



This is the 1<sup>st</sup> affidavit of  
Mike Clark in this case  
and was made on 16/SEPT/2024

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, **MIKE CLARK**, Licensed Insolvency Trustee, of 701 West Georgia Street, Suite 1450, Vancouver, British Columbia, AFFIRM THAT:

1. I am a Managing Director of FTI Consulting Canada Inc. ("FTI"). Pursuant to an Order granted 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"), FTI was appointed as monitor (in that capacity, the "Monitor") of Trevali Mining Corporation ("TMC") and Trevali Mining (New Brunswick) Ltd. ("TNB", together with TMC, "Trevali" or the "Applicants"). Pursuant to a further Order granted by this Court on January 9, 2023, FTI was appointed as receiver (in that capacity, the "Receiver") of certain assets of TNB, such order becoming effective as of January 24, 2023. I have been directly involved in FTI's mandates as the Monitor and the Receiver, and 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.

## Insolvency Proceedings

2. For convenience, this section of my affidavit provides a summary of the herein insolvency proceedings as set out in the numerous reports to this Court by the Monitor and the Receiver.
3. On August 19, 2022, this Court granted an Initial Order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), that, among other things, established a stay of proceedings (the “**Stay of Proceedings**”) in favour of TMC and TNB. The Initial Order was subsequently amended and restated by the ARIO.
4. Among other things, the ARIO appointed the Monitor and extended the Stay of Proceedings until October 6, 2022. The Stay of Proceedings has since been extended in respect of TMC until and including October 31, 2024. The Stay of Proceedings in respect of TNB expired January 24, 2023 and was replaced with a stay of proceedings under the Receivership Order (defined below).
5. Since being granted protection under the CCAA, both TMC and TNB have worked to restructure their affairs for the benefit of their stakeholders and maximize recovery for creditors.
6. On September 14, 2022, this Court approved a Sales and Investment Solicitation Process (the “**SISP**”) to solicit offers for, among other things, the purchase of TMC’s primary asset of value, a 90% interest in the Rosh Pinah mine in Namibia which it owned through the shares of GLCR Limited (the “**RP Interest**”) and TNB’s interest in the Caribou mine in New Brunswick.
7. The SISP resulted in a sale (the “**Appian Transaction**”) of the RP Interest 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 “**Appian SPA**”), as subsequently assigned, pursuant to an assignment agreement dated June 2, 2023, to ANR RP Limited, an Appian affiliate, as authorized in the Appian SPA.
8. On December 21, 2022, this Court approved the Appian Transaction.
9. On April 24, 2023, this Court approved a distribution order (the “**Distribution Order**”) authorizing TMC’s distribution of available funds, including the Immediately Available Sale Proceeds (as defined in the Distribution Order) arising from the Appian Transaction. The Distribution Order authorized 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.
10. On June 23, 2023, the Appian Transaction closed. The Outstanding Interim Financing Balance, the Revolving Credit Facility and the Glencore Facility have been repaid in full.

11. The SISP did not generate any bids for TNB's assets prior the LOI Deadline (as defined in the SISP) of October 7, 2022.

12. On January 9, 2023, this Court approved a receivership order (the "**Receivership Order**") by which among other things, effective from January 24, 2023 at 11:59 pm, FTI was appointed as the Receiver of all the assets, undertakings and property of TNB, including all proceeds thereof, other than any real property, mineral claims, mining leases or real property leases owned or held by TNB. The Receivership Order established a stay of proceedings against TNB and its property. Since its appointment, the Receiver has been working to maximize value for the TNB assets covered by the Receivership Order.

13. On March 28, 2023, this Court approved a Claims Process Order (the "**CPO**"). As is discussed in the Monitor's reports filed in this CCAA proceeding, the Monitor continues to implement and adjudicate the Claims Process (as defined in the CPO).

14. Trevali's remaining employees ceased their employment with Trevali on or prior to June 30, 2023. In addition, Trevali's one remaining director also resigned prior to June 30, which was also when Trevali's directors' and officers' insurance expired.

15. Given the status of TMC's restructuring efforts, the nature of its remaining assets and the reduction of its employees and management, TMC brought an application to expand the Monitor's powers regarding TMC.

16. On June 28, 2023, this Court granted an order expanding the powers of the Monitor with respect to TMC and its property.

### **Glencore Claim**

17. Pursuant to the CPO, Glencore submitted a Proof of Claim dated April 21, 2023, against TMC or TNB (the "**Glencore Claim**").

18. Now shown to me and attached hereto as **Exhibit "A"** is a copy of the Glencore Claim.

19. Now shown to me and attached hereto as **Exhibit "B"** are copies of the documents provided by Glencore as part of Exhibit 1 to the Glencore Claim that together are the "**Zinc Offtake Agreement**" (as defined in the Glencore Claim), which include amendments, addendums, and assignment agreements related thereto.

20. Now shown to me and attached hereto as **Exhibit "C"** are copies of the documents provided by Glencore as part of Exhibit 1 to the Glencore Claim that together are the "**Lead Offtake Agreement**" (as defined in the Glencore Claim), which include amendments, addendums, and assignment agreements related thereto.

21. Now shown to me and attached hereto as **Exhibit “D”** is a copy of a letter dated April 14, 2022 from Glencore to TMC (the “**Revised Set-Off Notice**”), that was provided by Glencore as part of Exhibit 2 to the Glencore Claim.

22. As stated in the Glencore Claim, “Exhibit 1 also encloses additional supporting documentation evidencing Trevali Corp.’s agreement to the terms of these documents.” These documents were certain invoices issued by TNB to Glencore.

23. The Zinc Offtake Agreement and the Lead Offtake Agreement are collectively referred to herein as the “**Caribou Offtake Agreements**”.

24. The Monitor did not dispute the Glencore Claim and did not send a Notice of Revision or Disallowance to Glencore. In accordance with the CPO, the Glencore Claim was deemed a Proven Claim (as defined in the CPO).

### **Settlement Agreement**

25. On October 11, 2022, this Court granted an order approving a Settlement Agreement effective as of October 12, 2022 (the “**Settlement Agreement**”) among TMC, TNB, Glencore International AG (“**Glencore International**”), Glencore AG and Glencore (collectively, Glencore International, Glencore AG and Glencore are referred to as “**Glencore Group**”), among other parties.

26. As set out in the Thirteenth Report of the Monitor dated July 25, 2023, among other reports to this Court:

- (a) the Settlement Agreement addressed issues that arose in response to Glencore Group declining to advise whether they would assert a right of set-off against amounts owing by them for delivery under various off-take agreements with TMC and TNB and certain affiliated entities, referred to as “**Multilateral Setoff**” in the Settlement Agreement; and
- (b) the Settlement Agreement resolved the possibility of Glencore asserting entitlement to Multilateral Setoff and confirmed that Glencore Group continued to have rights of set-off under the off-take agreements, including the Caribou Offtake Agreements, in accordance with the terms of those Agreements and such rights are not stayed.

27. As set out in the Settlement Agreement, among other things, the Settlement Agreement concerned the Caribou Offtake Agreements.

28. Now shown to me and attached hereto as **Exhibit “E”** is a copy of the Settlement Agreement.

## Invoices

29. In or about March 2023, TNB issued certain final invoices to Glencore with respect to lead and zinc concentrate delivered between December 2021 and October 2022. The Monitor reviewed copies of these invoices.

30. Based on my review of the Glencore Claim and TNB's books and records, the following invoices are at issue with respect to the Zinc Offtake Agreement (collectively, the "**Final Zinc Invoices**"):

Date	Delivery	Invoice No.	Final Invoice Amount (USD)
2022-12-31	Jan 2022	Zn-202201-F	\$1,594,587.53
2022-12-31	Feb 2022	Zn-202202-F	\$2,329,131.27
2022-12-31	Feb 2022	Zn-202203-F	\$4,498,642.74
2022-12-31	Apr 2022	Zn-202204-F	\$3,380,678.63
2022-12-31	May 2022	Zn-202205-F	\$4,992,031.62
2022-12-31	Jun 2022	Zn-202206-F	\$3,889,444.93
2022-12-31	May 2022	Zn-202207-F	\$3,121,488.18
2022-12-31	Aug 2022	Zn-202208-F	\$3,609,628.33
2022-12-31	Sep 2022	Zn-202209-F	\$211,961.42
2022-12-31	Oct 2022	Zn-202210-F	\$268,820.85

31. Now shown to me and attached hereto as Exhibit "F" are copies of the Final Zinc Invoices.

32. Based on my review of the Glencore Claim and TNB's books and records, the following invoices are at issue with respect to the Lead Offtake Agreement (collectively, the "Final Lead Invoices", and together with the Final Zinc Invoices, the "Final Invoices"):

Date	Delivery	Invoice No.	Final Invoice Amount (USD)
2022-12-31	Dec 2021	Pb-05-F	\$1,363,450.68
2022-12-31	Jan-Mar 2022	Pb-06-F	\$2,644,266.64
2022-12-31	Apr-May 2022	Pb-07-F	\$2,499,266.87
2022-12-31	Oct 2022	Pb-08-F	\$4,304,120.07

33. Now shown to me and attached hereto as Exhibit "G" are copies of the Final Lead Invoices.

34. Based on my review of the Glencore Claim and TNB's books and records, with the exception of Invoice Nos. Zn-202208-F, Zn-202209-F, Zn-202210-F and Pb-08-F, TNB received certain payments from Glencore, which included payment of some, but not all, HST. The payments made by Glencore were based on provisional invoices that were reconciled once the Final Zinc Invoices and the Final Lead Invoices were issued. The total amounts outstanding (the "Total Net Final Invoice Amount") with respect to the Final Zinc Invoices and Final Lead Invoices are as follows:

Concentrate	Total Net Final Invoice Amount (USD)	Total Net HST (USD)
Final Zinc Invoices:	\$4,805,417.51	\$626,793.46
Final Lead Invoices:	\$3,851,243.73	\$502,336.14
<b>TOTAL:</b>	<b>\$8,656,660.24</b>	<b>\$1,129,129.60</b>

### Glencore's Set-off Claim

35. As set out in the Glencore Claim, specifically the Revised Set-Off Notice, as payment for the Total Net Final Invoice Amounts (US\$8,656,660.24) owing pursuant to the Final Invoices, including HST (US\$1,129,129.60) (the "Total Net HST") payable by Glencore and collectible by

TNB in respect thereof, Glencore claimed a set-off against amounts owing from TMC and/or TNB to Glencore under the Caribou Offtake Agreements.

### **Canada Revenue Agency Audit and Claim**

36. The Monitor has reviewed the following:

- (a) A letter dated January 23, 2023 (the “**January Audit Letter**”), from the Canada Revenue Agency (“**CRA**”) to TNB that communicated the outcome of CRA’s audit of TNB’s Goods and Services Tax/Harmonized Sale Tax (GST/HST) returns. Now shown to me and attached hereto as **Exhibit “H”** is a copy of the January Audit Letter.
- (b) A letter dated March 22, 2023 (the “**March Audit Letter**”), from CRA to TNB that communicated the outcome of CRA’s further audit of TNB’s Goods and Services Tax/Harmonized Sale Tax (GST/HST) returns. Now shown to me and attached hereto as **Exhibit “I”** is a copy of the March Audit Letter.

37. As set out in the March Audit Letter, CRA has assessed TNB for failing to collect the Total Net HST, as set out in paragraphs 34–35 above, from Glencore. The March Audit Letter sets out an HST amount outstanding of CA\$1,566,221.27.

38. Based on my review of TNB’s books and records, the amount of CA\$1,566,221.27 was based on provisional invoices. The Final Invoices were issued to Glencore in or about March 2023 with the Total Net HST payable by Glencore totaling CA\$1,544,875.11 (the equivalent of US\$1,129,129.60).

39. Now shown to me and attached hereto as **Exhibit “J”** is a copy of the CRA Statement of Account issued May 26, 2023.

40. Pursuant to the CPO, CRA submitted a Proof of Claim dated April 18, 2023, against TNB with respect to a pre-filing claim (the “**CRA Claim**”). Now shown to me and attached hereto as **Exhibit “K”** is a copy of the CRA Claim.

41. The Monitor did not dispute the CRA Claim and did not send a Notice of Revision or Disallowance to CRA. In accordance with the CPO, the CRA Claim was deemed a Proven Claim (as defined in the CPO).

42. The CRA also submitted an amended claim to the Receiver. This was not a claim under the CPO, but in respect of the receivership of TNB. Now shown to me and attached hereto as **Exhibit “L”** is a copy of the claim CRA submitted to the Receiver.

43. Now shown to me and attached hereto as **Exhibit "M"** is a copy of the Government of Canada GST/HST Registry Search Result page for TNB.

44. Now shown to me and attached hereto as **Exhibit "N"** is a copy of the Government of Canada GST/HST Registry Search Result page for TMC.

**Request to Remit HST**

45. By letter dated September 13, 2023 (the "**Remittance Letter**"), the Receiver requested that Glencore remit US\$1,129,129.60 (CA\$1,544,875.11) in HST to the Receiver. Now shown to me and attached hereto as **Exhibit "O"** is a copy of the Remittance Letter.

46. I prepared the Remittance Letter, including the table attached thereto as Appendix "A".

53. Glencore has not remitted the Total Net HST to the Monitor or the Receiver.

SWORN (OR AFFIRMED) BEFORE ME at  
Vancouver, British Columbia, on  
16/SEPT/2024.



A Commissioner for taking Affidavits within  
British Columbia



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