

Filed in court
Jan 20/25
Justice J. Neilson
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COURT FILE NO. 2503 00016

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Edmonton

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

AND IN THE MATTER OF **KMC MINING CORPORATION**

DOCUMENT **ORDER – LEASED EQUIPMENT SALES OR RETURN PROCESS**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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DATE ON WHICH ORDER PRONOUNCED:

JANUARY 20, 2025

NAME OF JUSTICE WHO MADE THIS ORDER:

J.T. NEILSON

LOCATION OF HEARING:

EDMONTON, ALBERTA

UPON the application of **KMC Mining Corporation** (the "**Applicant**"); **AND UPON** having read the Application, the Affidavit of Bryn Jones sworn January 14, 2025, and the Affidavit of Service, filed; **AND UPON** being advised that the secured creditors who are likely to be affected by this Order have been provided notice of this application; **AND UPON** hearing counsel for the Applicant, Counsel for FTI Consulting Canada Inc. (the "**Monitor**") and counsel for ATB Financial in its capacity as Administrative Agent for the Lenders (collectively the "**Syndicate**"), counsel for The Klemke Foundation ("**TKF**"), and others appearing; **AND UPON** reading the Pre-Filing Report of the Monitor and the First Report of the Monitor; **AND UPON** reviewing the initial order granted in the within proceedings by the Honourable Justice M.J. Lema on January 10, 2025 (the "**Initial Order**"); **AND UPON** noting the Order – Approve Sales and Investment Solicitation Process granted by the Honourable M.J. Lema on January 10, 2025 (the "**Order – Approve SISP**") and the Amended and

Restated Initial Order granted by the Honourable Justice J.T. Neilson on this January 20, 2025 (“ARIO”); IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

LEASED EQUIPMENT RETURN PROCESS

2. In this Order:
 - (a) “**Equipment Lessor**” shall mean any individual, firm, corporation, governmental body or agency, or any other entities which the Applicant has leased any assets or equipment from;
 - (b) “**Lease**” shall mean any lease between the Applicant and an Equipment Lessor; and
 - (c) “**Leased Equipment**” shall mean any assets or equipment subject to a Lease.
3. The Applicant may elect to return any Leased Equipment to an Equipment Lessor via the following process:
 - (a) the Applicant shall notify (the “**Equipment Return Notice**”) the Equipment Lessor and the Monitor in writing of any Leased Equipment that the Applicant seeks to return to the Equipment Lessor;
 - (b) within 5 days of receipt of the Equipment Return Notice from the Applicant, the Equipment Lessor shall provide a payout statement (“**Payout Statement**”) to the Applicant and the Monitor in respect of each individual unit of Leased Equipment the Applicant has requested to return;
 - (c) within 7 business days of receipt of the Payout Statement, the Monitor shall review the applicable Lease, complete an independent security review and review the Payout Statement and shall advise the Applicant and Equipment Lessor in writing if it approves (“**Monitor’s Approval Notice**”) such return, which of the Leased Equipment the Monitor approves being returned to the Equipment Lessor (“**Returnable Equipment**”) and any costs which KMC, in consultation with the Monitor, determines may be payable by the Equipment Lessor prior to the release of the Returnable Equipment;
 - (d) the Equipment Lessor shall, after receipt of the Monitor’s Approval Notice, demobilize and remove the Returnable Equipment, at the Equipment Lessor’s sole cost and expense. The Applicant will use commercially reasonable efforts to facilitate such demobilization and removal as may be necessary;

- (e) after removal of the Returnable Equipment, the Equipment Lessor is at liberty to sell or dispose the Returnable Equipment (a "**Disposition**") following the procedure set forth in section 60 of the *Personal Property Security Act* ("**PPSA**"),
 - (f) within 30 days following a Disposition, the Equipment Lessor is required to provide a written accounting to the Applicant and the Monitor pursuant to section 61(3) of the PPSA;
 - (g) if there is any deficiency owing to the Equipment Lessor after the Disposition, such deficiency claim will be considered an unsecured claim against the Applicant provable as such in any claims process which may be established in these proceedings; and
 - (h) if there is a surplus after any Disposition, the Equipment Lessor shall forthwith remit the surplus to the Applicant's legal counsel or the Monitor, to be held in trust pending further Order of this Honourable Court.
4. Notwithstanding anything else within this Order:
- (a) the Monitor's written approval is required prior to any Leased Equipment being returned to an Equipment Lessor; and
 - (b) notwithstanding receipt of the Monitor's Approval Notice approving the return of any Leased Equipment, an Equipment Lessor may elect to have any Leased Equipment remain in the sales and investment solicitation process ("**SISP**"), as set out the Order – Approve SISP by providing an election ("**SISP Election**") to the Applicant and the Monitor in writing.
5. All Leased Equipment included in the SISP, whether the subject of a SISP Election to keep the Leased Equipment in the SISP or otherwise, will remain subject to the charges authorized and continued by the Court in each of the Initial Order and the ARIO and, subject to paragraph 47 of the ARIO, will be allocated their share of the costs of the proceedings once the SISP is complete based on their pro rata share of gross sale proceeds calculated by the Monitor.

GENERAL

6. The Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
7. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby

respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

8. Each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
9. This Order may be served in accordance with the provisions of the ARIO.
10. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.



Justice of the Court of King's Bench of Alberta