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

Applicants

FACTUM OF THE APPLICANTS
(Plan Amendment Motion Returnable June 1, 2015)

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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**").[1]

2. On January 27, 2015, this Court granted an Order (the "**Plan Sanction Order**") approving the Applicants' Amended and Restated Plan of Compromise and Arrangement dated January 20, 2015 (the "**Plan**"). The Plan was unanimously approved by the three classes of creditors who voted on the Plan on January 21, 2015.

3. This factum is filed in support of the Applicants' motion for an Order (the "**Plan Amendment Order**"), *inter alia*:

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[1] Any capitalized terms that are not defined herein have the meanings given to them in the affidavit of Mathew Goldfarb sworn May 26, 2015 (the "**Goldfarb Affidavit**").

(a) approving certain technical amendments to the Plan relating to the form of consideration to be received by the Secured Noteholders under the Plan; and

(b) extending the Stay Period to and including August 17, 2015 to provide the Applicants with additional time to implement the amended Plan and complete the CCAA Proceedings.

4. The requested relief will enable the Applicants to implement a recapitalization transaction that is clearly in the best interests of their stakeholders, as evidenced by the broad stakeholder support for the Plan.

5. The Applicants have been working diligently to implement the Plan; however, the implementation of the Plan has been delayed by a regulatory issue encountered by certain of the Secured Noteholders. The proposed amendments to the Plan are required to resolve this regulatory issue.

6. Specifically, certain of the Secured Noteholders are regulated investment funds that are restricted from holding certain types of debt and equity instruments under applicable securities laws. These restrictions affect the ability of these Secured Noteholders to hold the new debt and equity allocated to them under the existing terms of the Plan. The Secured Noteholders originally wished to receive the new debt and equity in the form set out in the Plan to minimize their administration costs following Plan implementation. The preferred alternative of Marret Asset Management Inc. ("**Marret**"), which exercises management discretion and control over all of the Secured Noteholders, was to obtain an exemption from the applicable regulatory restrictions from the Ontario Securities Commission (the "**OSC**") prior to Plan implementation. Marret sought that exemptive relief from the OSC; however the OSC did not ultimately grant the requested relief.

7. Accordingly, the Applicants and their advisors have worked with Marret and its advisors to develop certain technical amendments to the Plan that would modify the form (though not the economic attributes) of the consideration to be received by the Secured Noteholders to ensure that any Secured Noteholders that are regulated investment funds are able to hold the Plan consideration in compliance with applicable securities laws.

The proposed amendments are reflected in the Applicants' Second Amended Plan of Compromise and Arrangement dated May 26, 2015 (the "**Amended Plan**").

8. The Plan cannot proceed without the proposed amendments, as there are certain conditions precedent that will not be satisfied until the Plan meets all applicable regulatory requirements. Given the results of the Applicants' sale and investment process, which produced no offers, it is apparent that the unsecured creditors of the Applicants will not recover anything in the absence of the implementation of the Plan. The Plan represents the only way to ensure these stakeholders receive some recovery in the circumstances. Accordingly, the Applicants submit that it is in the best interests of all stakeholders that the Plan proceed in its amended form.

9. The Applicants submit that the proposed amendments to the Plan are reasonable in the circumstances as they do not alter the economic substance of the Plan for any creditors and they have no effect whatsoever on any of the Affected Creditors other than the Secured Noteholders. Marret, on behalf of the Secured Noteholders, is supportive of the Amended Plan.

10. The Plan expressly authorizes the Applicants to amend the Plan following the Meetings if such amendments are approved by the Court following notice to Affected Creditors. The Monitor has provided written notice of the Plan Amendments to the Applicants' Affected Creditors. Since the amendments affect only the Secured Noteholders and are necessary to enable the Applicants to implement the Plan for the benefit of Affected Creditors, the Applicants submit that Court approval of the Plan amendments is appropriate in the circumstances.

11. The Applicants also submit that that the extension of the Stay Period is reasonable in the circumstances as the Applicants have been proceeding in good faith and with due diligence, and additional time is needed to implement the Amended Plan and complete the CCAA proceedings.

PART II – THE FACTS

A. AMENDMENTS TO THE PLAN

12. The Plan, as approved pursuant to the Plan Sanction Order, provides that each Secured Noteholder will receive its *pro rata* share of the New Cline Common Shares and New Secured Debt. Approximately 70 percent of the Secured Noteholders are regulated investment funds that are subject to regulatory restrictions with respect to the nature of the debt and equity instruments that they can hold. The OSC has informed Marret that it is not prepared to grant the exemptive relief requested by Marret with respect to such regulatory restrictions. Without such exemptive relief, Marret's regulated investment funds are unable to hold the consideration to be received by Secured Noteholders pursuant to the existing terms of the Plan.

> Goldfarb Affidavit at paras. 21-23; Motion Record of the Applicants ("**Motion Record**"), Tab 2.

13. Currently, the Plan provides that the Secured Noteholders will receive one class of voting common shares in Cline; however, without exemptive relief from the OSC, the Secured Noteholders that are regulated investment fund are restricted from holding a substantial voting position in Cline. To address this issue, the Amended Plan provides for the creation of a new class of non-voting common shares (the "**New Cline Convertible Shares**") that are convertible into New Cline Common Shares on a one-to-one basis at the election of the holder. The New Cline Convertible Shares will be issued to Secured Noteholders that are regulated investment funds. Secured Noteholders that are not regulated investment funds will receive New Cline Common Shares as originally contemplated in the Plan. The New Cline Convertible Shares and the New Cline Common Shares will have the same economic entitlements and will differ only with respect to their voting rights. The issuance of the two classes of shares in this manner will ensure that the regulated investment funds do not hold a substantial voting position in Cline.

> Goldfarb Affidavit at paras. 28-29; Motion Record, Tab 2.

14. The Secured Noteholders are the only parties receiving shares in Cline under the Plan, so the amendment to provide two classes of shares will not affect any Affected Creditors other than the Secured Noteholders. Following the implementation of the Plan, the Secured Noteholders will hold all of the equity of Cline, as originally contemplated in the Plan.

Goldfarb Affidavit at para. 30; Motion Record, Tab 2.

15. In addition, the Plan currently provides for $55 million in New Secured Debt to be issued to Secured Noteholders on the Plan Implementation Date in the form of a credit facility governed by the terms of a New Credit Agreement. However, the Secured Noteholder that are regulated investment funds are restricted from holding debt issued pursuant to a credit facility.

Goldfarb Affidavit at para. 31; Motion Record, Tab 2.

16. To address this issue, the Amended Plan provides for the $55 million in secured debt to be held pursuant to secured notes governed under trust indentures that will have substantially similar terms as those contemplated under the New Credit Agreement. To reduce the closing costs associated with cancelling the existing Secured Notes and Indentures and then issuing $55 million of new secured debt under new trust indentures, the Amended Plan provides that $55 million of the existing Secured Notes under the existing Indentures will remain outstanding, and the Indentures will be amended to substantially conform them with the terms that were originally to be set out in the New Credit Agreement. These amendments are designed to ensure that the debt obligations held by Marret's regulated investment funds constitute permitted indebtedness for regulatory purposes.

Goldfarb Affidavit at paras. 32-35; Motion Record, Tab 2.

17. The Amended Plan also contains certain other related technical amendments in order to effectuate the revised arrangements noted above.

Goldfarb Affidavit at para. 36; Motion Record, Tab 2.

18. The proposed amendments to the Plan **do not** alter the economic substance of the Plan, and they **do not** affect any Affected Creditors other than the Secured Noteholders. Marret, on behalf of the Secured Noteholders, supports the relief requested in the Plan Amendment Order.

Goldfarb Affidavit at para. 8; Motion Record, Tab 2.

19. Section 6 of the Meetings Order provides that the Applicants are authorized to amend, modify and/or supplement the Plan, provided that any such amendment, modification or supplement shall be made in accordance with the terms of Article 10.5 of the Plan. Article 10.5(a)(ii) of the Plan enables the Applicants to amend, restate, modify or supplement the Plan following the Meetings without the need for additional voting by Affected Creditors if such amendment, restatement, modification or supplement is approved by the Court following notice to Affected Creditors.

Meetings Order, Section 6.

Plan, Article 10.5(a)(ii)

20. The Monitor has provided notice of the Plan amendments to Affected Creditors by delivering a notice in the form attached as Exhibit "E" to the Goldfarb Affidavit.

Goldfarb Affidavit at para. 26; Motion Record, Tab 2.

B. ACTIVITIES SINCE THE MARCH STAY EXTENSION ORDER

21. The Applicants have continued to act diligently and in good faith in respect of all matters relating to the CCAA Proceedings, including with respect to the implementation of the Plan and completion of the CCAA Proceedings. The Applicants have been in regular contact with Marret and its advisors with respect to Marret's efforts to obtain the requested exemptive relief from the OSC and have worked closely with Marret to develop the proposed amendments to the Plan.

Goldfarb Affidavit at para. 39; Motion Record, Tab 2.

22. The Applicants have made significant progress towards implementing the Plan and the only significant matters remaining to be completed prior to Plan implementation are the Court approval of the proposed amendments to the Plan and completion of the required changes to the closing documents to give effect to the Amended Plan. If the Plan Amendment Order is granted by this Court, certain final steps will need to be taken to update the closing documents and complete the remaining transactions contemplated in the Plan. The Applicants expect to be in a position to implement the Plan expeditiously following the granting of the Plan Amendment Order.

Goldfarb Affidavit at para. 40; Motion Record, Tab 2.

23. The Applicants require the ongoing benefit of the stay of proceedings to maintain the status quo while they continue to work towards implementation of the Plan and the completion of the CCAA Proceedings.

Goldfarb Affidavit at para. 43; Motion Record, Tab 2.

24. The facts relating to the activities of the Applicants since the March Stay Extension Order and the requested relief are more fully set out in the Goldfarb Affidavit and are not reproduced in full here to avoid duplication.

PART III – ISSUES AND THE LAW

25. The issues to be considered on this motion are whether:

(a) the Court should approve the proposed amendments to the Plan; and

(b) the Court should grant an extension of the Stay Period to August 17, 2015.

A. COURT APPROVAL OF THE PLAN AMENDMENTS

(i) Jurisdiction of the Court to approve the proposed amendments

26. The CCAA is remedial legislation, intended to facilitate compromises and arrangements between companies and their creditors as an alternative to bankruptcy. The Court may apply the CCAA in a broad, liberal and flexible manner in order to facilitate

restructurings and accomplish the statute's goals. Section 11 of the CCAA provides the Court with a broad and liberal power, which is at its disposal to achieve the overall objective of the CCAA.

> *Elan Corporation et al. v. Comiskey (Trustee of)* (1990), 1 C.B.R. (3d) 101 at paras. 22 and 56-60 (Ont. C.A.); Book of Authorities of the Applicants ("**Book of Authorities**"), Tab 1.
>
> *Re Lehndorff General Partner Ltd.* (1993), 17 C.B.R. (3d) 24 at para. 5 (Ont. Gen. Div. [Commercial List]); Book of Authorities, Tab 2.
>
> *Re Cinram International Inc.*, 2012 ONSC 3767, Sch. C at paras. 58 and 59 (Ont. Sup. Ct. [Commercial List]); Book of Authorities, Tab 3.

27. The Ontario Court of Appeal has held that the Court has the ability, in appropriate circumstances, to make amendments to a plan of compromise and arrangement after it has been voted upon by creditors and sanctioned by the Court. In *Algoma Steel Corp. v. Royal Bank of Canada*, the Ontario Court of Appeal held that, while the Court should not lightly interfere with a plan that has already been approved where doing so would prejudice the rights of the debtor company or its creditors, the court may approve an amendment in compelling circumstances where no prejudice would result. The Ontario Court of Appeal in *Algoma* approved the proposed amendments on the basis that they were technical and non-prejudicial to other creditors.

> *Algoma Steel Corp. v. Royal Bank of Canada* (1992), 11 C.B.R. (3d) 11 (Ont. C.A.) at para. 7 [*Algoma*], leave to appeal refused (1992), 10 O.R. (3d) 15 (S.C.C.); Book of Authorities, Tab 4.

28. In view of the *Algoma* case, courts have approved amendments to plans of compromise and arrangement after the creditors meetings, without the requirement for a further creditor vote, where the amendments were not prejudicial and where the ability to make amendments was expressly authorized in the plan.

> *Ontario v. Canadian Airlines Corporation*, 2001 ABQB 983 [*Canadian Airlines*]; Book of Authorities, Tab 5.
>
> *Re Ball Machinery Sales Ltd.* (2002), 37 C.B.R. (4th) 39 (Ont. Sup. Ct. [Commercial List]) [*Ball Machinery*]; Book of Authorities, Tab 6.

29. In *Ontario v. Canadian Airlines Corporation*, Justice Romaine of the Alberta Court of Queen's Bench found that it was appropriate to direct an amendment to a CCAA plan of compromise and arrangement after it had been voted upon and sanctioned. In that case, the Alberta court followed the guiding principles of fairness and reasonableness to find that the amendment (which provided that certain secured claims were not compromised) was appropriate in the circumstances given that the amendment would avoid unfairness to one of the creditors and would not prejudice other creditors.

Canadian Airlines, *supra* at paras. 53-58, 68 and 73; Book of Authorities, Tab 5.

30. Similarly, in *Ball Machinery Sales Ltd.*, Justice Pepall (as she then was) of the Ontario Superior Court of Justice (Commercial List) approved an amendment to the releases in a plan of compromise and arrangement after the plan had been voted upon. In that case, the Court relied upon the fact that the plan included a specific provision allowing further amendments after the meetings of creditors, and the fact that the proposed amendment was not materially prejudicial to the interests of the creditors.

Ball Machinery, *supra* at paras. 5 and 7; Book of Authorities, Tab 6.

31. Based on the foregoing, it is apparent that the Court has the jurisdiction to approve the proposed amendments to the Plan. The Applicants submit that the circumstances are appropriate in this case for the Court to exercise that jurisdiction.

(ii) It is fair, reasonable and appropriate to approve the proposed amendments

32. In the present case, all of the factors referred to in the *Algoma*, *Canadian Airlines* and *Ball Machinery* cases are satisfied. Amendments to the Plan following the Meetings are expressly authorized by the Plan (subject to Court approval) and the amendments are not prejudicial to the Affected Creditors. To the contrary, the amendments allow the Applicants to proceed with a restructuring that has been unanimously approved by the Affected Creditors who voted at the Meetings and that represents the only viable alternative to provide recoveries to the Affected Creditors that rank junior to the Secured Noteholders.

Goldfarb Affidavit at paras. 8 and 38; Motion Record, Tab 2.

33. The Applicants submit that it is appropriate in the circumstances for this Court to approve the amendments to the Plan because:

(a) paragraph 6 of the Meetings Order provides that the Plan can be amended, modified and/or supplemented in accordance with Article 10.5 of the Plan;

(b) Article 10.5(a)(ii) of the Plan expressly provides that the Applicants may amend, restate, modify or supplement the Plan following the Meetings if such amendment, restatement, modification or supplement is approved by the Court following notice to Affected Creditors;

(c) the Monitor has provided written notice of the Amended Plan to Affected Creditors;

(d) the Applicants' creditors voting in each class of creditors unanimously approved the Plan and therefore consented to the amendment provisions set out in Article 10.5(a)(ii) of the Plan;

(e) the amendments to the Plan are necessary to enable the Secured Noteholders to receive the consideration to be issued to them pursuant to the Plan;

(f) the amendments to the Plan do not alter the economic substance of the Plan;

(g) the amendments to the Plan do not affect any Affected Creditors other than the Secured Noteholders;

(h) Marret, on behalf of the Secured Noteholders, supports the amendments to the Plan;

(i) the Monitor supports the amendments to the Plan;

(j) the Plan cannot be implemented without the proposed amendments, and given the results of the sale and investment process carried out by the Applicants, it is apparent that if the Amended Plan is not implemented, the Affected Creditors other than the Secured Noteholders will receive no recoveries;

(k) the amendments to the Plan will enable the Applicants to complete a restructuring that has been unanimously supported by all voting creditors; and

(l) it is in the best interests of all Affected Creditors that the Amended Plan be implemented.

Meetings Order, Section 6.

Plan, Article 10.5(a)(ii).

Goldfarb Affidavit at paras. 3, 8, 25, 26, 38 and 47; Motion Record, Tab 2.

34. For the foregoing reasons, the Applicants submit that it is fair, reasonable and appropriate for the Court to grant the requested relief so that the Applicants can proceed to implement the Amended Plan for the benefit of their Affected Creditors.

Goldfarb Affidavit at paras. 37 and 38; Motion Record, Tab 2.

(iii) Restatement of paragraph 9 of the Plan Sanction Order

35. The amendments to the Plan relating to the New Cline Convertible Shares require a revision to paragraph 9 of the Plan Sanction Order, which ordered certain changes to Cline's Articles pursuant to section 6(2) of the CCAA. An amended and restated version of paragraph 9 of the Plan Sanction Order is included in the proposed Plan Amendment Order to give effect to the new class of New Cline Convertible Shares provided for in the Amended Plan.

Amended Plan, section 5.3.

36. These amendments to paragraph 9 of the Plan Sanction Order are authorized by section 6(2) of the CCAA, which states:

> If a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

CCAA, Section 6(2).

37. The proposed amendments to paragraph 9 of the Plan Sanction Order are necessary to give effect to the provisions of the Amended Plan and the required amendments to the Articles may lawfully be made under sections 54(1), 257(2)(b) and 257(3) of the *Business Corporations Act*, S.B.C. 2002, c. 57. For the same reasons noted above with respect to the proposed amendments to the Plan, the Applicants submit that it is fair, reasonable and appropriate for the Court to amend paragraph 9 of the Plan Sanction Order to conform that paragraph with the terms of the Amended Plan.

> Plan Sanction Order, Paragraph 9.

B. EXTENSION OF THE STAY PERIOD

38. 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
>
> (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.
>
> CCAA, Section 11.02(2).

39. 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).

40. The Applicants submit that an Order extending the Stay Period to and including August 17, 2015 is appropriate in the circumstances because:

(a) the Applicants have acted, and continue to act, in good faith and with due diligence towards the implementation of the Plan and the completion of the CCAA Proceedings;

(b) the Applicants have worked cooperatively with Marret and its counsel to address Marret's regulatory issues and to develop the proposed amendments to the Plan;

(c) the Applicants have made significant progress towards implementation of the Plan and the only significant matters remaining to be completed prior to Plan implementation are the Court approval of the proposed amendments to the Plan and completion of the required changes to the closing documents that will be needed to give effect to the Amended Plan;

(d) the extension of the Stay Period is necessary to maintain the status quo while the Applicants and Marret complete the remaining actions and agreements necessary to implement the Amended Plan on an expeditious basis;

(e) the Applicants' cash flow forecast for the period to August 17, 2015 indicates that the Applicants will have access to sufficient funds during the extended Stay Period;

(f) creditors will not suffer any material prejudice if the Stay Period is extended;

(g) Marret, on behalf of the Secured Noteholders, supports the requested extension of the Stay Period; and

(h) the Monitor supports the requested extension of the Stay Period.

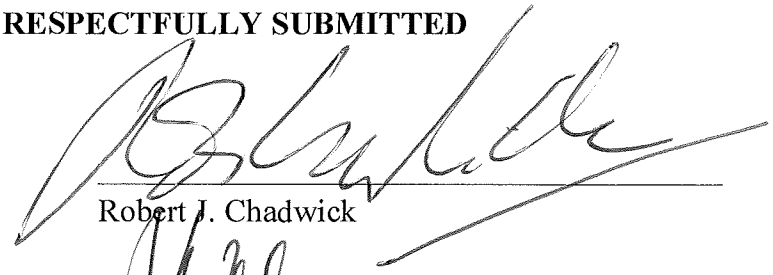
Goldfarb Affidavit at paras. 41-45 and 47; Motion Record, Tab 2.

41. 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 August 17, 2015.

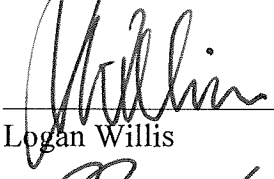
PART IV – ORDER REQUESTED

For the reasons set out above, the Applicants respectfully request that this Court grant the Plan Amendment Order and the requested relief.

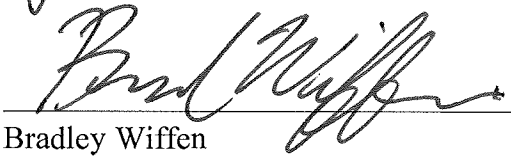
ALL OF WHICH IS RESPECTFULLY SUBMITTED



Robert J. Chadwick



Logan Willis



Bradley Wiffen

SCHEDULE "A"
STATUTORY REFERENCES

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

s. 6(2)

If a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

s. 11

General power of court – Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

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.

BUSINESS CORPORATIONS ACT
S.B.C. 2002, c. 57

s. 54(1)

Subject to this Part, a company may

(a) create one or more classes of shares,

(b) create one or more series of shares,

(c) increase, reduce or eliminate the maximum number of shares that the company is authorized to issue out of any class or series of shares,

(d) establish a maximum number of shares that the company is authorized to issue out of any class or series of shares for which no maximum is established,

(e) subdivide all or any of its unissued, or fully paid issued, shares with par value into shares of smaller par value,

(f) subdivide all or any of its unissued, or fully paid issued, shares without par value,

(g) consolidate all or any of its unissued, or fully paid issued, shares with par value into shares of larger par value,

(h) consolidate all or any of its unissued, or fully paid issued, shares without par value,

(i) if the company is authorized to issue shares of a class of shares with par value,

(i) subject to section 74, decrease the par value of those shares, or

(ii) increase the par value of those shares if none of the shares of that class of shares are allotted or issued,

(j) eliminate any class or series of shares if none of the shares of that class or series of shares are allotted or issued,

(k) change all or any of its unissued, or fully paid issued, shares with par value into shares without par value,

(l) change all or any of its unissued shares without par value into shares with par value,

(m) alter the identifying name of any of its shares, or

(n) otherwise alter its authorized share structure or shares when required or permitted to do so by this Act.

s. 257(2)

A company may not alter its notice of articles unless

(a) the company does so in a manner required or permitted by this Act, and

(b) subject to subsection (3) of this section, the company has been authorized to make the alteration by a court order or, if the alteration is not authorized by a court order,

(i) by the type of resolution specified in this Act,

(ii) if this Act does not specify the type of resolution, by the type of resolution specified by the articles, or

(iii) if neither this Act nor the articles specify the type of resolution, by a special resolution.

s. 257(3)

If an alteration to a company’s articles has been approved, under section 259(1), by a resolution marked in accordance with section 259(4)(a) and deposited in the company's records office in accordance with section 259(4)(b), or has been made by a court order, the company may alter its notice of articles to reflect that alteration to its articles without obtaining the authorization referred to in subsection (2)(b) of this section.

SCHEDULE "B"
LIST OF AUTHORITIES

1 *Elan Corporation et al. v. Comiskey (Trustee of)* (1990), 1 C.B.R. (3d) 101 (Ont. C.A.)

2 *Re Lehndorff General Partner Ltd.* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List])

3 *Re Cinram International Inc.*, 2012 ONSC 3767 (Ont. Sup. Ct [Commercial List])

4 *Algoma Steel Corp. v. Royal Bank of Canada* (1992), 11 C.B.R. (3d) 11 (Ont. C.A.)

5 *Ontario v. Canadian Airlines Corporation*, 2001 ABQB 983

6 *Re Ball Machinery Sales Ltd.* (2002), 37 C.B.R. (4^{th}) 39 (Ont. Sup. Ct. [Commercial List])

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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

Court File No.: CV14-10781-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

FACTUM OF THE APPLICANTS
(Plan Amendment Motion
Returnable June 1, 2015)

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