



Affidavit of Hein Frey #7
affirmed: October 23, 2024

No: S238572
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 PLAN OF COMPROMISE AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

AFFIDAVIT

I, **HEIN FREY**, of the City of Paarl, Western Cape, South Africa, AFFIRM THAT:

1. I am the Head of North American Mining Operations of Myra Falls Mine Ltd. (referred to in this affidavit as the "**Company**" or "**MFM**"). I have been involved in the financial and operational management of the Company since May of 2023. As a result, I have personal knowledge of the matters to which I hereinafter depose save and except where I refer to matters based on information and belief, in which case I verily believe that information to be true.

2. Capitalized terms used in this affidavit and not otherwise defined herein have the meaning given to them in my sixth Affidavit affirmed on July 25, 2024, or the Order of this Honourable Court granted on December 28, 2023 (the "**ARIO**").

Introduction and Relief Being Sought

3. On December 18, 2023, the Supreme Court of British Columbia (the "**CCAA Court**"), granted MFM an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"), which provided for, among other things:

- (a) a Stay Period in favour of MFM, until and including December 28, 2023;

- (b) an Administration Charge up to the maximum of \$350,000;
 - (c) a Directors' Charge up to the maximum of \$650,000;
 - (d) the Company's ability to borrow up to a maximum of \$4,000,000 under a debtor-in-possession credit facility (the "**DIP Facility**") pursuant to a DIP Term Sheet (the "**DIP Term Sheet**"), among MFM, as borrower and Trafigura US Inc., as interim lender (the "**Interim Lender**") and a corresponding Interim Lender's Charge; and
 - (e) that FTI Consulting Canada Inc. be appointed as Court-appointed monitor of the Company (in such capacity, the "**Monitor**").
4. On December 28, 2023, the CCAA Court granted the ARIO, which, among other things:
- (a) extended the Stay Period up to and including February 29, 2024;
 - (b) authorized the Company to borrow up to \$21,000,000 from the Interim Lender under the DIP Facility, together with a corresponding increase in the amount of the Interim Lender's Charge;
 - (c) increased the amount of the Administration Charge to \$800,000;
 - (d) increased the amount of the Directors' Charge to \$1,200,000; and
 - (e) granted the Interim Lender's Charge, the Administration Charge and the Directors' Charge priority ahead of secured creditors pursuant to ss. 11.2(2), 11.51(2) and 11.52(2) of the CCAA.
5. On February 27, 2024, the CCAA Court granted an Order (the "**SISP Order**"), which, among other things:
- (a) extended the Stay Period until June 30, 2024; and
 - (b) approved a sale and investment solicitation process for offers or proposals to purchase, or invest in, all or substantially all of the Property and Business of MFM (the "**SISP**").

6. On March 7, 2024, the CCAA Court granted an Order (the “**Approval and Vesting Order**”) which, among other things, approved the sale of the Company’s interest in the Epiroc Lease (as defined in the Approval and Vesting Order) to Breakwater Resources Ltd., pursuant to a sale and assignment agreement dated and effective as of February 28, 2024.
7. On June 28, 2024, the CCAA Court granted an Order (the “**KERP Order**”) which, among other things:
 - (a) extended the Stay Period up to and including August 2, 2024;
 - (b) authorized the Company to borrow an additional \$5,500,000 from the Interim Lender pursuant to the DIP Facility for an aggregate principal amount of \$26,500,000, together with a corresponding increase in the amount of the Interim Lender’s Charge; and
 - (c) approved a KERP (as attached to, and defined in, the KERP Order) in respect of the Company’s Key Employees.
8. On August 2, 2024, the CCAA Court granted Orders, among other things:
 - (a) extending the Stay Period up to and including October 31, 2024;
 - (b) authorizing the Company to enter into a transaction (the “**AMTI Transaction**”) contemplated by an Asset Purchase Agreement dated and effective as of July 25, 2024 between MFM, as seller, and Amalgamated Mining & Tunnelling Inc. (“**AMTI**”), as purchaser, in respect of MFM’s rights, title and interest in certain AMTI Equipment and vesting in AMTI all of MFM’s rights, title and interest in and to that equipment, free and clear of all claims;
 - (c) authorizing the Company to enter into a transaction (the “**NTM Transaction**”) contemplated by a Sale and Assignment of Equipment Lease Agreement between MFM, as seller, and Nyrstar Tennessee Mines – Strawberry Plains LLC (“**NTM**”), an affiliate of MFM, as purchaser, in respect of MFM’s rights, title and interest in a certain lease of Sandvick equipment, and vesting in NTM all of MFM’s rights, title and interest in and to such lease, free and clear of all claims;

- (d) approving an equipment and inventory part tender process (the “**Tender Process**”) in respect of certain of MFM’s equipment and parts inventory, and granting certain ancillary relief in relation thereto;
- (e) authorizing the Company to enter into a financing agreement with CAFO Inc. (“**CAFO**”) with respect to the financing by CAFO of the premium payable by MFM in relation to its Property Insurance Policy, and granting CAFO a first-ranking priority Court-Ordered charge to the unearned premium of such Insurance Policy; and
- (f) authorizing MFM to borrow up to an additional amount of \$7,500,000 pursuant to the terms of the Amended DIP Term Sheet (as defined in the KERP Order) and granting an increase in the amount of the Interim Lender’s Charge to \$34,000,000 (plus accrued and unpaid interest, fees and expenses).

9. The Company is now seeking an Order from the CCAA Court extending the Stay Period until January 31, 2025 and empowering the Company to disclose to the Union certain personal information of members of the Union.

Update on Progress Since Prior Court Appearance

10. Since the Company last appeared before the CCAA Court on August 2, 2024, the Company has in good faith and with due diligence:

- (a) completed the AMTI Transaction and the NTM Transaction;
- (b) made arrangements to provide the British Columbia government with a replacement reclamation bond, which will result in significant premium savings for the Company;
- (c) continued to operate the Mine in care and maintenance, including conducting environmental monitoring required while the Mine is in care and maintenance. During care and maintenance, the company continues to employ over 40 employees to ensure preservation of assets and compliance with environmental obligations. The Company has been in communications with representatives of the life of mine (“**Life of Mine**”) committee (the “**Committee**”), which is assisting with the environmental monitoring. The Committee includes delegates from the

Company, We Wai Kai, Wei Wai Kum, K'omoks, and Mowachaht Muchalaht First Nations, as well as delegates from various ministries, including the Ministry of Water, Land and Resources Stewardship, Ministry of Environmental and Climate Change Strategy, and the Ministry of Energy, Mines and Low Carbon Innovation (the "**Ministry**"). The most recent meeting with the Committee took place on October 17, 2024;

- (d) continued ongoing discussions with the First Nations regarding an opportunity to lease the main warehouse located at the Discovery Terminal;
- (e) updated the Mine's Life of Mine plan by conducting a full assessment of mineral reserves and technical engineering, and assessing how mining operations could proceed if the Company resumes operations. This comprehensive process would normally take between 8 to 9 months however, given the CCAA proceeding, the Company conducted this process in 4 months;
- (f) conducted a complete review of all the equipment and parts inventory at the Mine, which consisted of approximately 16,700 pieces of equipment, in order to assess which equipment would be included in the Tender Process, by identifying obsolete equipment, and equipment that needs to be retained in the event that the Mine resumes operations. This categorization of the inventory took several months and required the Company to bring additional staff to assist with the categorization and review of the inventory;
- (g) held in-person meeting consultations with third party operators with interest in potentially operating the Mine. The Company negotiated and assessed the third party operator's proposals and is currently considering the viability of a hybrid model where third party operators would manage specific operations if the Mine reopens;
- (h) initiated discussions with the Union based on the revised Life of Mine plan with a view of getting production enhancements and operating costs concessions; and
- (i) finalized its work to identify previously disclosed erroneous over-contributions and under-contributions to the Pension Plan. In total, the Company identified

over 400 instances where contributions were calculated incorrectly (in all instances, the average over- or under-contribution not exceeding \$3,000). The Company was required to do a significant amount of work to correct the over-contributions and under-contributions as these calculations needed to be completed on a case-to-case basis. The Company is currently conducting a peer review of this information to ensure accuracy, and expects to complete its review in early November. The Company also reviewed the calculations with its counsel who then had conversations on a no-name basis with CRA to discuss necessary tax refiling by affected individuals. Finally, the Company discussed its proposed approach with the British Columbia Financial Services Authority as well as Union Representatives (as defined below).

Details on Restructuring Progress

11. Earlier this year, the Company, with the assistance of the Monitor and FTI Capital Advisors - Canada ULC, conducted a comprehensive sale and investment solicitation process for the Business. Unfortunately, the SISP did not result in any acceptable offers capable of being implemented. The outcome of the SISP stressed the necessity for strategic reassessment of potential restructuring options moving forward.

12. Following the SISP, the Company pivoted and engaged with its existing owner and the Interim Lender (collectively, the "**Trafigura Group**") to assess remaining options available to the Company ranging from permanent closure, to long-term care and maintenance, to resuming mining operations following a Trafigura Group – led restructuring. The Company is focussing its efforts on the latter option.

13. Accordingly, since the Company last appeared before the CCAA Court on August 2, 2024, the Company, with the assistance and support of the Trafigura Group, has taken a number of steps, which includes those described in paragraph 10 (a) through (h), all with a view of focussing its efforts on developing a comprehensive internal restructuring business plan and strategy that includes productivity improvements and could enable the Company to restructure its balance sheet, exit CCAA protection in 2025 and, with favourable market conditions and certain concessions from key stakeholders, resume mining operations at the Mine. The Company is keeping the Monitor apprised on the development of its restructuring plan with the Trafigura Group.

14. Resumption of mining operations would also require significant capital investments to: (i) update the Mine equipment fleet and certain main infrastructure, (ii) provide training to returning employees, and (iii) restart production ramp-up including capital development and associated infill drilling.

15. The Trafigura Group, who funded approximately US\$114 million on an unsecured basis to keep the Company afloat prior to the Initial Order, has indicated that it will not make further investments in the Mine unless the Company addresses its current cost and productivity challenges. The Company's current operating model is not profitable due to current metal prices combined with below market productivity and high operating cost compared to its peers.

16. Consequently, the Company has met both in person and virtually with the Area Director (British Columbia) for UNIFOR and with locally elected representatives of UNIFOR Local 3019 (collectively the "**Union Representatives**") to discuss the challenges faced by the Company, the circumstances under which Mine operations could resume, and, in good faith, shared confidential financial information and the Company's analysis of the same. The Company also retained Doane Grant Thornton LLP to provide an independent review of, and a report (the "**GT Report**") on, the Company's financial information provided to the Union. The Company provided the GT Report to representatives of the Union on October 21, 2024.

17. At the most recent meeting between the Company and the Union, the parties agreed to meet for three days from November 6 to November 8, 2024 to continue negotiations. Based on prior negotiations, the Company anticipates that further meetings will be required to continue or complete these discussions. The negotiations could extend to the first half of 2025.

18. The Monitor and the Monitor's counsel have been present at all meetings with the Union Representatives and it is anticipated that they will continue to attend.

19. The outcome of these negotiations will directly impact the Company's ability to resume mining operations and secure additional investments from the Trafigura Group to implement an exit plan from this CCAA proceedings.

20. In parallel with its discussions with the Union Representatives, the Company has begun discussions with certain first nations representatives (the "**First Nations**") to explore ways in which the First Nations could become more involved in the operations and future of a restructured Mine as well as possible restructuring of the agreements currently in place

between the First Nations, the Company and the Government of British Columbia. The Company has plans to meet with Chief Roberts of the Wei Wai Kum First Nation on November 8, 2024 to advanced these discussions. While substantive discussions regarding amendments to the Discovery Terminal lease with the We Wai Kai First Nation and the Impact and Benefit Agreement have not yet occurred, MFM has continued to hold regular meetings with the We Wai Kai First Nation to discuss operations at the Mine and environmental monitoring at the Mine and the terminal site.

Tender Process

21. The CCAA Court authorized the Tender Process pursuant to an Omnibus Approval Order made on August 2, 2024. The Tender Process contemplated that it would begin following the completion of the Company's equipment and inventory part classification. In my sixth affidavit, I indicated that the Company would require until the end of September to complete the inventory classification and ensure accurate stock valuation and categorization.

22. The Company's equipment and inventory part classification entailed extensive efforts and time on the part of the Company's employees, even requiring additional hires to see the process through completion. The Company's inventory includes over 16,700 pieces of equipment and spare parts. The Company assessed the estimated value of critical items and the need of all such equipment and parts prior to determining which assets to include in the Tender Process. Items were categorised and catalogued and, at the same time, assessed if required for the care and maintenance period or potential restart of the Mine. The Company rehired employees with critical skills required to support the work, on a temporary basis.

23. The Monitor assisted, and continues to assist, the Company in the preparation and implementation of the Tender Process.

24. The Tender Process launched on October 18, 2024 and offers must be received by the Company and the Monitor no later than December 2, 2024. Pursuant to the Omnibus Approval Order, the Company will be required to seek Court approval of a transaction completed pursuant to the Tender Process, if it exceeds \$1 million or if a series of transactions exceed \$4 million.

Continuation of Care and Maintenance Operations

25. The Company continues to diligently ensure that its operations are conducted in accordance with federal and provincial statutory requirements and that its assets, including its mining permits, are preserved.

26. The Company is preparing an updated care and maintenance plan, which it must submit to the Ministry by December 18, 2024.

27. The Company, with the assistance of the Trafigura Group, has also made arrangements to provide the British Columbia government with a replacement reclamation bond, which will result in significant premium savings for the Company.

28. A Ministry compliance inspection was completed on August 7, 2024, which included (i) an underground and surface water treatment inspection; and (ii) a detailed inspection of the underground rehabilitation, surface infrastructure related to water treatment, dredging projects, tailings dam and general surface infrastructure. The site was found to be fully compliant with no Ministry orders or recommendations issued during the inspection.

29. An external review of outstanding Ministry orders was completed on August 31, 2024. No orders were identified that affects the Company mining permit or could potentially delay restart operations.

Pension Matters

30. As noted in paragraph 10(i), the Company identified over-contributions and under-contributions to the Pension Plan (the "**Contribution Rectification Process**").

31. The Company must rectify such contributions, to the extent feasible, in order to become compliant with applicable laws.

32. The Company was required to do a significant amount of work to calculate the over-contributions and under-contributions as these calculations needed to be completed on a case-to-case basis.

33. The Company also reviewed the calculations with its counsel who then had conversations on a no-name basis with CRA to discuss necessary tax re-filing by affected

individuals. The Company also discussed its proposed approach to the Contribution Rectification Process with the British Columbia Financial Services Authority.

34. The Company is currently conducting a peer review of this information to ensure accuracy and expects to complete its review in early November.

35. The Union has requested the Company to provide it with the over/under contribution amounts for each affected employee who is a member of the Union, so that it can assist those employees with any question they may have regarding the Contribution Rectification Process. As such, the Company is seeking an Order from the CCAA Court empowering the Company to disclose to the Union certain personal information of the unionized employees.

Stay Extension and Conclusion

36. The Company seeks an Order extending the Stay Period until January 31, 2024.

37. As set out in detail above, the Company requires additional time to carry out negotiations with its various stakeholders. The outcome of these discussions will determine the Company's ability to implement a transaction pursuant to which mining operations could resume at the Mine. The Company is diligently advancing these discussions, recognizing that those stakeholder representatives' time is in high demand, and is engaging with these parties in good faith with a view to implementing a restructuring transaction.

38. The Company believes that the 3 month additional Stay Period will allow it to significantly progress on these various negotiations and anticipates reporting to the Court at the future stay extension hearing.

39. The Company is discharging its post-filing and priority payables and will be able to continue to do so should the Stay Period be extended until January 31, 2025, as per the updated cash flow statement (the "**Updated Cash Flow Statement**"), a copy of which will be appended to the Monitor's fifth report.

40. As evidenced by the Updated Cash Flow Statement, the Company does not require an increase in its DIP Facility Term Sheet to discharge its obligations until the end of January, 2025.


41. The Interim Lender and the Monitor are supportive of the Stay Extension.

42. The Company is acting diligently in preserving its assets and business, ensuring compliance with applicable statutory requirements, while seeking, in good faith, to implement a restructuring transaction that, assuming:

- (i) appropriate wage concessions;
- (ii) productivity improvements; and
- (iii) favourable macro economic circumstances,

will allow the Company to exit CCAA with the Mine in an operational condition.

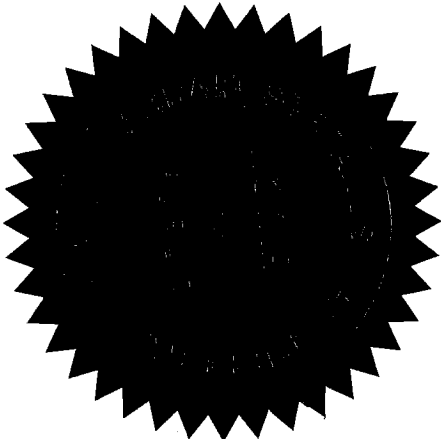
AFFIRMED BEFORE ME in Cape Town,
South Africa on October 23, 2024.



A Notary Public for taking Affidavits within
Cape Town, South Africa.

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