

This is the 2<sup>nd</sup> affidavit of  
Brendan Creaney 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, Brendan Creaney, c/o 1900 – 999 West Hastings Street, Vancouver, British Columbia, AFFIRM  
THAT:

**I. INTRODUCTION**

1. I am the Chief Financial Officer 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. The Applicants obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to an Order issued by this Court on August 19, 2022, as amended and

extended by this Court's Amended and Restated Initial Order granted on August 29, 2022 (the "ARIO").

3. In support of the Applicants' filing for CCAA protection, I made my Affidavit #1 on August 19, 2022 (my "First Affidavit"), which contains further background on the Applicants' business and their need for CCAA protection. Capitalized terms not otherwise defined in this affidavit have the meanings ascribed to them in my First Affidavit.

4. This Affidavit provides an update on the Applicants' restructuring efforts, and asks that this Court grant the Applicants' request for an order (the "SISP Approval Order"), which:

- (a) approves a sales and investment solicitation process for the Applicants' interest in the Rosh Pinah Mine and Caribou Mine (the "SISP");
- (b) approves an engagement letter (the "Sales Agent Agreement") between Trevali Corp. and National Bank Financial Inc. ("NBF") appointing NBF as the Applicants' "Sales Agent" for the purposes of the SISP; and
- (c) grants a charge over the Applicants' Property (as defined in the ARIO) to secure the Applicants' obligations to the Sales Agent under the Sales Agent Agreement.

## II. UPDATE ON APPLICANTS' RESTRUCTURING EFFORTS

5. In the approximately three weeks since the Applicants obtained CCAA protection, they have been working to stabilize their business and address their financial challenges with the assistance of the Monitor and in consultation with certain of their key stakeholders.

6. One essential aspect of the Applicants' restructuring efforts that has occurred since their filing for CCAA protection has been the continued operation and/or care and maintenance of the Rosh Pinah, Caribou and Perkoa Mines.

7. The status of each of these mines as of the date of this Affidavit can be summarized as follows:

- (a) The Rosh Pinah Mine remains operational and continues to produce zinc, lead and silver which has been delivered to Glencore on the schedule set out in Trevali's internal production forecast (with a delivery occurring approximately once every six weeks);

- (b) The Caribou Mine is currently in the process of being transferred to a care and maintenance program considering the operational challenges facing the mine, as discussed in greater detail in my First Affidavit. To that end, the Applicants have laid off approximately 100 employees to account for the reduced workforce required while the mine is in care and maintenance. The costs associated with the Caribou Mine are anticipated to be reduced even further once the mine has been fully transitioned into a stable care and maintenance state; and
- (c) Operations remain suspended at the Perkoa Mine following the tragic flooding event that occurred in April 2022. As will be discussed in greater detail in my Confidential Affidavit, to be affirmed and filed under seal (my "**Confidential Affidavit**"), the Applicants continue to consider their options with respect to the Perkoa Mine and remain engaged with the issues surrounding the continued detention in Burkina Faso of Perkoa Mine's manager and an employee of Byrnegut, Trevali's mining contractor.

8. Beyond the requirements of their mining business, which continue to require daily attention, the Applicants have also made significant efforts towards furthering their restructuring, which have included:

- (a) developing the terms of the SISP in consultation with the Monitor, and discussing the SISP terms with certain of their key stakeholders (including the RCF Administrative Agent and Glencore);
- (b) negotiating a Sales Agent Agreement with NBF in order to engage NBF as Sales Agent with respect to the SISP;
- (c) developing a key employee retention plan to secure the continued employment of certain of the Applicants' key employees (the "**KERP**");
- (d) considering the Applicants' cash flow needs, both with respect to the SISP and ongoing operations of their business, as well as considering and assessing potential interim financing to fund the SISP and the Applicants' ongoing operations;
- (e) preparing information for and meeting with the RCF Administrative Agent, the agent for the Applicants' first ranking secured lenders, and its advisors;
- (f) preparing information for and meeting with Glencore, the Applicants' second ranking secured lender and its advisors; and

- (g) engaging broadly with their stakeholders and other interested parties to further their continued restructuring efforts.

9. Considering these efforts to advance their restructuring, the Applicants' experience with their pre-CCAA Strategic Review Process undertaken with the assistance of NBF (as discussed in my First Affidavit), and the financial challenges and liquidity needs that they are facing, the Applicants have determined that it is necessary and appropriate to move forward with the SISP.

### III. THE SCOPE AND TERMS OF THE PROPOSED SISP

10. The proposed SISP, which was developed in consultation with the Sales Agent and the Monitor, and with an opportunity for input from the RCF Administrative Agent and Glencore, is intended to solicit interest in, and opportunities for:

- (a) one or more asset purchase transactions (an "**Asset Bid**"); or
- (b) some other restructuring, recapitalization or other form of reorganization of the business, property or affairs of the Applicants, including but not limited to the debt, share or other capital structure of the Applicants (a "**Restructuring Bid**"); or
- (c) some combination of one or more Asset and Restructuring Bids,

with respect to the Applicants' interests in the Caribou and Rosh Pinah Mines. As will be discussed in my Confidential Affidavit, the SISP does not contain a bidding procedure or timelines with respect to the Applicants' interest in the Perkoa Mine and is not intended to solicit offers for that asset.

11. The SISP will be implemented by the Applicants in consultation with the Monitor and with the assistance of NBF, which will act as Sales Agent with respect to the SISP.

12. The timelines described in the SISP are different in respect of bids for each of the Rosh Pinah and Caribou Mines:

<b>Event</b>	<b>Caribou Mine</b>	<b>Rosh Pinah Mine</b>
Commencement of Phase I of the SISP	September 14, 2022	September 14, 2022
LOI Deadline	October 7, 2022	October 21, 2022

Commencement of Phase II of the SISP	October 11, 2022	October 24, 2022
Final Bid Deadline	November 4, 2022	November 21, 2022
Final Agreement Deadline	November 14, 2022	December 9, 2022
Outside Closing Date	November 21, 2022	December 30, 2022

13. Any party wishing to submit a bid in respect of both mines is required to submit their bid by the applicable bid deadline for each mine and indicate that their bid with respect to the Caribou Mine is conditional on their anticipated bid with respect to the Rosh Pinah Mine being a Winning Bid (as defined below).

14. The SISP is divided into two phases. After an opportunity for Potential Bidders (as defined in the SISP) to conduct initial due diligence, Phase I of the SISP requires interested parties to submit a non-binding letter of intent (a “**LOI**”), which contains critical information about the proposed bid. A party that submits an LOI which satisfies the SISP criteria (a “**Qualified LOI**”), will be deemed a “**Qualified Bidder**” and invited to move to Phase II of the SISP.

15. In Phase II of the SISP, after any additional due diligence (including management presentations and on-site inspections), Qualified Bidders may submit a “**Final Bid**” in the form of an Asset Bid or a Restructuring Bid. Parties that submit a Final Bid which satisfies the SISP criteria will be deemed to have submitted “**Qualified Final Bids**”.

16. The Applicants will review all Qualified Final Bids, with the assistance of the Sale Agent, and in consultation with the Monitor, to determine the highest or otherwise best Qualified Final Bid (a “**Winning Bid**”). The SISP affords flexibility to the Applicants to select a Winning Bid that is not only the bid that provides the most cash, but to also consider other factors as well, such as levels of conditionality and the timeline to closing of any bid.

17. Absent consent of the RCF Administrative Agent, the agent for Applicants’ first ranking secured lenders, any Winning Bid must result in the payment in full of the amounts owing to the RCF Lenders on closing (and, similarly, absent consent of the RCF Administrative agent, any Potential Bidder may only be deemed a Qualified Bidder if the LOI submitted by such Potential Bidder is reasonably expected to result in the payment in full of the amounts owing to the RCF Lenders on closing).

18. The SISP additionally includes certain consultation requirements with respect to the Monitor vis-à-vis the RCF Administrative Agent, and Glencore, the Applicants' second ranking secured lender. These consultation requirements were developed in consultation with the Monitor and with the input of the RCF Administrative Agent and Glencore, given their status as secured lenders to the Applicants. To protect the integrity of the SISP, the Monitor is authorized in certain circumstances to limit the extent of such consultation if either of the parties entitled to consultation participate in the SISP.

19. The Applicants view the consultation rights conferred to the RCF Administrative Agent and Glencore as being reasonable given the nature of the RCF Lenders' and Glencore's interest in the Applicants' business and the successful outcome of the SISP. Additionally, the consultation rights strike an appropriate balance between the interests of the RCF Administrative Agent and Glencore as important stakeholders of the Applicants, and the need to maintain the integrity of the SISP process. In this regard, NBF has advised the Applicants that it is crucial to maintain the confidentiality of certain bidder information during the administration of the SISP.

20. There is flexibility in the SISP in that the proposed SISP timelines and criteria may be amended, extended, or waived by the Applicants, with the consent of the Monitor, or by further order of the Court.

21. The SISP will automatically terminate upon the occurrence of certain events, including the failure to receive any Qualified LOIs, Final Bids or Qualified Final Bids by the applicable deadlines.

#### **IV. THE SISP IS NECESSARY AND APPROPRIATE**

22. It is the Applicants' view that the SISP will adequately canvass the market in an effort to maximize value for the Applicants' interests in the Caribou and Rosh Pina Mines for the benefit of their stakeholders.

23. The timelines for the SISP were developed in consultation with the proposed Sales Agent and the Monitor and involved consideration of several factors, including that the pool of potential purchasers with sufficient resources and expertise to acquire and operate Caribou Mine or Rosh Pina Mine, or both, is relatively limited. And the fact that, given the public nature of these CCAA proceedings, viable potential purchasers of either the Rosh Pina Mine or Caribou Mine (or both) likely knew of the potential transaction opportunity with respect to these assets and

Applicants since at least the commencement of these proceedings, if not earlier (including as a result the Applicants pre-CCAA Strategic Review Process).

24. The Applicants are also cognisant of the need to balance the SISP with their financial challenges and liquidity needs. In the Applicants' view, the different timeframes in the SISP relating to Caribou Mine and Rosh Pinah Mine strike a necessary balance between managing those concerns and maximizing value for stakeholders.

25. In the circumstances, after consulting with the Sales Agent and the Monitor, it is the Applicants' view that:

- (a) the SISP will ensure the Applicants' assets are adequately exposed to the market;
- (b) the SISP will allow for the assessment of the viability of Potential Bidders and their ability to ultimately close on a transaction;
- (c) the timelines set out in the SISP provide a reasonable opportunity for all interested parties to submit competing offers, and that the process for determining Winning and Backup Bids (as defined in the SISP), including consultation with the Monitor, is fair and transparent; and
- (d) the consultation rights granted to the RCF Administrative Agent and Glencore are reasonable and appropriate given their respective status.

26. The Applicants therefore ask this Court to approve the SISP on the terms of the proposed SISP Approval Order.

#### **V. THE SALES AGENT AGREEMENT AND SALES AGENT CHARGE ARE NECESSARY AND APPROPRIATE**

27. The Applicants also seek approval of a Sales Agent Agreement with NBF and a corresponding Sales Agent Charge. A copy of the Sales Agent Agreement will be attached to a future affidavit.

28. As is discussed in greater detail in my First Affidavit, the Applicants previously engaged NBF in May 2022 to assist with their pre-CCAA Strategic Review Process. This Strategic Review Process solicited proposals for a broad range of transaction alternatives, including a potential investment in Trevali and the potential sale of all or part of the business and assets of Trevali.

29. As such, NBF is familiar with the Applicants' business and their assets, including their interests in the Rosh Pinah and Caribou Mines. The Applicants view this experience as beneficial to running an efficient and effective SISP, particularly given the timelines set out above and the need to address their financial challenges and liquidity needs.

30. The terms of the Sales Agent Agreement, in particular the fees discussed below, have been and continue to be subject to negotiations among the Applicants and NBF, with draft proposals and counter-proposals being exchanged between the parties, and in consultation with the Monitor.

31. The terms of the Sales Agent Agreement currently contemplate a payment structure comprised of an "**Asset Sale Transaction Fee**" based on the sale price and payable in the event of a sale at Rosh Pinah, a "**Restructuring Transaction Fee**" based on the amount of financing proceeds realized, and a monthly "**Engagement Fee**".

32. The Applicants require a sales agent with expertise and knowledge of their business as they implement the SISP and pursue their restructuring efforts more broadly. The Applicants therefore believe that the engagement of NBF is in the best interests of the Applicants and their stakeholders.

33. In my view, it would be almost impossible for a company of this size and with these assets to implement a successful sales process without retaining a sales advisor, particularly with a reduced number of employees at the management level and otherwise (as will be the case here). Trevali simply does not have the expertise or the resources to conduct the SISP without the assistance of a sales advisor.

34. It is contemplated that NBF will be granted a Court-ordered charge (the "**Sales Agent Charge**") as security for the payment of the fees payable to the Sales Agent pursuant to the Sales Agent Agreement. The Sales Agent Charge will rank after the Administration Charge, the D&O Charge, the Intercompany Advance Charge (each as defined in the ARIO) and the KERP Charge that the Applicants are concurrently seeking approval of on this application, as discussed in the affidavit of Russell Ball.

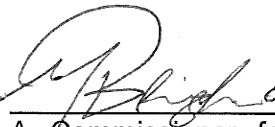
## **VI. CONFIDENTIAL AFFIDAVIT**


35. I will be affirming a Confidential Affidavit in these proceedings (which is referred to above), the purpose of which is to provide the Court with an update on the Applicants' operations



at Perkoa, which is not included in the SISP. This affidavit will include information with respect to options the Applicants are considering for the Perkoa Mine as well as an update with respect to the ongoing detention in Burkina Faso of the two individuals discussed above.

36. The information that will be contained in my Confidential Affidavit is highly sensitive and confidential. Disclosure of this information would be prejudicial to the Applicants' commercial interests, particularly their ability to properly and safely take steps with respect to that asset. More importantly, however, disclosure of this information could also have implications for Trevali's employees or contractors located in Burkina Faso. The Applicants therefore believe that a sealing order is required with respect to my Confidential Affidavit.

AFFIRMED BEFORE ME AT )  
VANCOUVER, BRITISH COLUMBIA ON )  
SEPTEMBER 11, 2022 )  
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A Commissioner for taking Affidavits for )  
British Columbia )  
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Brendan Creaney

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