

This is the 1st affidavit of
Russell Ball in this case and was
made on September 11, 2022

No. S-226670
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 *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED AND THE *BUSINESS*

CORPORATIONS ACT, S.N.B. 1981, C. B-9.1, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF TREVALI MINING
CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

AFFIDAVIT

I, Russell Ball, c/o 1900 – 999 West Hastings Street, Vancouver, BC, V6C 2W2, AFFIRM THAT:

I. INTRODUCTION

1. I am a member of the Board of Directors of Trevali Mining Corporation ("**Trevali Corp.**"), a petitioner in this proceeding and the one hundred (100) percent owner of the other petitioner in this proceeding, Trevali Mining (New Brunswick) Ltd. ("**Trevali NB**", together with Trevali Corp., the "**Applicants**"). As such, I have personal knowledge of the matters deposed to in this affidavit except where I depose to a matter based on information from an informant I identify, in which case I believe that both the information from the informant and the resulting statement are true.

2. In addition to sitting on Trevali Corp.'s Board of Directors, I am the Managing Director at QDBS Resources Inc. and the former Chief Executive Officer and a director and Executive Chairman of Calibre Mining Corp. I was also previously the Executive Vice President,

Chief Financial Officer and Corporate Development of Goldcorp Inc. and the Executive Vice President and Chief Financial Officer of Newmont Mining Corporation, among other roles. I am both a Chartered Accountant from the Institute of Chartered Accountants of South Africa and a Certified Public Accountant in the USA.

3. This Affidavit is made in support of the Applicants' request that this Court grant (a) an order approving a Key Employees Retention Plan (the "**KERP**") for certain of Trevali's KERP Employees (as defined below); (b) a charge in the amount of US \$800,000 over the Applicants' Property (as defined in the Amended and Restated Initial Order granted August 29, 2022 (the "**ARIO**")) to secure the amounts payable pursuant to the KERP; and (c) an order sealing my Confidential Affidavit #2 (the "**Confidential Second Affidavit**"), which is also being affirmed on September 11, 2022 in support of the foregoing relief, on the grounds that it contains confidential and personally and commercially sensitive information with respect to the KERP.

4. The KERP was developed by the Applicants, in consultation with the Monitor, to facilitate and encourage the continued participation of senior management and other key employees of Trevali who are required to guide the business through its restructuring efforts and preserve value for stakeholders. The KERP is intended to provide participating employees (the "**KERP Employees**") with additional payments as an incentive to continue their employment through these *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") proceedings. The KERP Employees have significant experience and specialized expertise that cannot be easily replicated or replaced, particularly in the context of these proceedings. Further, the KERP Employees have been and will continue to be faced with a significantly increased workload during the restructuring process.

5. It is my belief, and that of the Applicants' Board of Directors, that the KERP is critical to ensuring that the KERP Employees continue in their employment with Trevali as they work to implement the Applicants' restructuring strategy, to the benefit of the Applicants' stakeholders. For the reasons set out in this Affidavit, the Applicants believe that the terms of the KERP, including the amounts payable thereunder to these key employees, are commercially reasonable and appropriate in the circumstances. As noted above, the KERP has also been developed in consultation with the Monitor, which I understand is supportive of its approval by this Court.

II. THE NEED FOR THE KERP

6. The Applicants obtained protection under the CCAA pursuant to an Order issued by this Court on August 19, 2022, as amended and extended by the ARIO.

7. The circumstances that led to the commencement of these CCAA proceedings are described in Affidavit #1 of Brendan Creaney, made on August 19, 2022 (the “**First Creaney Affidavit**”) and will not be repeated here. Capitalized terms not otherwise defined in this affidavit have the meanings ascribed to them in the First Creaney Affidavit.

8. In the weeks since the Applicants obtained CCAA protection, their employees and officers have been working tirelessly to stabilize the Applicants’ business with the assistance of the Court-appointed monitor, FTI Consulting Ltd. (the “**Monitor**”). These efforts are described in greater detail in the Affidavit #2 of Brendan Creaney, made September 11, 2022 (the “**Second Creaney Affidavit**”). In particular, the KERP Employees, who are subject to the relief being requested from this Court, have over the past weeks expended significant time and effort in extremely demanding circumstances to help the Applicants stabilize their business operations in the interest of all their stakeholders.

9. The circumstances facing the Applicants, including: (a) the need to lay-off approximately 100 employees as a result of the Caribou Mine being placed on care and maintenance; (b) the challenges at the Perkoa Mine; (c) the uncertainty surrounding the employment future of current employees with Trevali or a prospective purchaser of their business; (d) the continued need to manage and operate a complex and diverse business in strained financial circumstances; (e) the cross border and international aspects of the Applicants’ business and operations; and (f) the significant work required to guide the Applicants’ restructuring efforts in addition to day-to-day business operations, have emphasized for the Applicants and their Board of Directors the importance of retaining the KERP Employees.

10. Considering these circumstances, the Applicants, in consultation with the Monitor, have determined that it is in the Applicants’ and their stakeholders’ best interests that steps be taken to ensure the continued retention of the KERP Employees and their ongoing commitment to the Applicants’ business as they pursue restructuring efforts and, ultimately, the opportunity to maximize value for stakeholders.

11. The Applicants, working with their Board of Directors, and in consultation with the Monitor, have identified eighteen (18) KERP Employees who would be subject to the proposed KERP.

12. The KERP Employees, who are drawn from some members of Trevali's senior management, operations, human resources, information technology, and finance teams, provide the critical leadership and resources required to run and administer the Applicants' complex and multi-jurisdictional business operations. They have historical knowledge of, and familiarity with, the Applicants' business and operations, and significant experience and expertise.

13. Given their roles within the Applicants' business operations, the continued employment of the KERP Employees is critical to ensuring the operational integrity at each of the Applicants' current mining sites. I believe that any potential losses of the KERP Employees would have a significant and detrimental effect on the Applicants' business operations.

14. In addition to their roles in supporting the Applicants' business operations, I believe that the KERP Employees will be of importance to the Applicants in completing their CCAA-specific requirements including by providing strategic direction for the Applicants' restructuring efforts and identifying, developing, and implementing initiatives intended to maximize value. In particular, the KERP Employees will be essential to implementing the sales investment and solicitation process (the "**SISP**") for the Applicants' interests in the Caribou and Rosh Pina Mines, as is more fully described in the Second Creaney Affidavit.

15. The KERP Employees cannot be replaced internally, and the process to find appropriately qualified external replacements for the KERP Employees given the Applicants' current circumstances would be, if possible at all, lengthy, difficult, costly, and an impediment to the Applicants' restructuring efforts. For these reasons, the Applicants do not think that outsourcing or replacing the KERP Employees is a practical option, and even if possible this could ultimately prove to be more costly in terms of money, time, and business disruptions than the terms of the KERP.

16. At the same time, I believe that due to their experience and expertise the KERP Employees will likely have other, more certain employment opportunities and will be faced with a significantly increased workload during the restructuring process. Without the benefit of the KERP, the KERP Employees would likely consider accepting other employment opportunities. As noted above, the departures of any of the KERP Employees will be costly and disruptive, and also likely

to press additional challenges on the Applicants in terms of work and morale at a time that they are most in need of stability and continuity.

III. THE KERP TERMS AND CHARGE

17. The “**Retention Bonuses**” paid to fifteen (15) of the KERP Employees under the KERP will be in the form of three (3) lump sums, payable upon the occurrence of the following events:

- (a) 33.3% of the total Retention Bonus will be paid on the earlier of:
 - (i) the execution of letters of intent for the sale of the Rosh Pinah Mine pursuant to the SISP; or
 - (ii) November 30, 2022;
- (b) 33.3% of the total Retention Bonus will be paid on the earlier of:
 - (i) the completion of a transaction for the sale of the Rosh Pinah Mine pursuant to the SISP; or
 - (ii) January 31, 2023; and
- (c) 33.4% of the total Retention Bonus will be paid on the earlier of:
 - (i) the completion of a transaction for the sale of the Rosh Pinah Mine pursuant to the SISP; or
 - (ii) March 31, 2023.

18. Three (3) of the KERP Employees (the “**Alternative Timeline KERP Employees**”) will be paid their full Retention Bonuses on different timelines that those set out above as their participation in the Applicants’ restructuring efforts is anticipated to conclude at an earlier date, depending on the status of the Applicants’ proposed asset sales or dispositions.

19. There are two (2) KERP Employees subject to the KERP who, due to the nature of their positions, experience, and expertise, have played an outsized role in the Applicants’ restructuring efforts and are anticipated to be required to take on a particularly significant and expanded role in running the SISP and attending to other CCAA matters than other KERP Employees. These individuals due again to their positions, experience, and expertise have been identified as being both particularly critical to the successful restructuring and most likely to have

access to external employment opportunities. The amount of the Retention Bonuses payable to these two (2) KERP Employees is reflective of these factors.

20. The Retention Bonuses will only be paid to the respective KERP Employees if they have not resigned or been terminated for cause. If the KERP Employees are terminated without cause, the full amount of their Retention Bonuses (to the extent not already paid) will be payable to them on termination.

21. It is anticipated that each Retention Bonus payable under the KERP will be funded out of the Applicants' cash flow. However, to ensure that the KERP Employees receive reasonable assurances that their entitlements under the KERP are secure given the Applicants' insolvency, the Applicants request a charge (the "**KERP Charge**") in respect of their obligations under the KERP in an amount of no more than US \$800,000 on account of anticipated Retention Bonus payments. The KERP Charge is intended to provide the KERP Employees with a reasonable level of assurance that the Retention Bonuses will be paid.

22. The proposed KERP charge would rank after the Administration Charge, the D&O Charge, and Intercompany Advances Charge (but before the Sales Agent Charge, as described in the Second Creaney Affidavit).

23. In the above circumstances, the Applicants and their Board of Directors believe that the amounts payable to the KERP Employees under the KERP and the provision of the KERP Charge are reasonable and appropriate in the circumstances.

24. As mentioned above, the Monitor has been involved with the development of the KERP, including consulting with the Applicants in identifying the KERP Employees, and determining the amount of each of their Retention Bonuses. It is my understanding that the Monitor is supportive of this Court's approval of the KERP and KERP Charge.

IV. THE NEED FOR CONFIDENTIALITY

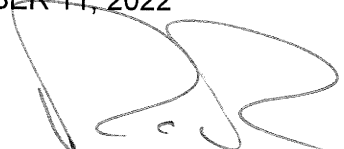
25. I have attached a list of the KERP Employees, their salaries, their Retention Bonuses, the timelines for payment of the Retention Bonuses, and a short summary of their roles in and importance to the Applicants' business and restructuring efforts as Exhibit "A" to my Confidential Affidavit, made September 11, 2022 (my "**Confidential Second Affidavit**").

26. Disclosure of the information contained in my Confidential Second Affidavit could be prejudicial to the Applicants, the KERP Employees, and others. Among other issues, disclosure of the information in my Confidential Second Affidavit could (a) create morale and other issues as between employees who are either not subject to the KERP or are receiving different entitlements under the KERP; (b) allow the Applicants' business competitors and others to attempt to induce the KERP Employees to depart from their employment for more lucrative opportunities; and (c) make it more difficult for the Applicants to negotiate employment terms for replacement employees if required. In addition, and generally speaking, salary and compensation levels for employees is a particularly personal and private matter to employees.

27. These issues and disruptions would be prejudicial to the Applicants at a time that they are most in need of stability and continuity. As the information found in my Confidential Second Affidavit is not of a nature that would normally be made public, I don't believe that anyone would be prejudiced by it remaining sealed from public view.


28. For these reasons, the Applicants seek an order that my Confidential Second Affidavit be filed under seal and kept confidential.

AFFIRMED BEFORE ME AT WEST
VANCOUVER, BRITISH COLUMBIA ON
SEPTEMBER 11, 2022



A Commissioner or Notary for taking
Affidavits for British Columbia

PETER RUBIN



Russell Ball