



Affidavit of Hein Frey #4
affirmed: June 17, 2024

No: S238572
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 PLAN OF COMPROMISE AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

AFFIDAVIT

I, **HEIN FREY**, of the City of Paarl, Western Cape, South Africa, AFFIRM THAT:

1. I am the Head of Mining North America Mining Operations of Myra Falls Mine Ltd. (referred to in this affidavit as the "**Company**" or "**MFM**"). I have been involved in the financial and operational management of the Company since May of 2023. As a result, I have personal knowledge of the matters to which I hereinafter depose save and except where I refer to matters based on information and belief, in which case I verily believe that information to be true.

2. Capitalized terms used in this affidavit and not otherwise defined herein have the meaning given to them in my third Affidavit, affirmed on February 21, 2024 or the Order of this Honourable Court granted on December 28, 2024 (the "**ARIO**").

Introduction and Relief Being Sought

3. This affidavit is being filed in support of an application by the Company returnable June 28, 2024, for Orders in the form to be filed with the Court, among other things:

- (a) extending the Stay Period up to and including October 31, 2024;

- (b) authorizing MFM to borrow up to an aggregate amount of \$34 million pursuant to the terms of the DIP Term Sheet as amended by a second amendment to the DIP Term Sheet, which amendment is anticipated to be formally executed in the coming days (the "**Amended DIP Term Sheet**"), and granting an increase in the amount of the Interim Lender's Charge to \$34 million (plus accrued and unpaid interest, fees and expenses);
- (c) approving a key employee retention plan to secure the continued services of certain critical employees of the Company (the "**KERP**"); and
- (d) sealing my confidential affidavit affirmed on June 17, 2024 (the "**Confidential Affidavit**"), which contains confidential employee information in connection with the KERP.

Update on the Proceedings

4. Since the Company last appeared before the Supreme Court of British Columbia, MFM has continued, in good faith, to implement its care and maintenance plan and advance its restructuring process. In this regard, during that period, the Company has:

- (a) carried out the SISP to the end of "Phase 1" and terminated the SISP as a result of there being no qualified bids, as described in greater detail below;
- (b) continued to perform care and maintenance activities, with the strategic objective of ensuring the site can be restarted with minimal delays and rework;
- (c) initiated a scrap metal recovery program and safely disposed of hazardous substances;
- (d) maintained communication and engagement with relevant government agencies and other stakeholder;
- (e) implemented several cost-saving measures, including reducing power usage, downsizing the light vehicle fleet, implementing Company-owned transport in place of contracted bus service, and substituting a first aid contractor with in-house trained personnel alongside site-owned emergency transport vehicles;

- (f) held meetings on at least eight separate occasions with representatives of Wei Wai Kum First Nation and We Wai Kai First Nation to advance discussions on potential modifications to the existing impact and benefit agreement, and the Discovery Terminal Lease;
- (g) communicated with representatives of the Union to schedule a meeting involving representatives of the Company, Monitor and Union. The meeting is scheduled to take place on July 4, 2024;
- (h) developed the proposed KERP;
- (i) continued to manage inquiries from certain creditors regarding pre-filling payables, including certain stakeholders who have sought to register liens or commenced proceedings against the Company in breach of the CCAA stay;
- (j) continued to engaged with certain equipment lessors who have been seeking release of equipment collateral, and obtained equipment valuations for certain pieces of equipment;
- (k) developed an inventory of equipment that is not required by the Company while the Mine is in care and maintenance, including reviewing its equipment lease portfolio, with a view to exploring potential disposition options of that equipment pursuant to a new disposition process (the "**Equipment Sale Process**");
- (l) worked with the Monitor to develop the structure for an Equipment Sale Process;
- (m) met with the Monitor to discuss various operational matters, including discussions around equipment valuations, as specifically related to certain equipment lessors, and identification of key employees whose services, skills and knowledge are critical for the Company's care and maintenance operations, its restructuring efforts and should a rapid restart of the operations be required;
- (n) began its review of material contracts to identify contracts that require modifications or terminations;

- (o) worked with representatives of the Canada Revenue Agency (“**CRA**”) in connection with an audit that CRA is performing in connection with the Company’s input tax credits;
- (p) with assistance of the Monitor, prepared updated cash flow forecast (the “**Updated Cash Flow Forecast**”);
- (q) worked to resolve certain amounts outstanding pursuant to concentrate shipments that occurred around December, 2023; and
- (r) begun exploratory discussions with a contract operator with interest in potentially operating the Mine in the short to medium term.

Update on the SISP

5. On February 27, 2024, this Honourable Court issued the SISP Order approving the SISP. The SISP guidelines were attached as Schedule A to the SISP Order.
6. The SISP contemplated a “Phase 1 Bid Deadline” of 12:00 p.m. (Pacific Time) on April 12, 2024, and if required, a “Phase 2 Bid Deadline” of May 24, 2024.
7. The Financial Advisor contacted a total of 163 potential investors or acquirors to solicit offers for a purchase of, or an investment in all, or substantially all of the Property and Business of the Company. These consisted of strategic mining companies, alternative investment funds, and private equity firms across the Canadian and U.S. markets.
8. 77 of the parties contacted by the Financial Advisor formally declined to participate in the SISP and 5 parties executed non-disclosure agreements.
9. The Company received 1 non-binding letter of intention prior to the Phase 1 Bid Deadline, and another one shortly after such deadline (collectively, the “**Bids**”). Despite the tardiness of the second bid, MFM, in consultation with the Financial Advisor, decided to allow that Bid in the process.
10. MFM, in consultation with the Interim Lender, the Monitor, and the Financial Advisor, reviewed the terms of the Bids and determined that neither Bid constituted a “Phase 1 Qualified Bid” pursuant to the SISP.

11. On April 17, 2024, the Financial Advisor advised the two bidders that their Bids did not constitute Phase 1 Qualified Bids and would not advance to the second phase of the process.
12. One of the bidders asked for an opportunity to improve the terms of its Bid, however, such bidder ultimately advised the Financial Advisor that it would not be in a position to provide a Bid that satisfies the requirements of the SISP.
13. In the circumstances, MFM, in consultation with the Interim Lender, the Monitor, and the Financial Advisor, decided to terminate the SISP.
14. Since the SISP has not resulted in any acceptable going-concern transaction for the Mine, MFM is now working with the Interim Lender and their parent Trafigura PTE Ltd., to develop a construct for the reorganization of the operations and balance sheet of MFM, and the structure of one or more transactions to effect such reorganization.

Approval of the KERP

15. With the assistance of its legal advisors and the Monitor, the Company has developed the KERP to secure the services of certain employees whose skills and knowledge are required during the continued restructuring of the Company. Attached and marked as **Exhibit "A"** is a redacted copy of the memorandum summarizing the materials terms of the KERP (the "**KERP Memorandum**"). An unredacted copy of the KERP Memorandum is attached as **Exhibit "A"** to the Confidential Affidavit.
16. The Company currently employs approximately 20 salaried and 27 hourly employees. Of these employees, the Company identified 17 employees (collectively, the "**Key Employees**") whose services, skills and knowledge are critical for the Company's care and maintenance operations, its restructuring efforts and should a rapid restart of the operations be required. The KERP is designed to incentivize the Key Employees to remain with the Company during the Company's restructuring process.
17. The Key Employees possess in-depth knowledge of proposed future projects and strategic development of the Mine, which MFM believes must be retained to preserve MFM or an eventual purchaser's ability to re-open the Mine. Additionally, certain Key Employees are critical for ensuring environmental and safety compliance at the Mine.

18. Since the commencement of the proceedings, including following the outcome of the SISF, management at MFM has observed a decline in employee morale and satisfaction. Absent the KERP, the Key Employees may seek alternative employment, which would materially impact the Company's restructuring efforts or imperil the safety of the care and maintenance operations. The Key Employees are familiar with the Company's business and operations and their experience and expertise may be difficult to replace. Additionally, any attempts to replace the Key Employees would likely be costly and time-consuming, which would detract from the Company's ability to manage its restructuring.

19. The amounts proposed to be paid to the Key Employees are based on the amounts that the Key Employees would have been entitled to receive had the contractual annual performance incentive for salaried employees payable at the end of the 2023 production year been paid.

20. The total maximum amount payable under the KERP is \$300,000.

21. Pursuant to the KERP, Key Employees would be entitled to be paid 50% of their individual KERP amount on the first payroll following June 28, 2024, with the remaining 50% payable on the first payroll following December 31, 2024. Each payment would be conditional on the Key Employee being employed at the date of the payment. Key Employees will not earn or accrue any partial KERP entitlement if they resign or are terminated for cause prior to June 28, 2024, or December 31, 2024, as the case may be.

22. I understand that the Interim Lender is supportive of the KERP as is the Monitor.

23. To conclude, given the importance of the Key Employees to the Company's restructuring and care and maintenance operations, I verily believe that the scope and quantum of the KERP are fair, reasonable, and appropriate under the circumstances.

The need for confidentiality

24. The Confidential Affidavit contains an unredacted version of the KERP Memorandum, which contains certain confidential and personally identifiable information concerning the Key Employees, including their names, positions, salary, and their corresponding allocation in respect of their entitlement pursuant to the KERP. The information found in the Confidential Affidavit is not of a nature that would normally be made public by the Company in the ordinary course of business.

25. Disclosure of the information contained in the Confidential Affidavit could be prejudicial to the Company and the Key Employees by significantly impacting the privacy interest of the Key Employees and raising potential animosity concerns among employees who are not subject to the KERP.

26. For these reasons, the Company seeks an order that the Confidential affidavit be filed under seal and kept confidential.

Increasing the DIP Facility and the Interim Lender's Charge

27. On December 17, 2023, the Company entered into the DIP Term Sheet with the Interim Lender. The Initial Order approved the DIP Term Sheet, with a borrowing limit of up to \$4,000,000. The Initial Order also granted the Interim Lender's Charge to secure the obligations of the Company to the Interim Lender under the DIP Term Sheet to a maximum amount of \$4,000,000 (plus accrued and unpaid interest, fees and expenses).

28. The ARIO was granted on December 28, 2023, which, *inter alia*, approved an increased to the borrowing limit under the DIP Term Sheet up to the principal amount of \$21,000,000, and granted an increase to the Interim Lender's Charge accordingly.

29. The Company now seeks authority to enter into the Amended DIP Term Sheet, which increases the borrowing limit under the debtor-in-possession credit facility to the principal amount of \$34 million, and an accompanying increase to the DIP Lender's Charge so that it is commensurate with such increase under the Dip Term Sheet. Attached and marked as **Exhibit "B"** is a copy of the unsigned Amended DIP Term Sheet, which is **anticipated to be formally executed in the coming days**. The Company intends to utilize the funds from the Amended DIP Term Sheet in accordance with the Updated Cash Flow Forecast, a copy of which is attached to the Monitor's Third Report.

30. The Company will continue to require interim financing to fund its operations during the proposed extension of the Stay Period. Access to this additional interim financing is necessary to MFM's ongoing working capital requirements and the cost of these proceedings.

Stay Extension

31. Since the conclusion of the SISP, MFM has continued to work in good faith to review available alternatives for a restructuring of its operations and balance sheet.

32. MFM requires additional time to develop a restructuring plan and strategy and to engage with significant stakeholders such as the Union, representatives of Wei Wai Kum First Nation and We Wai Kai First Nation, pension representatives and governmental authorities to discuss the future of the Company and the Mine.

33. MFM is asking this Honourable to extend the Stay until October 31, 2024. This relief is consistent with MFM's restructuring efforts, and in my view is reasonable and appropriate in the circumstances.

34. Should the Court approve the Amended DIP Term Sheet, MFM will have sufficient funds to discharge its obligations as per the Updated Cash Flow Statement.

Conclusion

35. In conclusion, the Company's actions and efforts detailed herein reflect a deliberate and responsible approach to the Company's financial restructuring, guided by good faith and diligence. The Orders the Company seeks are vital to sustaining operations and the restructuring process, crucial for safeguarding the interests and value for all stakeholders.

AFFIRMED BEFORE ME in Toronto,
Ontario, on June 17, 2024.



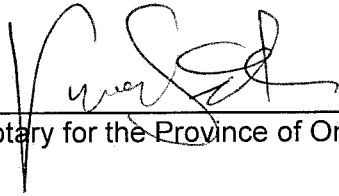
A Notary Public for taking Affidavits within
Toronto, Ontario.

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HEIN FREY

VIRGINIE GAUTHIER
GOWLING WLG (CANADA) LLP
Ste. 1600, 100 KING STREET W.
TORONTO, ONT. M5X 1G5
TEL: 416-594-5391

This is Exhibit "A" referred to in the Affidavit of **Hein Frey**, affirm before me at Toronto, Ontario, this 17th day of June, 2024.



A Notary for the Province of Ontario

MEMO

TO: Tom Powell – FTI Consulting Canada Inc., in its capacity as
Monitor

FROM: Hein Frey

CC: Maciej Sciazko
Virginie Gauthier – Gowling WLG LLP
Stuart Olley – Gowling WLG LLP

DATE: May 30, 2024

RE: Myra Falls Mine Ltd. (“**MFM**”) – Request for KERP Approval

1. Introduction.

MFM commenced proceedings (the “**Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act* on December 18, 2023. Upon the commencement of the Proceedings, MFM transitioned the Myra Falls Mine (the “**Mine**”) from production to Care and Maintenance (“**C&M**”), terminated most of its employees, and is now at steady state activities with the minimal amount of salaried and hourly employees. The transition was successful with minimal disruption while high safety standards were maintained. The number of employees currently employed in C&M has been reduced significantly compared to 2018 when 57 full time employees were employed during care and maintenance.

2. Discussion.

Table 2 summarizes the list of employees whom MFM employs during C&M as well as their roles and responsibilities. Since the commencement of the Proceedings, including following the outcome of the failed SISP, management at MFM (“**Management**”) has observed a decline in employee morale and dissatisfaction with not having received the bonuses that they would have been entitled to in 2023.

Considering these developments, MFM is seeking the Monitor’s approval and support for a key employee retention plan (“**KERP**”), the salient terms of which are reflected below.

Beneficiaries

MFM believes that the salaried employees listed in Table 1 (the “**Key Employees**”) are key to the C&M operations of MFM and would be essential should a quick restart of the Mine materialize.

While all employees currently retained, including the Key Employees, are necessary for C&M, Management believes that the Key Employees have expertise and skills in their specific fields that would be difficult to replace if the Key Employees were to leave. In addition, the Key Employees possess in-depth knowledge of future projects and strategic development of the Mine, which Management believes must be retained to preserve MFM’s ability to re-open the Mine.

KERP Terms

The amounts proposed to be paid to the Key Employees are based on the amounts that the Key Employees would have been entitled to receive had the contractual annual performance incentive (“**API**”) for salaried employees payable at the end of the 2023 production year been paid. Management notes that in 2023, APIs were not paid to salaried employees, however production bonuses were paid throughout the year to hourly employees as per the collective bargaining agreement.

The total amount payable under the KERP equals \$300,000

Pursuant to the KERP, Key Employees would be entitled to be paid 50% of their individual KERP amount on the first payroll following June 24, 2024, with the remaining 50% payable on the first payroll following December 31, 2024. Each payment would be conditional on the Key Employee being employed at the date of the payment. Key Employees will not earn or accrue any partial KERP entitlement if they resign or are terminated prior to June 24, 2024, or December 31, 2024, as the case may be. If a Key Employee is terminated without cause, the full amount of their KERP Payments (to the extent not already paid) will be payable to them on termination.

Should any Key Employee resign or be terminated for cause prior to full payment of their respective KERP Payments, MFM will be authorized to pay any such remaining KERP Payments to one or more alternative employees pursuant to the terms of the KERP, provided that the total amount of all KERP Payments payable to all employees shall not be greater than as set out in the KERP.

3. Conclusion.

MFM is seeking the Monitor's consent to the above described KERP. Trafigura US Limited has agreed to provide sufficient funding under the DIP Financing to fund the amounts required to be paid pursuant to the KERP.

Regards

Hein Frey

Table 1:

[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Yellow]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Green]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Grey]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Green]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Green]
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[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Green]
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[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[White]

Table 2

[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
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This is Exhibit "B" referred to in the Affidavit
of **Hein Frey**, affirm before me at Toronto, Ontario, this 17th
day of June, 2024.



A Notary for the Province of Ontario

SECOND AMENDMENT TO DIP FACILITY TERM SHEET

Dated: June____, 2024.

RECITALS:

- A. Myra Falls Mine Ltd. (the “**Borrower**”), as borrower, and Trafigura US Inc. (the “**DIP Lender**”), as lender, entered into a DIP facility term sheet dated December 17, 2023 (the “**DIP Facility Term Sheet**”);
- B. On February 16, 2024, the Borrower and the DIP Lender executed an amendment to the DIP Facility Term Sheet (the “**First Amendment**”), to extend the Maturity Date (as defined in the DIP Facility Term Sheet) to June 30, 2024;
- C. The Borrower now requires a further extension of the Maturity Date and an increase in the Maximum Amount (as such terms are defined in the DIP Facility Term Sheet); and
- D. Subject to the terms and conditions contained in this agreement (this “**Second Amendment**”), the parties hereto have agreed to further amend the DIP Facility Term Sheet on the terms and conditions set out below.

NOW THEREFORE in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. DEFINITIONS

- 1.1 **Use of Defined Terms.** Unless otherwise defined herein or the context otherwise requires, capitalized terms used in this Second Amendment, including its preamble and recitals, have the meanings provided in the DIP Facility Term Sheet, as amended by the First Amendment, as applicable.

2. AMENDMENTS TO DIP FACILITY TERM SHEET

- 2.1 **Amendments.** Subject to the satisfaction of each of the conditions to effectiveness set forth in this Second Amendment, the parties agree to amend the First Amendment and the DIP Facility Term Sheet as follows:

- 2.1.1 Section 5.2 of the First Amendment shall be deleted and replaced with:

“**Governing Laws.** This Amendment is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of British Columbia and the federal laws of Canada applicable therein.”

- 2.1.2 the reference to “June 30, 2024” in the DIP Facility Term Sheet, in paragraph (a) of the heading “**Maturity Date**” shall be deleted and replaced with “October 31, 2024”;
- 2.1.3 the reference to the “Maximum Amount” in the DIP Facility Term Sheet, in the heading “**DIP Facility**” shall be amended to reflect the following:
 - “up to the maximum principal amount of CDN \$34 million”

3. REPRESENTATIONS AND WARRANTIES

- 3.1 **Representations.** The Borrower represents and warrants to the DIP Lender that, as of the date hereof (after giving effect to this Second Amendment):
 - 3.1.1 This Second Amendment has been duly authorized, executed and delivered by the Borrower;
 - 3.1.2 This Second Amendment constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other applicable laws affecting creditors’ rights generally and to general principles of equity, regardless of whether considered in a proceeding in equity or at law;
 - 3.1.3 The representations and warranties set forth in the DIP Facility Term Sheet, and the other DIP Credit Documentation are true and correct in all respects on and as of the date hereof as though made on and as of such date, unless stated to be made as of a specified date; and
 - 3.1.4 No Default or Event of Default has occurred and is continuing.

4. CONDITIONS

- 4.1 **Conditions Precedent.** This Second Amendment shall become effective on the date upon which there has been receipt by the DIP Lender of the following (which conditions precedent are for the sole and exclusive benefit of the DIP Lender and may be waived by the DIP Lender):
 - 4.1.1 a counterpart of this Second Amendment executed by the Borrower;
 - 4.1.2 receipt by the DIP Lender of updated Cash Flow Projections, in form and substance satisfactory to the DIP Lender in its discretion; and
 - 4.1.3 an order issued by the Court, which authorizes and approves the terms of this Second Amendment and the increase of the DIP Lender’s Charge to the maximum amount of CDN\$34 million.

5. GENERAL PROVISIONS

- 5.1 **Headings.** The inclusion of headings in this Second Amendment is for convenience of reference only and does not affect the construction or interpretation hereof.
- 5.2 **Governing Law.** This Second Amendment is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of British Columbia and the federal laws of Canada applicable therein.
- 5.3 **Assignment.** This Second Amendment enures to the benefit of, and is binding upon, the parties and their respective successors and permitted assigns.
- 5.4 **Conflicts.** If, after the date of this Second Amendment, any provision of this Second Amendment is inconsistent with any provision of the DIP Facility Term Sheet, the relevant provision of this Second Amendment shall prevail.
- 5.5 **DIP Credit Documentation.** This Second Amendment constitutes DIP Credit Documentation for all purposes under the DIP Facility Term Sheet.
- 5.6 **Counterparts.** This Second Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original agreement and all of which shall constitute one agreement. All counterparts shall be construed together and shall constitute one and the same agreement. This Second Amendment, to the extent signed and delivered by means of electronic transmission (including, without limitation, facsimile and Internet transmissions), shall be treated in all manner and respects as an original agreement and should be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

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IN WITNESS WHEREOF the parties hereto have executed this Second Amendment as of the date first written above.

MYRA FALLS MINES LTD.

By:

Name:

Title: Authorized Signatory

I have the authority to bind the corporation.

TRAFIGURA US INC.

By:

Name:

Title: Authorized Signatory

I have the authority to bind the corporation.

No. S238572
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 PLAN OF COMPROMISE AND
ARRANGEMENT OF MYRA FALLS MINE LTD

AFFIDAVIT OF HEIN FREY #4

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
Bentall 5, Suite 2300,
550 Burrard Street
Vancouver, BC V6C 2B5

Attention: Jonathan B. Ross

Tel: 604.683.6498 Fax: 604.683.3558

File No. A172589

MD/msh