



COURT FILE NO. 24-3162620
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

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

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

DOCUMENT **SALE APPROVAL AND VESTING ORDER (Gibraltar Mines Limited)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	DARREN R. BIEGANEK, KC/ ZACHARY SOPROVICH Barrister & Solicitor Phone: 780.441.4386 Fax: 780.428.9683 Email: dbieganeke@dcllp.com	File # 204-219113 DUNCAN CRAIG LLP LAWYERS MEDIATORS 2800 Rice Howard Place 10060 Jasper Avenue Edmonton, Alberta T5J 3V9
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DATE ON WHICH ORDER PRONOUNCED: **DECEMBER 20, 2024**

JUDGE/ JUSTICE WHO MADE THIS ORDER: J.T. Neilson

LOCATION OF HEARING: **EDMONTON, ALBERTA**

UPON THE APPLICATION by **KMC MINING CORPORATION** (the "**Vendor**") for an order approving the proposed sale transaction (the "**Transaction**") contemplated by a letter of intent to purchase (the "**LOI**") between the Vendor and Gibraltar Mines Limited (the "**Purchaser**") dated **December 19, 2024**, a redacted version of which is appended to the Affidavit of **Daniel Klemke** dated **December 19, 2024** (the "**Second Affidavit**"), and vesting in the Purchaser the Vendor's right, title and interest in and to the assets described in the LOI and repeated herein in **Schedule "A"** (the "**Purchased Assets**"), subject to the terms and conditions of this Order;

AND UPON HAVING READ the pleadings and proceedings herein, the Second Affidavit, and the Second Report of FTI Consulting Canada Inc. in its capacity as Proposal Trustee (the "**Proposal Trustee**"); **AND UPON HEARING** the submissions of counsel for the Vendor; **AND UPON** noting the consent to this Order of counsel for KMC, counsel for the Syndicate (as defined in the Second Affidavit), counsel for the Klemke Foundation and counsel for the Proposal Trustee;

IT IS HEREBY ORDERED AND DECLARED THAT:**SERVICE**

1. Service of notice of this application and supporting materials is hereby waived.

APPROVAL OF TRANSACTION

2. Subject to the terms of this Order, the transaction is approved and execution of the LOI by the Vendor is hereby authorized and approved, with such minor amendments as the Vendor and the Purchaser may deem necessary.
3. KMC and Gibraltar are hereby authorized and directed to take such additional steps and execute such additional documents, including sales agreements and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the LOI or as may be necessary or desirable for completion of the Transaction, provided however that:
 - (a) The Definitive Documents are subject to the review and approval by the Proposal Trustee, ATB Financial as Administrative Agent for the Lenders and the Klemke Foundation;
 - (b) Any proposed reductions in the Purchase Price as set forth in the LOI are subject to the approval of the Proposal Trustee, ATB Financial in its capacity as Administrative Agent for the Lenders and the Klemke Foundation;
 - (c) If the transaction is not closed on or before 4:00 PM on January 9, 2025, then this Order shall have no further force and effect and the transaction shall not proceed absent further Order of this Court.

VESTING OF PROPERTY

4. Upon delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form set out in **Schedule "B"** hereto (the "**Proposal Trustee's Closing Certificate**"), all of the Vendor's right, title and interest in and to the Purchased Assets shall vest absolutely in the name of the Purchaser, free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "**Claims**") including, without limiting the generality of the foregoing:
 - (a) any encumbrances or charges created by the Order – First Stay Extension granted in this Action on December 9, 2024;
 - (b) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system; (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, caveats, interests, easements, and restrictive

covenants listed in **Schedule "C"** (collectively, "**Permitted Encumbrances**"), and for greater certainty, this Court orders that all Claims including Encumbrances other than Permitted Encumbrances, affecting or relating to the Purchased Assets are hereby expunged, discharged and terminated as against the Purchased Assets.

5. Upon delivery of the Proposal Trustee's Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Proposal Trustee's Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser clear title to the Purchased Assets subject only to Permitted Encumbrances. Without limiting the foregoing:
 - (a) the Registrar of the Alberta Personal Property Registry (the "**PPR Registrar**") shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Vendor in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.
6. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the LOI. Presentment of this Order and the Proposal Trustee's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
7. No authorization, approval or other action by and no notice to or filing with any Governmental Authorities or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Vendor of the LOI.
8. For the purposes of determining the nature and priority of Claims, net proceeds from sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets from and after delivery of the Proposal Trustee's Closing Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim against the Purchased Assets and may be asserted against the net proceeds from sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
9. Without affecting the rights of any parties pursuant to the prior paragraph, upon receipt of the net proceeds from sale of the Purchased Assets, KMC is authorized and directed to remit to its legal counsel the net sales proceeds from the sale of the Purchased Assets to be held in trust by KMC's legal counsel until further Order of this Court.

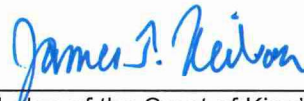
10. Except as expressly provided for in the LOI, the Purchaser shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Vendor.
11. Upon completion of the Transaction, the Vendor and all persons who claim by, through or under the Vendor in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser.
12. The Purchaser shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Vendor, or any person claiming by, through or against the Vendor.
13. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Vendor.
14. The Proposal Trustee is directed to file with the Court a copy of the Proposal Trustee's Closing Certificate forthwith after delivery thereof to the Purchaser.

MISCELLANEOUS MATTERS

15. Notwithstanding:
 - (a) the pendency of these proceedings and any declaration of insolvency made herein;
 - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "BIA"), in respect of the Vendor, and any bankruptcy order issued pursuant to any such applications;
 - (c) any assignment in bankruptcy made in respect of the Vendor; and
 - (d) the provisions of any federal or provincial statute:

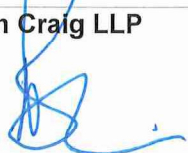

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Vendor and shall not be void or voidable by creditors of the Vendor, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

- 16. The Proposal Trustee, the Purchaser and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
- 17. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Proposal Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Proposal Trustee, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.
- 18. Service of this Order shall be deemed good and sufficient by:
 - (a) Serving the same on:
 - (i) the persons listed on any service list created in these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order;
 - (iv) the Purchaser or the Purchaser's solicitors; and
 - (b) Posting a copy of this Order on the Proposal Trustee's website at:
<http://cfcanada.fticonsulting.com/KMCMining/>and service on any other person is hereby dispensed with.
- 19. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



Justice/Judge of the Court of King's Bench of Alberta

Consented to by:

<p>Duncan Craig LLP</p>  <hr/> <p>Per: Darren R. Bieganek, KC Counsel for KMC Mining Corporation</p>	<p>Norton Rose Fulbright Canada LLP</p>  <p>for:</p> <hr/> <p>Per: Howard A. Gorman, KC Counsel for the Syndicate</p>
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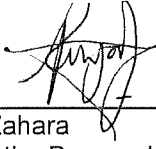
Ogilvie LLP



Per: Akhil Vohra
Counsel for The Klemke Foundation

MLT Aikins LLP

Per: Ryan Zahara
Counsel for the Proposal Trustee

<p>Ogilvie LLP</p> <hr/> <p>Per: Akhil Vohra Counsel for The Klemke Foundation</p>	<p>MLT Aikins LLP</p>  <hr/> <p>Per: Ryan Zahara Counsel for the Proposal Trustee</p>
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Schedule "A"

Purchased Assets

KMTHD038NPA32008 – 2017 Komatsu 930E-4 Haul Truck

KMTHD038NHPA32009 – 2017 Komatsu 930E-4 Haul Truck

If any discrepancy between this Schedule and the LOI, the LOI shall prevail.

Schedule "B"

Form of Proposal Trustee's Certificate

COURT FILE NO. 24-3162620

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Edmonton

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

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

DOCUMENT **PROPOSAL TRUSTEE'S CERTIFICATE**

ADDRESS FOR
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PARTY FILING THIS
DOCUMENT

RECITALS

- A. Pursuant to a Notice of Intention ("**NOI**") to Make a Proposal ("**Proposal**") pursuant to section 50.4(9) of the Bankruptcy and Insolvency Act, RSC 1985, c B-3 as amended ("**BIA**") filed by KMC Mining Corporation (the "**Vendor**") on December 5, 2024, and FTI Consulting Ltd. having consented to act as the trustee for the Proposal ("**Proposal Trustee**").
- B. Pursuant to an Order of the Court of King's Bench of Alberta dated [**Date**], the Court approved the agreement of purchase and sale made as of [**Date of Agreement**] (the "**Sale Agreement**") between the Vendor and [**Name of Purchaser**] (the "**Purchaser**") and provided for the vesting in the Purchaser of the Vendor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set under the Sale Agreement have been satisfied or waived by the Vendor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid the purchase price for the Purchased Assets pursuant to the Sale Agreement;
2. The conditions to closing as set out in sections **[NTD]** of the Sale Agreement have been satisfied or waived by the Vendor and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Proposal Trustee.

This Certificate was delivered by the Proposal Trustee at **[Time]** on **[Date]**.

FTI Consulting Ltd., in its capacity as Proposal Trustee of KMC Mining Corporation, and not in its personal capacity.

Per: _____

Name:

Title:

Schedule "C"
Permitted Encumbrances

None.