

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

**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 OR  
ARRANGEMENT OF CLINE MINING CORPORATION, NEW ELK  
COAL COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY**

Applicants

**FACTUM OF THE APPLICANTS  
(Stay Extension Motion Returnable December 22, 2014)**

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PART I – INTRODUCTION

1. On December 3, 2014, Cline Mining Corporation, New Elk Coal Company LLC and North Central Energy Company (collectively, the “**Applicants**”) sought and obtained an Order of this Court (the “**Initial Order**”) granting relief pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”, with these proceedings being referred to herein as the “**CCAA Proceedings**”). The relief granted under the Initial Order, included, *inter alia*, a stay of proceedings until December 31, 2014.<sup>1</sup>
2. This factum is filed in support of the Applicants’ motion for an extension of the Stay Period (as defined in the Initial Order) to and including March 1, 2015.

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<sup>1</sup> Any capitalized terms that are not defined herein shall have the meaning given to them in the affidavit of Mathew Goldfarb sworn December 15, 2014 (the “**Goldfarb Affidavit**”).

## PART II – THE FACTS

### A. BACKGROUND

3. The Applicants, along with FTI Consulting Canada Inc., in its capacity as CCAA Monitor of the Applicants (the “**Monitor**”), have been working diligently to carry out the terms of the Initial Order, the Claims Procedure Order and the Meetings Order granted on December 3, 2014. The Applicants have also continued to advance the proposed recapitalization transaction (the “**Recapitalization**”).

Goldfarb Affidavit at para. 3; Motion Record of the Applicants (“**Motion Record**”), Tab 2.

4. The Applicants’ activities since the Initial Order include the following:
  - (a) on December 3, 2014, Cline issued a press release announcing the Recapitalization and the commencement of the CCAA Proceedings;
  - (b) on December 3, 2014, the Applicants provided a letter to their employees to inform them of the commencement of the CCAA Proceedings and the Recapitalization;
  - (c) beginning on December 3, 2014, the Applicants contacted certain key suppliers to inform them of the commencement of the CCAA Proceedings and the Recapitalization. The Applicants also provided a letter to their suppliers informing them of the CCAA Proceedings and the Recapitalization and the anticipated impact of the CCAA Proceedings on the Applicants’ suppliers;
  - (d) on December 4, 2014, counsel to the Applicants served the Initial Order, the Claims Procedure Order, the Meetings Order, the related Application Record and Motion Record, and the Endorsement of Morawetz R.S.J. dated December 3, 2014 on various additional parties who had not previously been served with these materials, including Class Action Counsel in the WARN Act Class Action and various government offices;

- (e) the Applicants have responded to various inquiries from certain existing shareholders of Cline regarding the CCAA Proceedings and the effect of the Recapitalization on existing shareholders;
- (f) the Applicants reviewed their books and records to identify known claims against the Applicants for the purpose of preparing the Claims Schedule and worked with the Monitor to finalize the Claims Schedule;
- (g) the Applicants and their counsel assisted the Monitor with the finalization of the Notice to Creditors and the Notices of Claim to be sent to Known Creditors;
- (h) the Applicants and their U.S. counsel assisted the Monitor and the Monitor's U.S. counsel in preparing a list of potential WARN Act Plaintiffs for the purpose of providing them with notice of the Applicants' restructuring proceedings;
- (i) the Applicants have provided U.S. counsel to the Monitor with additional evidence and material in support of the Chapter 15 petitions and the request for the preliminary injunction extending the temporary restraining order (as described further below);
- (j) the Applicants have continued to seek opportunities to generate funds from the sale of surplus equipment and have reached an agreement with a purchaser of certain surplus equipment;
- (k) the Applicants have continued paying their employees and personnel in accordance with existing practices; and
- (l) the Applicants have continued to pay their suppliers for goods and services that were contracted for and provided to the Applicants after the commencement of the CCAA Proceedings.

Goldfarb Affidavit at para. 4; Motion Record, Tab 2.

5. The Monitor has complied with various notice requirements set forth in the Initial Order, the Claims Procedure Order and the Meetings Order, as more fully set out in the Goldfarb Affidavit.

Goldfarb Affidavit at para. 5; Motion Record, Tab 2.

6. The Monitor, as foreign representative of the Applicants, has commenced Chapter 15 Proceedings in the United States Bankruptcy Court for the District of Colorado (the “U.S. Court”), seeking recognition of the CCAA Proceedings as a “foreign main proceeding” and giving full force and effect in the United States to the Initial Order, the Claims Procedure Order and the Meeting Order. The hearing with respect to Chapter 15 recognition is currently scheduled for January 29, 2015.

Goldfarb Affidavit at para. 12; Motion Record, Tab 2.

7. In the meantime, the U.S. Court has granted a preliminary injunction staying the commencement or continuation of proceedings against the Applicants in the United States pending a determination of the Chapter 15 petitions. U.S. Counsel to the Monitor has provided notice of the Chapter 15 Proceedings and related relief to interested parties.

Goldfarb Affidavit at paras. 13-15; Motion Record, Tab 2.

**B. THE STAY PERIOD**

8. Since the issuance of the Initial Order, the Applicants and their advisors have continued to act diligently and in good faith in respect of all matters relating to the CCAA Proceedings, including the Recapitalization and the steps taken in furtherance of the Claims Procedure Order, the Meetings Order and the Chapter 15 Proceedings.

Goldfarb Affidavit at para. 16; Motion Record, Tab 2.

9. There are several matters that remain to be addressed in the CCAA Proceedings, including the continuance of the claims procedure, the advancement of the Chapter 15 Proceedings, the holding of creditors meetings to vote on the Plan, and, pending approval of the Plan by the requisite majorities of creditors and this Court, the implementation of

the Recapitalization. The Applicants require the ongoing benefit of the stay of proceedings in order to complete these and other matters and advance towards the completion of the Recapitalization.

Goldfarb Affidavit at para, 17; Motion Record, Tab 2.

10. The Stay Period granted in the Initial Order covered the period from the date of the Initial Order until and including December 31, 2014. The Applicants respectfully request an extension of the Stay Period until March 1, 2015. As indicated by the Cash Flow Forecast attached as Exhibit "A" to the Goldfarb Affidavit, the Applicants anticipate that they will have access to all necessary financing during the extended Stay Period.

Goldfarb Affidavit at para. 19; Motion Record, Tab 2.

11. The Monitor and Marret, on behalf of the Secured Noteholders, support the extension of the Stay Period.

Goldfarb Affidavit at para. 20; Motion Record, Tab 2.

**C. FURTHER FACTUAL BACKGROUND**

12. The facts relating to the requested relief are more fully set out in the Goldfarb Affidavit.

**PART III – ISSUES AND THE LAW**

**A. EXTENSION OF THE STAY PERIOD**

13. Section 11.02(2) of the CCAA states:

A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(b) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

CCAA, Section 11.02(2).

14. In order to make an order pursuant to Section 11.02(2), the Court must be satisfied that:
- (i) circumstances exist that make the order appropriate; and
  - (ii) the applicant has acted, and is acting, in good faith and with due diligence.

CCAA, Section 11.02(3).

15. The Applicants submit that an Order extending the Stay Period to and including March 1, 2015 is appropriate in the circumstance because:

- (a) the Applicants have acted, and continue to act, in good faith and with due diligence towards the completion of the Recapitalization;
- (b) the Applicants, the Monitor and their counsel have been working diligently to carry out the terms of the Initial Order, the Claims Procedure Order and the Meetings Order;
- (c) the extension of the Stay Period to March 1, 2015 is necessary in order to maintain the stability of the Applicants while they continue the claims procedure, advance the Chapter 15 Proceedings, hold meetings of creditors to vote on the Plan and pursue the completion of the Recapitalization;
- (d) the Applicants' Cash Flow Forecast for the period to March 1, 2015 indicates that they will have access to sufficient funds during the extended Stay Period;
- (e) creditors will not suffer any material prejudice if the Stay Period is extended;
- (f) Marret, on behalf of the Secured Noteholders, supports the extension of the Stay Period; and
- (g) the Monitor is supportive of the Applicants' request to extend the Stay Period until March 1, 2015.

Goldfarb Affidavit at paras. 16-20 ; Motion Record, Tab 2.

16. While the Applicants hope to complete the Recapitalization and the CCAA Proceedings as soon as possible, and potentially before the conclusion of the extended Stay Period, the Applicants submit that an extension of the Stay Period to March 1, 2015 would be beneficial to the Applicants and their stakeholders because it would avoid the additional professional expenses of returning for repeated stay extension requests in the interim period.
17. Accordingly, for all of the foregoing reasons, the Applicants submit that it is appropriate for this Court to extend the Stay Period to and including March 1, 2015.

**PART IV – ORDER REQUESTED**

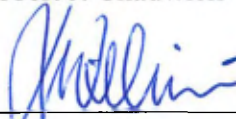
For the reasons set out above, the Applicants respectfully request that this Court extend the Stay Period to and including March 1, 2015 and grant the requested relief.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**



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Robert J. Chadwick



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Logan Willis



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Bradley Wiffen



**SCHEDULE “A”  
STATUTORY REFERENCES**

***COMPANIES’ CREDITORS ARRANGEMENT ACT*  
R.S.C. 1985, c. C-36, as amended**

s.11.02(1)

*Stays, etc. — initial application* – A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

s.11.02(2)

*Stays, etc. — other than initial application* – A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

s.11.02(3)

*Burden of proof on application* – The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

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Proceeding commenced at Toronto

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