



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

NOTICE OF APPLICATION

Name of applicant: FTI Consulting Canada Inc., in its capacity as court-appointed
monitor of Trevali Mining Corporation (in that capacity, the
"Monitor")

To: THE SERVICE LIST

TAKE NOTICE that an application will be made by the Monitor to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, British Columbia on June 28, 2023 at 9:00 am for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order abridging the time for service such that this Application is properly returnable on June 28, 2023.
2. An Order sealing the Confidential Supplemental Report to the Twelfth Report of the Monitor dated June 26, 2023 (the "**Twelfth Confidential Supplemental**") in the Court file.

Part 2: FACTUAL BASIS

1. On September 14, 2022, this Court approved, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), a sales and investment solicitation process (the "**SISP**") to solicit offers for, among other things, the purchase of Trevali Mining Corporation's ("**Trevali Corp.**") interest in the Rosh Pinah mine.
2. The SISP resulted in a sale (the "**Transaction**") of Trevali Corp.'s 90% interest in the Rosh Pinah mine, Trevali Corp.'s primary asset of value, by way of a sale of the shares of GLCR Limited, to Appian Natural Resources Fund III LP and Appian Natural Resources (UST) Fund III LP (collectively, "**Appian**") pursuant to a Share and Asset Purchase Agreement dated December

15, 2022 (the “SPA”), as subsequently assigned pursuant to an assignment agreement dated June 2, 2023, to ANR RP Limited, an Appian affiliate, as authorized in the SPA.

3. The Transaction was approved by this Court on December 21, 2022. The current Outside Closing Date (as defined in the SPA) is June 30, 2023.

4. On December 21, 2022, this Court also granted a sealing order (the “**Existing Sealing Order**”) in respect of:

(a) Confidential Affidavit #10 of Brendan Creaney affirmed December 16, 2022 (the “**Confidential Creaney Affidavit**”); and

(b) Confidential Supplemental Report to the Sixth Report of the Monitor dated December 19, 2022 (the “**Sixth Confidential Supplemental**”).

5. The Confidential Creaney Affidavit exhibits an unredacted copy of the SPA and the Sixth Confidential Supplemental spoke to the same confidential information as contained in the Confidential Creaney Affidavit.

6. On April 24, 2023, a distribution order (the “**Distribution Order**”) was approved by the Court authorizing the distribution by Trevali Corp. of available funds including in respect of the Immediately Available Sale Proceeds (as defined in the Distribution Order) arising from the Transaction. The Distribution Order authorizes the distribution of funds as more particularly set out in that order including distribution on account of the Outstanding Interim Financing Balance, the Revolving Credit Facility and the Glencore Facility (each as defined in the Distribution Order), subject to certain required holdbacks, as further defined and described in the Distribution Order.

7. On June 23, 2023, the Transaction closed. On closing of the Transaction, funds were distributed on account of the Outstanding Interim Financing Balance, the Revolving Credit Facility and the Glencore Facility as authorized in the Distribution Order.

8. The Twelfth Confidential Supplemental provides information with respect to the unredacted copy of the SPA, including the Purchase Price (as defined in the SPA), which is subject to the Existing Sealing Order.

Part 3: LEGAL BASIS

1. In the leading case of *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court of Canada held that a sealing order may be granted where (a) such an order is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which includes the public interest in open and accessible court proceedings.

***Sierra Club of Canada v. Canada (Minister of Finance)*,
2002 SCC 41 at para. 53 [*Sierra Club*].**

2. The Supreme Court of Canada had occasion to recently reaffirm its decision in *Sierra Club in Sherman Estate v. Donovan*. In that decision, the Court confirmed that the “test laid out in *Sierra*

Club continues to be an appropriate guide for judicial discretion” and that the structure provided by *Sierra Club* “remains appropriate and should be affirmed.”

***Sherman Estate v. Donovan*, 2021 SCC 25 at para. 43
[*Sherman Estate*].**

3. The Court in *Sherman Estate* did, however, break down the two-part test from *Sierra Club* into three parts to help clarify the prerequisites “without altering its essence”. As clarified, an applicant must establish that:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

***Sherman Estate* at para. 38.**

4. The Existing Sealing Order was granted by the Court in this CCAA proceeding on the basis that disclosure of certain confidential information in the SPA would be prejudicial to stakeholders, consistent with other decisions of this Court in similar circumstances.

***Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC
1746 at paras. 5–10.**

5. More specifically, the Existing Sealing Order was granted on the basis that the Confidential Creaney Affidavit, which exhibits the unredacted SPA, contains confidential information with respect to:

- (a) the proposed purchase price to be paid by Appian, or information that could be used to reverse engineer or estimate the purchase price, the disclosure of which could adversely affect any future sales process involving Trevali Corp.’s interest in the Rosh Pinah mine that may have been required if the Transaction did not close as contemplated by the SPA;
- (b) information that could, if disclosed, adversely affect net recoveries to stakeholders, efforts to complete the Transaction, or otherwise prejudice Trevali Corp.’s efforts to secure a new transaction if the Transaction contemplated by the SPA did not close; and
- (c) certain limited information that Appian advised to be particularly commercially sensitive to them, which if made publicly available could adversely affect their commercial interests.

6. The Existing Sealing Order is effective until further order of this Court.

7. The Twelfth Confidential Supplemental provides details of the Transaction and the distribution of funds pursuant to the Distribution Order that would reveal details, or information that could be used to reverse engineer details, of the SPA that are subject to the Existing Sealing

Order. As a result, the sealing order sought in respect of the Twelfth Confidential Supplemental is necessary given the Existing Sealing Order.

8. Further, the Twelfth Confidential Supplemental contains the same or similar information as the Confidential Creaney Affidavit that Appian previously advised was particularly commercially sensitive to them, which if made publicly available could adversely affect their commercial interests.

9. There is no prejudice to Trevali Corp.'s stakeholder if this information is sealed and public disclosure of this information could have an adverse impact on Trevali Corp.'s stakeholders.

Part 4: MATERIAL TO BE RELIED ON

10. Sealing Order made December 21, 2022;

11. Confidential Affidavit #10 of Brendan Creaney, affirmed December 16, 2022;

12. Confidential Supplemental Report to the Sixth Report of the Monitor, dated December 19, 2022;

13. Twelfth Report of the Monitor, dated June 26, 2023;

14. Confidential Supplemental Report to the Twelfth Report of the Monitor, dated June 26, 2023; and

15. Such further and other material as counsel for the Monitor may advise.

The Monitor estimates that this application will take 30 minutes.

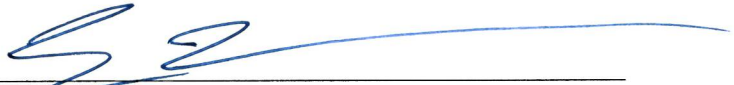
This matter is not within the jurisdiction of a master. Justice Fitzpatrick is seized of these CCAA proceedings.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;

- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: June 26, 2023


For: _____
Signature of lawyer for the Monitor
John Sandrelli

Dentons Canada LLP
Barristers and Solicitors
20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8
Email: john.sandrelli@dentons.com

To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs of Part 1 of this notice of application
<input type="checkbox"/>	with the following variations and additional terms:

Date: _____	_____
	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- expert