at how definitions might play out below:

1. Gross Proceeds less Realization Costs = Net Proceeds Available for Distribution
2. Net Proceeds Available for Distribution less Outstanding DIP Balance= Net Proceeds

Where:

Gross Proceeds means any proceeds, in its broadest sense, realized by Trevali or any of its subsidiaries or affiliates (collectively, "Trevali") that is subject to the security of both the Lenders and Glencore, including without limitation, Trevali's direct or indirect interest in Rosh Pinah Zinc Corporation (Pty) Limited ("RPZC") and the Rosh Pinah Mine, insurance proceeds claimed by Trevali in respect of the Perkoa insurance claim, amounts receivable from Cerro De Pasco Resources Inc. or realised from other assets.

Realization Costs mean the following, to the extent the same have not already been paid from the DIP financing and are paid from the Gross Proceeds:

- a) court approved professional fees (including any success fee to National Bank Financial, fees of the Monitor/Monitor's Counsel, Lender's Counsel and advisors and other fees) that are secured by a court ordered charge in priority to the Lenders' security, to the maximum amount of the respective charge;
- b) reasonable provision for the wind-down of Trevali and additional realization costs after repayment of the DIP, subject to court approval;
- c) any taxes payable by Trevali on the sale of Trevali's direct or indirect interest in RPZC or the Rosh Pinah Mine having priority to the Lenders' security; and
- d) payment of the amounts secured under any other court approved priority charges having priority to the Lenders' security pursuant to Trevali's ongoing insolvency proceedings, to the maximum amount of such charge.

For greater certainty, Realization Costs do not include any direct or indirect recovery by the Lenders or any payments for or on account of the Lenders, other than the recovery of fees set out in a) above. Realization Costs will only include those items above that are paid from the Gross Proceeds and will not include amounts paid from Trevali's other resources or from the DIP.

DIP means the interim financing to be provided by the Lenders in Trevali's CCAA proceeding, subject to court approval.

Outstanding DIP Balance means amount outstanding under the DIP, including principal, interest, fees and costs. For greater certainty, the DIP shall not directly or indirectly include any pre-filing obligations of Trevali to the Lenders, and there shall be no direct or indirect recovery to the Lenders from the DIP other than the principal to be advanced as part of the DIP, interest thereon, and fees and costs, all as expressly approved as part of the DIP facility.

Payment terms:

The first \$1 million of Net Proceeds are to be paid to Glencore

The next \$28 million of Net Proceeds are to be paid to the Lenders

The next \$1 million (i.e. Net Proceeds of \$29 million to \$30 million) will be paid to Glencore

Net Proceeds in excess of \$30 million will be shared 98% to the Lenders and 2% to Glencore, provided that Glencore's share of Net Proceeds shall not exceed \$3 million until the Lenders are repaid in full.

Illustrative Chart Below:

Net Proceeds	Glencore Share	Recovery on RCF
\$ 1.0	\$ 1.0	\$ -
10.0	1.0	9.0
29.0	1.0	28.0
30.0	2.0	28.0
40.0	2.2	37.8
50.0	2.4	47.6
60.0	2.6	57.4
70.0	2.8	67.2
80.0	3.0	77.0
91.8	3.0	88.8
100.0	11.2	88.8

Once amounts owing to the Lenders are repaid in full, any excess would then go to Glencore.

This is **Exhibit "C"** referred to in **Affidavit #1** of **Susan Danielisz**, sworn before me at Vancouver, British Columbia, this 24<sup>th</sup> day of July, 2023.



---

A Commissioner for taking Affidavits  
for British Columbia

**Williams, Lance**

**From:** Williams, Lance  
**Sent:** Monday, October 03, 2022 3:49 PM  
**To:** Kibben Jackson; Stuart Brotman; Rubin, Peter  
**Cc:** Finn, Forrest; Langdon, Christopher  
**Subject:** Settlement [MT-MTDOCS.FID3712943]  
**Attachments:** Settlement Terms - Combined(45912622.1).docx

**Importance:** High

*Without Prejudice*

Further to our discussions over the past couple of days, please find attached the combined settlement terms for review and approval. This includes the provisions circulated previously, and the amendment to Realization Costs included in my earlier email.

Can you please confirm:

- 1) That these are accepted by your respective clients (understanding for the banks that this remains subject to creditor committee approval, but has been signed off by the relevant representative pending that);
- 2) Everyone will use commercially reasonable efforts to memorialise these terms into a settlement agreement; and
- 3) Trevali will adjourn the application currently scheduled for October 11, 2022 either generally (to be brought back on with notice if the parties can't reach a settlement agreement) or to a date sufficiently in the future that we can get the settlement agreement completed (we can discuss an appropriate date, presumably with the input of scheduling).

Lance

**Lance Williams**

Partner | Associé

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### Financial Terms

In its simplest form, the sharing formula would kick in on any proceeds distributed to the Lenders after repayment of the DIP, on account of the RCF.

1. Gross Proceeds less Realization Costs = Net Proceeds Available for Distribution
2. Net Proceeds Available for Distribution less Outstanding DIP Balance = Net Proceeds

Where:

Gross Proceeds means any proceeds, in its broadest sense, realized by Trevali or any of its subsidiaries or affiliates (collectively, "Trevali") that is subject to the security of both the Lenders and Glencore, including without limitation, Trevali's direct or indirect interest in Rosh Pinah Zinc Corporation (Pty) Limited ("RPZC") and the Rosh Pinah Mine, insurance proceeds claimed by Trevali in respect of the Perkoa insurance claim, amounts receivable from Cerro De Pasco Resources Inc. or realised from other assets.

Realization Costs mean the following, to the extent the same have not already been paid from the DIP financing and are paid from the Gross Proceeds:

- a) professional fees (including any success fee to National Bank Financial, fees of the Monitor/Monitor's Counsel, Lender's Counsel and advisors and other fees), subject to court approval (where applicable), that are secured by a court ordered charge in priority to the Lenders' security;
- b) reasonable provision for the wind-down of Trevali and additional realization costs after repayment of the DIP, subject to court approval;
- c) any taxes payable by Trevali on the sale of Trevali's direct or indirect interest in RPZC or the Rosh Pinah Mine having priority to the Lenders' security; and
- d) payment of the amounts secured under any other court approved priority charges having priority to the Lenders' security pursuant to Trevali's ongoing insolvency proceedings, to the maximum amount of such charge.

For greater certainty, Realization Costs do not include any direct or indirect recovery by the Lenders or any payments for or on account of the Lenders, other than the recovery of fees set out in a) above. Realization Costs will only include those items above that are paid from the Gross Proceeds and will not include amounts paid from Trevali's other resources or from the DIP.

DIP means the interim financing to be provided by the Lenders in Trevali's CCAA proceeding, subject to court approval.

Outstanding DIP Balance means amount outstanding under the DIP, including principal, interest, fees and costs. For greater certainty, the DIP shall not directly or indirectly include any pre-filing obligations of Trevali to the Lenders, and there shall be no direct or indirect recovery to the Lenders from the DIP other than the principal to be advanced as part of the DIP, interest thereon, and fees and costs, all as expressly approved as part of the DIP facility.

**Payment terms:**

The first \$1 million of Net Proceeds are to be paid to Glencore

The next \$28 million of Net Proceeds are to be paid to the Lenders

The next \$1 million (i.e. Net Proceeds of \$29 million to \$30 million) will be paid to Glencore

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**Illustrative Chart Below:**

Net Proceeds	Glencore Share	Recovery on RCF
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50.0	2.4	47.6
60.0	2.6	57.4
70.0	2.8	67.2
80.0	3.0	77.0
91.8	3.0	88.8
100.0	11.2	88.8

**Other Terms**

The settlement, and the concessions herein, are conditional on the DIP facility being approved by the Court in the CCAA proceeding.

Glencore will approve of the terms of the Lenders' DIP facility and will not oppose it in the CCAA proceeding.

Glencore will formally waive any claim to set off Rosh Pinah payments against non-Rosh Pinah Trevali liabilities (a) during the entire CCAA process and (b) for all time for any purchaser of Rosh Pinah.

The Lenders and Trevali will acknowledge that, aside from the waiver set forth above, Glencore continues to have rights of set-off under its respective off-take agreements, that those rights are not stayed, will not seek to stay them, and will not challenge any set-offs to date or in the future (including for greater certainty, all set-offs at Caribou). For the avoidance of doubt, Glencore (and its affiliates) shall have the right to set-off any amounts (other than debt subordinated under the inter-creditor agreement between, amongst others, the Lenders and Glencore) under

the off-take agreements in accordance with the terms thereof and nothing in these settlement terms shall prejudice or limit the rights of Glencore (or its affiliates) under the provisions of the off-take agreements including the right to make, file and enforce any claim against a Trevali off-take counterparty, including for specific performance and/or monetary damages.

Lenders and Trevali agree that Glencore can pickup the remaining off-take at Caribou and that the sale of the same to Glencore will be set-off under the relevant off-take agreement. Trevali will cooperate to facilitate such transfer and sale.

The Lenders and Trevali will not contest, challenge or bring into question the validity or enforceability of the off-take agreements.

The Lenders and Trevali will not, directly or indirectly, propose, seek, approve, consent to, vote in favour of or support (including with any court or any monitor or other court officer appointed in any insolvency proceeding) any transaction that seeks or purports to eliminate, disclaim, terminate, repudiate, modify or otherwise adversely affect or impact any off-take agreement (including the sale of the assets of a mine free of the relevant off-take agreement), without the express written consent of Glencore.

The parties will agree to conduct themselves in a commercially reasonable manner in accordance with the agreements among them, including this settlement, and Glencore and the Lenders will offer commercially reasonable cooperation and will provide commercially reasonable assistance in the SISP if requested, including in any discussions with potential bidders. Among other things, neither Glencore nor the Lenders will not assert in discussions in the SISP with any prospective investors or purchasers any rights or entitlements in relation to the Trevali assets/business which are not expressly contemplated in its agreements with the relevant Trevali entities/each other. The parties will continue to abide by the terms of the inter-creditor agreement. Nothing herein prevents the Lenders or Glencore from taking positions or making arguments in their interest, provided those positions are consistent with the terms of their agreements (including this settlement).

The settlement will be approved by the court to the extent the parties consider it advisable.

The consent of Trevali in the above will include all relevant subsidiaries of Trevali as may be necessary to give effect to this agreement.



This is **Exhibit "D"** referred to in **Affidavit #1** of **Susan Danielisz**, sworn before me at Vancouver, British Columbia, this 24<sup>th</sup> day of July, 2023.



---

A Commissioner for taking Affidavits  
for British Columbia

**From:** Kibben Jackson <kjackson@fasken.com>  
**Sent:** Wednesday, October 05, 2022 9:58 AM  
**To:** Williams, Lance; Rubin, Peter  
**Cc:** Stuart Brotman; Finn, Forrest; Langdon, Christopher  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]  
**Attachments:** 119349742\_v(2)\_Glencore Settlement Terms - 10.04.DOCX

Thanks Lance – I think that works.

I have added it to the doc (attached).

Kibben Jackson\*

PARTNER

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\*Law Corporation

**From:** Williams, Lance <lwilliams@mccarthy.ca>  
**Sent:** October-05-22 9:24 AM  
**To:** Rubin, Peter <peter.rubin@blakes.com>; Kibben Jackson <kjackson@fasken.com>  
**Cc:** Stuart Brotman <sbrotman@fasken.com>; Finn, Forrest <ffinn@mccarthy.ca>; Langdon, Christopher <CLANGDON@mccarthy.ca>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Kibben and Peter,

Here is the revised language, which has been approved by Glencore:

In respect of each mine that is owned by a Trevali affiliate (each, the “Relevant Mine Owner”), Glencore will formally and irrevocably waive any rights or claims to apply set off between i) liabilities payable by Glencore to any particular Relevant Mine Owner, or in respect of any particular mine, on the one hand, and ii) any liabilities payable by any other Relevant Mine Owners, or in respect of that other particular mine, to Glencore on the other hand, during the entire CCAA process. Such waiver shall remain effective in perpetuity in relation to a Relevant Mine Owner acquired by a third party through a sales process in the CCAA process. However, such waiver shall not apply as between Glencore and multiple Relevant Mine Owners or mines that are acquired by the same third party, either directly or indirectly, in relation to liabilities incurred by any person after such acquisition. For greater certainty, following the sale of a Relevant Mine Owner or mine, the waiver acts solely to prevent Glencore from a global setting off in relation to liabilities incurred prior to the acquisition, and does not otherwise alter commercial relationships as among the parties going forward.

Lance

**mccarthy**  
**tétrault**

**Lance Williams**

Partner | Associé

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**From:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Sent:** Wednesday, October 05, 2022 7:54 AM  
**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
**Cc:** Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Lance – I had the same thought as Kibben on point #1 as did our client.

Reading your clarification email below – are you saying there is still no cross project set off in respect of obligations arising pre-sale or pre-restructuring, including as against a purchaser of both mines or a restructured Trevali – but instead Glencore is not wanting to waive obligations arising post sale or restructuring against a purchaser of both mines? If it is the latter then I believe Trevali is ok with this but we may need to revise the wording you sent around last night so it says this.

On a related matter – assuming there is a settlement on this matter – the DIP approval is rolled into this settlement. We would like to seek approval of the DIP on October 11<sup>th</sup>.

Yesterday I was speaking to Kibben about court approval of this agreement – which I think we need for Trevali given we are in a CCAA and presumably both Glencore and the Agent want it approved. In that vein, again assuming there will be agreement, one of you should send to the Monitor (once the changes noted above are made) – as the Monitor will need to review and consider.

Peter

**Peter Rubin\***  
 Partner  
[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)  
 T. +1-604-631-3315  
 \* denotes law corporation

**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
**Sent:** Wednesday, October 5, 2022 6:56 AM  
**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
**Cc:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** Re: [EXT] Settlement [MT-MTDOCS.FID3712943]

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I think there may be misunderstanding on point 1 - we're not talking about Trevali related debt/set off. We're talking about the relationship between Glencore and a new purchaser of two mines. Glencore isn't saying to someone that purchases two mines that there will never be set off between the mines - equitable set off is factual and may arise for a host of reasons. It's only Trevali debts that we're agreeing not to set off, and that is consistent with all discussions to date. That does affect value and is the same position a purchaser would be in buying any two mines with off takes.

Waiting for a settlement agreement to adjourn, given the time, will be a non-starter for Glencore.

Sent from my iPhone

On Oct 5, 2022, at 6:39 AM, Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)> wrote:

Lance, point (2) is fine, of course. Point (1) is problematic. It is inconsistent with all discussions to date (including the email exchange as recent as yesterday), and given it may affect sale price it is unworkable.

I am working on getting instructions to agree to adjourn the October 11 hearing, but I am getting pushback to wait until after a settlement agreement is signed (In escrow pending Lender approval). I mean it when I say I am working on those instructions, though. Hopefully you can do the same re: point (1) below.

Kibben Jackson\*

PARTNER

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\*Law Corporation

**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>

**Sent:** October-04-22 10:09 PM

**To:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>

**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Glencore is OK with the revised terms, with two (I believe) minor revisions:

1. On the set-off point, we've clarified that it applies to a third party purchaser in perpetuity vis-à-vis the other mines that are Trevali owned or are purchased by someone else. However, if a party purchases two mines, there is no waiver of set-off as between the two. There doesn't seem to be a scenario where two mines are purchased by the same party, but this is an important principled point for Glencore: they are waiving the right of cross-mine set off in this specific instance in relation to Trevali, but if someone buys two mines, Glencore is not agreeing it will never seek to set off between them in perpetuity.
2. Attornment is fine, but we clarified that it is just the settlement agreement. All other agreements retain their choice of law clause.

We also need an agreement to adjourn by tomorrow morning (while a settlement agreement is prepared). This can't drag any further.

Lance



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**From:** Williams, Lance  
**Sent:** Tuesday, October 04, 2022 5:13 PM  
**To:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

We're fine taking the Blakes suggested language for approval.

Peter – what is your timing for approval? Will you hear today?



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**From:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Sent:** Tuesday, October 04, 2022 4:49 PM

**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

One clarification – and then I can also seek instructions.

The clarification relates to the newly drafted paragraph (copied below) and Caribou. At Caribou, the offtake agreements are with Trevali Mining Corp. and not the “Relevant Mine Owner” which is Trevali Mining (New Brunswick) Ltd. As such, I don’t think the revised language captures the intent of the parties as set out in the Original Language. I have suggested a change below.

Original Language:

Glencore will formally and irrevocably waive any claim to set off any payments to be made by Glencore in respect of a particular mine against any liabilities owing to Glencore in respect of a different mine, including specifically any claim to set off any Rosh Pinah payments against non-Rosh Pinah Trevali liabilities, (a) during the entire CCAA process and (b) for all time for any purchaser of Rosh Pinah (or another of Trevali’s mines).

Revised Language

In respect of each mine that is owned by a Trevali affiliate (each, the “Relevant Mine Owner”), Glencore will formally and irrevocably waive any rights or claims to apply set off between liabilities payable by Glencore to any particular Relevant Mine Owner on the one hand and any liabilities payable by any other Relevant Mine Owners to Glencore on the other hand (a) during the entire CCAA process and (b) for all time against any third party who may acquire a Relevant Mine Owner through a sales process..

Blakes Suggested Language

In respect of each mine that is owned by a Trevali affiliate (each, the “Relevant Mine Owner”), Glencore will formally and irrevocably waive any rights or claims to apply set off between liabilities payable by Glencore to any particular Relevant Mine Owner, or in respect of that particular mine, on the one hand and any liabilities payable by any other Relevant Mine Owners, or in respect of that other particular mine, to Glencore on the other hand (a) during the entire CCAA process and (b) for all time against any third party who may acquire a Relevant Mine Owner through a sales process..

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**Sent:** Tuesday, October 4, 2022 3:50 PM

**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>

**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

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I am seeking those instructions presently.

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**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>

**Sent:** October-04-22 3:48 PM

**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>

**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Confirming that these changes remain subject to our client's review. If everyone is fine with these/prepared to adjourn the application, I will seek instructions.



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**From:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>

**Sent:** Tuesday, October 04, 2022 3:42 PM

**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>

**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Updating Peter by attaching the recent changes proposed by Lance (comparison version) and the clean copy.

Peter – any further comments?

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 \*Law Corporation

**From:** Kibben Jackson  
**Sent:** October-04-22 2:28 PM  
**To:** Williams, Lance <[williams@mccarthy.ca](mailto:williams@mccarthy.ca)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Lance:

Further to our call showing proposed changes based on emails exchanged with Peter this morning and additional comments from the Agent. Clean version attached as well.

Note this does not include the rep issue re: current setoff claims at RP, which we agree would need to be incorporated in the final settlement agreement.

Call when you receive and we can walk through.

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**From:** Williams, Lance <[williams@mccarthy.ca](mailto:williams@mccarthy.ca)>  
**Sent:** October-04-22 1:35 PM  
**To:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Yes – I don't think that point is controversial – no global set-off.



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**From:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Sent:** Tuesday, October 04, 2022 11:48 AM  
**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Lance,

I don't think this is controversial but can you please confirm that Glencore shares the view that the agreement confirms no global set off or as Kibben puts it in his email below "Yes, the discussions between Lance and I have always been that mine-on-mine setoff is permissible, but there is not inter-mine (global) setoff, not just with RP, but with any of the mines."

We have spoken with our client regarding the known claims/reconciliation payments under the RP off-take agreement and will get that to this group for review once we have it.

Thanks.

Peter

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 T. +1-604-631-3315  
 \* denotes law corporation

**From:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
**Sent:** Tuesday, October 4, 2022 9:31 AM  
**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

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Hi Peter,

Yes, the discussions between Lance and I have always been that mine-on-mine setoff is permissible, but there is not inter-mine (global) setoff, not just with RP, but with any of the mines.

You have Lance's response on the Caribou costs.

Lastly, in response to your question during our recent call: the concept (high level) is that "Net Proceeds" distills down to what the Lenders receive by way of distribution (undoubtedly pursuant to a

court order). So "Realization Costs", practically, is anything that is payable in priority to the security of the Lenders and Glencore, including those items enumerated in paras. (a) through (d) in the summary prepared by Lance.

Kibben Jackson\*

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**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>

**Sent:** October-04-22 9:00 AM

**To:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>

**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Peter,

I don't see a problem with the pickup being commercially reasonable cooperation, and confirming that it will be at Glencore's cost re. the trucking (which is what I understand is all that is required).

Lance



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**From:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>

**Sent:** Tuesday, October 04, 2022 8:34 AM

**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>

**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Without Prejudice,

Hi all – I have gone through the twenty or so (☺) email between you two over the past 14 hours. I have a call late this morning with our clients and will send this latest draft to them but we will not be able to get our comments back to you until later today.

Are both Glencore and the Agent comfortable that this agreement confirms there will be no “global” set-off between mines? I know it says that with respect to RP – but we should be clear that there will be no attempt to set off amounts owing in respect of Perkoa as against amounts owing by Glencore at Caribou. That is, preserving local set off (as has historically been the case) is ok but nothing beyond that. We obviously need to protect Carbiou as it is part of the SISP.

Lance – when we spoke yesterday (and I did not have instructions) I mentioned that any provision relating to Glencore wanting to take possession of offtake on the ground at Caribou will need to be done at the sole cost and expense of Glencore and if there is a cooperation provision it should track the commercially reasonable cooperation later in the document and make it clear that such cooperation is conditional on their being no cost to Trevali. We can’t spend what little money there is in that entity for this and there is no DIP available.

The provision that permits the Lenders and Glencore to take positions or arguments should also apply to Trevali if you want Trevali to sign on.

In any event, our client will review this draft sent this morning and we will get back to you.

**Peter Rubin\***

Partner

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---

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**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>

**Sent:** Tuesday, October 4, 2022 7:22 AM

**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>

**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

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Attached is a clean version with the updated chart attached.

I have asked Glencore what they show as owing at RP to ensure we're on the same page, but they won't be rep'ing in the agreement. This is a dynamic/ongoing relationship in a large organisation, so I have asked what our client shows as of now, but if something comes up in future that is set-offable under the terms of the off-take, Glencore isn't going to forego its right/somehow estop itself with a representation. This consistent with preserving the off-takes on their terms.



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**From:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
**Sent:** Tuesday, October 04, 2022 6:23 AM  
**To:** Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Lance – are you able to send a clean copy of the current draft of the settlement terms? I would like to get those over to the Agent and, as soon as possible thereafter, to the Lenders.

I do agree that it would be appropriate to have a rep from Glencore regarding any current setoff claim at RP included in the agreement (as noted in Stuart's email below). You can get us that info when available and we can include it in the settlement agreement.

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**From:** Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Sent:** October-04-22 6:09 AM  
**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Lance, I'll leave it to the others to respond on the terms but can you confirm what Glencore's records show as presently available to set off against deliveries at RP (on a mutual basis and not under any

theory of cross-entity set-off)? We don't need it to the penny and are not looking for an estimate of amounts that may accrue in future, just want to ensure that all are working off the same numbers.

Thanks.

**Stuart Brotman\***, LLB, MBA

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\*practising through a professional corporation

**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>

**Sent:** October-04-22 12:56 AM

**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>

**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

If the below works, here is the cumulative blackline. Given the time, I have gone for instructions based on this – give me a call tomorrow AM if we need to sort through anything else.

**mccarthy**  
**tétrault**

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**From:** Williams, Lance

**Sent:** Monday, October 03, 2022 9:19 PM

**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>

**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

I'd rather keep it with the wording I proposed wording – if we add 'validly' into this, then it needs to track through every other clause. Something done invalidly isn't done under the agreement – and we'd get into a host of additions (taxes validly payable by Trevali, charges having priority to the Lenders' valid security, etc.)

If you're OK with that, I will go seek instructions now and ask that you do the same. I can send an updated redline, subject to A&M's chart.

Peter – are you able to get Trevali sign off tomorrow AM?



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**From:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
**Sent:** Monday, October 03, 2022 8:58 PM  
**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** Re: [EXT] Settlement [MT-MTDOCS.FID3712943]

I think that works but better yet “any setoffs validly asserted pursuant to the terms of the off take agreements”?

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**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
**Sent:** Monday, October 3, 2022 7:48:15 PM  
**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

We need confirmation that none of the Caribou and RP set-offs are being challenged – they are within the oftakes, but the Lenders and Trevali need to confirm they aren’t challenging them.

The Lenders and Trevali will acknowledge that, aside from the waiver set forth above, Glencore continues to have rights of set-off under its respective off-take agreements in accordance with the terms thereof, that those rights are not stayed, they will not seek to stay them, and they will not challenge any set-offs to date or in the future thereunder (including, for certainty, all set-offs to date in relation to Caribou and Rosh Pinah will not be challenged). For the avoidance of doubt, Glencore (and its affiliates) shall have the right to set-off any amounts (other than debt subordinated under the inter-creditor agreement between, amongst others, the Lenders and Glencore) under the off-take agreements in accordance with the terms thereof and nothing in these settlement terms shall prejudice or limit the rights of Glencore (or its affiliates) under the

provisions of the off-take agreements including the right to make, file and enforce any claim against a Trevali off-take counterparty, including for specific performance and/or monetary damages.



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**From:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
**Sent:** Monday, October 03, 2022 7:40 PM  
**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

In the fourth para under "Other Terms", I think you need to address the issue of challenging setoffs. I think it's easiest to take it out, though I suppose it could say that they won't challenge any setoffs asserted in accordance with the terms of the offtake agreements (as cumbersome as it seems to keep refining this language).

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**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Here is a blackline showing what we'll seek instructions on (in addition, a new illustrative chart that goes up to full payment of the lenders to come). I plan to send this later tonight, so let me know if anything changes.



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That was my understanding. I'm not sure that's a hare worth chasing.

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It continues to have claims under the off take – there is a provisional payment, and then a reconciliation, so they shift continually with each shipment.



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**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Further question: does Glencore have any further claims against RP? If so, we are hoping that can be represented in the final settlement agreement.

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It's not that clear. Would the addition of this work? This lines it up and confirms you're not adding any rights of set off – just Glencore has what it has under the offtake agreements:

*The Lenders and Trevali will acknowledge that, aside from the waiver set forth above, Glencore continues to have rights of set-off under its respective off-take agreements in accordance with the terms thereof*



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Thanks – we're down to one issue.

Here's the easy question: what does the ICA say? Does it acknowledge rights of setoff, or simply preserve whatever rights may exist under the offtake agreements? Whichever it is, it seems to me that this point should simply mirror the language in the ICA, no?

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**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Responses below (subject that I am taking everything back to our client for approval). Give me a call at the office if you want to discuss.



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**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Some additional comments:

1. Given that you have proposed to take out the language after the Illustrative Chart, it seems to me we should cut that chart off after full recovery by the Lenders – the rest does not concern them, as we discussed. Agreed? **That's fine. Can you ask them to send one**
2. We still need to get you the DIP term sheet, and will do so as soon as we have sign off.
3. Fourth paragraph under "Other Terms" – Should be that the Lenders and Trevali acknowledge that all rights of setoff that Glencore has under its off-take agreements are unaffected (aside from the waiver set forth above). I don't think we are saying there are rights, just that any rights are preserved (noting that setoff has already been permitted at RP, which should be the comfort your client needs). The not seek to stay (not challenge) is fair, provided the earlier language is updated. The point is that this is not an open season any right of setoff Glencore wants to assert at RP, just that any rights it has are unaffected. I actually think this is more consistent with the last sentence, which accurately reflects my understanding. Maybe we just leave that sentence in and take out the first part to make it simple? **I don't think this needs to be changed. Glencore has its rights of set-off under the offtakes (and the offtake agreements are acknowledged in the ICA) – no confirmation is being sought on what those rights are, just that they exist. I don't think it makes a big difference to remove it, but doing so will raise suspicion with our client that there is some challenge to the offtake terms.**
4. In the third to last paragraph, you have "... neither Glencore nor the Lenders will not assert in discussions..." I think the "not" comes out? **Agreed.**
5. Consistent with the last paragraph, that would apply to Glencore as well (i.e. all affiliates of Glencore). **I'll propose "The Glencore parties to this agreement will ensure that their affiliates abide by the terms herein" because we're not adding extra Glencore affiliates as signatories.**

I wonder if you could update in light of the above suggestions (noting we need a new Illustrative Chart from A&M).

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**Subject:** [EXT] Settlement [MT-MTDOCS.FID3712943]

**Importance:** High

*Without Prejudice*

Further to our discussions over the past couple of days, please find attached the combined settlement terms for review and approval. This includes the provisions circulated previously, and the amendment to Realization Costs included in my earlier email.

Can you please confirm:

- 1) That these are accepted by your respective clients (understanding for the banks that this remains subject to creditor committee approval, but has been signed off by the relevant representative pending that);

- 2) Everyone will use commercially reasonable efforts to memorialise these terms into a settlement agreement; and
- 3) Trevali will adjourn the application currently scheduled for October 11, 2022 either generally (to be brought back on with notice if the parties can't reach a settlement agreement) or to a date sufficiently in the future that we can get the settlement agreement completed (we can discuss an appropriate date, presumably with the input of scheduling).

Lance



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### Financial Terms

In its simplest form, the sharing formula would kick in on any proceeds distributed to the Lenders after repayment of the DIP, on account of the RCF.

1. Gross Proceeds less Realization Costs = Net Proceeds Available for Distribution
2. Net Proceeds Available for Distribution less Outstanding DIP Balance= Net Proceeds

Where:

Gross Proceeds means any proceeds, in its broadest sense, realized by Trevali or any of its subsidiaries or affiliates (collectively, "Trevali") that is subject to the security of both the Lenders and Glencore, including without limitation, Trevali's direct or indirect interest in Rosh Pinah Zinc Corporation (Pty) Limited ("RPZC") and the Rosh Pinah Mine, insurance proceeds claimed by Trevali in respect of the Perkoa insurance claim, amounts receivable from Cerro De Pasco Resources Inc. or realised from other assets.

Realization Costs mean any costs determined by the court or required by law to be paid from the Gross Proceeds in priority to the security of the Lenders and Glencore, including the following, to the extent the same have not been paid from the DIP financing and are paid from the Gross Proceeds (without duplication or double counting):

- a) professional fees (including any success fee to National Bank Financial, fees of the Monitor/Monitor's Counsel, Lender's Counsel and advisors and other fees), subject to court approval (where applicable), that are secured by a court ordered charge in priority to the Lenders' security;
- b) reasonable provision for the wind-down of Trevali and additional realization costs after repayment of the DIP, subject to court approval;
- c) any taxes payable by Trevali on the sale of Trevali's direct or indirect interest in RPZC or the Rosh Pinah Mine having priority to the Lenders' security; and
- d) payment of the amounts secured under any other court approved priority charges having priority to the Lenders' security pursuant to Trevali's ongoing insolvency proceedings, to the maximum amount of such charge.

For greater certainty, Realization Costs do not include any direct or indirect recovery by the Lenders or any payments for or on account of the Lenders, other than the recovery of fees set out in a) above.

DIP means the interim financing to be provided by the Lenders in Trevali's CCAA proceeding, subject to court approval.

Outstanding DIP Balance means amount outstanding under the DIP, including principal, interest, fees and costs. For greater certainty, the DIP shall not directly or indirectly include any pre-filing obligations of Trevali to the Lenders, and there shall be no direct or indirect recovery to the Lenders from the DIP other than the principal to be advanced as part of the DIP, interest thereon, and fees and costs, all as expressly approved as part of the DIP facility.



Payment terms:

The first \$1 million of Net Proceeds are to be paid to Glencore

The next \$28 million of Net Proceeds are to be paid to the Lenders

The next \$1 million (i.e. Net Proceeds of \$29 million to \$30 million) will be paid to Glencore

Net Proceeds in excess of \$30 million will be shared 98% to the Lenders and 2% to Glencore, provided that Glencore's share of Net Proceeds shall not exceed \$3 million until the Lenders are repaid in full.

Illustrative Chart Below:

Net Proceeds	Glencore Share	Recovery on RCF
\$ 1.0	\$ 1.0	\$ -
10.0	1.0	9.0
29.0	1.0	28.0
30.0	2.0	28.0
40.0	2.2	37.8
50.0	2.4	47.6
60.0	2.6	57.4
70.0	2.8	67.2
80.0	3.0	77.0
91.8	3.0	88.8

Other Terms

The settlement, and the concessions herein, are conditional on the DIP facility being approved by the Court in the CCAA proceeding.

Glencore will approve of the terms of the Lenders' DIP facility and will not oppose it in the CCAA proceeding.

In respect of each mine that is owned by a Trevali affiliate (each, the "Relevant Mine Owner"), Glencore will formally and irrevocably waive any rights or claims to apply set off between i) liabilities payable by Glencore to any particular Relevant Mine Owner, or in respect of any particular mine, on the one hand, and ii) any liabilities payable by any other Relevant Mine Owners, or in respect of that other particular mine, to Glencore on the other hand, during the entire CCAA process. Such waiver shall remain effective in perpetuity in relation to a Relevant Mine Owner acquired by a third party through a sales process in the CCAA process. However, such waiver shall not apply as between Glencore and multiple Relevant Mine Owners or mines that are acquired by the same third party, either directly or indirectly, in relation to liabilities incurred by any person after such acquisition. For greater certainty, following the sale of a Relevant Mine Owner or mine, the waiver acts solely to prevent Glencore from a global setting

off in relation to liabilities incurred prior to the acquisition, and does not otherwise alter commercial relationships as among the parties going forward.

The Lenders and Trevali will acknowledge that, aside from the waiver set forth above, Glencore continues to have rights of set-off under its respective off-take agreements in accordance with the terms thereof, that those rights are not stayed, they will not seek to stay them, and they will not challenge any set-offs to date or in the future thereunder (including, for certainty, all set-offs to date in relation to Caribou and Rosh Pinah will not be challenged). For the avoidance of doubt, Glencore (and its affiliates) shall have the right to set-off any amounts (other than debt subordinated under the inter-creditor agreement between, amongst others, the Lenders and Glencore) under the off-take agreements in accordance with the terms thereof and nothing in these settlement terms shall prejudice or limit the rights of Glencore (or its affiliates) under the provisions of the off-take agreements including the right to make, file and enforce any claim against a Trevali off-take counterparty, including for specific performance and/or monetary damages.

Lenders and Trevali agree that Glencore can pickup the remaining off-take at Caribou and that the sale of the same to Glencore will be set-off under the relevant off-take agreement. Trevali will provide commercially reasonable cooperation to facilitate such transfer and sale. All costs associated with any such pickup, transfer and sale will be paid by Glencore, including any pre-approved third-party costs incurred by Trevali (which shall be paid in cash by Glencore). For clarity, to the extent that such costs are to be borne by Trevali under the relevant off-take agreement and are paid by Glencore, such costs may be set-off under the relevant off-take agreement.

The Lenders and Trevali will not contest, challenge or bring into question the validity or enforceability of the off-take agreements.

The Lenders and Trevali will not, directly or indirectly, propose, seek, approve, consent to, vote in favour of or support (including with any court or any monitor or other court officer appointed in any insolvency proceeding) any transaction that seeks or purports to eliminate, disclaim, terminate, repudiate, modify or otherwise adversely affect or impact any off-take agreement (including the sale of the assets of a mine free of the relevant off-take agreement), without the express written consent of Glencore.

The parties will agree to conduct themselves in a commercially reasonable manner in accordance with the agreements among them, including this settlement, and Glencore and the Lenders will offer commercially reasonable cooperation and will provide commercially reasonable assistance in the SISP if requested, including in any discussions with potential bidders. Among other things, neither Glencore nor the Lenders will assert in discussions in the SISP with any prospective investors or purchasers any rights or entitlements in relation to the Trevali assets/business which are not expressly contemplated in its agreements with the relevant Trevali entities/each other. The parties will continue to abide by the terms of the inter-creditor agreement. Nothing herein prevents the Lenders or Glencore from taking positions or making arguments in their interest, provided those positions are consistent with the terms of their agreements (including this settlement).

The settlement will be approved by the court to the extent the parties consider it advisable.

The consent of Trevali in the above will include all relevant subsidiaries of Trevali as may be necessary to give effect to this agreement. The Glencore parties to this agreement will ensure that their affiliates abide by the terms of this agreement.

The settlement agreement shall be governed by the laws of the Province of BC and Canada, and the parties will irrevocably attorn to the exclusive jurisdiction of the CCAA court to resolve any disputes arising out of the settlement agreement. Nothing in the settlement agreement will alter the choice of law or attornment provisions of any other agreement, including without limitation, the off-take agreements.

This is **Exhibit "E"** referred to in **Affidavit #1** of **Susan Danielisz**, sworn before me at Vancouver, British Columbia, this 24<sup>th</sup> day of July, 2023.



A Commissioner for taking Affidavits  
for British Columbia

---

**From:** Rubin, Peter <peter.rubin@blakes.com>  
**Sent:** Wednesday, October 05, 2022 10:55 AM  
**To:** Kibben Jackson; Williams, Lance  
**Cc:** Stuart Brotman; Finn, Forrest; Langdon, Christopher  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Works for Trevali as well.

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\* denotes law corporation

**From:** Kibben Jackson <kjackson@fasken.com>  
**Sent:** Wednesday, October 5, 2022 9:58 AM  
**To:** Williams, Lance <lwilliams@mccarthy.ca>; Rubin, Peter <peter.rubin@blakes.com>  
**Cc:** Stuart Brotman <sbrotman@fasken.com>; Finn, Forrest <ffinn@mccarthy.ca>; Langdon, Christopher <CLANGDON@mccarthy.ca>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

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Thanks Lance – I think that works.

I have added it to the doc (attached).

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**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
**Sent:** October-05-22 9:24 AM  
**To:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
**Cc:** Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Kibben and Peter,

Here is the revised language, which has been approved by Glencore:

In respect of each mine that is owned by a Trevali affiliate (each, the “Relevant Mine Owner”), Glencore will formally and irrevocably waive any rights or claims to apply set off between i) liabilities payable by Glencore to any particular Relevant Mine Owner, or in respect of any particular mine, on the one hand, and ii) any liabilities payable by any other Relevant Mine Owners, or in respect of that other particular mine, to Glencore on the other hand, during the entire CCAA process. Such waiver shall remain effective in perpetuity in relation to a

Relevant Mine Owner acquired by a third party through a sales process in the CCAA process. However, such waiver shall not apply as between Glencore and multiple Relevant Mine Owners or mines that are acquired by the same third party, either directly or indirectly, in relation to liabilities incurred by any person after such acquisition. For greater certainty, following the sale of a Relevant Mine Owner or mine, the waiver acts solely to prevent Glencore from a global setting off in relation to liabilities incurred prior to the acquisition, and does not otherwise alter commercial relationships as among the parties going forward.

Lance



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**From:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Sent:** Wednesday, October 05, 2022 7:54 AM  
**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
**Cc:** Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Lance – I had the same thought as Kibben on point #1 as did our client.

Reading your clarification email below – are you saying there is still no cross project set off in respect of obligations arising pre-sale or pre-restructuring, including as against a purchaser of both mines or a restructured Trevali – but instead Glencore is not wanting to waive obligations arising post sale or restructuring against a purchaser of both mines? If it is the latter then I believe Trevali is ok with this but we may need to revise the wording you sent around last night so it says this.

On a related matter – assuming there is a settlement on this matter – the DIP approval is rolled into this settlement. We would like to seek approval of the DIP on October 11<sup>th</sup>.

Yesterday I was speaking to Kibben about court approval of this agreement – which I think we need for Trevali given we are in a CCAA and presumably both Glencore and the Agent want it approved. In that vein, again assuming there will be agreement, one of you should send to the Monitor (once the changes noted above are made) – as the Monitor will need to review and consider.

Peter

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 \* denotes law corporation

**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
**Sent:** Wednesday, October 5, 2022 6:56 AM  
**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
**Cc:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** Re: [EXT] Settlement [MT-MTDOCS.FID3712943]

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I think there may be misunderstanding on point 1 - we're not talking about Trevali related debt/set off. We're talking about the relationship between Glencore and a new purchaser of two mines. Glencore isn't saying to someone that purchases two mines that there will never be set off between the mines - equitable set off is factual and may arise for a host of reasons. It's only Trevali debts that we're agreeing not to set off, and that is consistent with all discussions to date. That does affect value and is the same position a purchaser would be in buying any two mines with off takes.

Waiting for a settlement agreement to adjourn, given the time, will be a non-starter for Glencore.

Sent from my iPhone

On Oct 5, 2022, at 6:39 AM, Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)> wrote:

Lance, point (2) is fine, of course. Point (1) is problematic. It is inconsistent with all discussions to date (including the email exchange as recent as yesterday), and given it may affect sale price it is unworkable.

I am working on getting instructions to agree to adjourn the October 11 hearing, but I am getting pushback to wait until after a settlement agreement is signed (In escrow pending Lender approval). I mean it when I say I am working on those instructions, though. Hopefully you can do the same re: point (1) below.

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**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
**Sent:** October-04-22 10:09 PM  
**To:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Glencore is OK with the revised terms, with two (I believe) minor revisions:

1. On the set-off point, we've clarified that it applies to a third party purchaser in perpetuity vis-à-vis the other mines that are Trevali owned or are purchased by someone else. However, if a party purchases two mines, there is no waiver of set-off as between the two. There doesn't seem to be a scenario where two mines are purchased by the same party, but this is an important principled point for Glencore: they are waiving the right of cross-mine set off in this specific instance in relation to Trevali, but if someone buys two mines, Glencore is not agreeing it will never seek to set off between them in perpetuity.
2. Attornment is fine, but we clarified that it is just the settlement agreement. All other agreements retain their choice of law clause.

We also need an agreement to adjourn by tomorrow morning (while a settlement agreement is prepared). This can't drag any further.

Lance



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**From:** Williams, Lance

**Sent:** Tuesday, October 04, 2022 5:13 PM

**To:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>

**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

We're fine taking the Blakes suggested language for approval.

Peter – what is your timing for approval? Will you hear today?



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**From:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Sent:** Tuesday, October 04, 2022 4:49 PM  
**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

One clarification – and then I can also seek instructions.

The clarification relates to the newly drafted paragraph (copied below) and Caribou. At Caribou, the offtake agreements are with Trevali Mining Corp. and not the “Relevant Mine Owner” which is Trevali Mining (New Brunswick) Ltd. As such, I don’t think the revised language captures the intent of the parties as set out in the Original Language. I have suggested a change below.

#### Original Language:

Glencore will formally and irrevocably waive any claim to set off any payments to be made by Glencore in respect of a particular mine against any liabilities owing to Glencore in respect of a different mine, including specifically any claim to set off any Rosh Pinah payments against non-Rosh Pinah Trevali liabilities, (a) during the entire CCAA process and (b) for all time for any purchaser of Rosh Pinah (or another of Trevali’s mines).

#### Revised Language

In respect of each mine that is owned by a Trevali affiliate (each, the “Relevant Mine Owner”), Glencore will formally and irrevocably waive any rights or claims to apply set off between liabilities payable by Glencore to any particular Relevant Mine Owner on the one hand and any liabilities payable by any other Relevant Mine Owners to Glencore on the other hand (a) during the entire CCAA process and (b) for all time against any third party who may acquire a Relevant Mine Owner through a sales process..

#### Blakes Suggested Language

In respect of each mine that is owned by a Trevali affiliate (each, the “Relevant Mine Owner”), Glencore will formally and irrevocably waive any rights or claims to apply set off between liabilities payable by Glencore to any particular Relevant Mine Owner, or in respect of that particular mine, on the one hand and any liabilities payable by any other Relevant Mine

Owners, or in respect of that other particular mine, to Glencore on the other hand (a) during the entire CCAA process and (b) for all time against any third party who may acquire a Relevant Mine Owner through a sales process..

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**Sent:** Tuesday, October 4, 2022 3:50 PM  
**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

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I am seeking those instructions presently.

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**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
**Sent:** October-04-22 3:48 PM  
**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Confirming that these changes remain subject to our client's review. If everyone is fine with these/prepared to adjourn the application, I will seek instructions.



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**From:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
**Sent:** Tuesday, October 04, 2022 3:42 PM  
**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Updating Peter by attaching the recent changes proposed by Lance (comparison version) and the clean copy.

Peter – any further comments?

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**From:** Kibben Jackson  
**Sent:** October-04-22 2:28 PM  
**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Lance:

Further to our call showing proposed changes based on emails exchanged with Peter this morning and additional comments from the Agent. Clean version attached as well.

Note this does not include the rep issue re: current setoff claims at RP, which we agree would need to be incorporated in the final settlement agreement.

Call when you receive and we can walk through.

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**Sent:** October-04-22 1:35 PM  
**To:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Yes – I don't think that point is controversial – no global set-off.



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**Sent:** Tuesday, October 04, 2022 11:48 AM  
**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Williams, Lance <[williams@mccarthy.ca](mailto:williams@mccarthy.ca)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Lance,

I don't think this is controversial but can you please confirm that Glencore shares the view that the agreement confirms no global set off or as Kibben puts it in his email below "Yes, the discussions between Lance and I have always been that mine-on-mine setoff is permissible, but there is not inter-mine (global) setoff, not just with RP, but with any of the mines."

We have spoken with our client regarding the known claims/reconciliation payments under the RP off-take agreement and will get that to this group for review once we have it.

Thanks.

Peter

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**From:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
**Sent:** Tuesday, October 4, 2022 9:31 AM  
**To:** Williams, Lance <[williams@mccarthy.ca](mailto:williams@mccarthy.ca)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Stuart Brotman

<[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>

Cc: Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

Subject: RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

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Hi Peter.

Yes, the discussions between Lance and I have always been that mine-on-mine setoff is permissible, but there is not inter-mine (global) setoff, not just with RP, but with any of the mines.

You have Lance's response on the Caribou costs.

Lastly, in response to your question during our recent call: the concept (high level) is that "Net Proceeds" distills down to what the Lenders receive by way of distribution (undoubtedly pursuant to a court order). So "Realization Costs", practically, is anything that is payable in priority to the security of the Lenders and Glencore, including those items enumerated in paras. (a) through (d) in the summary prepared by Lance.

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**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>

**Sent:** October-04-22 9:00 AM

**To:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>

**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Peter,

I don't see a problem with the pickup being commercially reasonable cooperation, and confirming that it will be at Glencore's cost re. the trucking (which is what I understand is all that is required).

Lance



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**From:** Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Sent:** Tuesday, October 04, 2022 8:34 AM  
**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Without Prejudice,

Hi all – I have gone through the twenty or so (☺) email between you two over the past 14 hours. I have a call late this morning with our clients and will send this latest draft to them but we will not be able to get our comments back to you until later today.

Are both Glencore and the Agent comfortable that this agreement confirms there will be no “global” set-off between mines? I know it says that with respect to RP – but we should be clear that there will be no attempt to set off amounts owing in respect of Perkoa as against amounts owing by Glencore at Caribou. That is, preserving local set off (as has historically been the case) is ok but nothing beyond that. We obviously need to protect Carbiou as it is part of the SISP.

Lance – when we spoke yesterday (and I did not have instructions) I mentioned that any provision relating to Glencore wanting to take possession of offtake on the ground at Caribou will need to be done at the sole cost and expense of Glencore and if there is a cooperation provision it should track the commercially reasonable cooperation later in the document and make it clear that such cooperation is conditional on their being no cost to Trevali. We can't spend what little money there is in that entity for this and there is no DIP available.

The provision that permits the Lenders and Glencore to take positions or arguments should also apply to Trevali if you want Trevali to sign on.

In any event, our client will review this draft sent this morning and we will get back to you.

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From: Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
 Sent: Tuesday, October 4, 2022 7:22 AM  
 To: Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
 Cc: Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
 Subject: RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

External Email | Courriel électronique externe

Attached is a clean version with the updated chart attached.

I have asked Glencore what they show as owing at RP to ensure we're on the same page, but they won't be rep'ing in the agreement. This is a dynamic/ongoing relationship in a large organisation, so I have asked what our client shows as of now, but if something comes up in future that is set-offable under the terms of the off-take, Glencore isn't going to forego its right/somehow estop itself with a representation. This consistent with preserving the off-takes on their terms.



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From: Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
 Sent: Tuesday, October 04, 2022 6:23 AM  
 To: Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
 Cc: Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
 Subject: RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Lance – are you able to send a clean copy of the current draft of the settlement terms? I would like to get those over to the Agent and, as soon as possible thereafter, to the Lenders.

I do agree that it would be appropriate to have a rep from Glencore regarding any current setoff claim at RP included in the agreement (as noted in Stuart's email below). You can get us that info when available and we can include it in the settlement agreement.

Kibben Jackson\*

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**From:** Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>

**Sent:** October-04-22 6:09 AM

**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>

**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Lance, I'll leave it to the others to respond on the terms but can you confirm what Glencore's records show as presently available to set off against deliveries at RP (on a mutual basis and not under any theory of cross-entity set-off)? We don't need it to the penny and are not looking for an estimate of amounts that may accrue in future, just want to ensure that all are working off the same numbers.

Thanks.

Stuart Brotman\*, LLB, MBA

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\*practising through a professional corporation

**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>

**Sent:** October-04-22 12:56 AM

**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>

**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

If the below works, here is the cumulative blackline. Given the time, I have gone for instructions based on this – give me a call tomorrow AM if we need to sort through anything else.



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**From:** Williams, Lance  
**Sent:** Monday, October 03, 2022 9:19 PM  
**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

I'd rather keep it with the wording I proposed wording – if we add 'validly' into this, then it needs to track through every other clause. Something done invalidly isn't done under the agreement – and we'd get into a host of additions (taxes validly payable by Trevali, charges having priority to the Lenders' valid security, etc.)

If you're OK with that, I will go seek instructions now and ask that you do the same. I can send an updated redline, subject to A&M's chart.

Peter – are you able to get Trevali sign off tomorrow AM?



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**From:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
**Sent:** Monday, October 03, 2022 8:58 PM  
**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** Re: [EXT] Settlement [MT-MTDOCS.FID3712943]

I think that works but better yet “any setoffs validly asserted pursuant to the terms of the off take agreements”?

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**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
**Sent:** Monday, October 3, 2022 7:48:15 PM  
**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>

Cc: Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
 Subject: RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

We need confirmation that none of the Caribou and RP set-offs are being challenged – they are within the offtakes, but the Lenders and Trevali need to confirm they aren't challenging them.

The Lenders and Trevali will acknowledge that, aside from the waiver set forth above, Glencore continues to have rights of set-off under its respective off-take agreements in accordance with the terms thereof, that those rights are not stayed, they will not seek to stay them, and they will not challenge any set-offs to date or in the future thereunder (including, for certainty, all set-offs to date in relation to Caribou and Rosh Pinah will not be challenged). For the avoidance of doubt, Glencore (and its affiliates) shall have the right to set-off any amounts (other than debt subordinated under the inter-creditor agreement between, amongst others, the Lenders and Glencore) under the off-take agreements in accordance with the terms thereof and nothing in these settlement terms shall prejudice or limit the rights of Glencore (or its affiliates) under the provisions of the off-take agreements including the right to make, file and enforce any claim against a Trevali off-take counterparty, including for specific performance and/or monetary damages.



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From: Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>

Sent: Monday, October 03, 2022 7:40 PM

To: Williams, Lance <[williams@mccarthy.ca](mailto:williams@mccarthy.ca)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>

Cc: Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

Subject: RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

In the fourth para under "Other Terms", I think you need to address the issue of challenging setoffs. I think it's easiest to take it out, though I suppose it could say that they won't challenge any setoffs asserted in accordance with the terms of the offtake agreements (as cumbersome as it seems to keep refining this language).

Kibben Jackson\*

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\*Law Corporation

**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
**Sent:** October-03-22 7:37 PM  
**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Here is a blackline showing what we'll seek instructions on (in addition, a new illustrative chart that goes up to full payment of the lenders to come). I plan to send this later tonight, so let me know if anything changes.



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**Sent:** Monday, October 03, 2022 7:30 PM  
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**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

That was my understanding. I'm not sure that's a hare worth chasing.

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**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

It continues to have claims under the off take – there is a provisional payment, and then a reconciliation, so they shift continually with each shipment.



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**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Further question: does Glencore have any further claims against RP? If so, we are hoping that can be represented in the final settlement agreement.

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**Sent:** October-03-22 7:20 PM  
**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

It's not that clear. Would the addition of this work? This lines it up and confirms you're not adding any rights of set off – just Glencore has what it has under the offtake agreements:

*The Lenders and Trevali will acknowledge that, aside from the waiver set forth above, Glencore continues to have rights of set-off under its respective off-take agreements in accordance with the terms thereof*



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**From:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
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**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Thanks – we're down to one issue.

Here's the easy question: what does the ICA say? Does it acknowledge rights of setoff, or simply preserve whatever rights may exist under the offtake agreements? Whichever it is, it seems to me that this point should simply mirror the language in the ICA, no?

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**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Responses below (subject that I am taking everything back to our client for approval). Give me a call at the office if you want to discuss.



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**Sent:** Monday, October 03, 2022 6:57 PM  
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**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** RE: [EXT] Settlement [MT-MTDOCS.FID3712943]

Some additional comments:

1. Given that you have proposed to take out the language after the Illustrative Chart, it seems to me we should cut that chart off after full recovery by the Lenders – the rest does not concern them, as we discussed. Agreed? **That's fine. Can you ask them to send one**
2. We still need to get you the DIP term sheet, and will do so as soon as we have sign off.
3. Fourth paragraph under "Other Terms" – Should be that the Lenders and Trevali acknowledge that all rights of setoff that Glencore has under its off-take agreements are unaffected (aside from the waiver set forth above). I don't think we are saying there are rights, just that any rights are preserved (noting that setoff has already been permitted at RP, which should be the comfort your client needs). The not seek to stay (not challenge) is fair, provided the earlier language is updated. The point is that this is not an open season any right of setoff Glencore wants to assert at RP, just that any rights it has are unaffected. I actually think this is more consistent with the last sentence, which accurately reflects my understanding. Maybe we just leave that sentence in and take out the first part to make it simple? **I don't think this needs to be changed. Glencore has its rights of set-off under the oftakes (and the oftake agreements are acknowledged in the ICA) – no confirmation is being sought on what those rights are, just that they exist. I don't think it makes a big difference to remove it, but doing so will raise suspicion with our client that there is some challenge to the oftake terms.**
4. In the third to last paragraph, you have "... neither Glencore nor the Lenders will not assert in discussions..." I think the "not" comes out? **Agreed.**
5. Consistent with the last paragraph, that would apply to Glencore as well (i.e. all affiliates of Glencore). **I'll propose "The Glencore parties to this agreement will ensure that their affiliates abide by the terms herein" because we're not adding extra Glencore affiliates as signatories.**

I wonder if you could update in light of the above suggestions (noting we need a new Illustrative Chart from A&M).

Kibben Jackson\*  
 PARTNER  
 T. +1 604 631 4786 | F. +1 604 632 4786  
 \*Law Corporation

**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
**Sent:** October-03-22 3:49 PM  
**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>; Stuart Brotman <[sbrotman@fasken.com](mailto:sbrotman@fasken.com)>; Rubin, Peter <[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)>  
**Cc:** Finn, Forrest <[ffinn@mccarthy.ca](mailto:ffinn@mccarthy.ca)>; Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** [EXT] Settlement [MT-MTDOCS.FID3712943]  
**Importance:** High

*Without Prejudice*

Further to our discussions over the past couple of days, please find attached the combined settlement terms for review and approval. This includes the provisions circulated previously, and the amendment to Realization Costs included in my earlier email.

Can you please confirm:

- 1) That these are accepted by your respective clients (understanding for the banks that this remains subject to creditor committee approval, but has been signed off by the relevant representative pending that);
- 2) Everyone will use commercially reasonable efforts to memorialise these terms into a settlement agreement; and
- 3) Trevali will adjourn the application currently scheduled for October 11, 2022 either generally (to be brought back on with notice if the parties can't reach a settlement agreement) or to a date sufficiently in the future that we can get the settlement agreement completed (we can discuss an appropriate date, presumably with the input of scheduling).

Lance



**Lance Williams**  
Partner | Associé  
Bankruptcy and Restructuring | Faillite et restructuration  
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representation, we will make the best arrangements within our power to obtain time extensions and/or adjournments. We appreciate your understanding.

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> [Centre de ressources sur la COVID-19 pour les entreprises](#)

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This is **Exhibit "F"** referred to in **Affidavit #1** of **Susan Danielisz**, sworn before me at Vancouver, British Columbia, this 24<sup>th</sup> day of July, 2023.



---

A Commissioner for taking Affidavits  
for British Columbia

**Williams, L.**

---

**From:** Williams, Lance  
**Sent:** Friday, October 07, 2022 12:23 PM  
**To:** Kibben Jackson  
**Cc:** Stuart Brotman; Langdon, Christopher  
**Subject:** Settlement Agreement [MT-MTDOCS.FID3712943]  
**Attachments:** #45939733v4\_mccarthytetrault-mobility-ca.imate.manage.work\_ - Settlement Agreement - Trevali - Glencore.docx; Redline - Settlement Agreement - Trevali - Glencore-45939733-v1 and Settlement Agreement - Trevali - Glencore-45939733-v4.pdf

Kibben,

Our/Glencore's comments attached. Give me a call if you want to discuss.

Lance



**Lance Williams**  
Partner | Associé  
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[McCarthy / Glencore comments: October 7, 2022]

## SETTLEMENT AGREEMENT

**THIS SETTLEMENT AGREEMENT** (the “**Agreement**”) is effective as of the [ ] day of October 2022

AMONG:

THE BANK OF NOVA SCOTIA (the “**Agent**”) as agent for and on behalf of those parties enumerated in Schedule “A” hereto

(collectively, the “**Lenders**”)

AND:

GLENCORE INTERNATIONAL AG (“**Glencore International**”), GLENCORE AG (“**Glencore AG**”) and GLENCORE CANADA CORPORATION (“**Glencore Canada**”)

(collectively, “**Glencore**”)

AND:

TREVALI MINING CORPORATION

(“**Trevali**”)

**WHEREAS:**

- A. Trevali is a Canadian-based mining company, having wholly or majority-owned direct and indirect subsidiaries located in various jurisdictions as shown in the organization chart attached hereto as Schedule “B” (collectively, the “**Trevali Group**”).
- B. Trevali directly owns 100% of the issued and outstanding shares of ~~Tervali~~Trevali Mining (New Brunswick) Ltd. (“**Trevali NB**”), a company incorporated under the laws of New Brunswick, which owns the “Caribou Mine” located in New Brunswick, Canada. Operations at the Caribou Mine are presently suspended, but some amount of concentrate remains on the Caribou Mine site (the “**Caribou Concentrate**”).
- C. Trevali indirectly owns 90% of the issued and outstanding shares of Nantou Mining Burkina Faso S.A. (“**Nantou**”), a company incorporated under the laws of Burkina Faso, which owns the “Perkoa Mine” located in Burkina Faso. Operations at the Perkoa Mine were suspended due to a flood in April 2022.
- D. Trevali indirectly owns 90% of the issued and outstanding shares of Rosh Pinah Zinc Corporation (Pty) Ltd. (“**RPZC**” and, together with Trevali NB and Nantou, the “**Mine Owners**”), a company incorporated under the laws of Namibia, which owns the “Rosh Pinah Mine” (the Caribou Mine, the Perkoa Mine and the Rosh Pinah Mine are all collectively referred to herein as the “**Mines**”) located in Namibia. The Rosh Pinah Mine is a producing mine.

- E. Pursuant to a second amended and restated credit agreement dated August 6, 2020 among the Agent and Trevali (the “**Lenders Credit Agreement**”), the Agent made available to Trevali a revolving credit facility up to a maximum amount of USD \$150,000,000 (the “**Revolving Credit Facility**”). The Revolving Credit Facility is secured by way of security agreements executed by members of the Trevali Group in favour of the Agent (the “**RCF Security**”).
- F. Pursuant to a facility agreement dated August 6, 2020 among Glencore Canada and Trevali (the “**Glencore Credit Agreement**”), Glencore Canada made available to Trevali a non-revolving credit facility in the amount of USD \$20,000,000 (the “**Glencore Facility**”). The Glencore Facility is secured by way of security agreements executed by members of the Trevali Group in favour of Glencore Canada (the “**Glencore Security**”) and, together with the RCF Security, the “**Security**”).
- G. Glencore AG, Glencore Canada and Trevali are parties to the Caribou Off-Take Agreements (as defined herein).
- H. Glencore AG and Nantou are parties to the Perkoa Off-Take Agreements (as defined herein).
- I. Glencore International and RPZC are parties to the Rosh Pinah Off-Take Agreements (as defined herein).
- J. The Agent, Glencore Canada and Trevali, among others, are parties to an intercreditor agreement dated September 30, 2020 (the “**ICA**”) which, among other things, confirms ~~that the RCF Security ranks in priority to~~ of ~~the Glencore Security and the Agent agreed; in the context of an insolvency proceeding in any of the relevant jurisdictions, not to propose, seek, approve, consent to, vote in favour of or support any Insolvency Transaction (as defined in the ICA) which: (i) purports to eliminate, disclaim, terminate, repudiate, modify or otherwise adversely affect or impact any of the Off Take Agreement (as defined in the ICA) without the consent of Glencore Canada; or (ii) contests, challenges or brings into question the validity or enforceability~~ certain protections of the Off-Take Agreements (as defined ~~herein~~ in the ICA).
- K. On August 19, 2022 (the “**Filing Date**”), Trevali and Trevali NB (collectively, the “Applicants”) obtained protection from ~~its~~ their creditors under the provisions of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) by way of an order (the “**Initial Order**”) of the Supreme Court of British Columbia (the “**Court**”) made in Supreme Court of British Columbia Action No. S-226670 (the “**CCAA Proceedings**”). Pursuant to the Initial Order, FTI Consulting Canada Inc was appointed monitor of ~~Trevali~~ the Applicants (in such capacity, the “**Monitor**”).
- L. The other members of the Trevali Group are not applicants in the CCAA Proceedings. Nantou commenced liquidation under Namibian law on [REDACTED]
- M. ~~P~~ Pursuant to an order of the ~~Supreme Court of British Columbia (the “Court”)~~ made in the CCAA Proceedings on September 14, 2022, ~~Trevali~~ the Applicants initiated a sales and investment solicitation process (the “**SISP**”) to solicit proposals for either an

investment transaction or a sale of one or more of the Mines, Caribou Mine and Trevali was's direct or indirect interests in RPZC, and the Applicants were authorized to engage National Bank Financial Inc. ("NBF") as sales agent.

- N. ~~M.~~ As at the Filing Date, the Lenders were owed approximately USD \$88.8 million under the Revolving Credit Facility (the amount owing under the Revolving Credit Facility as at the Filing Date, plus interest thereon to the date of payment in accordance with the terms of the Lenders Credit Agreement is hereafter referred to as the "Pre-Filing RCF Indebtedness") and Glencore Canada was owed approximately USD \$[~~13.1 million~~] under the Glencore Facility (the amount owing under the Glencore Credit Facility as at the Filing Date, plus interest thereon to the date of payment in accordance with the terms of the Glencore Credit Agreement is hereafter referred to as the "Glencore Facility Indebtedness"). ~~{NTD: Does interest continue to accrue on those amounts?}~~
- O. ~~N.~~ As at the Filing Date, Glencore AG, Glencore Canada and Glencore International each had claims against Trevali, Nantou and RPZC arising under the Off-Take Agreements, and, since the Filing Date, additional potential claims have arisen against RPZC under the Rosh Pinah Off-Take Agreement. As regards the Rosh Pinah Off-Take Agreement, Glencore International's is only aware of existing claims ~~only that~~ arise in respect of deliveries made by RPZC to Glencore International during [June] 2022 or thereafter
- P. ~~O.~~ Glencore has ~~asserted an entitlement~~ declined to advise whether it will assert a right to set off amounts payable by it after the Filing Date under the Rosh Pinah Off-Take Agreement against amounts owed to it by Trevali, Trevali NB and Nantou, including under ~~the Glencore Facility and~~ the ~~Rosh Pinah~~ Caribou and Perkoa Off-Take Agreements (such set-off is hereafter referred to as "Multilateral Setoff").
- Q. ~~P. Trevali has~~ The Applicants have requested that the Lenders provide interim financing ~~in the context of~~ the CCAA Proceedings in order to fund, among other things, the continuation of mining activities at the Rosh Pinah Mine during the pendency of the CCAA Proceedings and professional costs associated with the CCAA Proceedings, including the SISP, and the Lenders have agreed to provide an interim financing facility (the "Interim Financing Facility") on the terms set out in the [ ] dated [ ] (the "Interim Lending Facility Term Sheet"), a copy of which is attached hereto as Schedule "C", including on the condition that Glencore's ~~assertion of a potential~~ entitlement to effect Multilateral Setoff be resolved in a manner acceptable to the Lenders.
- R. ~~Q.~~ The parties to this Agreement (collectively, the "Parties") wish to facilitate the provision of funding for ~~Trevali~~ the Applicants by the Lenders under the Interim Lending Facility Term Sheet and ~~resolve their concerns regarding, among other things,~~ address Glencore's potential claim of Multilateral Setoff and confirm their agreements relating to the existing set-offs and the preservation of the Off-Take Agreements and any rights of setoff thereunder, all on the terms set out in this Agreement.

**NOW THEREFORE** in consideration of the mutual promises and covenants and agreements in this Agreement and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree with each other as follows:

1. In this Agreement, the following terms have the following definitions:
  - (a) **“Caribou Off-Take Agreements”** means: (i) for zinc concentrates, Contract No. 062-13-27000-P dated October 15, 2012 between Trevali and Glencore AG, as amended; and (ii) for lead concentrates, Contract No. 180-13-30423-P dated March 17, 2020 between Trevali, Glencore AG and Glencore Canada, as amended, as assigned from Contract No. 180-13-27002-P dated October 15, 2012 between Trevali and Glencore AG, as amended;
  - (b) **“Gross Proceeds”** means any proceeds, in its broadest sense, realized by any member of the Trevali Group that are subject to the Security, including without limitation Trevali’s direct or indirect interest in RPZC and the Rosh Pinah Mine, insurance proceeds claimed by Trevali in respect of an insurance claim made in respect of the flood at the Perkoa Mine, amounts receivable from Cerro De Pasco Resources Inc. or ~~realised~~realized from the sale or realization of any other assets;
  - (c) **“Interim Financing Facility”** means the financing facility to be provided by the Lenders under the Interim Financing Facility Term Sheet;
  - (d) **“Net Proceeds”** means Net Proceeds Available for Distribution less the Outstanding Interim Facility Balance;
  - (e) **“Net Proceeds Available for Distribution”** means Gross Proceeds less Realization Costs;
  - (f) **“Off-Take Agreements”** means the Caribou Off-Take Agreements, the Perkoa Off-Take Agreements and the Rosh Pinah Off-Take Agreements;
  - (g) **“Outstanding Interim Facility Balance”** means the amount outstanding under the Interim Financing Facility, including principal, interest, fees and costs; and, for greater certainty: (i) the Outstanding Interim Facility Balance shall not directly or indirectly include any pre-filing obligations of ~~Trevali~~the Applicants to the Lenders; and (ii) there shall be no direct or indirect recovery to the Lenders under the Interim Financing Facility Term Sheet other than the principal to be advanced as part of the Interim Financing Facility, interest thereon, fees and costs, all as expressly contemplated under the Interim Financing Facility Term Sheet;
  - (h) **“Party”** means a party to this Agreement;
  - (i) ~~(h)~~ **“Perkoa Off-Take Agreements”** means; (i) for zinc concentrates, Contract No. 062-10-12611-P dated June 30, 2010 between Nantou and Glencore International, as amended; and (ii) for lead concentrates, Contract No. 180-11-11996-P dated March 22, 2011 between Nantou and Glencore International, as amended;



- (j) ~~(i)~~ **“Realization Costs”** means any costs determined by the Court or required by law to be paid from the Gross Proceeds in priority to the Security, including the following, to the extent the same have not been paid from the Interim Financing Facility and are paid from the Gross Proceeds (without duplication or double counting):
- (i) professional fees, including without limitation any success fee payable to NBF, fees of the Monitor, the Monitor’s legal counsel, independent legal counsel to Trevali’s board of directors, the ~~Lender~~Lenders’s legal counsel and financial advisors, and any other fees that are secured by a Court-ordered charge ranking in priority to the Security, all subject to Court approval (where applicable);
  - (ii) reasonable provision for the wind-down of Trevali and additional realization costs after repayment of the Interim Financing Facility, subject to Court approval;
  - (iii) any taxes payable by Trevali on the sale of Trevali’s direct or indirect interest in RPZC or the Rosh Pinah Mine which have priority over the Security; and
  - (iv) amounts secured under any other Court-approved priority charges having priority to the Security in the context of the CCAA Proceedings, to the maximum amount of such charge,

and, for greater certainty, Realization Costs do not include any direct or indirect recovery by the Lenders or any payments to or on account of any indebtedness owing by Trevali to the Lenders, other than the recovery of fees contemplated by sub-paragraph ~~(aj)~~, above.

- (k) ~~(j)~~ **“Rosh Pinah Off-Take Agreements”** means: (i) for zinc concentrates, Contract No. 062-12-12076-P dated July 3, 2012 between RPZC and Glencore International, as amended; and (ii) for lead concentrates, Contract No. 180-13-11417-P dated January 1, 2013 between RPZC and Glencore International, as amended.

2. The ~~parties hereto~~Parties acknowledge and agree that the above recitals to this Agreement are incorporated into and form an integral part of this Agreement ~~and each of the Parties represents to the others that, to their knowledge, the recitals are true and accurate in every respect.~~
3. This Agreement and the Parties’ obligations hereunder are conditional upon the granting of one or more orders of the Court in the CCAA Proceedings approving and authorizing ~~Trevali~~the Applicants to enter into: (i) this Agreement; and (ii) the Interim Financing Facility Term Sheet and to borrow funds under the Interim Financing Facility.
4. At such time as Trevali, or such other party on Trevali’s behalf, is authorized to pay the Net Proceeds Available for Distribution to the Agent, the Agent and Glencore hereby


irrevocably authorize and direct Trevali, or such other party on Trevali's behalf, to immediately pay out the Net Proceeds Available for Distribution to the Agent, for the Agent to immediately apply the Net Proceeds Available for Distribution to pay the Outstanding Interim Facility Balance to the Lenders, and to thereafter apply the Net Proceeds on the following terms:

- (a) up to the first USD\$1,000,000 shall be paid to or as directed by Glencore;
- (b) up to the next USD\$28,000,000 shall be paid to the Agent;
- (c) up to the next USD\$1,000,000 shall be paid to or as directed by Glencore; and
- (d) ~~of the balance, up to the amount of the RCF Indebtedness at the time of payment plus \$3 million~~ Net Proceeds in excess of USD\$30,000,000 shall be paid 98% to the Lenders and 2% to Glencore and 98% to the Agent until such time, or as directed by Glencore ~~has been paid a total of \$3,000,000, after which 100% shall be paid to the Agent.~~ provided that Glencore's share of Net Proceeds shall not exceed USD\$3,000,000 until the RCF Indebtedness is repaid in full, and thereafter any remaining Net Proceeds shall be applied in accordance with the priorities in relation thereto in accordance with the ICA and Security.

For illustrative purposes, the foregoing is summarized in the chart attached hereto as Schedule "D".

5. Glencore hereby approves the Interim Financing Facility Term Sheet and shall not oppose any application by Trevali for approval of such term sheet, or of the Interim Financing Facility, in the CCAA Proceedings.
6. Glencore hereby formally and irrevocably waives any right or claim ~~to Multilateral Setoff, including, for clarity, any rights or claims~~ to apply set off in respect of: (i) any obligations of Glencore Canada, Glencore AG or Glencore International to any particular Mine Owner, or in respect of any particular Mine, on the one hand; against (ii) any obligations to Glencore of any other Mine Owner, or in respect of any other Mine, on the other hand. Such waiver shall remain effective during the pendency of the CCAA Proceedings and in perpetuity in relation to any Mine Owner acquired by a third party through the SISF. Such waiver shall not, however, apply as between any Glencore entity and any two or more Mine Owners or Mines that are acquired by the same third party (the "Acquiror"), either directly or indirectly, in relation to liabilities incurred by the Mine Owner after the completion of any such acquisition transaction(s). For greater certainty, following the sale of a Mine Owner or Mine, the waiver acts solely to prevent Glencore from asserting any right or claim to Multilateral Setoff in relation to liabilities incurred prior to the completion of any such acquisition transaction(s), and does not otherwise alter commercial relationships as among Glencore and the Acquiror in the future.
7. The Lenders and the Trevali Group hereby acknowledge and agree that, aside from the waiver set forth above, Glencore continues to have rights of set-off under the Off-Take ~~agreements~~ Agreements in accordance with the terms thereof, that such rights are not stayed, that neither the Lenders nor the Trevali Group will seek to stay such rights and

- that neither the Lenders nor the Trevali Group will challenge any set-offs effected by Glencore to date or in the future in accordance with the terms of the Off-Take Agreements (including, for certainty, all set-offs effected to date in relation to the Caribou Off-Take Agreements and the Rosh Pinah Off-Take Agreements). For the avoidance of doubt, Glencore shall have the continuing right to set off any amounts (other than the Glencore Indebtedness (as defined in the ICA)) under the Off-Take Agreements in accordance with the terms thereof, and nothing in this Agreement shall prejudice or limit the rights of Glencore under the provisions of the Off-Take Agreements, including the right to make, file and enforce any claim against any of the Mine Owners, including for specific performance and/or monetary damages.
8. Neither the Lenders nor the Trevali Group will contest, challenge or bring into question the validity or enforceability of any of the Off-Take Agreements.
  9. Neither the Lenders nor the Trevali Group will, directly or indirectly, propose, seek, approve, consent to, vote in favour of or support (including with any court or any monitor or other court officer appointed in any insolvency proceeding) any transaction that seeks or purports to eliminate, disclaim, terminate, repudiate, modify or otherwise adversely affect or impact any of the Off-Take Agreements (including the sale of the assets of a Mine free of the relevant Off-Take Agreement) without the express written consent of Glencore.
  10. The Lenders and ~~Trevali~~the Applicants agree that Glencore can pick up the Caribou Concentrate, and that the amount payable by Glencore for same will be paid by way of set-off against the amount owing by Trevali to Glencore, under the Caribou Off-Take Agreement. Trevali will provide commercially reasonable cooperation to facilitate the transfer and sale of the Caribou Concentrate to Glencore. All costs associated with any such pickup, transfer and sale will be paid by Glencore, including any pre-approved third-party costs incurred by Trevali, which shall be paid in cash by Glencore. For clarity, to the extent that such costs are to be borne by Trevali under the Caribou Off-Take Agreement and are paid by Glencore, such costs may be included in the amount set off by Glencore under the Caribou Off-Take Agreement.
  11. The Parties agree to conduct themselves in a commercially reasonable manner in accordance with the agreements among them, including this Agreement, and Glencore and the Lenders will ~~Provide~~provide commercially reasonable cooperation and assistance in connection with the SISP if requested, including in any discussions with potential bidders. Among other things, neither Glencore nor the Lenders will as part of any such discussions assert any rights or entitlements in relation to Trevali's assets or business which are not expressly contemplated by their agreements either with one or more members of the Trevali Group or with one another. Nothing herein prevents the Lenders or Glencore from taking positions or making arguments in their interests, provided such positions are consistent with the terms of their agreements either with one or more members of the Trevali Group or with one another (including this Agreement).
  12. This Agreement, and the Parties' rights and obligations, shall terminate: (i) in accordance with the further written agreement of all of the Parties; or (ii) upon the termination of the

- SISP in relation to the sale of Trevali's interest in the Rosh Pinah Mine in accordance with the terms of the SISP, and more particularly paragraph 46 thereof. Upon such termination, all existing agreements, including the ICA and the Off-Takes shall continue, unamended by this Agreement.
13. The Lenders ~~and~~, Glencore and the Trevali Group agree that the ICA remains binding, effective and unmodified, except as expressly contemplated by this Agreement. In the event of a conflict between the terms of the ICA and the terms of this Agreement, this Agreement shall govern.
  14. Trevali covenants and agrees that it shall cause all other members of the Trevali Group  to abide by the terms of this Agreement. Glencore covenants and agrees that it shall cause all of its affiliates to abide by the terms of this agreement.
  15. The Parties each represent and declare that they have read and understood this Agreement, have consulted with and been advised by their legal counsel before signing this Agreement, that they hereby execute this Agreement as the free and willing act of such Party, and that any signatory on behalf of any of a Party has full authority to execute this Agreement.
  16. Time is of the essence of this Agreement.
  17. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada, as applicable. Any dispute arising out of this Agreement, including the enforcement of this Agreement, shall be determined by the Court in the CCAA Proceeding, and the Parties hereby attorn to the exclusive jurisdiction of the courts of the Province of British Columbia, sitting in Vancouver. Nothing in this Agreement will alter the choice of law or attornment provisions of any other agreement among any of the Parties, including without limitation, the Off-Take Agreements.
  18. This Agreement shall be binding upon and enure to the benefit of each of the Parties ~~hereto~~, their respective administrators, successors and assigns and the Parties agree for themselves, and their respective administrators, successors and assigns to execute any instruments and to perform any acts which may be necessary or proper to carry out the purposes of this Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK

19. This Agreement may be executed by the Parties in counterparts with the same effect as if each of the Parties had signed the same document and all such counterparts, taken together, shall constitute one and the same agreement. This Agreement may be executed and delivered by email or other means of electronic communication with the same effect as if the Parties had executed and delivered original documents.

IN WITNESS WHEREOF the Parties have executed this Agreement effective as of the [ ] day of October 2022.

**THE BANK OF NOVA SCOTIA as agent  
for and on behalf of the Lenders**

**GLENCORE INTERNATIONAL AG**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**GLENCORE AG**

**GLENCORE CANADA CORPORATION**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**TREVALI MINING CORPORATION**

Per: \_\_\_\_\_  
Authorized Signatory



**SCHEDULE "A"****LENDERS**

- The Bank of Nova Scotia
- HSBC Bank Canada
- Société Générale
- Bank of Montreal
- The Toronto-Dominion Bank
- National Bank of Canada
- ING Capital LLC

**SCHEDULE "B"**  
**TREVALI ORGANIZATION CHART**

**SCHEDULE "C"**  
**INTERIM LENDING FACILITY TERM SHEET**



**SCHEDULE "D"**  
**ILLUSTRATIVE CHART**

Net Proceeds	Glencore Share	Recovery on RCF
\$ 1.0	\$ 10	\$ -
10.0	10	9.0
29.0	10	28.0
30.0	20	28.0
40.0	22	37.8
50.0	24	47.6
60.0	26	57.4
70.0	28	67.2
80.0	30	77.0
91.8	30	88.8

Document comparison by Workshare Compare on Friday, October 07, 2022  
12:20:52 PM

Input:	
Document 1 ID	iManage://mccarthytravail-mobility-ca.imatech.com/mtdocs/45939733/1
Description	#45939733v1<mccarthytravail-mobility-ca.imatech.com> - Settlement Agreement - Trevali - Glencore
Document 2 ID	iManage://mccarthytravail-mobility-ca.imatech.com/mtdocs/45939733/4
Description	#45939733v4<mccarthytravail-mobility-ca.imatech.com> - Settlement Agreement - Trevali - Glencore
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	82
Deletions	51
Moved from	0
Moved to	0
Style changes	0
Format changes	0

Total changes	133
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This is **Exhibit "G"** referred to in **Affidavit #1** of **Susan Danielisz**, sworn before me at Vancouver, British Columbia, this 24<sup>th</sup> day of July, 2023.



---

A Commissioner for taking Affidavits  
for British Columbia

**Williams, Lance**

---

**From:** Kibben Jackson <kjackson@fasken.com>  
**Sent:** Friday, October 07, 2022 1:31 PM  
**To:** Williams, Lance  
**Cc:** Stuart Brotman; Langdon, Christopher  
**Subject:** RE: [EXT] Settlement Agreement [MT-MTDOCS.FID3712943]  
**Attachments:** Re: [EXT] Trevali Settlement Agreement; 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore.DOCX; 119390434\_v(1)\_Comparison - Glencore SA - GC to v.3.DOCX

Thanks Lance.

See amended draft, which incorporates all comments from all stakeholders and the Monitor, along with a comparison to the draft you sent over. I think that should be sufficient to show you what your client will be concerned with.

One comment: Recital O – I don't believe Trevali NB is a party to any off-take agreements (see attached email).

Let me know if any further comments.

**Kibben Jackson\***

PARTNER

T. +1 604 631 4786 | F. +1 604 632 4786

\*Law Corporation

**From:** Williams, Lance <lwilliams@mccarthy.ca>  
**Sent:** October-07-22 12:23 PM  
**To:** Kibben Jackson <kjackson@fasken.com>  
**Cc:** Stuart Brotman <sbrotman@fasken.com>; Langdon, Christopher <CLANGDON@mccarthy.ca>  
**Subject:** [EXT] Settlement Agreement [MT-MTDOCS.FID3712943]

Kibben,

Our/Glencore's comments attached. Give me a call if you want to discuss.

Lance

 **Lance Williams**  
 Partner | Associé  
 Bankruptcy and Restructuring | Faillite et restructuration  
 T. 604 643 7154  
 C. 778-928 9758  
 E. [williams@mccarthy.ca](mailto:williams@mccarthy.ca)  
**McCarthy Tétrault LLP**  
 Suite 2400  
 745 Thurlow Street  
 Vancouver BC V6E 0C5

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Please do not visit our offices without an appointment in advance; and please excuse us if we do not shake your hand. In the event the risk of COVID-19 increases and affects our ability to provide legal services or representation, we will make the best arrangements within our power to obtain time extensions and/or adjournments. We appreciate your understanding.

> [COVID-19 Resource Centre for Businesses](#)

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*Fasken dispose d'un plan de gestion de la situation en lien avec la COVID-19. Notre priorité est de maintenir un milieu de travail sécuritaire, d'encourager la distanciation sociale et d'assurer la protection des renseignements personnels et de la confidentialité au nom des personnes pour lesquelles nous travaillons. Nous avons réduit le nombre de visites nécessaires à nos bureaux et réduit au strict minimum les réunions en personne. Nous avons amélioré les communications numériques par téléphone, par vidéoconférence, par courrier électronique sécurisé, par l'intermédiaire de Fasken Plus, etc.*

*Nous vous prions de ne pas vous présenter au bureau sans rendez-vous et veuillez nous excuser d'avance si nous ne vous serrons pas la main. Si le risque de propagation du virus COVID-19 augmente et atteint notre capacité à fournir des services juridiques ou de représenter nos clients, nous ferons tout en notre pouvoir pour prendre les meilleures dispositions afin d'obtenir des reports et ou des ajournements. Nous vous remercions pour votre compréhension.*

> [Centre de ressources sur la COVID-19 pour les entreprises](#)

## SETTLEMENT AGREEMENT

**THIS SETTLEMENT AGREEMENT** (the “**Agreement**”) is effective as of the [ ] day of October 2022

AMONG:

THE BANK OF NOVA SCOTIA (the “**Agent**”) as agent for and on behalf of those parties enumerated in Schedule “A” hereto

(collectively, the “**Lenders**”)

AND:

GLENCORE INTERNATIONAL AG (“**Glencore International**”), GLENCORE AG (“**Glencore AG**”) and GLENCORE CANADA CORPORATION (“**Glencore Canada**”)

(collectively, “**Glencore**”)

AND:

TREVALI MINING CORPORATION (“**Trevali Corp.**”), GUINEA FOWL INVESTMENTS FIFTY EIGHT (PROPRIETARY) LIMITED, ALOE INVESTMENTS TWO HUNDRED AND SIXTY SEVEN (PROPRIETARY) LIMITED, TREVALI MINING (NEW BRUNSWICK) LTD. (“**Trevali NB**”), TREVALI PERU (S.A.C.), GLCR LIMITED, TREVALI HOLDINGS (BERMUDA) LTD., BOUNDARY VENTURES LIMITED, WILRU INVESTMENTS ONE HUNDRED AND THIRTY FOUR (PROPRIETARY) LIMITED, ROSH PINAH BASE METALS (PROPRIETARY) LIMITED and ROSH PINAH HOLDINGS (PROPRIETARY) LIMITED

(“**Trevali**”)

(collectively, the “**Trevali Group**”)

**WHEREAS:**

- A. Trevali Corp. is a Canadian-based mining company, having wholly or majority-owned direct and indirect subsidiaries located in various jurisdictions ~~as shown in the organization chart attached hereto as Schedule “B”~~ (collectively, the “**Trevali Group**”).
- B. Trevali Corp. directly owns 100% of the issued and outstanding shares of Trevali Mining (New Brunswick) Ltd. (“**Trevali NB**”), a company incorporated under the laws of New Brunswick, which owns the “Caribou Mine” located in New Brunswick, Canada. Operations at the Caribou Mine are presently suspended, but some amount of concentrate remains on the Caribou Mine site (the “**Caribou Concentrate**”).

- C. Trevali Corp. indirectly owns 90% of the issued and outstanding shares of Nantou Mining Burkina Faso S.A. (“**Nantou**”), a company incorporated under the laws of Burkina Faso, which owns the “Perkoa Mine” located in Burkina Faso. Operations at the Perkoa Mine were suspended due to a flood in April 2022 and on October 5, 2022, Nantou submitted an application for judicial liquidation to the Burkina Faso Judicial Tribunal of Commerce.
- D. Trevali Corp. indirectly owns 90% of the issued and outstanding shares of Rosh Pinah Zinc Corporation (Pty) Ltd. (“**RPZC**” and, together with Trevali NB and Nantou, the “**Mine Owners**”), a company incorporated under the laws of Namibia, which owns the “Rosh Pinah Mine” (the Caribou Mine, the Perkoa Mine and the Rosh Pinah Mine are all collectively referred to herein as the “**Mines**”) located in Namibia. The Rosh Pinah Mine is a producing mine.
- E. Pursuant to a second amended and restated credit agreement dated August 6, 2020 among the Agent and Trevali Corp. (the “**Lenders Credit Agreement**”), the Agent made available to Trevali Corp. a revolving credit facility up to a maximum amount of USD \$150,000,000 (the “**Revolving Credit Facility**”). The Revolving Credit Facility is secured by way of guarantees and security agreements executed by ~~members of~~ the Trevali Group in favour of the Agent (the “**RCF Security**”).
- F. Pursuant to a facility agreement dated August 6, 2020 among Glencore Canada and Trevali Corp. (the “**Glencore Credit Agreement**”), Glencore Canada made available to Trevali Corp. a non-revolving credit facility in the amount of USD \$20,000,000 (the “**Glencore Facility**”). The Glencore Facility is secured by way of guarantees and security agreements executed by ~~members of~~ the Trevali Group in favour of Glencore Canada (the “**Glencore Security**” and, together with the RCF Security, the “**Security**”).
- G. Glencore AG, Glencore Canada and Trevali Corp. are parties to the Caribou Off-Take Agreements (as defined herein).
- H. Glencore AG and Nantou are parties to the Perkoa Off-Take Agreements (as defined herein).
- I. Glencore International and RPZC are parties to the Rosh Pinah Off-Take Agreements (as defined herein).
- J. The Agent, Glencore Canada and the Trevali, ~~among others,~~ Group are parties to an intercreditor agreement dated September 30, 2020 (the “**ICA**”) which, among other things, confirms the relative priority of the Security and certain protections of the Off-Take Agreements (as defined in the ICA).
- K. On August 19, 2022 (the “**Filing Date**”), Trevali Corp. and Trevali NB (collectively, the “**Applicants**”) obtained protection from their creditors under the provisions of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) by way of an order (the “**Initial Order**”) of the Supreme Court of British Columbia (the “**Court**”) made in Supreme Court of British Columbia Action No. S-226670 (the “**CCAA Proceedings**”). Pursuant to the Initial Order, FTI Consulting Canada Inc was appointed



monitor of the Applicants (in such capacity, the “**Monitor**”). The other members of the Trevali Group are not applicants in the CCAA Proceedings.

~~L. The other members of the Trevali Group are not applicants in the CCAA Proceedings. Nantou commenced liquidation under Namibian law on [REDACTED].~~

M.L. Pursuant to an order of the Court made in the CCAA Proceedings on September 14, 2022, the Applicants initiated a sales and investment solicitation process (the “**SISP**”) to solicit proposals for either an investment transaction or a sale of one or ~~more~~both of the Caribou Mine and ~~Trevali’s~~Trevali Corp.’s direct or indirect ~~interests~~interest in RPZC or the Rosh Pinah Mine, and the Applicants were authorized to engage National Bank Financial Inc. (“**NBF**”) as sales agent.

N.M. As at the Filing Date, the Lenders were owed approximately USD \$88.8 million under the Revolving Credit Facility (the amount owing under the Revolving Credit Facility as at the Filing Date, plus interest thereon to the date of payment in accordance with the terms of the Lenders Credit Agreement is hereafter referred to as the “**Pre-Filing RCF Indebtedness**”) and Glencore Canada was owed approximately USD ~~13.1 million~~ [REDACTED] under the Glencore Facility (the amount owing under the Glencore Credit Facility as at the Filing Date, plus interest thereon to the date of payment in accordance with the terms of the Glencore Credit Agreement is hereafter referred to as the “**Glencore Facility Indebtedness**”). [NTD: Trevali to confirm debt numbers against their accounting.]

~~Q.N.~~ As at the Filing Date, Glencore AG, ~~Glencore Canada~~ and Glencore International each had claims against Trevali, Corp., Nantou and RPZC arising under the Off-Take Agreements, and, since the Filing Date, additional potential claims have arisen against RPZC under the Rosh Pinah Off-Take Agreement. As regards the Rosh Pinah Off-Take Agreement, Glencore International is only aware of existing claims that arise in respect of deliveries made by RPZC to Glencore International during [June] 2022 or thereafter [REDACTED] Agreements.

~~P.O.~~ Glencore ~~has~~ declined to advise whether it will assert a right to set off amounts payable by it after the Filing Date under the Rosh Pinah Off-Take Agreement against amounts owed to it by Trevali, Trevali NB Corp. and Nantou, including under [REDACTED] the Caribou and Perkoa Off-Take Agreements (such set off is hereafter referred to as “Multilateral Setoff”).

Q.P. The Applicants have requested that the Lenders provide interim financing in the context of the CCAA Proceedings in order to fund, among other things, the continuation of mining activities at the Rosh Pinah Mine during the pendency of the CCAA Proceedings and professional costs associated with the CCAA Proceedings, including the SISP, and the Lenders have agreed to provide an interim financing facilitytranche (the “**Interim Financing Facility**”) by way of an amendment to the Lenders Credit Agreement on the terms set out in the [REDACTED] Indicative Term Sheet dated [REDACTED] October [REDACTED], 2022 (the “**Interim**”).

~~Lending Facility Financing~~ Term Sheet”), a copy of which is attached hereto as Schedule “~~CB~~”, including on the condition that Glencore’s ~~potential assertion of an~~ entitlement to effect Multilateral Setoff (~~as defined herein~~) be resolved in a manner acceptable to the Lenders ~~in their sole discretion~~.

R.Q. The parties to this Agreement (collectively, the “Parties”) wish to facilitate the provision of funding for the Applicants by the Lenders under the Interim ~~Lending Facility Financing~~ Term Sheet and, among other things, address Glencore’s potential claim of Multilateral Setoff and confirm their agreements relating to the ~~existing set offs and the~~ preservation of the Off-Take Agreements and any rights of setoff thereunder, all on the terms set out in this Agreement.

**NOW THEREFORE** in consideration of the mutual promises and covenants and agreements in this Agreement and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree with each other as follows:

1. In this Agreement, the following terms have the following definitions:
  - (a) “**Caribou Off-Take Agreements**” means: (i) for zinc concentrates, Contract No. 062-13-27000-P dated October 15, 2012 between Trevali Corp. and Glencore AG, as amended; and (ii) for lead concentrates, Contract No. 180-13-30423-P dated March 17, 2020 between Trevali, Corp., Glencore AG and Glencore Canada, as amended, as assigned from Contract No. 180-13-27002-P dated October 15, 2012 between Trevali Corp. and Glencore AG, as amended;
  - (b) “**Gross Proceeds**” means any proceeds, in its broadest sense, realized by any member of the Trevali Group that are subject to the Security, including without limitation ~~Trevali’s~~ Trevali Corp.’s direct or indirect interest in RPZC and the Rosh Pinah Mine, insurance proceeds claimed by Trevali Corp. in respect of an insurance claim made in respect of the flood at the Perkoa Mine, amounts receivable from Cerro De Pasco Resources Inc. or realized from the sale or realization of any other assets;
  - ~~(c) “**Interim Financing Facility**” means the financing facility to be provided by the Lenders under the Interim Financing Facility Term Sheet;~~
  - ~~(d)~~(c) “**Net Proceeds**” means Net Proceeds Available for Distribution less the Outstanding Interim ~~Facility Financing~~ Balance;
  - ~~(e)~~(d) “**Net Proceeds Available for Distribution**” means Gross Proceeds less Realization Costs;
  - ~~(f)~~(e) “**Off-Take Agreements**” means the Caribou Off-Take Agreements, the Perkoa Off-Take Agreements and the Rosh Pinah Off-Take Agreements;
  - ~~(g)~~(f) “**Outstanding Interim ~~Facility Financing~~ Balance**” means the amount outstanding ~~under the amount of~~ Interim Financing ~~Facility~~, including principal, interest, fees and costs; and, for greater certainty: (i) the Outstanding Interim

Facility Financing Balance shall not directly or indirectly include any pre-filing obligations of the Applicants to the Lenders; and (ii) there shall be no direct or indirect recovery to the Lenders under the Interim Financing Facility Term Sheet other than the principal to be advanced as part of the Interim Financing Facility, interest thereon, fees and costs, all as expressly contemplated under the Interim Financing Facility Term Sheet;

~~(+)~~(g) **“Party”** means a party to this Agreement;

~~(+)~~(h) **“Perkoa Off-Take Agreements”** means; (i) for zinc concentrates, Contract No. 062-10-12611-P dated June 30, 2010 between Nantou and Glencore International, as amended; and (ii) for lead concentrates, Contract No. 180-11-11996-P dated March 22, 2011 between Nantou and Glencore International, as amended;

~~(+)~~(i) **“Realization Costs”** means any costs determined by the Court or required by law to be paid from the Gross Proceeds in priority to the Security, including the following, to the extent the same have not been paid from the Interim Financing Facility and are paid from the Gross Proceeds (without duplication or double counting):

- (i) professional fees, including without limitation any success fee payable to NBF, fees of Trevali Corp.’s legal counsel, the Monitor, the Monitor’s legal counsel, independent legal counsel to ~~Trevali’s~~Trevali Corp.’s board of directors, the Lenders’ legal counsel and financial advisors, and any other fees that are secured by a Court-ordered charge ranking in priority to the Security, all subject to Court approval (where applicable);
- (ii) reasonable provision for the wind-down of Trevali Corp. and additional realization costs after repayment of the Interim Financing Facility, subject to Court approval;
- (iii) any taxes payable by Trevali Corp. on the sale of ~~Trevali’s~~Trevali Corp.’s direct or indirect interest in RPZC or the Rosh Pinah Mine which have priority over the Security; and
- (iv) amounts secured under any other Court-approved priority charges having priority to the Security in the context of the CCAA Proceedings, to the maximum amount of such charge,

and, for greater certainty, Realization Costs do not include any direct or indirect recovery by the Lenders or any payments to or on account of any pre-filing indebtedness owing by Trevali Corp. to the Lenders, other than the recovery of fees contemplated by sub-paragraph (i), above; and

~~(\*)~~(j) **“Rosh Pinah Off-Take Agreements”** means: (i) for zinc concentrates, Contract No. 062-12-12076-P dated July 3, 2012 between RPZC and Glencore International, as amended; and (ii) for lead concentrates, Contract No. 180-13-

11417-P dated January 1, 2013 between RPZC and Glencore International, as amended.

2. The Parties acknowledge and agree that the above recitals to this Agreement are incorporated into and form an integral part of this Agreement.

R. Glencore hereby represents to the Agent and the Trevali Group that, as regards the Rosh Pinah Off-Take Agreement, Glencore International is only aware of existing claims that arise in respect of deliveries made by RPZC to Glencore International during June 2022 or thereafter. [NTD: Glencore to confirm date.]

3. This Agreement and the Parties' obligations hereunder are conditional upon the granting of one or more orders of the Court in the CCAA Proceedings approving and authorizing the Applicants to enter into: (i) this Agreement; and (ii) the Interim Financing ~~Facility~~ Term Sheet and to borrow funds under the Interim Financing ~~Facility~~.

4. At such time as Trevali, Corp., or such other party on ~~Trevali's~~ Trevali Corp.'s behalf, is authorized to pay the Net Proceeds Available for Distribution to the Agent, the Agent and Glencore hereby irrevocably authorize and direct Trevali, Corp., or such other party on ~~Trevali's~~ Trevali Corp.'s behalf, to immediately pay out the Net Proceeds Available for Distribution to the Agent, for the Agent to immediately apply the Net Proceeds Available for Distribution to pay the Outstanding Interim ~~Facility~~ Financing Balance to the Lenders, and to thereafter apply the Net Proceeds on the following terms:

- (a) up to the first USD \$1,000,000 shall be paid to ~~or as directed by~~ Glencore;
- (b) up to the next USD \$28,000,000 shall be paid to the Agent;
- (c) up to the next USD \$1,000,000 shall be paid to ~~or as directed by~~ Glencore; and
- (d) Net Proceeds in excess of USD \$30,000,000 shall be paid 98% to the Lenders and 2% to Glencore, or as directed by Glencore, provided that Glencore's share of the Net Proceeds shall not exceed USD \$3,000,000 until the RCF Indebtedness is repaid in full, and thereafter any remaining Net Proceeds shall be applied in accordance with the priorities in relation thereto in accordance with the ~~ICA and~~ Security and the ICA.


For illustrative purposes, the foregoing is summarized in the chart attached hereto as Schedule "DC".

5. Glencore hereby approves the Interim Financing ~~Facility~~ Term Sheet and shall not oppose any application by Trevali Corp. for approval of such term sheet, or of the Interim Financing ~~Facility~~, in the CCAA Proceedings.
6. Glencore hereby formally and irrevocably waives any right or claim to apply set off in respect of: (i) any obligations of Glencore Canada, Glencore AG or Glencore International to any particular Mine Owner, or in respect of any particular Mine, on the one hand; against (ii) any obligations to Glencore of any other Mine Owner, or in respect

of any other Mine, on the other hand: (such setoff is herein referred to as “Multilateral Setoff”). Such waiver shall remain effective during the pendency of the CCAA Proceedings and in perpetuity in relation to any Mine Owner acquired by a third party through the SISP. Such waiver shall not, however, apply as between any Glencore entity and any two or more Mine Owners or Mines that are acquired by the same third party (the “Acquiror”), either directly or indirectly, in relation to liabilities incurred by the Mine Owner after the completion of any such acquisition transaction(s). For greater certainty, following the sale of a Mine Owner or Mine, the waiver acts solely to prevent Glencore from asserting any right or claim to Multilateral Setoff in relation to liabilities incurred prior to the completion of any such acquisition transaction(s), and does not otherwise alter commercial relationships as among Glencore and the Acquiror in the future: with respect to obligations arising after the completion of any such acquisition transaction(s).

7. The Lenders and the Trevali Group hereby acknowledge and agree that, aside from the waiver set forth above, Glencore continues to have rights of set-off under the Off-Take Agreements in accordance with the terms thereof, that such rights are not stayed, that neither the Lenders nor the Trevali Group will seek to stay such rights and that neither the Lenders nor the Trevali Group will challenge any set-offs effected by Glencore to date or in the future in accordance with the terms of the Off-Take Agreements (including, for certainty, all set-offs effected to date in relation to the Caribou Off-Take Agreements and the Rosh Pinah Off-Take Agreements). For the avoidance of doubt, Glencore shall have the continuing right to set-off any amounts (other than the Glencore Indebtedness ~~as~~ as defined in the ICA)) under the Off-Take Agreements in accordance with the terms thereof, and nothing in this Agreement shall prejudice or limit the rights of Glencore under the provisions of the Off-Take Agreements, including the right to make, file and enforce any claim against any of the Mine Owners, including for specific performance and/or monetary damages.
8. Neither the Lenders nor the Trevali Group will contest, challenge or bring into question the validity or enforceability of any of the Off-Take Agreements.
9. Neither the Lenders nor the Trevali Group will, directly or indirectly, propose, seek, approve, consent to, vote in favour of or support (including with any court or any monitor or other court officer appointed in any insolvency proceeding) any transaction that seeks or purports to eliminate, disclaim, terminate, repudiate, modify or otherwise adversely affect or impact any of the Off-Take Agreements (including the sale of the assets of a Mine free of the relevant Off-Take Agreement) without the express written consent of Glencore.
10. The Lenders and the Applicants agree that Glencore can pick up the Caribou Concentrate, and that the amount payable by Glencore for same will be paid by way of set-off against the amount owing by Trevali Corp. to Glencore, under the Caribou Off-Take Agreement. Trevali Corp. will provide commercially reasonable cooperation to facilitate the transfer and sale of the Caribou Concentrate to Glencore. All costs associated with any such pickup, transfer and sale will be paid by Glencore, including any pre-approved third-party costs incurred by Trevali; Corp., which shall be paid in cash by Glencore. For clarity, to

the extent that such costs are to be borne by Trevali Corp. under the Caribou Off-Take Agreement and are paid by Glencore, such costs may be included in the amount set off by Glencore under the Caribou Off-Take Agreement.

11. The Parties agree to conduct themselves in a commercially reasonable manner in accordance with the agreements among them, including this Agreement, and Glencore and the Lenders will provide commercially reasonable cooperation and assistance in connection with the SISP if requested by Trevali Corp. or the Monitor, including in any discussions with potential bidders. Among other things, neither Glencore nor the Lenders will as part of any such discussions assert any rights or entitlements in relation to ~~Trevali's~~ the Trevali Group's assets or business which are not expressly contemplated by their agreements either with one or more members of the Trevali Group or with one another. Nothing herein prevents the Lenders or Glencore from taking positions or making arguments in their interests, provided such positions are consistent with the terms of their agreements either with one or more members of the Trevali Group or with one another (including this Agreement).
12. This Agreement, and the Parties' rights and obligations, shall terminate: (i) in accordance with the further written agreement of all of the Parties; or (ii) upon the termination of the SISP in relation to the sale of ~~Trevali's~~ the Trevali Group's interest in the Rosh Pinah Mine in accordance with the terms of the SISP, and more particularly paragraph 46 thereof. Upon such termination, all existing agreements, including the ICA and the ~~Off-Takes~~ Take Agreements, shall continue, unamended by this Agreement.
13. The Lenders, ~~Glencore and~~ the Trevali Group and Glencore agree that the ICA remains binding, effective and unmodified, except as expressly contemplated by this Agreement. In the event of a conflict between the terms of the ICA and the terms of this Agreement, this Agreement shall govern.
14. The Trevali Group covenants and agrees that it shall cause all other ~~members~~ affiliates of the Trevali Group  to abide by the terms of this Agreement. Glencore covenants and agrees that it shall cause all of its affiliates to abide by the terms of this ~~agreement~~ Agreement.
15. This Agreement and its terms shall be kept confidential by the Parties, save and except for such disclosure as may be necessary to obtain the approval of this Agreement by the Court as contemplated by this Agreement.
- ~~15.~~ 16. The Parties each represent and declare that they have read and understood this Agreement, have consulted with and been advised by their legal counsel before signing this Agreement, that they hereby execute this Agreement as the free and willing act of such Party, and that any signatory on behalf of any of a Party has full authority to execute this Agreement.
- ~~16.~~ 17. Time is of the essence of this Agreement.

~~17.~~18. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada, as applicable. Any dispute arising out of this Agreement, including the enforcement of this Agreement, shall be determined by the Court in the CCAA Proceeding, and the Parties hereby attorn to the exclusive jurisdiction of the courts of the Province of British Columbia, sitting in Vancouver. Nothing in this Agreement will alter the choice of law or attornment provisions of any other agreement among any of the Parties, including without limitation, the Off-Take Agreements.

~~18.~~19. This Agreement shall be binding upon and enure to the benefit of each of the Parties, their respective administrators, successors and assigns and the Parties agree for themselves, and their respective administrators, successors and assigns to execute any instruments and to perform any acts which may be necessary or proper to carry out the purposes of this Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK

19.20. This Agreement may be executed by the Parties in counterparts with the same effect as if each of the Parties had signed the same document and all such counterparts, taken together, shall constitute one and the same agreement. This Agreement may be executed and delivered by email or other means of electronic communication with the same effect as if the Parties had executed and delivered original documents.

IN WITNESS WHEREOF the Parties have executed this Agreement effective as of the [ ] day of October 2022.

**THE BANK OF NOVA SCOTIA as agent  
for and on behalf of the Lenders**

Per: \_\_\_\_\_  
Authorized Signatory

**GLENCORE INTERNATIONAL AG**

Per: \_\_\_\_\_  
Authorized Signatory

**GLENCORE AG**

Per: \_\_\_\_\_  
Authorized Signatory

**GLENCORE CANADA CORPORATION**

Per: \_\_\_\_\_  
Authorized Signatory

**TREVALI MINING CORPORATION**

Per: \_\_\_\_\_  
Authorized Signatory

**GUINEA FOWL INVESTMENTS FIFTY  
EIGHT (PROPRIETARY) LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory

**ALOE INVESTMENTS TWO HUNDRED  
AND SIXTY SEVEN (PROPRIETARY)  
LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory

**TREVALI MINING (NEW BRUNSWICK)  
LTD.**

Per: \_\_\_\_\_  
Authorized Signatory

**TREVALI PERU (S.A.C.)**

Per: \_\_\_\_\_  
Authorized Signatory

**GLCR LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory

**TREVALI HOLDINGS (BERMUDA)  
LTD.**

Per: \_\_\_\_\_  
Authorized Signatory

**BOUNDARY VENTURES LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory



**WILRU INVESTMENTS ONE  
HUNDRED AND THIRTY FOUR  
(PROPRIETARY) LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory

**ROSH PINAH BASE METALS  
(PROPRIETARY) LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory

**ROSH PINAH HOLDINGS  
(PROPRIETARY) LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory  
[Redacted Signature]

**SCHEDULE "A"****LENDERS**

- The Bank of Nova Scotia
- HSBC Bank Canada
- Société Générale
- Bank of Montreal
- The Toronto-Dominion Bank
- National Bank of Canada
- ING Capital LLC

**SCHEDULE "B"**

**TREVALI ORGANIZATION CHART**

**INTERIM FINANCING TERM SHEET**

**SCHEDULE "C"**  
**INTERIM LENDING FACILITY TERM SHEET**

**SCHEDULE "D"**

**ILLUSTRATIVE CHART**

Net Proceeds	Glencore Share	Recovery on RCF	Net Proceeds	Paid to Glencore	Paid to the Agent
\$ 1.0	\$ 1.0	\$ -	\$ 1.0	\$ 1.0	\$ -
10.0	1.0	9.0	10.0	1.0	9.0
29.0	1.0	28.0	29.0	1.0	28.0
30.0	2.0	28.0	30.0	2.0	28.0
40.0	2.2	37.8	40.0	2.2	37.8
50.0	2.4	47.6	50.0	2.4	47.6
60.0	2.6	57.4	60.0	2.6	57.4
70.0	2.8	67.2	70.0	2.8	67.2
80.0	3.0	77.0	80.0	3.0	77.0
91.8	3.0	88.8	91.8	3.0	88.8

This is **Exhibit "H"** referred to in **Affidavit #1** of **Susan Danielisz**, sworn before me at Vancouver, British Columbia, this 24<sup>th</sup> day of July, 2023.



A Commissioner for taking Affidavits  
for British Columbia

**Williams, Lance**

---

**From:** Kibben Jackson <kjackson@fasken.com>  
**Sent:** Monday, October 10, 2022 6:59 PM  
**To:** Williams, Lance  
**Cc:** Langdon, Christopher  
**Subject:** RE: [EXT] Fwd: 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX  
**Attachments:** 119359210\_v(6)\_Settlement Agreement - Trevali - Glencore.DOCX

Updated draft attached – Notes to Draft removed, dated October 12, 2022 and updated the Lenders' payout number to \$88.9 (from \$88.8).

Let me know if Glencore has signed off please.

**Kibben Jackson\***

PARTNER

T. +1 604 631 4786 | F. +1 604 632 4786

\*Law Corporation

**From:** Kibben Jackson  
**Sent:** October-10-22 6:39 PM  
**To:** Williams, Lance <lwilliams@mccarthy.ca>  
**Cc:** Langdon, Christopher <CLANGDON@mccarthy.ca>  
**Subject:** RE: [EXT] Fwd: 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX  
**Importance:** High

Hey Lance. Think you're home now?

Trevali has confirmed that their records match Glencore's in terms of pre-filing debt (i.e. ~USD \$13 million), so we'll stick with the USD \$13.1 million in the SA.

Can we remove the NTD re: the date of last shipment for setoff? I ask because Rubin desperately wants to circulate his materials tonight, and with that we can effectively sign off.

**Kibben Jackson\***

PARTNER

T. +1 604 631 4786 | F. +1 604 632 4786

\*Law Corporation

**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
**Sent:** October-10-22 12:10 PM  
**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
**Cc:** Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>  
**Subject:** Re: [EXT] Fwd: 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX

Can you send the comparison as a PDF so I can see on my phone? Also please call my cell re the date. 778.928.9758

Sent from my iPhone

On Oct 10, 2022, at 3:08 PM, Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)> wrote:

See amended draft of the Settlement Agreement incorporating minor comments from Trevali and Glencore, along with a comparison to the last version circulated (on Friday).

I believe that all we need now are:

1. confirmation from Trevali as to the amounts owing to each of Glencore and the Lenders; and
2. confirmation from Glencore that the last month for shipment at RP in respect of which setoff claims might arise is June 2022.

Kibben Jackson\*

PARTNER

T. +1 604 631 4786 | F. +1 604 632 4786

\*Law Corporation

**From:** Kibben Jackson

**Sent:** October-07-22 4:34 PM

**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>

**Subject:** RE: [EXT] Fwd: 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX

See amended draft plus comparison to the last clean version I sent to you incorporating your recent comments plus those of the Agent.

Kibben Jackson\*

PARTNER

T. +1 604 631 4786 | F. +1 604 632 4786

\*Law Corporation

**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>

**Sent:** October-07-22 3:07 PM

**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>

**Subject:** [EXT] Fwd: 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX

Calling you now

Sent from my iPad

Begin forwarded message:

**From:** "Doumakis, Katerina" <[KDOUMAKIS@mccarthy.ca](mailto:KDOUMAKIS@mccarthy.ca)>

**Date:** October 7, 2022 at 6:06:29 PM EDT

**To:** "Williams, Lance" <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>

**Subject:** RE: 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX

Attached.

Katerina Doumakis

T: 604-643-7910

**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>

**Sent:** Friday, October 07, 2022 3:00 PM



**To:** Doumakis, Katerina <[KDOUMAKIS@mccarthy.ca](mailto:KDOUMAKIS@mccarthy.ca)>  
**Subject:** 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX  
**Importance:** High

Can you send me this as a PDF showing the comments and changes?

Thanks!

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Please do not visit our offices without an appointment in advance, and please excuse us if we do not shake your hand. In the event the risk of COVID-19 increases and affects our ability to provide legal services or representation, we will make the best arrangements within our power to obtain time extensions and/or adjournments. We appreciate your understanding.

> [COVID-19 Resource Centre for Businesses](#)

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> [Centre de ressources sur la COVID-19 pour les entreprises](#)

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## SETTLEMENT AGREEMENT

**THIS SETTLEMENT AGREEMENT** (the “**Agreement**”) is effective as of the 12<sup>th</sup> day of October 2022

AMONG:

THE BANK OF NOVA SCOTIA (the “**Agent**”) as agent for and on behalf of those parties enumerated in Schedule “A” hereto

(collectively, the “**Lenders**”)

AND:

GLENCORE INTERNATIONAL AG (“**Glencore International**”), GLENCORE AG (“**Glencore AG**”) and GLENCORE CANADA CORPORATION (“**Glencore Canada**”)

(collectively, “**Glencore**”)

AND:

TREVALI MINING CORPORATION (“**Trevali Corp.**”), TREVALI MINING (NEW BRUNSWICK) LTD. (“**Trevali NB**”), GLCR LIMITED, TREVALI HOLDINGS (BERMUDA) LTD., BOUNDARY VENTURES LIMITED, WILRU INVESTMENTS ONE HUNDRED AND THIRTY FOUR (PROPRIETARY) LIMITED, ROSH PINAH BASE METALS (PROPRIETARY) LIMITED and ROSH PINAH HOLDINGS (PROPRIETARY) LIMITED

(collectively, the “**Trevali Group**”)

**WHEREAS:**

- A. Trevali Corp. is a Canadian-based mining company, having wholly or majority-owned direct and indirect subsidiaries located in various jurisdictions.
- B. Trevali Corp. directly owns 100% of the issued and outstanding shares of Trevali NB, a company incorporated under the laws of New Brunswick, which owns the “Caribou Mine” located in New Brunswick, Canada. Operations at the Caribou Mine are presently suspended, but some amount of concentrate remains on the Caribou Mine site (the “**Caribou Concentrate**”).
- C. Trevali Corp. indirectly owns 90% of the issued and outstanding shares of Nantou Mining Burkina Faso S.A. (“**Nantou**”), a company incorporated under the laws of Burkina Faso, which owns the “Perkoa Mine” located in Burkina Faso. Operations at the Perkoa Mine were suspended due to a flood in April 2022 and on October 5, 2022, Nantou submitted an application for judicial liquidation to the Burkina Faso Judicial Tribunal of Commerce.

- D. Trevali Corp. indirectly owns 90% of the issued and outstanding shares of Rosh Pinah Zinc Corporation (Pty) Ltd. (“**RPZC**” and, together with Trevali NB and Nantou, the “**Mine Owners**”), a company incorporated under the laws of Namibia, which owns the “Rosh Pinah Mine” (the Caribou Mine, the Perkoa Mine and the Rosh Pinah Mine are all collectively referred to herein as the “**Mines**”) located in Namibia. The Rosh Pinah Mine is a producing mine.
- E. Pursuant to a second amended and restated credit agreement dated August 6, 2020 among the Agent and Trevali Corp. (the “**Lenders Credit Agreement**”), the Agent made available to Trevali Corp. a revolving credit facility up to a maximum amount of USD \$150,000,000 (the “**Revolving Credit Facility**”). The Revolving Credit Facility is secured by way of guarantees and security agreements executed by the Trevali Group in favour of the Agent (the “**RCF Security**”).
- F. Pursuant to a facility agreement dated August 6, 2020 among Glencore Canada and Trevali Corp. (the “**Glencore Credit Agreement**”), Glencore Canada made available to Trevali Corp. a non-revolving credit facility in the amount of USD \$20,000,000 (the “**Glencore Facility**”). The Glencore Facility is secured by way of guarantees and security agreements executed by the Trevali Group in favour of Glencore Canada (the “**Glencore Security**” and, together with the RCF Security, the “**Security**”).
- G. Glencore AG, Glencore Canada and Trevali Corp. are parties to the Caribou Off-Take Agreements (as defined herein).
- H. Glencore AG and Nantou are parties to the Perkoa Off-Take Agreements (as defined herein).
- I. Glencore International and RPZC are parties to the Rosh Pinah Off-Take Agreements (as defined herein).
- J. The Agent, Glencore Canada and the Trevali Group are parties to an intercreditor agreement dated September 30, 2020 (the “**ICA**”) which, among other things, confirms the relative priority of the Security and certain protections of the Off-Take Agreements (as defined in the ICA).
- K. On August 19, 2022 (the “**Filing Date**”), Trevali Corp. and Trevali NB (collectively, the “**Applicants**”) obtained protection from their creditors under the provisions of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) by way of an order (the “**Initial Order**”) of the Supreme Court of British Columbia (the “**Court**”) made in Supreme Court of British Columbia Action No. S-226670 (the “**CCAA Proceedings**”). Pursuant to the Initial Order, FTI Consulting Canada Inc was appointed monitor of the Applicants (in such capacity, the “**Monitor**”). The other members of the Trevali Group are not applicants in the CCAA Proceedings.
- L. Pursuant to an order of the Court made in the CCAA Proceedings on September 14, 2022, the Applicants initiated a sales and investment solicitation process (the “**SISP**”) to solicit proposals for either an investment transaction or a sale of one or both of the

Caribou Mine and Trevali Corp.'s direct or indirect interest in RPZC, and the Applicants were authorized to engage National Bank Financial Inc. ("NBF") as sales agent.

- M. As at the Filing Date, the Lenders were owed approximately USD \$88.9 million under the Revolving Credit Facility (the amount owing under the Revolving Credit Facility as at the Filing Date, plus interest thereon to the date of payment in accordance with the terms of the Lenders Credit Agreement is hereafter referred to as the "**Pre-Filing RCF Indebtedness**") and Glencore Canada was owed approximately USD \$13.1 million under the Glencore Facility (the amount owing under the Glencore Credit Facility as at the Filing Date, plus interest thereon to the date of payment in accordance with the terms of the Glencore Credit Agreement is hereafter referred to as the "**Glencore Facility Indebtedness**").
- N. As at the Filing Date, Glencore AG, Glencore Canada and Glencore International each had claims against Trevali Corp., Nantou and RPZC arising under the Off-Take Agreements, and, since the Filing Date, additional potential claims have arisen against RPZC under the Rosh Pinah Off-Take Agreements.
- O. Glencore declined to advise whether it will assert a right to set off amounts payable by it after the Filing Date under the Rosh Pinah Off-Take Agreement against amounts owed to it by Trevali Corp., Trevali NB and Nantou under the Caribou and Perkoa Off-Take Agreements.
- P. The Applicants requested that the Lenders provide interim financing in the CCAA Proceedings in order to fund, among other things, the continuation of mining activities at the Rosh Pinah Mine during the pendency of the CCAA Proceedings and professional costs associated with the CCAA Proceedings, including the SISF, and the Lenders have agreed to provide an interim financing tranche (the "**Interim Financing**") by way of an amendment to the Lenders Credit Agreement on the terms set out in the Indicative Term Sheet dated October [ ], 2022 (the "**Interim Financing Term Sheet**"), a copy of which is attached hereto as Schedule "B", including on the condition that Glencore's potential entitlement to effect Multilateral Setoff (as defined herein) be resolved in a manner acceptable to the Lenders in their sole discretion.
- Q. The parties to this Agreement (collectively, the "**Parties**") wish to facilitate the provision of funding for the Applicants by the Lenders under the Interim Financing Term Sheet and, among other things, address Glencore's potential claim of Multilateral Setoff and confirm their agreements relating to the set-offs effected by Glencore to date and the preservation of the Off-Take Agreements and any rights of setoff thereunder, all on the terms set out in this Agreement.

**NOW THEREFORE** in consideration of the mutual promises and covenants and agreements in this Agreement and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree with each other as follows:

1. In this Agreement, the following terms have the following definitions:

- (a) **“Caribou Off-Take Agreements”** means: (i) for zinc concentrates, Contract No. 062-13-27000-P dated October 15, 2012 between Trevali Corp. and Glencore AG, as amended; and (ii) for lead concentrates, Contract No. 180-13-30423-P dated March 17, 2020 between Trevali Corp., Glencore AG and Glencore Canada, as amended, as assigned from Contract No. 180-13-27002-P dated October 15, 2012 between Trevali Corp. and Glencore AG, as amended;
- (b) **“Gross Proceeds”** means any proceeds, in its broadest sense, realized by any member of the Trevali Group that are subject to the Security, including without limitation Trevali Corp.’s direct or indirect interest in RPZC and the Rosh Pinah Mine, insurance proceeds claimed by Trevali Corp. in respect of an insurance claim made in respect of the flood at the Perkoa Mine, amounts receivable from Cerro De Pasco Resources Inc. or realized from the sale or realization of any other assets;
- (c) **“Net Proceeds”** means Net Proceeds Available for Distribution less the Outstanding Interim Financing Balance;
- (d) **“Net Proceeds Available for Distribution”** means Gross Proceeds less Realization Costs;
- (e) **“Off-Take Agreements”** means the Caribou Off-Take Agreements, the Perkoa Off-Take Agreements and the Rosh Pinah Off-Take Agreements;
- (f) **“Outstanding Interim Financing Balance”** means the outstanding amount of Interim Financing, including principal, interest, fees and costs; and, for greater certainty: (i) the Outstanding Interim Financing Balance shall not directly or indirectly include any pre-filing obligations of the Applicants to the Lenders; and (ii) there shall be no direct or indirect recovery to the Lenders under the Interim Financing Term Sheet other than the principal to be advanced as part of the Interim Financing, interest thereon, fees and costs, all as expressly contemplated under the Interim Financing Term Sheet;
- (g) **“Party”** means a party to this Agreement;
- (h) **“Perkoa Off-Take Agreements”** means; (i) for zinc concentrates, Contract No. 062-10-12611-P dated June 30, 2010 between Nantou and Glencore International, as amended; and (ii) for lead concentrates, Contract No. 180-11-11996-P dated March 22, 2011 between Nantou and Glencore International, as amended;
- (i) **“Realization Costs”** means any costs determined by the Court or required by law to be paid from the Gross Proceeds in priority to the Security, including the following, to the extent the same have not been paid from the Interim Financing and are paid from the Gross Proceeds (without duplication or double counting):
  - (i) professional fees, including without limitation any success fee payable to NBF, fees of Trevali Corp.’s legal counsel, the Monitor, the Monitor’s legal counsel, independent legal counsel to Trevali Corp.’s board of

directors, the Lenders' legal counsel and financial advisors, and any other fees that are secured by a Court-ordered charge ranking in priority to the Security, all subject to Court approval (where applicable);

- (ii) reasonable provision for the wind-down of Trevali Corp. and additional realization costs after repayment of the Interim Financing, subject to Court approval;
- (iii) any taxes payable by Trevali Corp. on the sale of Trevali Corp.'s direct or indirect interest in RPZC or the Rosh Pinah Mine which have priority over the Security; and
- (iv) amounts secured under any other Court-approved priority charges having priority to the Security in the context of the CCAA Proceedings, to the maximum amount of such charge,

and, for greater certainty, Realization Costs do not include any direct or indirect recovery by the Lenders or any payments to or on account of any pre-filing indebtedness owing by Trevali Corp. to the Lenders, other than the recovery of fees contemplated by sub-paragraph (i), above; and

- (j) **"Rosh Pinah Off-Take Agreements"** means: (i) for zinc concentrates, Contract No. 062-12-12076-P dated July 3, 2012 between RPZC and Glencore International, as amended; and (ii) for lead concentrates, Contract No. 180-13-11417-P dated January 1, 2013 between RPZC and Glencore International, as amended.

2. The Parties acknowledge and agree that the above recitals to this Agreement are incorporated into and form an integral part of this Agreement.
3. Glencore International hereby represents to the Agent and the Trevali Group that, in regards to the Rosh Pinah Off-Take Agreement, Glencore International is only aware of existing claims that arise in respect of deliveries made by RPZC to Glencore International during June 2022 or thereafter.
4. This Agreement and the Parties' obligations hereunder are conditional upon the granting of one or more orders of the Court in the CCAA Proceedings approving and authorizing the Applicants to enter into: (i) this Agreement; (ii) the Interim Financing Term Sheet; and (iii) an agreement to further amend the terms of the Lenders Credit Agreement in accordance with the terms of the Interim Financing Term Sheet, and to borrow funds under the Interim Financing.
5. At such time as Trevali Corp., or such other party on Trevali Corp.'s behalf, is authorized to pay the Net Proceeds Available for Distribution to the Agent, the Agent and Glencore hereby irrevocably authorize and direct Trevali Corp., or such other party on Trevali Corp.'s behalf, to immediately pay out the Net Proceeds Available for Distribution to the Agent, for the Agent to immediately apply the Net Proceeds Available for Distribution to

pay the Outstanding Interim Financing Balance to the Lenders, and to thereafter apply the Net Proceeds on the following terms:

- (a) up to the first USD \$1,000,000 shall be paid to Glencore, or to such other entity as may be directed by Glencore in writing;
- (b) up to the next USD \$28,000,000 shall be paid to the Agent;
- (c) up to the next USD \$1,000,000 shall be paid to Glencore, or to such other entity as may be directed by Glencore in writing; and
- (d) Net Proceeds in excess of USD \$30,000,000 shall be paid 98% to the Lenders and 2% to Glencore, or to such other entity as may be directed by Glencore in writing, provided that Glencore's total share of the Net Proceeds shall not exceed USD \$3,000,000 until the RCF Indebtedness is repaid in full, and thereafter any remaining Net Proceeds shall be applied in accordance with the priorities in relation thereto in accordance with the Security and the ICA.

For illustrative purposes, the foregoing is summarized in the chart attached hereto as Schedule "C".

6. Glencore hereby approves the Interim Financing Term Sheet and shall not oppose any application by Trevali Corp. for an order of the Court in the CCAA Proceedings approving such term sheet and granting all related relief as contemplated by paragraph 4 hereof.
7. Glencore hereby formally and irrevocably waives any right or claim to apply set off in respect of: (i) any obligations of Glencore Canada, Glencore AG or Glencore International to any particular Mine Owner, or in respect of any particular Mine, on the one hand; against (ii) any obligations to Glencore of any other Mine Owner, or in respect of any other Mine, on the other hand (such setoff is herein referred to as "**Multilateral Setoff**"). Such waiver shall remain effective during the pendency of the CCAA Proceedings and in perpetuity in relation to any Mine Owner acquired by a third party through the SISF. Such waiver shall not, however, apply as between any Glencore entity and any two or more Mine Owners or Mines that are acquired by the same third party (the "**Acquiror**"), either directly or indirectly, in relation to liabilities incurred by the Mine Owner after the completion of any such acquisition transaction(s). For greater certainty, following the sale of a Mine Owner or Mine, the waiver acts solely to prevent Glencore from asserting any right or claim to Multilateral Setoff in relation to liabilities incurred prior to the completion of any such acquisition transaction(s), and does not otherwise alter commercial relationships as among Glencore and the Acquiror in the future with respect to obligations arising after the completion of any such acquisition transaction(s).
8. The Lenders and the Trevali Group hereby acknowledge and agree that, aside from the waiver set forth above, Glencore continues to have rights of set-off under the Off-Take Agreements in accordance with the terms thereof, that such rights are not stayed, that neither the Lenders nor the Trevali Group will seek to stay such rights and that neither the

Lenders nor the Trevali Group will challenge any set-offs effected by Glencore to date or in the future in accordance with the terms of the Off-Take Agreements (including, for certainty, all set-offs effected to date in relation to the Caribou Off-Take Agreements and the Rosh Pinah Off-Take Agreements). For the avoidance of doubt, Glencore shall have the continuing right to set off any amounts (other than the Glencore Indebtedness, as defined in the ICA) under the Off-Take Agreements in accordance with the terms thereof, and nothing in this Agreement shall prejudice or limit the rights of Glencore under the provisions of the Off-Take Agreements, including the right to make, file and enforce any claim against any of the Mine Owners, including for specific performance and/or monetary damages.

9. Neither the Lenders nor the Trevali Group will contest, challenge or bring into question the validity or enforceability of any of the Off-Take Agreements.
10. Neither the Lenders nor the Trevali Group will, directly or indirectly, propose, seek, approve, consent to, vote in favour of or support (including with any court or any monitor or other court officer appointed in any insolvency proceeding) any transaction that seeks or purports to eliminate, disclaim, terminate, repudiate, modify or otherwise adversely affect or impact any of the Off-Take Agreements (including the sale of the assets of a Mine free of the relevant Off-Take Agreement) without the express written consent of Glencore.
11. The Lenders and the Applicants agree that Glencore can pick up the Caribou Concentrate, and that the amount payable by Glencore for same will be paid by way of set-off against the amount owing by Trevali Corp. to Glencore under the Caribou Off-Take Agreement. Trevali Corp. will provide commercially reasonable cooperation to facilitate the transfer and sale of the Caribou Concentrate to Glencore. All costs associated with any such pickup, transfer and sale will be paid by Glencore, including any pre-approved third-party costs incurred by Trevali Corp., which shall be paid in cash by Glencore. For clarity, to the extent that such costs are to be borne by Trevali Corp. under the Caribou Off-Take Agreement and are paid by Glencore, such costs may be included in the amount set off by Glencore under the Caribou Off-Take Agreement.
12. The Parties agree to conduct themselves in a commercially reasonable manner in accordance with the agreements among them, including this Agreement, and Glencore and the Lenders will provide commercially reasonable cooperation and assistance in connection with the SISF if requested by Trevali Corp. or the Monitor, including in any discussions with potential bidders. Among other things, neither Glencore nor the Lenders will as part of any such discussions assert any rights or entitlements in relation to the Trevali Group's assets or business which are not expressly contemplated by their agreements either with one or more members of the Trevali Group or with one another. Nothing herein prevents the Lenders or Glencore from taking positions or making arguments in their interests, provided such positions are consistent with the terms of their agreements either with one or more members of the Trevali Group or with one another (including this Agreement).



13. This Agreement, and the Parties' rights and obligations, shall terminate: (i) in accordance with the further written agreement of all of the Parties; or (ii) upon the termination of the SISP in relation to the sale of the Trevali Group's interest in the Rosh Pinah Mine in accordance with the terms of the SISP, and more particularly paragraph 46 thereof. Upon such termination, all existing agreements, including the ICA and the Off-Take Agreements, shall continue, unamended by this Agreement
14. The Lenders, the Trevali Group and Glencore agree that the ICA remains binding, effective and unmodified, except as expressly contemplated by this Agreement. In the event of a conflict between the terms of the ICA and the terms of this Agreement, this Agreement shall govern.
15. The Trevali Group covenants and agrees that it shall cause all other affiliates of the Trevali Group to abide by the terms of this Agreement. Glencore covenants and agrees that it shall cause all of its affiliates to abide by the terms of this Agreement.
16. This Agreement and its terms shall be kept confidential by the Parties, save and except for such disclosure as may be necessary to obtain the approval of this Agreement by the Court as contemplated by this Agreement.
17. The Parties each represent and declare that they have read and understood this Agreement, have consulted with and been advised by their legal counsel before signing this Agreement, that they hereby execute this Agreement as the free and willing act of such Party, and that any signatory on behalf of any of a Party has full authority to execute this Agreement.
18. Time is of the essence of this Agreement.
19. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada, as applicable. Any dispute arising out of this Agreement, including the enforcement of this Agreement, shall be determined by the Court in the CCAA Proceeding, and the Parties hereby attorn to the exclusive jurisdiction of the courts of the Province of British Columbia, sitting in Vancouver. Nothing in this Agreement will alter the choice of law or attornment provisions of any other agreement among any of the Parties, including without limitation, the Off-Take Agreements.
20. This Agreement shall be binding upon and enure to the benefit of each of the Parties, their respective administrators, successors and assigns and the Parties agree for themselves, and their respective administrators, successors and assigns to execute any instruments and to perform any acts which may be necessary or proper to carry out the purposes of this Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK

21. This Agreement may be executed by the Parties in counterparts with the same effect as if each of the Parties had signed the same document and all such counterparts, taken together, shall constitute one and the same agreement. This Agreement may be executed and delivered by email or other means of electronic communication with the same effect as if the Parties had executed and delivered original documents.

IN WITNESS WHEREOF the Parties have executed this Agreement effective as of the 12<sup>th</sup> day of October 2022.

**THE BANK OF NOVA SCOTIA as agent  
for and on behalf of the Lenders**

Per: \_\_\_\_\_  
Authorized Signatory

**GLENCORE INTERNATIONAL AG**

Per: \_\_\_\_\_  
Authorized Signatory

**GLENCORE AG**

Per: \_\_\_\_\_  
Authorized Signatory

**GLENCORE CANADA CORPORATION**

Per: \_\_\_\_\_  
Authorized Signatory

**TREVALI MINING CORPORATION**

Per: \_\_\_\_\_  
Authorized Signatory

**TREVALI MINING (NEW BRUNSWICK)  
LTD.**

Per: \_\_\_\_\_  
Authorized Signatory

**ROSH PINAH HOLDINGS  
(PROPRIETARY) LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory

**GLCR LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory

**TREVALI HOLDINGS (BERMUDA)  
LTD.**

Per: \_\_\_\_\_  
Authorized Signatory

**BOUNDARY VENTURES LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory

**WILRU INVESTMENTS ONE  
HUNDRED AND THIRTY FOUR  
(PROPRIETARY) LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory

**ROSH PINAH BASE METALS  
(PROPRIETARY) LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory

**SCHEDULE "A"****LENDERS**

- The Bank of Nova Scotia
- HSBC Bank Canada
- Société Générale
- Bank of Montreal
- The Toronto-Dominion Bank
- National Bank of Canada
- ING Capital LLC

**SCHEDULE "B"**  
**INTERIM FINANCING TERM SHEET**

286051.00072 119359210.2  
286051.00072 119359210.5

**SCHEDULE "C"**  
**ILLUSTRATIVE CHART**

Net Proceeds	Paid to Glencore	Paid to the Agent
\$ 10	\$ 10	\$ -
10 0	10	9 0
29 0	10	28 0
30 0	20	28 0
40 0	22	37 8
50 0	24	47 6
60 0	26	57 4
70 0	28	67 2
80 0	30	77 0
91 8	30	88 8

This is **Exhibit "I"** referred to in **Affidavit #1** of **Susan Danielisz**, sworn before me at Vancouver, British Columbia, this 24<sup>th</sup> day of July, 2023.



A Commissioner for taking Affidavits  
for British Columbia

**Williams, Lance**

---

**From:** Kibben Jackson <kjackson@fasken.com>  
**Sent:** Monday, October 10, 2022 7:51 PM  
**To:** Williams, Lance  
**Cc:** Langdon, Christopher  
**Subject:** RE: [EXT] Fwd: 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX

Thanks bud. I think the only bullet is the date of the Interim Financing Term Sheet, which I can fill in once that is finalized.

**Kibben Jackson\***

**PARTNER**

T. +1 604 631 4786 | F. +1 604 632 4786

\*Law Corporation

**From:** Williams, Lance <lwilliams@mccarthy.ca>  
**Sent:** October-10-22 7:04 PM  
**To:** Kibben Jackson <kjackson@fasken.com>  
**Cc:** Langdon, Christopher <CLANGDON@mccarthy.ca>  
**Subject:** Re: [EXT] Fwd: 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX

Our emails crossed. Confirmed that Glencore is fine with this form of agreement with those changes and confirmed the date for the rep.

I note there are still bullets in this, but once we get an execution version, we will send it off to be signed (which as we noted before will take some time to get the international entities signatures due to internal mechanics).

Lance

Sent from my iPad

On Oct 10, 2022, at 9:00 PM, Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)> wrote:

Updated draft attached – Notes to Draft removed, dated October 12, 2022 and updated the Lenders' payout number to \$88.9 (from \$88.8).

Let me know if Glencore has signed off please.

**Kibben Jackson\***

**PARTNER**

T. +1 604 631 4786 | F. +1 604 632 4786

\*Law Corporation

**From:** Kibben Jackson  
**Sent:** October-10-22 6:39 PM  
**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
**Cc:** Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** RE: [EXT] Fwd: 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX  
**Importance:** High

Hey Lance. Think you're home now?

Trevali has confirmed that their records match Glencore's in terms of pre-filing debt (i.e. ~USD \$13 million), so we'll stick with the USD \$13.1 million in the SA.

Can we remove the NTD re: the date of last shipment for setoff? I ask because Rubin desperately wants to circulate his materials tonight, and with that we can effectively sign off.

**Kibben Jackson\***

PARTNER

T. +1 604 631 4786 | F. +1 604 632 4786

\*Law Corporation

**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>

**Sent:** October-10-22 12:10 PM

**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>

**Cc:** Langdon, Christopher <[CLANGDON@mccarthy.ca](mailto:CLANGDON@mccarthy.ca)>

**Subject:** Re: [EXT] Fwd: 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX

Can you send the comparison as a PDF so I can see on my phone? Also please call my cell re the date. 778.928.9758

Sent from my iPhone

On Oct 10, 2022, at 3:08 PM, Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)> wrote:

See amended draft of the Settlement Agreement incorporating minor comments from Trevali and Glencore, along with a comparison to the last version circulated (on Friday).

I believe that all we need now are:

1. confirmation from Trevali as to the amounts owing to each of Glencore and the Lenders; and
2. confirmation from Glencore that the last month for shipment at RP in respect of which setoff claims might arise is June 2022.

**Kibben Jackson\***

PARTNER

T. +1 604 631 4786 | F. +1 604 632 4786

\*Law Corporation

**From:** Kibben Jackson

**Sent:** October-07-22 4:34 PM

**To:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>

**Subject:** RE: [EXT] Fwd: 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX



See amended draft plus comparison to the last clean version I sent to you incorporating your recent comments plus those of the Agent.

Kibben Jackson\*  
PARTNER  
T. +1 604 631 4786 | F. +1 604 632 4786  
\*Law Corporation

**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
**Sent:** October-07-22 3:07 PM  
**To:** Kibben Jackson <[kjackson@fasken.com](mailto:kjackson@fasken.com)>  
**Subject:** [EXT] Fwd: 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX

Calling you now

Sent from my iPad

Begin forwarded message:

**From:** "Doumakis, Katerina" <[KDOUMAKIS@mccarthy.ca](mailto:KDOUMAKIS@mccarthy.ca)>  
**Date:** October 7, 2022 at 6:06:29 PM EDT  
**To:** "Williams, Lance" <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
**Subject:** RE: 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX

Attached.

Katerina Doumakis  
T: 604-643-7910

**From:** Williams, Lance <[lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca)>  
**Sent:** Friday, October 07, 2022 3:00 PM  
**To:** Doumakis, Katerina <[KDOUMAKIS@mccarthy.ca](mailto:KDOUMAKIS@mccarthy.ca)>  
**Subject:** 119359210\_v(3)\_Settlement Agreement - Trevali - Glencore (002).DOCX  
**Importance:** High

Can you send me this as a PDF showing the comments and changes?

Thanks!

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Please do not visit our offices without an appointment in advance, and please excuse us if we do not shake your hand. In the event the risk of COVID-19 increases and affects our ability to provide legal services or representation, we will make the best arrangements within our power to obtain time extensions and/or adjournments. We appreciate your understanding.

> [COVID-19 Resource Centre for Businesses](#)

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> [Centre de ressources sur la COVID-19 pour les entreprises](#)

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