

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

Applicants

**MOTION RECORD
(Stay Extension Motion Returnable March 30, 2015)**

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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TAB 1

Court File No. CV14-10781-00CL

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

Applicants

**NOTICE OF MOTION
(Stay Extension Motion Returnable March 30, 2015)**

Cline Mining Corporation, New Elk Coal Company LLC and North Central Energy Company (collectively, the "**Applicants**") will make a motion before a judge of the Ontario Superior Court of Justice on March 30, 2015 at 8:30 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR AN ORDER, substantially in the form attached at Tab 3 of the Motion Record, *inter alia*:

1. extending the Stay Period, as defined in the Initial Order of this Court granted on December 3, 2014, to and including June 1, 2015;
2. approving the activities of FTI Consulting Canada Inc., in its capacity as CCAA Monitor in respect of the Applicants (the "**Monitor**"), and the fees and disbursements of the Monitor and its counsel; and
3. such further and other relief as this Court deems just.

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THE GROUNDS FOR THE MOTION ARE:

1. on December 3, 2014, the Court granted the Initial Order, *inter alia*, granting a stay of proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") in respect of the Applicants and appointing FTI Consulting Canada Inc. as the Monitor;¹
2. on December 3, 2014, the Court also granted the Claims Procedure Order and the Meetings Order;
3. the Applicants' Amended and Restated Plan of Compromise and Arrangement dated January 20, 2015 (the "**Plan**") was unanimously approved by all creditors who voted on January 21, 2015 in each of the three classes of creditors established by the Meetings Order for purposes of voting on the resolution to approve the Plan;
4. on January 27, 2015, the Court granted an Order (the "**Plan Sanction Order**") approving the Plan;
5. the Monitor, as foreign representative of the Applicants, obtained recognition of the Plan Sanction Order in the Applicants' Chapter 15 Proceedings pursuant to an Order of the U.S. Court granted on January 28, 2015;
6. the Applicants have acted diligently and in good faith with respect to all matters in the CCAA Proceedings and have been working with the Monitor, Marret Asset Management Inc. (on behalf of the Secured Noteholders) ("**Marret**") and various other stakeholders in order to implement the Plan;
7. the Applicants have made significant progress towards finalizing the documents and mechanics needed to implement the Plan;
8. implementation of the Plan requires the completion of a limited number of additional activities; in particular, Marret is in the process of obtaining regulatory approval from the

¹ Capitalized terms used but not otherwise defined herein have the meaning given to them in the Affidavit of Matthew Goldfarb sworn March 23, 2015 (the "**Goldfarb Affidavit**"), attached at Tab 2 of the Motion Record.

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- Ontario Securities Commission to enable it to receive the debt and equity interests to be issued to it under the Plan, and the Applicants will need to complete certain final pre-closing steps and deliverables once Marret has received the required regulatory approval;
9. the Applicants, with the assistance of the Monitor, have now resolved all but two of the Claims identified in the Claims Procedure;
 10. the Applicants require an extension of the Stay Period to June 1, 2015 to maintain the status quo while they complete the remaining Plan implementation matters and work towards completion of the CCAA Proceedings;
 11. the Applicants' cash flow forecast, to be attached to the Monitor's Fourth Report filed in connection with this motion, indicates that the Applicants will have access to sufficient financing to meet their obligations during the requested extended Stay Period;
 12. the Applicants' creditors will not suffer any material prejudice if the Stay Period is extended;
 13. the Applicants' motion for the extension of the Stay Period is supported by Marret, on behalf of the Secured Noteholders, and the Monitor;
 14. the evidence in support of the Monitor's request for approval of its activities and the fees and disbursements of the Monitor and its counsel will be set forth in the Monitor's Fourth Report, the affidavit of Paul Bishop (the "**Bishop Affidavit**") and the affidavit of Michael De Lellis (the "**De Lellis Affidavit**") to be filed by the Monitor in connection with this motion;
 15. the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
 16. Rules 1.04, 1.05, 2.03, 3.02, 16, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
 17. such further and other grounds as counsel may advise and this Court may permit.

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THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this Motion:

1. the Goldfarb Affidavit;
2. the Monitor's Fourth Report;
3. the Bishop Affidavit;
4. the De Lellis Affidavit; and
5. such further and other materials as counsel may advise and this Court may permit.

Date: March 24, 2015

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Lawyers for the Applicants

TO: THE SERVICE LIST

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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**AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT
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NORTH CENTRAL ENERGY COMPANY**

Applicants

Court File No: CV14-10781-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Stay Extension Motion
Returnable March 30, 2015)**

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TAB 2

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

Applicants

**AFFIDAVIT OF MATTHEW GOLDFARB
(sworn March 23, 2015)**

I, Matthew Goldfarb, in the City of Westport, in the State of Connecticut, MAKE OATH
AND SAY:

I. INTRODUCTION

1. I am the Chief Restructuring Officer and acting Chief Executive Officer of Cline Mining Corporation (“**Cline**”). I was appointed to serve in such capacities as of December 11, 2013 and January 15, 2014, respectively. As such, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. This affidavit is sworn in support of a motion by Cline, New Elk Coal Company LLC and North Central Energy Company (collectively, the “**Applicants**”) for an Order (the “**Stay Extension Order**”) extending the stay of proceedings granted by this Court pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

3. The Applicants are seeking an extension of the Stay Period, as defined in the initial CCAA order of this Court (the “**Initial Order**”), to June 1, 2015. The purpose of the requested extension is to allow the Applicants additional time to implement their Court-approved CCAA Plan of Compromise and Arrangement (the “**Plan**”) and to complete these CCAA proceedings.¹

II. THE CCAA PROCEEDINGS

4. On December 3, 2014, the Applicants sought protection from their creditors under the CCAA and obtained the Initial Order, which, among other things, granted a stay of proceedings in respect of the Applicants and appointed FTI Consulting Canada Inc. as the Monitor (the “**Monitor**”).

5. On December 3, 2014, this Court also granted: (i) an Order (the “**Claims Procedure Order**”) establishing a process for the identification and determination of claims against the Applicants and their present and former directors and officers (the “**Claims Procedure**”); and (ii) an Order authorizing the Applicants to file a plan of compromise and arrangement and to convene meetings of their affected creditors to consider and vote on the plan (the “**Meetings Order**”).

6. This Court set a “**Comeback Date**” of December 22, 2014 at which interested parties could appear before the Court to raise any issues or concerns with the Initial Order, the Claims Procedure Order or the Meetings Order; however, no such issues or concerns were raised on the Comeback Date. On the Comeback Date, this Court extended the Stay Period to and including March 1, 2015.

¹ Capitalized terms used but not defined in this Affidavit shall have, as the context requires, the meanings given to such terms in the Affidavit of Matthew Goldfarb sworn December 2, 2014 or the Plan.

7. The Applicants, with the assistance of the Monitor, diligently carried out the Claims Procedure in accordance with the Claims Procedure Order. The results of the Claims Procedure were reported to the Court in detail in my affidavit of January 21, 2015, and in the Monitor's Third Report dated January 23, 2015, which were filed previously in connection with the Applicants' motion for Court approval of the Plan.

8. On January 20, 2015, the Applicants made certain amendments to the Plan to reflect the settlement of a significant class action claim against the Applicants. The Plan, as amended, was voted upon by the Applicants' creditors on January 21, 2015 in accordance with the Meetings Order, and the creditors voting in each class of creditors unanimously approved the Plan.

9. On January 27, 2015, this Court granted an Order (the "**Plan Sanction Order**") approving the Plan pursuant to the CCAA.

III. CHAPTER 15 PROCEEDINGS

10. On December 3, 2014, the Monitor, as foreign representative of the Applicants, commenced ancillary proceedings (the "**Chapter 15 Proceedings**") in the United States by filing petitions under Chapter 15, Title 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Colorado (the "**U.S. Court**"). By the petitions, the Monitor sought an order (the "**Recognition Order**") recognizing the CCAA Proceedings as "foreign main proceedings" within the meaning of the Bankruptcy Code and giving full force and effect in the United States to the Initial Order, the Claims Procedure Order and the Meetings Order. No objections to the Recognition Order were received by the U.S. Court prior to the deadline for such objections on January 9, 2015. The U.S. Court entered the Recognition Order on January 14, 2015.

IV. ACTIVITIES SINCE PLAN SANCTION ORDER

11. Since the Plan Sanction Order was granted on January 27, 2015, the Applicants have continued to diligently work towards implementation of the Plan and the completion of these proceedings. The Applicants' activities and the other material developments in the CCAA proceedings since the date of the Plan Sanction Order include the following:

- (a) On January 28, 2015, the U.S. Court granted an Order in the Chapter 15 Proceedings recognizing the Plan Sanction Order and giving effect to the Plan Sanction Order in the United States.
- (b) The Applicants, the Monitor and their respective counsel have resolved a number of Disputed Claims in respect of the Applicants in accordance with the Claims Procedure Order. At this time, of the 220 Claims identified in the Claims Procedure Order, there are two Disputed Claims that remain to be resolved. The Applicants, with the assistance of the Monitor, will continue to attempt to resolve those remaining Disputed Claims.
- (c) The Applicants have worked diligently to implement the Plan. This has included working with the Monitor, Marret Asset Management Inc. (on behalf of the Secured Noteholders) ("**Marret**"), the indenture trustee in respect of the Secured Notes, the Canadian Depository for Securities and such parties' counsel or other representatives to finalize the closing mechanics and to settle the various documents, agreements and corporate steps needed to implement the Plan. The Applicants have also been engaged in coordinating the actions that will need to be taken to cancel the existing Secured Notes and to distribute the new debt and

equity interests under the Plan. Significant progress has been made towards finalizing these mechanics, agreements and corporate actions. In particular, the new credit agreement, the related guarantees and security documents, the new shareholders agreement and other significant transactional documents required to implement the Plan have now been substantially settled between the Applicants and Marret, and the process for distributing the new debt and equity interest under the Plan has been agreed with the various parties involved in the Plan implementation process.

- (d) The Applicants have continued their efforts to find opportunities to sell redundant assets in an effort to generate additional cash to be used to fund the Applicants' business. The Monitor and Marret have been kept apprised of all such efforts to date. The Applicants will return to this Court to seek approval of any asset sales that exceed the permitted sale thresholds established in the Initial Order.
- (e) Counsel for the Applicants has been in contact with counsel for various stakeholders to keep them apprised of the status of the CCAA proceedings and the expected timeframe for the implementation of the Plan.
- (f) The Applicants and their counsel have continued to respond to inquiries from their stakeholders in a timely manner regarding the effects of the CCAA proceedings, the Chapter 15 proceedings and the Plan.
- (g) The Applicants have continued to manage the Cline Business in the ordinary course and have continued to address matters with contractual counterparties,

lessors and other stakeholders arising from these proceedings and the Chapter 15 proceedings.

12. The Applicants have made significant progress towards implementing the Plan. At this time, the implementation of the Plan requires the completion of a limited number of additional activities. In particular, Marret is in the process of seeking regulatory approval from the Ontario Securities Commission to enable it to receive the debt and equity interests to be issued to it under the Plan. Once that approval has been received, certain final steps will need to be taken to close the transactions contemplated in the Plan. The Applicants are not in a position to estimate when Marret will receive the approval as that matter is being addressed directly by Marret. However, once such approval has been obtained by Marret, the Applicants expect to be in a position to implement the Plan within one to two weeks.

V. EXTENSION OF STAY PERIOD

13. 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 steps taken in furtherance of the Initial Order, the Claims Procedure Order, the Plan Sanction Order, the Chapter 15 Proceedings and the implementation of the Plan.

14. There are a limited number of matters that remain to be completed prior to the implementation of the Plan. The Applicants require the ongoing benefit of the stay of proceedings to maintain the status quo while they complete those matters and advance towards the completion of the Plan and the CCAA proceedings.

15. The Stay Period granted in the Initial Order was extended by the Plan Sanction Order until and including April 1, 2015. The Applicants are requesting an extension of the Stay Period until June 1, 2015. While the Applicants are hopeful that Plan implementation will occur in advance of June 1, 2015, the timing of the regulatory matter being addressed by Marret is outside of the control of the Applicants. The Applicants are therefore seeking the extension of the Stay Period until June 1, 2015 to allow for a reasonable period of additional time to implement the Plan without having to incur the additional expenses that would be incurred if the Applicants were required to seek interim extensions of the Stay Period.

16. As indicated by the cash flow forecast attached to the Monitor's Fourth Report, to be filed in connection with this Motion, the Applicants anticipate that they will have access to sufficient funding during the extended Stay Period.

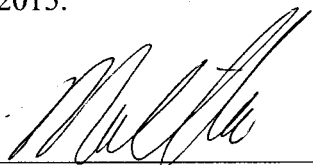
17. In accordance with the Plan Sanction Order, upon the satisfaction or waiver of the conditions precedent set forth in the Plan, the Monitor is to file with this Court and the U.S. Court a Monitor's Certificate certifying that the Plan Implementation Date has occurred. Upon the implementation of the Plan, the Applicants intend to return to this Court to seek an Order terminating the CCAA proceedings and to address other matters relating to the conclusion of these proceedings.

VI. CONCLUSION

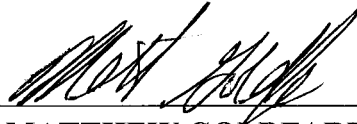
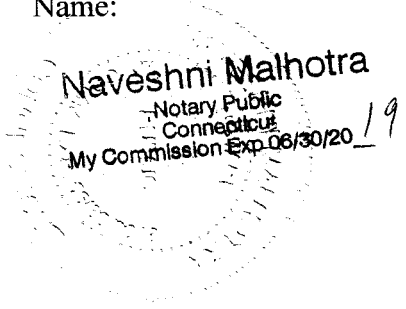
18. The Applicants believe that the extension of the Stay Period is reasonable in the circumstances given their significant progress towards the implementation of the Plan to date and the additional time needed to complete the remaining steps. I understand that the Monitor and Marret, on behalf of the Secured Noteholders, support the relief requested in the Stay Extension Order, and I am not aware of any other stakeholders that would be unduly prejudiced by the

proposed extension of the Stay Period. The Applicants therefore respectfully request that this Court grant the Stay Extension Order.

SWORN before me in the City of Westport,
in the State of Connecticut, on March 23,
2015.



A Commissioner for taking affidavits
Name:



MATTHEW GOLDFARB

**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 CLINE MINING CORPORATION, NEW ELK COMPANY LLC AND NORTH
CENTRAL ENERGY COMPANY**

Court File No: CV14-10781-00CL

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE-
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AFFIDAVIT OF MATTHEW GOLDFARB
(Sworn March 23, 2015)**

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TAB 3

Court File No. CV14-10781-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE REGIONAL)	MONDAY, THE 30TH
)	
SENIOR JUSTICE MORAWETZ)	DAY OF MARCH, 2015

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

STAY EXTENSION ORDER

THIS MOTION made by Cline Mining Corporation, New Elk Coal Company LLC and North Central Energy Company (collectively, the "**Applicants**") for an Order substantially in the form attached at Tab 3 of the Motion Record herein was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of Matthew Goldfarb sworn March 23, 2015 (the "**Goldfarb Affidavit**"), the fourth report (the "**Fourth Report**") of FTI Consulting Canada Inc., in its capacity as CCAA monitor of the Applicants (the "**Monitor**"), the affidavit of Paul Bishop sworn March 24, 2015 (the "**Bishop Affidavit**") and the affidavit of Michael De Lellis sworn March 24, 2015 (the "**De Lellis Affidavit**"), and on hearing the submissions of counsel for each of the Applicants and the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record in respect of this Motion be and is hereby abridged so that the Motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF THE STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that the Stay Period, as such term is defined in and used throughout the Order of this Court dated December 3, 2014 (the “**Initial CCAA Order**”), be and is hereby extended to and including 11:59 p.m. on June 1, 2015, and that all other terms of the Initial CCAA Order shall remain in full force and effect, unamended, except as may be required to give effect to this paragraph.

APPROVAL OF MONITOR’S ACTIVITIES

3. **THIS COURT ORDERS** that the activities and conduct of the Monitor prior to the date hereof in relation to the Applicants and these CCAA proceedings are hereby ratified and approved.

4. **THIS COURT ORDERS** that the third report of the Monitor dated January 23, 2015 and the conduct and activities of the Monitor described therein are hereby approved.

APPROVAL OF MONITOR’S FEES

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor in the amount of \$● (for the period December 3, 2014 to ●, 2015, inclusive, and including Harmonized Sales Tax), all as set out in the Bishop Affidavit and the Monitor’s Fourth Report, are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of the Monitor’s counsel, Osler, Hoskin & Harcourt LLP, in the amount of \$● (for the period December 3, 2014 to ●, 2015, inclusive, and including Harmonized Sales Tax), all as set out in the De Lellis Affidavit and the Monitor’s Fourth Report, are hereby approved.

RECOGNITION AND ASSISTANCE

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
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Court File No.: CV14-10781-00CL

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**STAY EXTENSION ORDER
(Motion Returnable March 30, 2015)**

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

Court File No: CV14-10781-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT
OF CLINE MINING CORPORATION, NEW ELK COAL COMPANY LLC AND
NORTH CENTRAL ENERGY COMPANY**

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD
(Stay Extension Motion
Returnable March 30, 2015)**

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