



This is the 12th affidavit of
Brendan Creaney in this case and was
made on March 24, 2023

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, of 1900 – 999 West Hastings Street, Vancouver, British Columbia, AFFIRM
THAT:

I. INTRODUCTION

1. I am the Chief Financial Officer of Trevali Mining Corporation (the "**Company**"), 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**", and together with the Company, 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. I make this Affidavit in support of the Company's application for approval of a Claims Process Order (the "**Claims Process Order**") that will permit the Applicants and FTI Consulting Canada Inc., the court-appointed ("**Monitor**") to determine and adjudicate, as part of these *Companies' Creditors Arrangement Act* (the "**CCAA**") proceedings, the claims may be made against the Applicants and their Directors and Officers.

3. Capitalized terms not otherwise defined in this affidavit have the meanings given to them in the proposed Claims Process Order.

II. **BACKGROUND**

4. The Applicants obtained protection under the CCAA pursuant to an Order issued by this Court on August 19, 2022.

5. Since obtaining CCAA protection, among other things, the Applicants have implemented a court-approved sales process that resulted in the signing of a sales and purchase agreement for a sale of the Company's 90% interest in Rosh Pinah mine and assignment of debt owing from certain of the Company's subsidiaries (the "**Transactions**") to Appian Natural Resources Fund III LP and Appian Natural Resources (UST) Fund III LP (the "**Purchasers**").

6. On December 21, 2022, this Court approved the Transactions pursuant to an Approval and Vesting Order.

7. Since that date, the Company has been working with the Monitor to further these restructuring efforts, including by:

- (a) working diligently and cooperatively with the Purchasers, their advisors, and other interested stakeholders to negotiate and finalize the documentation and approvals required to close the Transactions, including taking the steps necessary to obtain foreign government and other approval and consents, as well as addressing conditions precedent to closing, including those discussed below;
- (b) continuing operations at the Rosh Pinah mine;

- (c) obtaining an Order extending the stay of proceedings up to April 30, 2023;
- (d) continuing to consider potential options with respect to the Company's remaining assets, including recovery of accounts receivable, recovery of insurance proceeds, and settlement of disputes;
- (e) discussing and considering next steps in these CCAA proceedings, including as discussed below with respect to a claims process;
- (f) communicating regularly with their stakeholders, including their respective creditors, suppliers, lenders, employees, and governmental bodies, in connection with these CCAA proceedings; and
- (g) engaging frequently with the Monitor with respect to all aspects of their restructuring efforts.

8. As set out in my affidavit dated December 16, 2022, the "Target Closing Date" for the Transactions was February 28, 2023. One of the conditions to closing the Transactions is the Namibian Competition Law Approval (as defined in Exhibit A to that Affidavit). The approval of the Transactions is anticipated to be before the Namibian Competition Tribunal at their next scheduled meeting date of April 20, 2023. The Company therefore now anticipates that the Transactions will close prior to the end of May 2023.

III. THE CLAIMS PROCESS

9. In light of the progress made in the Applicants' restructuring to date and the anticipated closing of the Transactions in the near term, it is the Company's view, in consultation with, and with the support of the Monitor, that now is an appropriate time to commence a claims process.

10. A claims process is required to provide the Applicants with certainty as to the realm of claims that may be asserted against them as part of their restructuring efforts. It will permit the Monitor, who will take a leading role in the claims process, in consultation with the Company, to commence the process of determining the nature, quantum and priority of potential claims.

11. Importantly, conducting a claims process at this time will permit potential claims to be assessed efficiently, effectively, and with the institutional knowledge and input of current Company management. In discussions with the Monitor, the Company has concluded that the

ability to accurately consider and assess claims may be impaired if a claims process is delayed as a result of the further passage of time and in circumstances where critical employees with direct and institutional knowledge may leave the Company. In such circumstances, information with respect to alleged Claims will become more difficult to obtain.

12. While it is ultimately not clear what distributions to creditors following the anticipated closing of the Appian Transactions will look like, the Company and the Monitor agree that running a claims process at this time will help to avoid or reduce delays in any distributions that may be made following the closing of the Transactions.

13. Ascertaining the potential realm of Claims will also assist the Company in renewing or extending its Directors and Officers' insurance, which currently expires at the end of April, as the Company will be able to provide the insurers with information with respect to the Claims made.

14. Although Trevali NB is in Receivership, the Company is of the view, in consultation with the Monitor, that it is both efficient and appropriate for the Claims Process for both Applicants to be carried out in the CCAA proceedings. The Claims Process will also allow for the determination of claims so that any distributions to be made to creditors in the Receivership can be effectively carried out.

15. The Company has therefore worked with the Monitor to develop the "**Claims Process**" summarized below. The Company is of the view that implementing the Claims Process at this time is appropriate and the prudent course of action in the circumstances and that the terms of the proposed Claims Process are fair and reasonable.

A. SUMMARY OF PROPOSED CLAIMS PROCESS

(1) Affected Claims

16. The Claims Process is designed to give certainty to the Applicants regarding the nature of the Claims that may be made against them.

17. The specifics of the Claims Process are set out in the Claims Process Order itself but I have summarized certain aspects below.

18. The proposed Claims Process Order includes a broad definition of the Claims and the Claims that will be subject to the Claims Process include the following:

- (a) Pre-Filing Claims;
- (b) Environmental Claims;
- (c) Director/Officer Claims;
- (d) Employee Claims;
- (e) Restructuring Claims; and
- (f) Intercompany Claims.

19. The overarching purpose of the proposed Claims Process Order is to create certainty for the Applicants as to what Claims may exist against them and their Directors and Officers. This includes with respect to the Glencore Group, which must file any Claim it may have against the Applicants as part of the Claims Process (other than the Secured Claim of Glencore Canada Corporation, which as discussed below is an Unaffected Claim).

20. While Intercompany Claims, being claims between either of the Applicants against each other, are subject to the Claims Process, no Claims Process Forms are required to be submitted with respect to Intercompany Claims. It is proposed that the existence, validity and amount of any Intercompany Claims will be determined at a later date as necessary and pursuant to court order.

21. The Unaffected Claims under the Claims Process include the Secured Claim of the lenders party to the Second Amended and Restated Credit Agreement dated August 6, 2020 between the Applicants, as borrower, The Bank of Nova Scotia and HSBC Bank Canada, as co-lead arrangers and joint bookrunners, The Bank of Nova Scotia, as administrative agent, and the lenders party thereto and the Secured Claim of Glencore Canada Corporation pursuant to the August 6, 2020 Second Lien Secured Facility Agreement entered into with the Applicants.

(2) Implementation

22. The proposed Claims Process is primarily a “negative claims process”, intended to efficiently and effectively identify and adjudicate all Claims against both of the Applicants, as well as their Directors and Officers.

23. To that end, the Claims Process contemplates that all “Known Claim Value Creditors”, being Creditors that the Applicants are aware of where the Company or the Monitor

has sufficient information to make a reasonable assessment of their Claim, will be sent a "Known Claim Value Claims Package". This package will include, among other documents, a "Claims Notice" that will set out the value of that Known Claim Value Creditor's Claim. If the Creditor does not dispute the Claims Notice, they shall be deemed to have accepted the Claim. If the Creditor wishes to dispute the Claims Notice they must submit a Proof of Claim Form to the Monitor.

24. In the interests of efficiency, the Company has already begun, in consultation with the Monitor, to identify the Known Value Claim Creditors and determine the amount of their Claims based on the Applicants' books and records.

25. Creditors of whom the Applicants or the Monitor are aware of, but do not have sufficient information to make a reasonable assessment their Claims, shall receive an "Other Creditor Claims Package", which will include a Proof of Claim Form that the Creditor must submit to the Monitor with respect of their Claim.

26. Any Creditor wishing to assert a Director/Officer Claim against either of the Applicants' Directors or Officers must submit a Director/Officer Claim Form to the Monitor.

27. Should:

- (a) a Known Claim Value Creditor wish to dispute their Claim as set out in the Claims Notice by submitting a Proof of Claim Form;
- (b) an Other Creditor wish to make a Claim by submitting a Proof of Claim Form; or
- (c) any Creditor wish to make a Director/Officer Claim by submitting a Director/Officer Claim Form,

then they must do so prior to the "Claims Bar Date" of April 21, 2023, or such other date as may be ordered by the Court.

28. In light of, among others, the fact that the Claims Process is a negative process and that potential Creditors will likely have been aware of these CCAA proceedings since August 2022, the Company views a Claims Bar Date of April 21, 2023 as reasonable.

29. Should any Creditor wish to assert a "Restructuring Claim" they must do so prior to the "Restructuring Bar Date", which is the later of the Claims Bar Date and 15 days following

the date of the applicable Notice of Disclaimer or Resiliation, or such other date as may be ordered by the Court.

30. Once Claims against the Applicants and their Directors and Officers have been submitted to the Monitor, as described in the Claims Process Order and as summarized above, the Monitor will then be responsible for review and adjudication of the Claims, in consultation with the Company and, as appropriate, any Director/Officer against whom a Director/Officer Claim is asserted. The process by which Claims will be adjudicated is summarized as follows:


- (a) if the Monitor receives a Proof of Claim Form (either disputing a Claims Notice sent to a Known Claim Value Creditor or asserting a Claim of an Other Creditor) or a Director/Officer Claim Form, the Monitor may, in consultation with Trevali Corp., accept the Claim, revise the Claim, or disallow the Claim;
- (b) should the Monitor revise or disallow the Claim, it shall, within 21 Business Days of the Claims Bar Date or the Restructuring Bar Date, send a Notice of Revision or Disallowance to the Creditor; and
- (c) any Creditor who receives a Notice of Revision or Disallowance with respect to their Claim that it wishes to dispute must (a) deliver to the Monitor a completed Notice of Dispute or Revision or Disallowance within 5 Business Days, and (b) file and serve on the Monitor, the Applicants, and any Director or Officer against whom a Claim is asserted, as applicable, a Notice of Application and supporting affidavit material appealing the Notice of Revision or Disallowance within 15 Business Days.

31. As the party primarily responsible for adjudicating the Claims, the Claims Process Order contains provisions aimed at giving the Monitor certain flexibility and discretion as to the implementation of the Claims Process, such as the ability to refer a Claim for resolution to the Court where in the Monitor's discretion such a referral is preferable or necessary for the resolution or valuation of the Claim.

32. In particular, the Monitor is permitted to extend the time period within which the Monitor or any Creditor is required to take steps related to the adjudication of Claims. This will permit the Monitor to "pause" the adjudication of Claims should the Monitor determine it is in the Applicants and their stakeholders' best interests to do so.


33. The Company has prepared the proposed Claims Process Order in consultation with the Monitor and understands the Monitor supports the approval of the Claims Process Order.

AFFIRMED BEFORE ME AT Vancouver,
British Columbia on March 24, 2023



A Commissioner for taking Affidavits for
British Columbia

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Brendan Creaney

MITCH BRINGELAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-4160