

COURT FILE NO. 2503 00016

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

Clerk's Stamp

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 **AFFIDAVIT OF DANIEL KLEMKE ("Fourth Affidavit")**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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**AFFIDAVIT OF DANIEL KLEMKE**  
**SWORN ON THE 9<sup>th</sup> DAY OF MAY, 2025**

I, Daniel Klemke, of the City of St. Albert, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am the President and CEO of KMC Mining Corporation ("**KMC**" or the "**Applicant**"), and as such, have personal knowledge of the matters hereinafter deposed to save where:
  - a) stated to be based upon information and belief and where so stated I do believe the information to be true; or
  - b) I have informed myself from books or records maintained by KMC, and where I have done so, these books or records were part of KMC's ordinary books or records and any entries in these books or records were made in the usual and ordinary course of KMC's business.
2. I am authorized to make this Affidavit on behalf of KMC.

3. Unless otherwise stated, all monetary references in this Affidavit are references to Canadian dollars.

#### A. Relief Sought and Introduction

4. I swear this Affidavit in support of an application by KMC for an order extending the stay of proceedings against KMC, which currently expires on June 16, 2025, to and including July 31, 2025.
5. This Affidavit is limited to updates since the April 7, 2025 Affidavit of Bryn Jones ("**Jones Affidavit #3**") and should be read in conjunction with the Jones Affidavit #3 as well as other affidavits of Bryn Jones sworn previously in these proceedings on December 31, 2024 ("**Jones Affidavit #1**") and January 14, 2025 ("**Jones Affidavit #2**").
6. Unless otherwise defined herein, capitalized terms used in this Affidavit shall have the meanings ascribed to them in Jones Affidavit #1.

#### B. Current Stay of Proceedings

7. On January 10, 2025, Justice Lema granted KMC's requested relief, in all respects, to have its Notice of Intention of Proceedings under the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("**BIA**") taken up and continued under the provisions of the *Companies Creditors Arrangement Act*, RSC 1985, c-36 as amended ("**CCAA**") (the "**Initial Order**").
8. On January 20, 2025, Justice Neilson granted KMC's application for an Amended and Restated Initial Order ("**ARIO**"), which extended the stay of proceedings until and including June 16, 2025.
9. KMC seeks an extension of the stay of proceedings to and including July 31, 2025.

#### C. Sale of KMC Assets and Equipment

10. Pursuant to the SISP as approved by the Court on January 10, 2025, the marketing period was launched by the sales agent, Ernst & Young Orenda Corporate Finance Inc and Ernst & Young Corporate Finance (Canada) Inc. (the "**Sales Agent**").

11. The Phase II bid deadline was March 28, 2025, at 12:00 p.m. Mountain Time. A total of nine proposals were received and are summarized as follows:
  - a) one (1) unconditional Phase II proposal for substantially all of the assets;
  - b) one (1) unconditional proposal for the acquisition of the Syncrude shop;
  - c) three (3) conditional proposals for individual or smaller blocks of assets; and
  - d) four (4) liquidation or auction proposals.
12. The only party providing a deposit in accordance with the requirements of the SISP was 2122256 Alberta Ltd o/a Heavy Metal Equipment & Rentals (the "**Purchaser**"), who made the *en bloc* offer for substantially all of the assets and executed an Asset Purchase Agreement ("**APA**") in respect of same (the "**Transaction**").
13. While the purchase price of the assets was insufficient to retire the indebtedness to KMC's primary secured lender (the Syndicate) or repay in full the amounts owing to equipment lessors, KMC determined that the Purchaser's offer represented the greatest return for stakeholders at present time.
14. On April 17, 2025, the Court granted a Sale Approval and Vesting Order, which approved the Transaction.
15. No party opposed the Transaction. The Transaction had the support of the Syndicate, various equipment lessors whose equipment was included in the Transaction and the Monitor.
16. The Transaction closed on May 2, 2025, as seen by the Monitor's Closing Certificate attached as **Exhibit "A"**. I am advised by KMC's counsel and do verily believe that sale proceeds in excess of \$100 Million were wired to the Monitor upon closing of the Transaction.

#### **D. Employees and Current Operations**

17. As described within the Jones Affidavit #3, as of April 4, 2025, KMC employed 92 full-time employees or subcontractors, of which 14 are located at its head office in Edmonton, Alberta, 40 on a labour supply project in British Columbia, and 38 field employees working in Fort McMurray or a field office location maintained there.
18. At present time, and since the Transaction has closed and most of KMC's current operations have been wound down, or are in the process of being wound down, KMC has approximately

10 employees in Edmonton and approximately 35 on a labour and supply contract in British Columbia.

19. Other than the winding down of operations after closing of the Transaction, KMC does have in place a purchase order with Hudbay Minerals at its copper mountain mine in British Columbia to supply equipment operators to the site. That purchase order commenced at or around the date of the Initial Order and is for a term which expires on May 31, 2025 however there is work remaining which could result in an extension of the work into June.

#### **E. Stay of Proceedings Extension and Suncor Claims**

20. As described within the Jones Affidavit #1, the circumstances necessitating these CCAA proceedings arose due to several factors, though chief among those factors being the sudden and unexpected cancellation of substantial scopes of work under contracts between KMC and Suncor Energy Inc. ("**Suncor**") or affiliates.
21. Prior to these CCAA proceedings, Suncor was KMC's most significant, if not only, customer. KMC had been providing contracting mining services to Suncor for several decades.
22. Suncor's contracting practice generally, and with KMC specifically, utilizes a master Multiple Use Agreement ("**MUA**") which sets out general terms and conditions, and allows for the entering of multiple sub-agreements, contracts or purchase orders under the umbrella of the MUA for any number of different projects or scopes of work.
23. In 2019, KMC was awarded two years of overburden scope work at Suncor's Millenium Base Mine, terminating at the end of 2021. To meet the performance requirements imposed by Suncor under that contract and based on the volume of work projected by Suncor, KMC spent approximately \$43,000,000 refreshing its heavy equipment. Five months into that contract, Suncor, without cause, abruptly stopped nominating work to KMC and ordered it to demobilize from the Millenium Base Mine on very short notice "**Millenium Notice**").
24. At that time KMC was left with approximately \$29,000,000 in trade payables and without the substantial revenue under the contract with Suncor. KMC spent the next two years selling equipment and negotiating small contracts, including with Suncor, for services to survive.
25. Any limitation periods regarding claims which KMC had against Suncor arising from the Millenium Notice were tolled by agreement with Suncor.

26. During 2023, KMC and Suncor negotiated a new, large-scale three-year MUA, which contemplated work under various scopes.
27. In February of 2024, and pursuant to the MUA, after lengthy discussions between the parties, Suncor issued a purchase order under the MUA to KMC for the removal of substantial volumes of overburden on the Fort Hills Project site (the "**Fort Hills PO**").
28. The Fort Hills PO was awarded to KMC in part as consideration pursuant to a settlement agreement between KMC and Suncor in which KMC released Suncor from claims relating to the Millenium Notice.
29. The scope of the work originally contemplated under the Fort Hills PO required KMC to spend an additional approximately \$83,000,000 for new asset additions and approximately \$10,000,000 in additional maintenance expenditures on the existing assets.
30. KMC entered into the Syndicate Credit Agreement in August 2024, in part on the strength of, and also to assist it in fulfilling, the Fort Hills PO. Suncor was aware of the various financial commitments KMC had made to meet the performance requirements and volume guidance provided by Suncor.
31. Suncor pledged high volumes of work to KMC under the Fort Hills PO. Work was started on an hourly compensation basis (as opposed to a unit rate basis) due to mining conditions, KMC's fleet not being balanced and efficient as KMC mobilized, and because Suncor's mine plan was still evolving. This caused Suncor to assign much longer haul distances than earlier guidance had indicated. KMC responded to the changes by committing to additional new equipment leases and renting significant equipment from third parties. KMC was determined to do everything in its power to respond to Suncor's guidance and volume requirements, acting in good faith that the Fort Hills PO would compensate KMC for the additional costs incurred.
32. In March 2024, Suncor directed KMC to move from hourly compensation to unit rate compensation (regardless of contract triggers flowing from mining conditions) or to "put shovels down". Through the summer of 2024, KMC proposed alternate lump sum or unit rate top-up solutions to address some of the adverse mining conditions that arose.
33. In September 2024, during negotiations of the appropriate application of the contract, Suncor provided KMC with a notice of Termination for Convenience of the overburden work represented by the Fort Hills PO, being most of the scope of work under the MUA. The notice

of termination required KMC to cease work on the significant scope of work effective October 31, 2024.

34. In addition to the Termination for Convenience of the Fort Hills PO, Suncor had also earlier awarded KMC a large three-year scope of work for the handling of plant rejects and oversized materials at Suncor's base plant and Syncrude's ore processing plant. In April 2024, Suncor also cancelled this contract, stating it had no concerns with KMC's workmanship but that it would undertake the work itself. Despite this statement, Suncor put another contractor in place to perform the work, without any consideration to KMC for its commitment made to Suncor. KMC had committed to significant new capital assets to perform this work.
35. With the Transaction closed and the majority of KMC operations winding down, KMC has asked its legal counsel to fully evaluate potential claims against Suncor for, *inter alia*, the circumstances described above. That review and evaluation is ongoing.
36. The brief extension of the stay of proceedings to July 31, 2025 is for the primary purpose of determining pertinent next steps of potential claims against Suncor.

#### F. Conclusion

37. KMC continues to, as it has throughout these entire proceedings, act in good faith and with due diligence.
38. In the circumstances of KMC's counsel undertaking a thorough review of potential claims KMC may bring against Suncor and pertinent subsequent steps, the extension of the stay of proceedings to July 31, 2025 is appropriate in the circumstances.

SWORN BEFORE ME at St. Albert, )  
 Alberta, this 9<sup>th</sup> day of May, 2025 )



Commissioner for Oaths in and for Alberta

Tomi Ameobi  
 Student-At-Law



DANIEL KLEMKE

This is **Exhibit "A"** referred to in the Affidavit  
of DANIEL KLEMKE sworn before me  
on the 9<sup>TH</sup> day of May, 2025.

A handwritten signature in cursive script, appearing to read 'Tomi Ameobi', written over a horizontal line.

A Commissioner for Oaths in and for  
the Province of Alberta

Tomi Ameobi  
Student-At-Law

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IN THE MATTER OF THE COMPANIES  
ARRANGMENT ACT, R.S.C. 1985, C.c-36, AS  
AMENDED

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

DOCUMENT **MONITOR'S CERTIFICATE**

ADDRESS FOR  
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CONTACT  
INFORMATION OF  
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DOCUMENT  
MLT AIKINS LLP  
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223 3<sup>rd</sup> Street  
Calgary, Alberta T2P 0B4  
Attention: Ryan Zahara  
Tel: 403-693-5420  
Email: rzahara@mltaikins.com

## RECITALS

- A. Pursuant to an Initial Order of the Honourable Justice M.J. Lema of the Court of King's Bench of Alberta, Judicial District of Edmonton (the "**Court**") dated January 10, 2025, FTI Consulting Canada Inc. was appointed as the Monitor (the "**Monitor**") of KMC Mining Corporation (the "**Applicant**");
- B. Pursuant to the Order of Justice M.J. Lema dated January 10, 2025, a Sales and Investment Solicitation Process ("**SISP**") was approved and Ernst & Young Orenda Corporate Finance Inc. (the "**Sales Agent**") proceeded to administer the SISP, with oversight by the Monitor.
- C. After conclusion of the SISP and pursuant to an Order of the Court dated April 17, 2025, the Court approved the sale transaction as set forth in the Asset Purchase Agreement ("**APA**") between the Applicant (the "**Vendor**") and 2122256 Alberta Ltd. o/a Heavy Metal Equipment & Rentals (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 Monitor 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 out in Article VIII of the APA have been satisfied or waived by the Vendor and the Purchaser; (iii) the Vendor Closing Certificate and Purchaser Closing



Certificate have been received by the Monitor; and (iv) the Transaction has been completed to the satisfaction of the Monitor.

- D. Unless otherwise indicated herein, capitalized terms have the meanings set out in the APA.

**THE MONITOR CERTIFIES** the following:

1. The Purchaser (or its nominee) has paid, and the Monitor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the APA;
2. The conditions to Closing as set out in Article VIII of the APA have been satisfied or waived by the Vendor and the Purchaser (or its nominee); and
3. The Transaction has been completed to the satisfaction of the Monitor.

This Certificate was delivered by the Monitor at 9:30 a.m. on May 2, 2025

FTI Consulting Canada Inc., in its capacity as Monitor of KMC Mining Corporation, and not in its personal or corporate capacity.

Per: 

Name: Dustin Olver

Title: Senior Managing Director