



FORCE FILED

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 A PLAN OF COMPROMISE AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

PETITIONER

NOTICE OF APPLICATION

(SISP, Engagement of Financial Advisor, Stay Extension and Breakwater Sale Approval)

Name of Applicant: Myra Falls Mine Ltd.

TO: THE SERVICE LIST

TAKE NOTICE that an application will be made by the Applicant, Myra Falls Mine Ltd., before Justice Fitzpatrick at the Courthouse at 800 Smithe Street, Vancouver, British Columbia, on Tuesday, February 27, 2024 at 9:00 a.m. (as arranged through Trial Scheduling) for an Order set out in Part 1 below.

The applicant estimates that the application will take **1 hour** (as arranged through Trial Scheduling)

This matter is before Justice Fitzpatrick.

PART 1: ORDER(S) SOUGHT

1. The Petitioner, Myra Falls Mine Ltd. (the "**Petitioner**") seeks the following orders under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"):

- (a) an order substantially in the form attached hereto as **Schedule "A"** (the "**SISP Approval Order**"), granting *inter alia* the following relief:
 - (i) confirming that service of this Notice of Application has been made on all interested parties and abridging the time of service to the date of actual service;

- (ii) approving a sale and investment solicitation process in the form attached as Schedule “B” to the SISP Approval Order (the “**SISP**”);
 - (iii) approving the engagement letter (the “**Financial Advisor Agreement**”) dated as of February 2, 2024 between the Petitioner and FTI Capital Advisors-Canada ULC (the “**Financial Advisor**”), pursuant to which the Petitioner has engaged the Financial Advisor as the Petitioner’s investment banking advisor to assist with, among other things, identifying and soliciting strategic transactions for the Petitioner as part of the SISP;
 - (iv) declaring that FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor in these CCAA proceedings (in such capacity, the “**Monitor**”), the Financial Advisor and the Petitioner, and their respective affiliates, partners, directors, employees, advisors, agents, shareholders and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP or the conduct thereof, except to the extent of such losses, claims, damages or liabilities result from their respective gross negligence or willful misconduct in performing their obligations under the SISP, as determined by this Court;
 - (v) granting the Financial Advisor the benefit of the Administration Charge (as such term is defined in paragraph 33 of the amended and restated initial order granted by the Honourable Justice Fitzpatrick on December 28, 2023 (the “**ARIO**”), as security for the fees owing to the Financial Advisor pursuant to the Financial Advisor Agreement; and
 - (vi) extending the Stay Period (as defined in paragraph 15 of the ARIO) up to and including June 30, 2024; and
- (b) an order substantially in the form attached hereto as **Schedule “B”** (the “**Breakwater Sale Order**”), granting *inter alia* the following relief:
- (i) approving the sale of the Petitioner’s interest in the Epiroc Lease (as defined below) to Breakwater-Resources Ltd. (“**Breakwater**”), a related party to the Petitioner, pursuant to a sale and assignment agreement

dated and effective as of February 28, 2024 (the "**Breakwater Agreement**") between the Petitioner and Breakwater, and the purchase and sale transaction contemplated thereby (the "**Breakwater Transaction**"), and vesting all of the right, title and interest of the Petitioner in the Epiroc Lease in Breakwater free and clear of any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts, reservations of ownership, privileges, interests, assignments, actions, judgments, executions, levies, taxes, writs of enforcement, charges, or other claim; and

- (c) Such further and other relief as counsel for the Petitioner may request and this Honourable Court may deem just.

PART 2: FACTUAL BASIS

1. On December 18, 2023, the Honourable Justice Fitzpatrick granted an Initial Order under the CCAA with respect to the Petitioner granting, among other things:

- (a) the Stay Period in favour of the Petitioner, until and including December 28, 2023;
- (b) the Administration Charge up to the maximum of \$350,000 (the "**Administration Charge**");
- (c) the Directors' Charge up to the maximum of \$650,000 (the "**Directors' Charge**");
- (d) the Petitioner's ability to borrow under a debtor-in-possession credit facility (the "**DIP Facility**") pursuant to a DIP Term Sheet, among the Petitioner, as borrower and Trafigura US Inc., as interim lender (the "**Interim Lender**") and corresponding Interim Lender's Charge up to the maximum of \$4,000,000 (the "**Interim Lender's Charge**"); and
- (e) that FTI Consulting Canada Inc. be appointed as Court-appointed monitor of the Petitioner (in such capacity, the "**Monitor**").

2. On December 28, 2023, the Honourable Justice Fitzpatrick granted the ARIO which, among other things:

- (a) extended the Stay Period until February 29, 2024;
- (b) authorized the Petitioner to borrow up to \$21,000,000 from the Interim Lender, and increased the quantum of the Interim Lender's Charge;
- (c) increased the amount of the Administration Charge to \$800,000;
- (d) granted the Interim Lender's Charge, the Administration Charge and the Directors' Charge priority ahead of secured creditors pursuant to ss. 11.2(2), 11.51(2) and 11.52(2) of the CCAA; and
- (e) authorized the Petitioner to, in its discretion, make a Supplemental Hardship Payment to terminated or temporarily laid off employees.

3. In support of this application, the Petitioner relies upon and restates the factual basis set out in Part 2 of the Petition filed in these proceedings on December 18, 2023 and Part 2 of the Notice of Application filed in these proceedings on December 21, 2023.

4. Additional facts in support of this application are set out in the Affidavit #1 of Hein Frey affirmed December 17, 2023, the Affidavit #2 of Hein Frey affirmed December 21, 2023, the Affidavit #3 of Hein Frey affirmed February 21, 2024 (the "**Frey Affidavit #3**") and the Affidavit of Michèle Hay sworn February 22, 2024 (the "**Hay Affidavit**"). Capitalized terms not otherwise defined herein have the meanings given to them in the Frey Affidavit #3.

UPDATE ON THE PROCEEDINGS AND EXTENSION OF STAY PERIOD

5. Since the ARIO was granted, the Petitioner has, in consultation with the Monitor:
- (a) implemented its previously announced plan to transition the Mine to care and maintenance with the strategic objective to ensure that the site can be restarted with minimal delays or rework required. While implementing the transition, the Petitioner maintained communication and engagement with relevant government and stakeholders;
 - (b) met with the Chiefs of the Wei Wai Kum First Nation and We Wai Kai First Nation to discuss potential amendments to the impact and benefit agreement and the Petitioner's restructuring efforts;

- (c) continued to manage inquires from suppliers regarding pre-filing payables, including certain suppliers who have sought to register liens against the Mine or commence proceedings against the Petitioner in breach of the Stay Period;
- (d) developed the SISP in consultation the Monitor and the Financial Advisor and began the process of gathering and preparing various information and data that will be required to be uploaded to the data-site to be established as part of the SISP;
- (e) developed a form of non-disclosure agreement to be used as part of the SISP;
- (f) begun the process of reviewing, with the involvement of the Monitor, the Petitioner's equipment lease portfolio;
- (g) with the assistance of the Monitor, negotiated the Financial Advisor Agreement;
- (h) commissioned the RB Appraisal (as defined and described below);
- (i) met with the Monitor to discuss various operational matters, including those relating to the Petitioner's transition of the Mine into care and maintenance;
- (j) with the assistance of the Monitor, prepared updated cash flow forecasts and considered adequacy of DIP funding up to and including June 30, 2024;
- (k) engaged in discussions with the Union and its counsel around the Supplemental Hardship Payment; and
- (l) met with an agent regarding a preliminary expression of interest in a sub-let of the Discovery Terminal Warehouse Building.

Frey Affidavit #3, para 6

6. The proposed extension of the Stay Period will allow the SISP to be implemented and afford the Petitioner the time necessary to seek Court approval of one or more value-maximizing transactions identified in accordance with the SISP (should any such transaction be identified through the SISP) and to continue engaging with the Petitioner's stakeholders and creditors. Pursuant to the updated cash flow statements, a copy of which will be appended to the Second

Report of the Monitor, the Petitioner expects to have sufficient cash to continue operating the Mine in care and maintenance throughout the proposed extended Stay Period.

7. The Petitioner has acted, and will continue acting in good faith and with due diligence during these CCAA proceedings.

THE SISP¹

8. The Petitioner, in consultation with Monitor and the proposed Financial Advisor, developed the SISP in order to solicit offers or proposals for a sale in respect of all or substantially all of the Property and Business, or an investment in the Petitioner. At this time, the Petitioner is not proposing to solicit offers or proposals in respect of individual assets of the Petitioner, with the exception of the Epiroc Transaction, as set out in greater detail below. The SISP Guidelines are intended to facilitate a broad market solicitation of the Property and Business as a whole.

Frey Affidavit #3, paras 8, 11

9. The SISP is a key step in the CCAA proceeding and is intended to maximize value for the Petitioner's creditors and stakeholders.

10. If their engagement is approved by this Court, the Financial Advisor, will run the SISP with the assistance of the Petitioner and the oversight of the Monitor.

11. The key milestones and deadlines in the SISP, with the exception of a potential sale closing if a Successful Bid is received, are all anticipated to occur during the proposed extension of the Stay Period, are as follows:

Milestone	Deadline
Publication of a notice of the SISP and delivery of teaser letters and NDAs to potential bidders	Five (5) days following issuance of the SISP Approval Order (March 4, 2024)
Phase 1 Bid Deadline	April 12, 2024
Phase 2 Bid Deadline	May 24, 2024
Deadline for completion of definitive documentations in respect of a	June 7, 2024

¹ All capitalized terms used in this section and not otherwise defined herein have the meanings given to them in the SISP.

Successful Bid	
Court approval of a Successful Bid	Week of June 17, 2024
Closing of a Successful Bid transaction	On or before July 5, 2023

Frey Affidavit #3, para 12

12. Nothing in the SISP prevents the Petitioner or any of its affiliates from filing a plan of compromise or arrangement in respect of the Petitioner.

Frey Affidavit #3, para 16

13. Further, any sale of, or investment in, the Business and Property under the SISP Guidelines, will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description.

Frey Affidavit #3, para 17

14. To participate in Phase 1 of the SISP, and prior to distribution of any confidential information, a Potential Bidder must deliver to the Financial Advisor, the Petitioner and the Monitor an executed NDA. Once an NDA is received, Potential Bidder(s) will be granted access to a confidential virtual data room in order to conduct due diligence.

15. Phase 1 will consist of an initial due diligence period ending with the submission of non-binding letters of intent on or before the Phase 1 Bid Deadline. The SISP includes various requirements for the information to be incorporated in the LOI, as set out in further detail in paragraph 16 of the SISP which include, *inter alia*, the Potential Bidder identifying the structure and means by which they intend to satisfy applicable governmental reclamation security obligations in respect of the Mine, including reclamation of the Discovery Terminal and the Business. The Petitioner, the Monitor and the Financial Advisor will then assess the LOIs to determine if the Potential Bidder(s) have a *bona fide* interest in consummating a transaction and financial, operational, technical and other capabilities to be considered a Phase 1 Qualified Bidder. At this stage the Petitioner may, in consultation with the Monitor and the Financial Advisor, use their reasonable business judgment to limit the number of Potential Bidders advancing to Phase 2.

16. Phase 2 will consist of a further due diligence period prior to the submission of binding, executed bids. To qualify as a Phase 2 Bid, certain requirements must be met, as set out in paragraph 26 of the SISP. The Petitioner, in consultation with the Financial Advisor and the Monitor will review all Phase 2 Bids to determine the highest or otherwise best bid received, with reference to certain criteria as specified in the SISP. Following evaluation of Phase 2 Qualified Bids, the Petitioner, in consultation with the Financial Advisor, and with the consent of the Interim Lender and the Monitor can undertake one or more of the following steps:

- (a) accept one of the Phase 2 Qualified Bids (the "**Successful Bid**", and the offeror making such Successful Bid, the "**Successful Bidder**") and take such steps as may be necessary to finalize definitive transaction documents for the Successful Bid with the Successful Bidder;
- (b) continue negotiations with Phase 2 Bidders who have submitted Phase 2 Qualified Bids with a view to finalizing acceptable terms with one or more Phase 2 Bidders that submitted Phase 2 Qualified Bids;
- (c) terminate the SISP without consummating a transaction; or
- (d) schedule an auction with all Phase 2 Bidders that submitted Phase 2 Qualified Bids to determine the Successful Bid in accordance with auction procedures determined by the Financial Advisor and the Monitor, which procedures shall be provided to all Phase 2 Bidders that submitted Phase 2 Qualified Bids at least four (4) Business Days prior to an auction.

17. All Phase 2 Bids must be accompanied by a non-refundable good faith cash deposit equal to the greater of (i) 10% of the total cash component of the purchase prices contemplated by such Phase 2 Bid, or (ii) \$5,000,000, to be paid to the Monitor in trust until the earlier of: (a) closing of the Successful Bid or Back-Up Bid, as applicable; and (b) rejection of the Phase 2 Bid.

18. The Trafigura Group of Companies, including the Interim Lender, are in support of the SISP, and have advised the Petitioner and the Monitor that they do not intend to submit a bid as part of the SISP although the Petitioner and the Trafigura Group have reserved their rights to submit a bid for the Business and Property, or otherwise seek to implement a transaction

through a formal plan of arrangement or compromise, following the completion or termination of the SISP.

Frey Affidavit #3, para 19

19. All bids received under the SISP are subject to Court approval.

ENGAGEMENT OF FINANCIAL ADVISOR

20. In connection with the SISP, the Petitioner and the Financial Advisor negotiated and entered into the Financial Advisor Agreement. The engagement of the Financial Advisor is subject to Court Approval.

Frey Affidavit #3, para 20, Exhibit "B"

21. The Financial Advisor is an investment banking affiliate of the Monitor with significant experience structuring and executing complex distressed M&A and private capital raising transactions in multiple sectors, including mining.

Frey Affidavit #3, para 21

22. Under the Financial Advisor Agreement, the Financial Advisor will be paid based upon time incurred, at the standard hourly rates of its professionals, subject to a monthly fee cap in the amount of \$135,000 USD per month. The Financial Advisor Agreement does not provide for a success fee in connection with any transaction that may arise out of the SISP.

Frey Affidavit #3, para 23

23. The Petitioner seeks authority to enter into the Financial Advisor Agreement with the Financial Advisor so that the Financial Advisor can continue to provide assistance in connection with the SISP, as set out in greater detail in the Financial Advisor Agreement. The Petitioner believes the involvement of the Financial Advisor with the SISP will promote continuity, stability and credibility to the sales process.

24. The Financial Advisor requires security for its fees and disbursements under the Financial Advisor Agreement given that the Petitioner is under CCAA protection.

Frey Affidavit #3, para 25

25. As such, the Petitioner is seeking to have the ARIO further amended to include the Financial Advisor as a beneficiary of the Administration Charge. The Petitioner believes that this relief is both appropriate and necessary in the circumstances to ensure that payment of the fees of the Financial Advisor have the same protections as the other professionals assisting the Petitioner in these proceedings.

Frey Affidavit #3, paras 26, 27

26. The inclusion of the Financial Advisor as a beneficiary to the Administration Charge will not, at this stage require an increase to the Administration Charge.

27. The Petitioner has provided notice of the proposed amendment to the Administration Charge to all current beneficiaries of the same, and each have consented to the proposed amendment.

Frey Affidavit #3, para 28

BREAKWATER TRANSACTION

28. The Petitioner is seeking authorization to enter into the Breakwater Transaction pursuant to the Breakwater Agreement with Breakwater, a mining company related to the Petitioner.

29. During these CCAA proceedings, members of the Trafigura Group, expressed an interest in acquiring the Simba Equipment, being a long-hole production drill rig for medium-to-large drift mining (the "**Simba Equipment**"). As a result, the Petitioner commissioned an independent appraisal of the Simba Equipment from Rouse Services Canada Ltd., an affiliate of Ritchie Bros. Auctioneers (Canada) Ltd. (the "**RB Appraisal**"), to determine the fair market value of the Simba Equipment (the "**Simba FMV**").

Frey Affidavit #3, para 34

30. The Petitioner and Breakwater have since negotiated and entered into the Breakwater Agreement for the purchase and sale of the Petitioner's rights, title and interest in and to a lease agreement among the Petitioner, as lessee, and Epiroc Canada Inc. ("**Epiroc**"), as lessor (the "**Epiroc Lease**") in respect of the Simba Equipment. Based on the RB Appraisal, the Petitioner has equity in the Simba Equipment.

Frey Affidavit #3, paras 31, 33

31. The Simba Equipment is not required by the Petitioner as part of its care and maintenance plan for the Mine.

Frey Affidavit #3, para 32

32. The purchase price under the Breakwater Agreement corresponds to the Petitioner's equity in the Simba Equipment as established by the RB Appraisal that is, the difference between the Simba FMV and the amount owed to Epiroc pursuant to the payout statement issued by Epiroc effective February 28, 2024. The Breakwater Transaction is contemplated as an "as is, where is" basis and is conditional upon Court approval and the issuance of the Breakwater Sale Order.

Frey Affidavit #3, paras 35, 36

PART 3: LEGAL BASIS

32. The Petitioner relies on:

- (a) *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**");
- (b) *Business Corporations Act*, SBC 2022, c. 57;
- (c) *Supreme Court Civil Rules*, B.C. Re. 168/2009, as amended;
- (d) inherent and equitable jurisdiction of this Honourable Court; and
- (e) such further and other legal basis as counsel may advise and this Honourable Court may allow.

EXTENSION OF THE STAY PERIOD

33. Under sub-section 11.02(1) of the CCAA, a Court may grant a Stay under the CCAA for a period not to exceed ten (10) days. On December 28, 2023, pursuant to the ARIO the Court extended the Stay Period which is set to expire on February 29, 2024.

CCAA, s. 11.02(1).

34. The Petitioner is now seeking an extension of the Stay Period up to and including June 30, 2024.

35. Pursuant to section 11.02(2) of the CCAA, the Court may grant an extension of a stay of proceedings if the Court is satisfied that (a) the applicant has acted, and is acting, in good faith and with due diligence; and (b) that circumstances exist that make the order appropriate.

CCAA, s. 11.02(2).

36. Both the examination of whether a debtor has acted in good faith, and the appropriateness of a request for an order extending a stay of proceedings, must be viewed within the lens of the remedial objectives of the CCAA and in turn the purpose of a stay of proceedings.

Yukon Zinc Corporation (Re), 2015 BCSC 1219 (CanLII), paras 24-25 and 36-38;
Century Services Inc. v Canada (Attorney General), 2010 SCC 60 (CanLII), [2010] 3 SCR 379 [**“Century Services”**], para 70.

37. The purpose of a stay of proceedings under the CCAA is well established: it is designed to give companies under CCAA protection the “breathing room” required to restructure with a view to maximizing recoveries, whether the restructuring takes place as a going concern or as an orderly liquidation or wind-down.

Target Canada Co. (Re), 2015 ONSC 303 (CanLII), at para 8;
Century Services, at para 14;
Imperial Tobacco Canada Limited, et al, Re, 2019 ONSC 1684, para 9;
Industrial Properties Regina Limited v Copper Sands Land Corp., 2018 SKCA 36, paras 19 and 21.

38. Extending the Stay Period in this case is reasonable and appropriate. The evidence is clear that the Petitioner, under the supervision of the Monitor, has acted in good faith and with due diligence in the period that has elapsed since the ARIO was granted.

39. An extension of the Stay Period will provide the Petitioner with continued breathing space to stabilize operations with the assistance of the Monitor and determine a strategy to maximize value for the benefit of its stakeholders through the CCAA proceedings. It will also allow the Petitioner to, among other things:

- (a) keep the Mine in care and maintenance in a manner that prioritizes safety and the careful management of potential environmental issues;
- (b) if approved, use this period of time to implement the SISP;

- (c) if approved, complete the Breakwater Transaction; and
- (d) continue discussions with the Petitioner's stakeholders, including *inter alia* discussions with the Union respecting the Supplemental Hardship Payment.

40. The revised cash flow forecast indicates that, with the advances made available under the DIP Facility, the Petitioner will have sufficient liquidity to meet its obligations during the stay extension period being sought.

41. The Monitor supports the proposed extension to the Stay Period.

42. For the reasons set out above, the Petitioner submits that the Stay Period should be extended until June 30, 2024.

THE SISP SHOULD BE APPROVED

43. Section 11 of the CCAA provides the Court with the authority to approve a sale and investment solicitation process where the Court considers it to be appropriate in the circumstances.

*CCAA, s.11; Nortel Networks Corp. Re, 2009 CarswellOnt 4467, [2009]
O.J. No. 3169 [Nortel], at para 48.*

44. In exercising their broad powers to facilitate restructurings under the CCAA, Courts consider a number of factors in connection with the approval of a sales process, including, *inter alia*:

- (a) whether a transaction is warranted at this time;
- (b) whether the sale will benefit the whole economic community;
- (c) whether creditors have a *bona fide* reason to object to a sale of the business;
and
- (d) whether there is a better viable alternative.

*Nortel, at para 49; Brainhunter Inc., Re, 2009 CarswellOnt 8207, [2009]
O.J. No. 5578, at para 13.*

45. Courts have also held that the factors set out in section 36(3) of the CCAA, relative to the approval of an eventual transaction, are relevant considerations in approving a sale process. The factors enumerated under section 36 are:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the Court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

CCAA, s.36(3)

46. Courts have also considered additional factors in approving a sale process under the CCAA:

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances; and
- (c) whether the sales process will, in the circumstances, optimize the chances of securing the best possible price for the assets for sale.

Walter Energy Canada Holdings, Inc., 2016 BCSC 1076 [**Walter**], at paras 20-21;
Tacora Resources Inc. (Re), 2023 ONSC 6162, at paras 166, 167.

47. The Petitioner is of the view that the proposed SISP should be approved for the following reasons:

- (a) a transaction is warranted at this time as the Petitioner is insolvent, has a liquidity crisis, has placed the Mine in care and maintenance and has terminated or temporarily laid-off the majority of its employees. The SISP will provide the opportunity for the Petitioner to maximize the value of its assets and business for the benefit of its many stakeholders;
- (b) the SISP will benefit the whole economic community as it is designed to canvass the market broadly to identify one or more bids that maximize value for the Petitioner's stakeholders;
- (c) the SISP was developed in consultation with the Monitor, the Financial Advisor and the Interim Lender;
- (d) the SISP requires Potential Bidders to identify the structure and means by which they intend to satisfy applicable governmental reclamation security obligations in respect of the Mine, including reclamation of the Discovery Terminal and the Business;
- (e) the timelines of the SISP are fair and reasonable in the circumstances; and
- (f) the Monitor is supportive of the SISP.

48. Having regard to the circumstances of these CCAA proceedings, the Petitioner submits that the proposed SISP is reasonable and appropriate and should be granted.

THE COURT SHOULD APPROVE THE ENGAGEMENT OF THE FINANCIAL ADVISOR AND AMENDMENT TO THE ARIO

49. The Petitioner is seeking approval of the retention of the Financial Advisor pursuant to the Financial Advisor Agreement and an amendment to the ARIO to include the Financial Advisor as a beneficiary to the Administration Charge.

50. CCAA Courts have recognized that financial advisors can play a key role in assisting insolvent companies, and the Monitor by bringing experience and expertise to the restructuring process, including during a sales process.

Walter, at paras 25-48; *Canwest Publishing Inc.*, 2010 ONSC 222 [Canwest], at paras 52-55

51. As set out above, the Petitioner requires a sales advisor with the requisite expertise and knowledge in structuring and executing complex distressed M&A transactions. Given that the primary asset in this case is the Mine, the Petitioner, in consultation with the Monitor and the Trafigura Group, determined that the Financial Advisor has the necessary expertise and knowledge to implement the SISP. The Financial Advisor has significant expertise running similar sale and investment solicitation processes in restructuring files, including in the mining industry, and is well regarded.

52. In the circumstances, the assistance of the Financial Advisor is desirable and necessary to promote a successful SISP outcome, with the goal that the Financial Advisor's involvement will enhance the likelihood that the SISP generates maximum value for the Petitioner's creditors and other stakeholders.

53. Section 11.52(1) of the CCAA provides that, on notice to secured creditors likely to be affected by a Court-ordered priority charge, the Court may order that all or part of the property of the Petitioner be subject to a charge, in an amount the Court considers appropriate, in favour of any financial, legal or other experts engaged by the company for the purposes of proceedings under the CCAA.

CCAA, s.11.52(1)

54. Courts have routinely granted separate financial advisor charges in a restructuring when it is necessary to ensure the involvement and alignment of the professionals involved to achieve the best outcome for stakeholders through value maximizing transaction. In this case the

Petitioner is not seeking a separate financial advisor charge but is seeking an amendment to the ARIO to include the Financial Advisor as a beneficiary to the Administration Charge as security for its fees and disbursements under the Financial Advisor Agreement.

See for example, *US Steel Canada Inc. (Re)*, 2014 ONSC 6145, at para 22;
Canwest, at paras 54, 55; *Re Just Energy Corp.*, 2021 ONSC 1793, at
paras 113, 126

55. The factors to be considered by the Court in determining whether to approve a charge securing compensation include:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.

Canwest, at para 54

56. The Petitioner submits that the inclusion of the Financial Advisor as a beneficiary to the Administration Charge is necessary and appropriate having regard to, *inter alia*, the size and complexity of the Petitioner's business, the nature of the Petitioner's numerous stakeholders and the proposed role of the Financial Advisor in administering the SISP. In addition there would not be any unwarranted duplication of roles arising from the appointment of the Financial Advisor.

57. The Petitioner has provided notice of the proposed amendment of the ARIO to the current beneficiaries of the Administration Charge, and each have consented to the proposed amendment. Further, at this time, the proposed amendment will not result in an increase in the amount of the Administration Charge.

58. As a result of the foregoing, the Petitioner submits that it is appropriate for this Court to approve the Financial Advisor's retention pursuant to the Financial Advisor Agreement and for the amendment to the ARIO.

THE BREAKWATER TRANSACTION SHOULD BE APPROVED

59. The Breakwater Transaction is described in detail in the Frey Affidavit #3. The Petitioner respectfully submits that the Breakwater Transaction should be approved, as it is in the best interest of the Petitioner's estate and its stakeholders.

Frey Affidavit #3, paras 29-38; Hay Affidavit para 3-4, Exhibit "A"

60. Pursuant to section 36 of the CCAA, this Court has the jurisdiction to approve a sale or disposition of assets outside of the ordinary course of business. Sections 36(1), (2), (3), (4), and (6) of the CCAA provide as follows:

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

- (4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that
 - (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
 - (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Assets may be disposed of free and clear

- (6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Nortel, at paras 35-41 and 48; CCAA, ss 36(1), 36(2), 36(4), 36(6), 36(7)

61. As stated above in Part 3, paragraph 45, section 36(3) of the CCAA, sets out the non-exhaustive factors for the Court to consider in determining whether to approve a debtor company's sale or disposition of assets outside of the ordinary course. In addition, section 36(4) of the CCAA imposes additional factors for the Court to consider when dealing with a sale to a related party.

62. Also relevant when reviewing a sale or disposition of assets in a CCAA proceeding are the factors set out in *Royal Bank v Soundair Corp.*, which include considering whether sufficient effort was made to obtain the best price, the interests of all parties have been considered, the efficacy and integrity of the sales process and whether the process was fair.

Royal Bank v Soundair Corp., 1991 CarswellOnt 205 (ONCA) at para 16;
Nelson, supra at paras 37-38; *Pricewaterhousecoopers Inc. v 1905393
Alberta Ltd.*, 2019 ABCA 433 at paras 10-13

63. A Court should also give effect to the business judgment rule, which affords deference to the exercise of the commercial and business judgment of the debtor company in the context of an asset sale where the marketing and sale process was fair, reasonable, transparent and efficient.

Re Bloom Lake, 2015 QCCS 1920 at para 28

64. The Petitioner submits that the Breakwater Transaction satisfies the criteria in section 36(3) of the CCAA and the *Soundair* principles as follows:

- (a) the Simba Equipment is not required by the Petitioner as part of its care and maintenance plan for the Mine;
- (b) the Petitioner determined the purchase price for the Breakwater Transaction based on the fair market value of the Simba Equipment established by an appraisal performed by a recognized appraisal firm, and as such, maximizes the Petitioner's interest in the Simba Equipment;
- (c) the Petitioner has equity in the Simba Equipment and the Breakwater Transaction allows the Petitioner to monetize the Petitioner's equity in a depreciating asset expeditiously and without any discount for assembling, cleaning, security, advertising, brokerage or other disposal costs;
- (d) the RB Appraisal shows that the orderly liquidation value and the forced liquidation value of the Simba Equipment are significantly lower than the Simba FMV and would result in no, or next to no, equity to the Petitioner before even factoring transaction costs. As such, the Breakwater Transaction is more beneficial to the Petitioner's creditors than a sale or disposition under a bankruptcy;
- (e) the RB Appraisal indicates that:

- (i) in recent months, equipment values have been decreasing steadily;
 - (ii) the Simba Equipment is located remotely in a provincial park and the removal of that asset by any purchaser would be a painstaking process;
 - (iii) in a hypothetical liquidation scenario, the Simba Equipment would require a specific buyer such as another mining company as not all companies require assets of this size. If this is not the case, return values could be low.
- (f) as Breakwater will assume the obligations of the Petitioner under the Epiroc Lease, the Breakwater Transaction results in the removal from the estate of a claim of nearly \$1 million;
- (g) the Breakwater Transaction will reduce the Petitioner's borrowings under the DIP Facility by providing the Petitioner with additional funds to fund its operations, and is of the view that the Breakwater Transaction represents the best available outcome for all stakeholders;
- (h) the total consideration under the Breakwater Agreement, including the cash consideration represents the highest and best consideration that realistically can be obtained for the Simba Equipment in the current circumstances and is therefore reasonable and fair;
- (i) the interests of the affected parties, including the Petitioner's creditors and other stakeholders have been considered; and
- (j) Epiroc is consenting to the sale and assignment of the Epiroc Lease to Breakwater.

65. With respect to the criteria set out in Section 36(4) of the CCAA, for the reasons stated above, the Petitioner sees no reason to believe that a third party purchaser, assuming one

exists for the Simba Equipment, would pay more than fair market value to purchase this equipment on an "as is, where is" basis from an insolvent seller, and the Petitioner believes that expending costs and time to find such a *hypothetical* purchaser would not have been in the best interest of the Petitioner's stakeholders in comparison to the economics of the Breakwater Transaction.

66. Notice of this application has been given to all secured creditors of the Petitioner as required under section 36(2) of the CCAA.

67. Accordingly, the Petitioner submits that the Breakwater Transaction satisfies the criteria under section 36(3) of the CCAA and the *Soundair* factors and should be approved by this Honourable Court.

PART 4: MATERIAL TO BE RELIED ON


1. Affidavit #1 of Hein Frey, affirmed December 17, 2023
2. Affidavit #2 of Hein Frey, affirmed December 21, 2023
3. Affidavit #3 of Hein Frey, affirmed February 21, 2024
4. Affidavit #1 of Michèle Hay, sworn February 22, 2024
5. Pre-Filing Report of the Proposed Monitor, dated December 17, 2023
6. First Report of the Monitor, dated December 21, 2023
7. Second Report of the Monitor, to be filed

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 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.

Date: February 22 2024



Signature of Jonathan B. Ross
Counsel for the Petitioner, Myra Falls
Mine Ltd.

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"/> Associate Judge

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- 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
- experts
- other

SCHEDULE "A"

No. S-238572
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 A PLAN OF COMPROMISE AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

PETITIONER

ORDER MADE AFTER APPLICATION

**(Approval of Sale and Investment Solicitation Process
and Engagement of Financial Advisor)**

BEFORE THE HONOURABLE)
JUSTICE FITZPATRICK) 27/02/2024
)

THE APPLICATION of the Petitioner, coming on for hearing before me at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 27th day of February, 2024; AND ON HEARING Jonathan B. Ross, counsel for the Petitioner and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the materials filed, including the Affidavit #3 of Hein Frey, affirmed February 21, 2024 (the "**Third Frey Affidavit**") and the Second Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioner, the "**Monitor**"); AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

DEFINITIONS

1. Unless otherwise indicated, capitalized terms used in this Order that are not otherwise defined have the same meaning given to them in the SISP (as defined below).

APPROVAL OF SISP

2. The sale and investment solicitation process substantially in the form set out in the attached **Schedule "B"** to this Order (the "**SISP**") is hereby approved and the Petitioner, the Monitor, FTI Capital Advisors-Canada ULC (the "**Financial Advisor**") and their respective advisors (if applicable) are hereby authorized and directed to carry out the SISP in accordance with its terms and the terms of this Order, and to take such steps and execute such documentation as they consider to be necessary or desirable in carrying out each of their obligations thereunder.

FINANCIAL ADVISOR

3. The engagement letter dated as of February 2, 2024 (the "**Financial Advisor Agreement**") between the Financial Advisor and the Petitioner, attached as **Exhibit "B"** to the Third Frey Affidavit is hereby approved, including, without limitation, the payment of the fees and expenses set out therein (the "**Financial Advisor Compensation**") and the Petitioner is authorized to enter into, and perform its obligations under the Financial Advisor Agreement.

4. The Financial Advisor shall be entitled to the benefit of the Administration Charge on the Property (as those terms are defined in the Amended and Restated Initial Order dated December 28, 2023 (the "**ARIO**")), as security for the Financial Advisor Compensation.

5. Each of the Petitioner, the Monitor and the Financial Advisor and their respective affiliates, partners, directors, employees, advisors, agents, shareholders and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP or the conduct thereof, except to the extent of such losses, claims, damages or liabilities result from their respective gross negligence or willful misconduct in performing their obligations under the SISP, as determined by this Court.

6. Pursuant to Section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under the authority of either Act, the Petitioner, the Financial Advisor and the Monitor may disclose to Potential Bidders and their advisors, in connection with the SISP, personal information of identifiable individuals, records pertaining to the Petitioner's past and current employees, and information on specific customers, but only to the extent desirable or required to carry out the SISP. Each Potential Bidder and their respective advisors to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction in respect of the Petitioner and the Property, and if it does not complete such a transaction, shall return all such information to the Petitioner, or in the alternative destroy all such information. The Successful Bidder shall be entitled to continue to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Petitioner, and shall return all other personal information to the Petitioner, or ensure that all other personal information is destroyed.

STAY EXTENSION

7. The Stay Period (as defined in paragraph 15 of the ARIO) is hereby continued and extended to and including June 30, 2024.

GENERAL

8. The Petitioner, the Monitor, or the Financial Advisor, may from time to time apply for such further or other directions as may be necessary or desirable to give effect to this Order, including, without limitation, advice and directions regarding the SISP, the discharge of their respective powers and duties under the SIPS, or any matter in connection therewith.

9. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner is hereby dispensed with.

10. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the date this Order is made.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Jonathan B. Ross
Lawyer for the Petitioner

BY THE COURT

REGISTRAR

Schedule "A"

COUNSEL NAME	PARTY REPRESENTED
Peter Rubin Claire Hildbrand	Monitor – FTI Consulting Canada Inc.

Schedule "B"

SCHEDULE "B"

No. S-238572
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 A PLAN OF COMPROMISE AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

PETITIONER

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE)
JUSTICE FITZPATRICK) 27/02/2024
)

THE APPLICATION of the Petitioner, coming on for hearing before me at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 27th day of February, 2024; AND ON HEARING Jonathan B. Ross, counsel for the Petitioner and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the Affidavit #3 of Hein Frey, affirmed February 21, 2024 (the "**Third Frey Affidavit**"), the Affidavit #1 of Michèle Hay, sworn February 22, 2024 (the "**First Hay Affidavit**"), and the Second Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioner, the "**Monitor**"); AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

APPROVAL AND VESTING

1. The sale transaction (the "**Transaction**") contemplated by the sale and assignment agreement dated and effective as of February 28, 2024, (the "**Breakwater Agreement**")

between the Petitioner and Breakwater Resources Ltd. (the "**Purchaser**"), a copy of which is attached as **Exhibit "A"** to the First Hay Affidavit is hereby approved, and the Breakwater Agreement is commercially reasonable. The execution of the Breakwater Agreement by the Petitioner is hereby authorized and approved, and the Petitioner is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Breakwater Agreement (the "**Purchased Lease**").

2. Upon delivery by the Monitor to the Purchaser of a certificate substantially in the form attached as **Schedule "B"** hereto (the "**Monitor's Certificate**"), all of the Petitioner's right, title and interest in and to the Purchased Lease (including for greater certainty the Petitioner's right, title and interest in any leased equipment thereunder (the "**Leased Equipment**")) shall be sold, assigned, transferred and vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the ARIO dated December 28, 2024, and; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**"). and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Lease or Leased Equipment are hereby expunged and discharged as against the Purchased Lease and Leased Equipment.
3. Notwithstanding Clause 2, nothing in this order shall expunge, discharge or otherwise affect the interest of Epiroc Canada Inc. in the Leased Equipment pursuant to the Purchased Lease or the registration pursuant to the *Personal Property Security Act* of British Columbia under base registration numbers 615796N and 653012N in relation to such security interest in the Leased Equipment.

4. The Monitor is to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof.
5. The Petitioner shall not be required to hold the Purchase Price (as defined in the Breakwater Agreement) in trust for the benefit of any Person but rather shall be entitled to use the funds comprising the Purchase Price in the ordinary course of its operations, subject to the ARIO and the other orders made in these proceedings.
6. Notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of the Petitioner now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of the Petitioner,

the vesting of the Purchased Lease and Leased Equipment in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioner and shall not be void or voidable by creditors of the Petitioner, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
7. The assignment of the Purchased Lease is valid and binding upon all of the counterparties to the Purchased Lease, notwithstanding any restriction or prohibition contained in such Purchased Lease relating to the assignment thereof, including, but not limited to, any provision requiring the consent of any party to the transfer, conveyance, or assignment of the Purchased Lease.
8. No counterparty under the Purchased Lease, nor any other person, upon the assignment and transfer to, and assumption by, the Purchaser of the Purchased Lease hereunder shall make or pursue any demand, Claim, action or suit or exercise any right or remedy (including any termination rights) against the Purchaser relating to: (a) the Petitioner

having sought or obtained relief under the CCAA; (b) the insolvency of the Petitioner; or (c) any failure by the Petitioner to perform a non-monetary obligation under the Purchased Lease and all such counterparties and persons shall be forever barred and estopped from taking such action. For greater certainty, nothing herein shall limit or exempt the Purchaser in respect of obligations accruing, arising or continuing after the date hereof, under the Purchased Lease other than in respect of items (a) - (c) above.

9. The Petitioner or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
10. Endorsement of this Order by counsel appearing on this application other than the counsel for the Petitioners is hereby dispensed with.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Jonathan B. Ross
Lawyer for the Petitioner

BY THE COURT

REGISTRAR

Schedule "A"

LIST OF COUNSEL

COUNSEL NAME	PARTY REPRESENTED
Peter Rubin Claire Hildebrand	Monitor – FTI Consulting Canada Inc.

SCHEDULE "B"

FORM OF MONITOR'S CERTIFICATE

No. S-238572
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 A PLAN OF COMPROMISE AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

PETITIONER

MONITOR'S CERTIFICATE

RECITALS:

1. Pursuant to an Order of the Honourable Justice Fitzpatrick of the Supreme Court of British Columbia (the "**Court**") dated December 18, 2024, as subsequently amended and restated on December 28, 2024, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of Myra Falls Mine Ltd. (the "**Petitioner**").
2. Unless otherwise indicated herein, all capitalized terms in this Monitor's Certificate shall have the meaning ascribed to them in the Breakwater Agreement dated [xx], 2024 among the Petitioner and Breakwater Resources Ltd. All references to Purchaser shall include any assignee, if any, to the Purchaser.
3. Pursuant to an Order of the Court, dated February 28, 2024 (the "**Sale Approval Order**"), among other things, the Court approved the Breakwater Agreement dated as of [xx], 2024 (the "**Breakwater Agreement**") and provided for the vesting in the Purchaser of the Petitioner's right, title, and interest in and to the Purchased Lease, which vesting is to be effective with respect to the Purchased Lease upon the delivery by the Monitor to the Purchaser of a certificate confirming that the Monitor has been advised by the Petitioner that the sale transaction contemplated by the Breakwater Agreement has occurred.

THE MONITOR CERTIFIES the following:

1. The Monitor has been advised by the Petitioner that the sale transaction contemplated by the Breakwater Agreement has occurred.

This Certificate was executed by the Monitor at [Time] on [Date].

**FTI CONSULTING CANADA INC., in its
capacity as the monitor of MYRA FALLS
MINE LTD., and not in its personal or
corporate capacity**

Per: _____
Name:
Title:

No. S-238572
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 A PLAN OF COMPROMISE AND
ARRANGEMENT OF MYRA FALLS MINE LTD.

PETITIONER

**ORDER
(APPROVAL AND VESTING ORDER)**

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/SPK

No. S-238572
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 A PLAN OF COMPROMISE AND
ARRANGEMENT OF MYRA FALLS MINE LTD.

PETITIONER

NOTICE OF APPLICATION
(SISP, Engagement of Financial Advisor, Stay Extension
and Breakwater Sale Approval)

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
Bentall 5, Suite 2300,
550 Burrard Street
Vancouver, BC V6C 2B5

Attention: Jonathan B. Ross

Tel. No. 604.683.6498

Fax No. 604.683.3558

File No. A172589

SPK/JRB

No. S-238572
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IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS*
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PETITIONER

NOTICE OF APPLICATION
(SISP, Engagement of Financial Advisor, Stay Extension
and Breakwater Sale Approval)

GOWLING WLG (CANADA) LLP
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