

COURT FILE NUMBER 2503 00016

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, RSC 1984, c
C-36, AS AMENDED

AND IN THE MATTER OF KMC MINING
CORPORATION

APPLICANT FTI CONSULTING CANADA INC., in its capacity as
the Court-Appointed Monitor of KMC MINING
CORPORATION

**DOCUMENT APPLICATION (Allocation Approval and
Distribution Order)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Monitor

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File: 0052752-00008

NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: May 23, 2025
Time: 10:00 a.m.
Where: Via WebEx (see enclosed Appendix "A")
Before Whom: The Honourable Justice Harris

Go to the end of this document to see what else you can do and when you must do it.

Remedy sought:

1. FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the Court-appointed Monitor (the "**Monitor**") of KMC Mining Corporation ("**KMC**"), seeks an Order substantially in the form attached hereto as **Schedule "A"**:
 - (a) abridging the time for, and validating service of, this Application and the materials filed in support of this Application, if necessary, and dispensing with service on any party not served;
 - (b) authorizing and empowering the Monitor to make a distribution to creditors as set out in the Third Report of the Monitor, dated May 13, 2025 (the "**Third Report**"), in respect of the Sale Proceeds (as defined below) (the "**Proposed Distribution**");
 - (c) approving the cost allocation methodology proposed by the Monitor, as set out in the Third Report (the "**Proposed Cost Allocation**");
 - (d) directing each of the persons listed in the Proposed Cost Allocation (collectively, the "**Affected Creditors**") to pay their respective obligations, in respect of the Proposed Cost Allocation, to the Monitor, and authorizing the Monitor to deduct any amounts owing by any Affected Creditors under and pursuant to the Proposed Cost Allocation from any distributions, proceeds or funds which such Affected Creditors are entitled to from the proceeds of the HME APA (as defined below); and
 - (e) such further and other relief as may be sought by the Applicant and this Honourable Court may permit.
2. KMC has also filed an Application seeking an Order from the Court extending the Stay Period (as defined in the Amended and Restated Initial Order, granted by the Honourable Justice J.T. Neilson on January 20, 2025 (the "**ARIO**")) up to and including July 31, 2025), which is also scheduled to be heard on May 23, 2025.

Basis for this claim:

Procedural History

3. On December 5, 2024, KMC filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”). FTI consented to act as proposal trustee in the NOI proceedings (the “**Proceedings**”) of KMC.
4. On December 9, 2024, in the NOI Proceedings, the Court granted an Order (the “**December 9 Order**”) which, among other things:
 - (a) approved an administrative charge, ranking in priority only to the claims of KMC’s first secured lender, being a syndicate of lenders led by ATB Financial and including Canadian Western Bank, Export Development Canada and Laurentian Bank of Canada (collectively, the “**Syndicate**”) and the second secured lender, The Klemke Foundation on all of KMC’s present and after-acquired assets, property and undertakings, not to exceed \$500,000 (the “**Administration Charge**”);
 - (b) authorized KMC to obtain and borrow under a credit facility provided by certain lenders of the Syndicate (the “**Interim Lenders**”) to finance the Applicant’s working capital requirements and such other general corporate and capital expenditures, not to exceed \$6,000,000 (the “**Interim Financing Charge**”);
 - (c) authorized KMC, with approval from the Proposal Trustee, to sell and dispose of redundant or non-material assets not exceed \$1,000,000; and
 - (d) extended the stay of proceedings and the time within which KMC was required to file a proposal to its creditors to February 18, 2025.
5. On December 20, 2024, the Court granted an Order which, among other things, authorized KMC to execute a letter of intent for an asset sales transaction with Gibraltar Mines Limited which exceeded the pre-authorized sale asset limit of \$1,000,000.
6. On January 10, 2025 (the “**CCAA Filing Date**”), KMC obtained the following orders from the Court:

(a) an Initial Order pursuant to the *Companies' Creditors Arrangement Act*, RSC 1984, c C-36, as amended (the "**CCAA**") granting the following relief, among other things:

- i. a continuation of the NOI Proceedings under the CCAA (the "**CCAA Proceedings**");
- ii. an initial stay period until January 20, 2025 (the "**Stay Period**");
- iii. the appointment of FTI as Monitor in the CCAA Proceedings;
- iv. approval and continuation of the priority and amount in respect of the Administration Charge, the Interim Financing Charge, and KMC's obligation to indemnify KMC's directors and officers for post-filing liabilities in the amount of \$500,000 (the "**Directors' Charge**" and together with the Administration Charge and the Interim Financing Charge, the "**Initial Order Charges**"); and
- v. expansion of the Interim Financing Charge to take priority over all Property of KMC;

(b) a Sales and Investment Solicitation Process Order (the "**SISP Order**"), granting approval of the proposed sale and investment solicitation process (the "**SISP**") and approval of the engagement letter, dated December 23, 2024, between KMC and Ernst & Young Orenda Corporate Finance Inc. (the "**Sales Agent**"); and

(c) a temporary Sealing Order in respect of certain confidential information with respect to KMC's Property.

7. On January 20, 2025, KMC sought and obtained the following Orders from the Court:

(a) the ARIO, which approved the extension of the Stay Period up to and including June 16, 2025, a fourth-ranking charge against KMC's Property for a key employee retention plan (the "**KERP**"), and declared that pursuant to section 5(5) of the Wage Earner Protection Program Act, SC 2005, c 47, s.1 ("**WEPPA**") that KMC meet the criteria established by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 (the "**WEPP Regulations**") as of the date of the granting of the ARIO;

- (b) the Lease Equipment Return Process Order, which approved a process for the return of certain equipment leased by KMC which KMC determined had no available surplus equity; and
 - (c) a temporary Sealing Order in respect of certain confidential information contained in KMC's evidence.
8. On April 17, 2025, KMC obtained the following orders from the Court:
- (a) a sale approval and vesting order (the "**SAVO**") approving the asset purchase agreement (the "**HME APA**") for the sale of substantially all the assets of KMC to 2122256 Alberta Ltd. operating as Heavy Metal Equipment and Rentals ("**HME**");
 - (b) an order (the "**KERP/WEPPA/Distribution Order**"):
 - i. modifying the KERP to provide certain adjustments to the entitlements and payments with respect to the KERP without modification to the total amounts payable thereunder;
 - ii. an order affirming the continued applicability of WEPPA as authorized in the ARIO;
 - iii. an order authorizing an interim distribution (the "**Interim Distribution Order**") to secured creditors and equipment lessors of up to 66.66% of the net sale proceeds from the HME APA; and
 - (c) a temporary sealing order sealing the confidential supplementary report of the Monitor.
9. On May 1, 2025, the transaction contemplated in the HME APA closed and an initial distribution of proceeds in the total amount of \$65,815,000 was subsequently distributed to creditors in accordance with the Interim Distribution Order.

Proposed Distribution

10. As of May 13, 2025, the Monitor holds approximately \$35,052,000 in net proceeds remaining from the HME APA available to be distributed to KMC's creditors following the previous distributions made pursuant to the Interim Distribution Order (the "**Sales**

Proceeds"). Subject to the approval of the Proposed Cost Allocation (outlined in further detail below), the Monitor's calculation in respect of the distribution of the remaining Sale Proceeds is set out in detail in the Third Report, which is summarized as follows:

- (a) \$24,253,000 to the Syndicate;
 - (b) \$6,777,000 to Komatsu;
 - (c) \$989,000 to John Deere;
 - (d) \$1,624,000 to CAT;
 - (e) \$44,000 to Edmonton Kenworth Ltd; and
 - (f) \$100,000 to Finning International Inc.
11. The Proposed Distribution would provide for the full and final distribution of the sale proceeds received under the HME APA and full balance of the proceeds currently held by the Monitor in trust. To ensure adequate liquidity and funding of these CCAA Proceedings, KMC will remain in possession of approximately \$3.8 million (the "**Retained Cash**") cash-on-hand to wind down operations over the coming months and complete any remaining matters under the CCAA.
12. The Monitor's legal counsel has provided the Monitor with a legal opinion confirming the validity and enforceability of the security held by the proposed recipients (the "**Affected Creditors**") of the Proposed Distribution.

Cost Allocation

13. The Proposed Cost Allocation was determined based upon each of the Syndicate, the secured creditors, and equipment lessors *pro-rata* share of the HME APA.
14. KMC has incurred costs and expenses in connection with these CCAA Proceedings in the approximate amount of \$4,235,000 (the "**Costs**"). The Costs are comprised of: (i) professional fees including KMC's counsel, the Monitor, the Monitor's counsel, and the Sales Agent's fees, KMC employee and personnel costs directly related to their involvement in the SISF, insurance costs related to the assets comprising the SISF and the KERP.

15. The Monitor's Proposed Cost Allocation was prepared after significant consultation with KMC and takes into account and allocates the Costs based on the relative potential and actual, direct and indirect, benefits received by each of the Affected Creditors.
16. The Proposed Cost Allocation distinguishes between: (i) specific costs, which have been allocated to the applicable Affected Creditor that took the benefit of such costs; and (ii) general costs, which are not directly attributable to any specific Affected Creditor.
17. The Proposed Cost Allocation does not include an allocation of costs expended for operations of KMC that generated additional revenue during the course of the CCAA Proceedings.
18. The Proposed Cost Allocation also accounts for the payment of certain lease payments to Komatsu International (Canada) Inc. ("**Komatsu**") for the use of certain assets used by KMC during the CCAA Proceedings, the calculations for which are outlined in further detail in the Third Report.
19. The Proposed Cost Allocation provides a fair, reasonable and equitable allocation of the costs incurred in these CCAA Proceedings among KMC's secured creditors.

Material or evidence to be relied on:

20. The Affidavit of Daniel Klemke, sworn on May 9, 2025;
21. Pre-Filing Report of the Proposed Monitor, dated January 2, 2025;
22. First Report of the Monitor, dated January 17, 2025;
23. Second Report of the Monitor, dated April 8, 2025;
24. Second Supplemental to the Second Report of the Monitor, April 16, 2025;
25. Third Report of the Monitor, dated May 13, 2025; and
26. Such further and other materials as counsel may advise and this Honorable Court may permit.

Applicable Rules:

27. The *Alberta Rules of Court*, AR 124/2010, and specifically, Rules 6.3, 6.9, 6.28 and 11.27;
and
28. Such further and other rules as counsel for the Monitor may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

29. The *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.
30. Such further and other acts and regulations as counsel for the Monitor may advise and this Honourable Court may permit.

Any irregularity complained of or objections relied on:

31. None.

How the Application is proposed to be heard or considered:

32. Virtually by WebEx, before the Honourable Justice Harris, as scheduled on the Commercial List.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant and against all persons claiming under the applicant. You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant is entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant a reasonable time before the application is to be heard or considered.

APPENDIX “A”

WebEx Details

Virtual Courtroom 86 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom86>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

SCHEDULE "A"

Form of Order

(See attached)

COURT FILE NUMBER 2503 00016

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

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

AND IN THE MATTER OF KMC MINING CORPORATION

DOCUMENT **ORDER FOR APPROVAL OF ALLOCATION AND DISTRIBUTION**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

Monitor
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Fax: 403.508.4349
Attention: Ryan Zahara
Email: rzahara@mltaikins.com
File: 0052752-00008

DATE ON WHICH ORDER WAS PRONOUNCED: May 23, 2025

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice L.K. Harris

UPON THE APPLICATION of FTI Consulting Canada Inc., in its capacity as the Court-appointed Monitor (the “**Monitor**”) of KMC Mining Corporation (“**KMC**” pursuant to the initial order granted under the *Companies' Creditors Arrangement Act* (Canada) (the “**CCAA**”) on January 10, 2025, and subsequently amended and restated on January 20, 2025 (collectively, the “**ARIO**”), all in the within proceedings (the “**CCAA Proceedings**”); **AND UPON** having read the Third Report of the Monitor, dated May 13, 2025 (the “**Third Report**”), the Affidavit of Daniel Klemke, sworn on May 9, 2025; **AND UPON** having read the Affidavit of Service of Ameena Quazi, sworn

on May ____, 2025; **AND UPON** hearing from counsel for the Monitor, counsel for KMC, and all other interested parties in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of this Application and supporting materials are hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.
2. The Proposed Cost Allocation, as defined and described in the Third Report in paragraphs 28 to 30 is hereby approved.
3. The Monitor is hereby authorized and empowered to make the distributions to creditors as set out in the Third Report at paragraph 32.
4. The Monitor is authorized and empowered to do such things, and execute and deliver such additional, restated and ancillary documents and assurances governing or giving effect to the distribution, which in the Monitor's discretion, are reasonably necessary or advisable to properly give effect to the distribution contemplated in paragraph 2 above or this Order.
5. Service of this Order shall be deemed good and sufficient by:
 - a. serving the same on:
 - i. the persons listed on the 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; and
 - b. posting a copy of this Order on the Monitor's website at cfcanada.fticonsulting.com/KMCMining/
6. 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 of the Court of King's Bench of Alberta