

**Court File No. CV14-10781-00CL**

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

**FOURTH REPORT  
OF FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR OF THE APPLICANTS**

**March 25, 2015**



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

FOURTH REPORT OF FTI CONSULTING CANADA INC.,  
in its capacity as Monitor of the Applicants

March 25, 2015

INTRODUCTION

1. On December 3, 2014 (the "**Filing Date**"), Cline Mining Corporation ("**Cline**"), New Elk Coal Company LLC ("**New Elk**") and North Central Energy Company (collectively, the "**Applicants**") filed for and obtained protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Pursuant to the Order of this Honourable Court (the "**Initial Order**") dated December 3, 2014, FTI Consulting Canada Inc. ("**FTI**") was appointed as the Monitor of the Applicants (the "**Monitor**") in these CCAA proceedings (the "**CCAA Proceedings**"). The Initial Order provided, *inter alia*, for a stay of proceedings through to and including December 31, 2014 for the Applicants.

2. On the Filing Date, this Honourable Court also granted an Order that approved a claims process for the identification and determination of claims against the Applicants and their present and former directors and officers (the "**Claims Procedure Order**") and an Order authorizing the Applicants to file a plan of compromise and arrangement (the "**Plan**") and to

convene meetings of their affected secured creditors, affected unsecured creditors, and the WARN Act Plaintiffs (as defined in the Claims Procedure Order) to consider and vote on the Plan (the "**Meetings Order**").

3. On December 3, 2014, the Monitor commenced ancillary cases in the United States by filing petitions under chapter 15 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Colorado (the "**Bankruptcy Court**").

4. On December 4, 2014 the Monitor, as foreign representative of the Applicants, obtained certain relief from the Bankruptcy Court, including (i) the joint administration of the Chapter 15 Proceedings, (ii) approval of the form and manner of notice of the Chapter 15 Proceedings, and (iii) the entry of a temporary restraining order (the "**TRO**") staying the commencement or continuation of proceedings against the Applicants and preventing parties from exercising contractual rights triggered by the commencement of insolvency proceedings in respect of the Applicants.

5. On December 11, 2014, the Bankruptcy Court entered a preliminary injunction extending the relief granted in the TRO pending further determination in the Chapter 15 Proceedings.

6. On December 22, 2014, this Honourable Court issued an Order approving an extension of the Stay Period (as defined in the Initial Order) to and including March 1, 2015.

7. On January 15, 2015 the Bankruptcy Court entered an Order granting recognition of the CCAA Proceedings and giving full force and effect in the United States to the Initial Order, Claims Procedure Order, and Meetings Order.

8. On January 20, 2015 the Applicants filed an amended and restated plan of compromise and arrangement (the "**Amended and Restated Plan**"). The amendments to the Plan were described in the Second Report of the Monitor dated January 14, 2015 (the "**Second Report**"). The Notice of Plan Amendment Affecting WARN Act Plaintiffs dated January 20, 2015 and a blackline of the Amended and Restated Plan to the original Plan is attached hereto as Appendix "A".

9. On January 27, 2015, this Honourable Court issued an Order (the "**Sanction Order**") extending the Stay Period to and including April 1, 2015 and approving and sanctioning the Amended and Restated Plan, as may be further amended, restated, modified or supplemented from time to time. A copy of the Sanction Order (without schedules) is attached hereto as Appendix "B".

10. On January 28, 2015, the Bankruptcy Court entered an Order giving full force and effect to the Plan Sanction Order in the United States.

11. The Applicants' stated objectives for the CCAA Proceedings include permitting them to pursue a recapitalization with a view to maximizing value for the benefit of their stakeholders. The Applicants believe that without the benefit of CCAA protection there could be significant erosion in the value of the Cline Group (being the Applicants and Raton Basin Analytical LLC, collectively) that could result in the loss of tax attributes and various exploration, mining and environmental permits.

12. Unless otherwise stated, all monetary amounts contained in this fourth report of the Monitor (the "**Fourth Report**") are expressed in Canadian dollars. Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the Amended and Restated Plan and the affidavit of Matthew Goldfarb sworn December 2, 2014, as applicable.

13. The following appendices have been attached to this Fourth Report:
- a) Appendix “A” – Notice of Plan Amendment Affecting WARN Act Plaintiffs and blackline of the Amended and Restated Plan to the original Plan;
  - b) Appendix “B” – Sanction Order;
  - c) Appendix “C” – The March 16 Forecast (as defined below);
  - d) Appendix “D” – Affidavit of Paul Bishop sworn March 25, 2015;
  - e) Appendix “E” – Affidavit of Michael De Lellis sworn March 25, 2015; and
  - f) Appendix “F” – the Third Report of the Monitor dated January 23, 2015 (the “**Third Report**”, without appendices).

#### **PURPOSE**

14. The purpose of the Monitor’s Fourth Report is to provide information to this Honourable Court and the Applicants’ stakeholders relating to the following:
- a) the status of the Applicants’ CCAA Proceedings, including an update regarding the implementation of the Amended and Restated Plan;
  - b) the status of the claims process;
  - c) the state of the Applicants’ financial affairs, including:
    - i. the Applicants’ actual receipts and disbursements for the period from January 19, 2015 to March 15, 2015; and

- ii. the Applicants' post-filing consolidated cash position and liquidity as detailed in the March 16 Forecast;
- d) the Monitor's activities since the Filing Date, as well as a summary of the professional fees and disbursements incurred by the Monitor and its legal counsel; and
- e) the Monitor's conclusions and recommendations regarding the Applicants' motion for an Order that grants an extension of the Stay Period.

#### **TERMS OF REFERENCE**

15. In preparing this report, the Monitor has relied upon audited and unaudited financial information of the Applicants, the Applicants' books and records (where appropriate), certain financial information prepared by the Applicants and discussions with various parties, including the Applicants' management and counsel to the Applicants (collectively, the "**Information**").

16. Except as described in this Fourth Report:

- a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
- b) the Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.

## GENERAL BACKGROUND

17. The Cline Group is in the business of locating, exploring and developing mineral resource properties, with a particular focus on gold and metallurgical coal.

18. To avoid unnecessary duplication, please refer to the Initial Order, the Meetings Order, the Claims Procedure Order and the Sanction Order, together with other motion materials and orders granted by this Honourable Court and the Bankruptcy Court, FTI's pre-filing report dated December 2, 2014 (the "**Pre-Filing Report**"), the Monitor's prior reports filed in the CCAA Proceedings and other documentation filed in the CCAA Proceedings which have been posted on the Monitor's website at <http://cfcanada.fticonsulting.com/cline>.

## UPDATE REGARDING THE CCAA PROCEEDINGS

19. As described further in the Second Report, implementation of the Amended and Restated Plan is conditional upon the satisfaction or waiver (to the extent permitted) of certain conditions prior to or at the Effective Time. Set out below are some of the more material conditions precedent:

- a) all definitive agreements in respect of the Recapitalization and the new (or amended) Articles, by-laws and other constating documents, and all definitive legal documentation in connection with all of the foregoing shall be in a form satisfactory to the Applicants and Marret Asset Management Inc. (on behalf of the Secured Noteholders, referred to herein as "**Marret**");
- b) the New Credit Agreement governing the New Secured Debt, together with all guarantees and security agreements contemplated thereunder, shall have been entered into and become effective, subject only to the implementation of the

Amended and Restated Plan, and all required filings related to the security as contemplated in the security agreements shall have been made;

- c) the terms of the New Cline Common Shares and the New Credit Agreement shall be satisfactory to the Applicants and Marret (on behalf of the Secured Noteholders);
- d) the Amended and Restated Plan shall have been approved by the Required Majorities of each Voting Class;
- e) all Orders made and judgments rendered by any competent court of law, and all rulings and decrees of any competent regulatory body, agent or official in relation to the CCAA Proceedings, the Chapter 15 Proceeding, the Recapitalization or the Amended and Restated Plan shall be satisfactory to the Applicants;
- f) all material agreements, consents and other documents relating to the Recapitalization and the Amended and Restated Plan shall be in form and in content satisfactory to the Applicants;
- g) all securities of the Applicants, when issued and delivered, shall be duly authorized and validly issued and fully paid and non-assessable and the issuance thereof shall be exempt from all prospectus and registration requirements of Applicable Laws; and
- h) all Material filings under Applicable Laws shall have been made and any Material regulatory consents or approvals that are required in connection with the Recapitalization shall have been obtained.



20. Since the Sanction Order was granted by this Honourable Court on January 27, 2015, the Applicants and Marret (on behalf of the Secured Noteholders) have been working towards implementation of the Amended and Restated Plan. The Monitor is advised that, as of the date of this Fourth Report, being March 25, 2015, the form of the required agreements and documentation described in the preceding paragraph have been substantially settled and the Orders granted by this Honourable Court and the Bankruptcy Court are all satisfactory to the Applicants.

21. Accordingly, as of the date of this Fourth Report, there are only a limited number of remaining tasks to be completed prior to implementation of the Amended and Restated Plan. Amongst these tasks is the Secured Noteholders' application to obtain certain relief from the Ontario Securities Commission (the "OSC") in connection with the consideration that they are to receive pursuant to the Amended and Restated Plan, as described further below.

#### *OSC Relief*

22. The Amended and Restated Plan provides that each Secured Noteholder will receive, on a *pro rata* basis, New Cline Common Shares and New Secured Debt in the manner and in the amounts set forth in the Amended and Restated Plan. In connection with the New Secured Debt, the Secured Noteholders will be parties to the New Credit Agreement pursuant to which Cline will be the borrower. Accordingly, Marret is seeking relief from section 2.6(f) of National Instrument 81-102, which regulates the ability of an investment fund to lend cash, before implementation of the Amended and Restated Plan.

23. Additionally, implementation of the Amended and Restated Plan will result in certain Secured Noteholders owning, in the aggregate, more than 20% of the voting securities of Cline. Accordingly, Marret is seeking relief on behalf of certain Secured Noteholders from

sections 111(2)(b) and 111(4) of the Ontario *Securities Act*, R.S.O. 1990, c S. 5 (the “OSA”) before implementation of the Amended and Restated Plan. Section 111(2)(b) of the OSA regulates the ability of an investment fund to make an investment in any person or company in which the investment fund, alone or together with one or more related investment funds, is a substantial security holder. Section 111(4) of the OSA regulates the ability of an investment fund to make certain investments, including the investment described in section 111(2)(b).

24. Marret (on behalf of the Secured Noteholders) has applied to the OSC for the aforementioned exemptive relief; however, the Applicants have no control over when such relief will be obtained and are not in a position to make an estimate in this regard. As the exemptive relief application is currently outstanding and beyond the Applicants’ control, and in light of the pending expiry of the Stay Period, the Applicants are seeking an extension of the Stay Period to and including June 1, 2015.

25. The Monitor is advised by counsel to the Applicants that the Applicants expect to be in a position to implement the Amended and Restated Plan within one to two weeks of Marret receiving the relief being sought from the OSC.

#### **STATUS OF THE CLAIMS PROCESS**

26. On the Filing Date, this Honourable Court issued the Claims Procedure Order that approved a process for the identification and quantification of claims against the Applicants and their present and former directors and officers.

27. The Monitor reported five Disputed Claims (as such term is defined in the Claims Procedure Order) in its Third Report. Currently, there are two Disputed Claims that remain to be resolved. These two Disputed Claims are summarized in the following table:

Creditor	Amount per Notice of Claim	Amount per Notice of Dispute
Canada Brokerlink (Ontario) Inc.	-	3,753.59
Jennifer K. Byrd	30,000.00	374,375.29

28. Canada Brokerlink (Ontario) Inc. (“**Brokerlink**”) has asserted that it is owed money in connection with certain commercial liability insurance. The Monitor understands that Brokerlink, through its collection agent, is in the process of finalizing a settlement with Cline. The Monitor will provide an update in this regard in a subsequent report.

29. Jennifer Byrd’s Claim is based on a discrimination claim against New Elk that was previously filed in Colorado. The Applicants are engaged in ongoing settlement discussions with Ms. Byrd’s legal counsel. The Monitor will provide an update in this regard in a subsequent report.

30. The Applicants, with the assistance of the Monitor, will continue to work towards resolving these Disputed Claims.

31. The Applicants and the Monitor have agreed to allow one Proof of Claim that was received from an Affected Unsecured Creditor shortly after the Claims Bar Date. The Affected Unsecured Creditor that submitted this Proof of Claim has a court-ordered judgment Claim against New Elk and had served New Elk with notice of that Claim prior to the commencement of the CCAA proceedings. Therefore, this Affected Unsecured Creditor ought to have been treated as a Known Creditor and, accordingly, should have directly received a Notice of Claim in accordance with the Claims Procedure Order. As such Notice of Claim was not provided, this Proof of Claim has been allowed.

32. The Monitor is advised that Cline received a letter from the Ministry of Finance following the Claims Bar Date which asserted a Claim for unpaid Employer Health Tax (the “**EHT Claim**”). Pursuant to the Claims Procedure Order, any governmental entity with a Claim against the Applicants that pertained to the period prior to the Filing Date (a “**Pre-Filing Claim**”) was required to file a proof of such Claim with the Monitor prior to the Claims Bar Date. The Amended and Restated Plan has the effect of discharging and releasing all Pre-Filing Claims against the Applicants. Furthermore, the Sanction Order confirms that any Pre-Filing Claims that were not filed by the Claims Bar Date have been forever barred and extinguished. Cline has advised the Ministry of Finance in writing that the EHT Claim is a Pre-Filing Claim and was extinguished pursuant to the Claims Procedure Order and the Sanction Order, given that the Ministry of Finance did not file a Proof of Claim in respect of same prior to the Claims Bar Date.

33. The Monitor and the Applicants are in receipt of a Proof of Claim from the Internal Revenue Service that was filed following the Claims Bar Date. U.S. counsel to the Monitor, in its capacity as foreign representative of the Applicants in the Chapter 15 Proceeding, has advised the Internal Revenue Service that the Claim asserted in the Proof of Claim is a Pre-Filing Claim and was extinguished pursuant to the Claims Procedure Order and the Sanction Order, given that the Internal Revenue Service did not file a Proof of Claim in respect of same prior to the Claims Bar Date.

34. Each of the Ministry of Finance and the Internal Revenue Service had previously been served with notice of the commencement of the CCAA proceedings and the Chapter 15 proceedings.

## THE APPLICANTS' FINANCIAL AFFAIRS

35. Since the Filing Date, the Monitor has continued reviewing the actual receipts and disbursements of the Applicants as well as the Applicants' cash flow statements.

### *Actual Receipts and Disbursements for the Period from January 19, 2015 to March 15, 2015*

36. The Applicants' actual net cash flow from the period of January 19, 2015 to March 15, 2015 (the "Current Period") together with an explanation of key variances as compared to the cash flow forecast described in the Monitor's Third Report is described below. Actual net cash flows for the Current Period were approximately \$1.0 million higher than forecast and are summarized as follows:

	Forecast	Actual	Variance
<i>\$ thousands</i>			
<b>Cash Flow from Operations</b>			
Receipts	330.7	441.0	110.3
Operating Disbursements	(1,865.0)	(1,203.1)	661.9
<b>Operating Cash Flows</b>	<b>(1,534.3)</b>	<b>(762.1)</b>	<b>772.2</b>
Restructuring/ Non-Recurring Disbursements	(903.8)	(762.7)	141.1
<b>Projected Net Cash Flow</b>	<b>(2,438.1)</b>	<b>(1,524.9)</b>	<b>913.2</b>
Beginning Cash Balance	8,557.5	8,652.6	95.1
<b>Ending Cash Balance</b>	<b>6,119.4</b>	<b>7,127.8</b>	<b>1,008.4</b>

37. The variance in actual receipts and disbursements is comprised primarily of the following:

- a) a permanent positive variance in receipts of approximately \$0.1 million, primarily due to a settlement with a customer who had previously disputed the invoice price of coal;

- b) a positive variance in operating disbursements of approximately \$0.7 million, in relation to the appreciation of the U.S. Dollar relative to the Canadian Dollar, since the Third Report, on the expenses incurred at New Elk; and,
- c) a positive variance in restructuring/non-recurring disbursements of approximately \$0.1 million relating to legal and professional fees, which are primarily timing differences that are anticipated to be temporary in nature and reverse in future weeks.

38. Additionally, a positive variance in the opening cash balance of \$0.1 million has been recognized to reflect the impact of the appreciation of the U.S. Dollar relative to the Canadian Dollar, since the Filing Date, on the funds held at New Elk.

***The Applicants’ Revised Cash Flow Forecast***

39. The Applicants prepared a cash flow forecast for the period from March 16, 2015 to June 28, 2015 (the “**March 16 Forecast**”), attached as Appendix “C” hereto.

40. The March 16 Forecast shows a negative cash flow of approximately \$4.7 million and is summarized below:

(CAD in millions)	Total
<b>Cash Flow from Operations</b>	
Receipts	0.6
Operating Disbursements	(3.9)
<b>Operating Cash Flows</b>	<b>(3.3)</b>
Restructuring/ Non-Recurring Disbursements	(1.4)
<b>Projected Net Cash Flow</b>	<b>(4.7)</b>
Beginning Cash Balance	8.6
<b>Ending Cash Balance</b>	<b>3.9</b>

41. It is anticipated that the Applicants' projected liquidity requirements through to June 1, 2015, being the end of the requested Stay Period, will be met by existing cash available to the Applicants.

## **MONITOR'S ACTIVITIES**

42. Since its appointment, the Monitor has been involved with numerous aspects of the CCAA Proceedings with a view to fulfilling its statutory and court-ordered duties and obligations, as well as assisting the Applicants and their stakeholders in addressing restructuring issues. FTI described some of the more significant matters that it was involved in prior to the Filing Date in the Pre-Filing Report. In addition, the Monitor described some of the more significant matters it was involved in since the Filing Date through January 23, 2015 in its previous reports. Since then, some of the more significant matters that the Monitor has been involved in, and assisted with, include, but are not limited to the following:

- a) posting various materials relating to the CCAA Proceedings on its website <http://cfcanada.fticonsulting.com/cline> and continuing to update the website by posting, among other things, the Monitor's reports, motion materials, and Orders granted in the CCAA Proceedings;
- b) maintaining a toll free hotline number (416-649-8099/1-855-398-7390) and a dedicated email inbox ([cline@fticonsulting.com](mailto:cline@fticonsulting.com)) to allow creditors and other interested parties to contact the Monitor to obtain additional information concerning the CCAA Proceedings and responding in a timely manner;
- c) participating in numerous discussions with senior management of the Applicants and the Applicants' legal advisors in connection with the

Applicants' business and financial affairs, generally, and in connection with the preparation of the Applicants' cash flow forecasts;

- d) participating in numerous discussions with the Applicants and the Applicants' legal advisors in connection with matters related to the Amended and Restated Plan and its implementation;
- e) assisting the Applicants with the review of the Applicants' receipts and disbursements, the preparation of cash flow forecasts and the reporting thereon;
- f) assisting the Applicants with the review and resolution of various claims asserted in and outside of the claims process set out in the Claims Procedure Order;
- g) responding to enquiries from creditors regarding the Amended and Restated Plan and the claims process set out in the Claims Procedure Order;
- h) preparing for and attending the sanction hearing;
- i) working with its U.S. counsel, in the Monitor's capacity as foreign representative of the Applicants in the Chapter 15 Proceeding, in respect of such U.S. counsel's preparation for and attendance at the Bankruptcy Court hearing for an Order giving full force and effect to the Plan Sanction Order in the United States; and
- j) preparing and delivering this Fourth Report.



## **PROFESSIONAL FEES**

43. The Monitor and its counsel have maintained detailed records of their professional costs and time during the course of the CCAA Proceedings, as detailed in the Affidavit of Paul Bishop sworn March 25, 2015 (the “**Bishop Affidavit**”) and the Affidavit of Michael De Lellis sworn March 25, 2015 (the “**De Lellis Affidavit**”). The Monitor has reviewed the fees of its counsel and believes they are reasonable. Copies of the Bishop Affidavit and the De Lellis Affidavit are attached to this Monitor’s Fourth Report as Appendix “D” and “E”, respectively.

44. The fees and disbursements of the Monitor for the period of December 3, 2014 to March 15, 2015, inclusive, and including Harmonized Sales Tax, as set out in the Bishop Affidavit, total \$171,481.09. The fees and disbursements of the Monitor’s counsel for the period of December 3, 2014 to February 28, 2015, inclusive, and including Harmonized Sales Tax, as set out in the De Lellis Affidavit, total \$160,180.04.

## **CONCLUSIONS AND RECOMMENDATION**

45. The current Stay Period expires on April 1, 2015. In order to allow the Applicants sufficient time to continue towards their restructuring goals and implement the Amended and Restated Plan, the Applicants are requesting that the Stay Period be extended to June 1, 2015.

46. It is the Monitor’s view that the Applicants continue to act with due diligence and in good faith and have not breached any requirements under the CCAA or any other Order of the Court.

47. The Monitor further believes that the proposed extension is fair and reasonable in the circumstances and that the Applicants will require the protection of the stay of proceedings in order to carry out the Amended and Restated Plan.

48. The Monitor also respectfully requests that this Honourable Court approve the Third Report and the activities described therein, as well as the fees and disbursements of the Monitor and its counsel (as particularized in the Bishop Affidavit and the De Lellis Affidavit).

All of which is respectfully submitted this 25th day of March, 2015.

FTI Consulting Canada Inc.,  
in its capacity as Monitor of Cline Mining Corporation, New Elk Coal Company LLC and North  
Central Energy Company

Per

A handwritten signature in black ink, appearing to read "Paul Bishop". The signature is written in a cursive style with a large initial "P" and a long, sweeping tail.

Paul Bishop

Senior Managing Director

## Appendix "A"

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

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NOTICE OF PLAN AMENDMENT  
AFFECTING WARN ACT PLAINTIFFS

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The Applicants hereby give notice of certain amendments to the Plan of Compromise and Arrangement dated December 3, 2014 (the "**Plan**") that affect members of the WARN Act Plaintiffs Class. An amended and restated Plan has been filed with the Court, which provides for the amendments set out on Schedule "A" hereto (the "**Amended Plan**"). The amendments are summarized as follows:

- If the Required Majorities of the WARN Act Plaintiffs Class vote to approve the Plan at the WARN Act Plaintiffs Meeting and the Plan is implemented in accordance with its terms, then the Proof of Claim filed by Class Action Counsel on behalf of the WARN Act Plaintiffs will be accepted as an unsecured Distribution Claim, and each WARN Act Plaintiff with an Allowed WARN Act Claim shall be entitled to the following:
  - its applicable share of a payment of \$120,000, less an expense reimbursement amount relating to certain attorneys fees and other costs incurred on behalf of the WARN Act Plaintiffs in the Class Action, which payment is to be made on or prior to the date that is eight years from the Plan Implementation Date; and
  - its applicable share of a cash payment in the amount of \$90,000 less an expense reimbursement amount relating to certain attorneys fees and other costs incurred on behalf of the WARN Act Plaintiffs in the Class Action, which payment is to be made on the Plan Implementation Date.

In each case, the expense reimbursement amount is to be determined by agreement among Class Action Counsel and the representative plaintiffs in the WARN Act Class Action.

- All payments to be made to the WARN Act Plaintiffs with allowed claims pursuant to the Plan shall be made to Class Action Counsel for the benefit of the WARN Act Plaintiffs

with allowed claims, and Class Action Counsel will be responsible for allocating and distributing such payments to the WARN Act Plaintiffs.

- Certain other amendments were made to the Plan to address the distribution mechanics relating to the foregoing payments and to ensure the provisions of the Plan interact appropriately with the WARN Act Class Action case.

Please note that the foregoing is a summary only, and reference should be made to the Amended Plan for the specifics of the amendments made to the Plan. Capitalized terms used but not defined herein shall have the meaning given to them in the Amended Plan.

DATED at Toronto, Ontario this 20<sup>th</sup> day of January, 2015.

**SCHEDULE A**  
**AMENDED AND RESTATED CCAA PLAN OF ARRANGEMENT**  
**(BLACKLINE TO ORIGINAL PLAN)**

**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**

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**AMENDED AND RESTATED  
PLAN OF COMPROMISE AND ARRANGEMENT  
pursuant to the *Companies' Creditors Arrangement Act*  
concerning, affecting and involving**

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

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**December 3, 2014**

**January 20, 2015**



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**AMENDED AND RESTATED**  
**PLAN OF COMPROMISE AND ARRANGEMENT**

**WHEREAS** Cline Mining Corporation (“**Cline**”), New Elk Coal Company LLC (“**New Elk**”) and North Central Energy Company (“**North Central**” and together with Cline and New Elk, the “**Applicants**”) are debtor companies under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”);

**AND WHEREAS** the Applicants have obtained an order (as may be amended, restated or varied from time to time, the “**Initial Order**”) of the Ontario Superior Court of Justice (the “**Court**”) under the CCAA (the date of such Initial Order being the “**Filing Date**”);

**AND WHEREAS** Marret Asset Management Inc. (“**Marret**”) exercises sole investment discretion and control over all of the beneficial holders of (i) the \$71,381,900 million aggregate principal amount of 10% senior secured notes due June 15, 2014 issued by Cline pursuant to the indenture dated December 13, 2011, as amended (the “**2011 Notes**”) and (ii) the \$12,340,998 aggregate principal amount of 10% senior secured notes due June 15, 2014 issued by Cline pursuant to the indenture dated July 8, 2013, as amended (the “**2013 Notes**”, and collectively with the 2011 Notes, the “**Secured Notes**”);

**AND WHEREAS** the Applicants have developed a recapitalization transaction (the “**Recapitalization**”) as set forth herein, and Marret (on behalf of all of the beneficial holders of the Secured Notes) has agreed to support the terms of the Recapitalization;

**AND WHEREAS** the Applicants filed a Plan of Compromise and Arrangement dated December 3, 2014 pursuant to the Meetings Order (as defined below) (the “**Original Plan**”);

**AND WHEREAS**, following discussions with counsel for the WARN Act Plaintiffs, Marret and the Monitor, the Applicants have agreed to make certain amendments to the Original Plan to address the settlement of the WARN Act Claims;

**AND WHEREAS** the Applicants file this amended and restated consolidated plan of compromise and arrangement with the Court pursuant to the CCAA and hereby propose and present the plan of compromise and arrangement to the Secured Noteholders Class, the Affected Unsecured Creditors Class and the WARN Act Plaintiffs Class (each as defined below) under and pursuant to the CCAA.

**ARTICLE 1**  
**INTERPRETATION**

**1.1 Definitions**

In the Plan, unless otherwise stated or unless the subject matter or context otherwise requires:

“**2011 Indenture**” means the note indenture dated December 13, 2011 that was entered into between Cline, Marret and the 2011 Trustee in connection with the issuance of the 2011 Notes, as amended from time to time.

“**2011 Noteholders**” means the holders of the 2011 Notes, and “**2011 Noteholder**” means any one of them.

“**2011 Trustee**” means the Indenture Trustee, Computershare Trust Company of Canada, specifically in its capacity as trustee in respect of the 2011 Secured Notes under the 2011 Indenture.

“**2013 Indenture**” means the note indenture dated July 8, 2013 that was entered into between Cline, Marret and the 2013 Trustee in connection with the issuance of the 2013 Notes, as amended from time to time.

“**2013 Noteholders**” means the holders of the 2013 Notes, and “**2013 Noteholder**” means any one of them.

“**2013 Trustee**” means the Indenture Trustee, Computershare Trust Company of Canada, specifically in its capacity as trustee in respect of the 2013 Secured Notes under the 2013 Indenture.

“**Affected Claim**” means any Claim that is not an Unaffected Claim, and, for greater certainty, includes any Secured Noteholder Claim, Affected Unsecured Claim, WARN Act Claim and Equity Claim.

“**Affected Creditor**” means any Creditor with an Affected Claim, but only with respect to and to the extent of such Affected Claim.

“**Affected Unsecured Claims**” means all Claims against one or more of the Applicants that are not secured by a valid security interest over assets or property of the Applicants and that are not (i) Unaffected Claims, (ii) the Claims comprising the Secured Noteholders Allowed Secured Claim, (iii) WARN Act Claims or (iv) Equity Claims; and, for greater certainty, the Affected Unsecured Claims shall include the Secured Noteholders Allowed Unsecured Claim, the Marret Unsecured Claim and any portion of any other Affected Claim that is secured but in respect of which there is a deficiency in the realizable value of the security held in respect of such Claim relative to the amount of such Claim.

“**Affected Unsecured Creditor**” means any holder of an Affected Unsecured Claim, but only with respect to and to the extent of such Affected Unsecured Claim.

“**Affected Unsecured Creditors Class**” means the class of Affected Unsecured Creditors entitled to vote on the Plan at the Unsecured Creditors Meeting in accordance with the terms of the Meetings Order.

“**Agreed Number**” means, with respect to the New Cline Common Shares, that number of New Cline Common Shares to be issued on the Plan Implementation Date pursuant to the Plan as agreed to by the Applicants, the Monitor and Marret (on behalf of the Secured Noteholders).

“**Allowed**” means, with respect to a Claim, any Claim or any portion thereof that has been finally allowed as a Distribution Claim (as defined in the Claims Procedure Order) for purposes of receiving distributions under the Plan in accordance with the Claims Procedure Order or a Final Order of the Court.

“**Applicable Law**” means any law, statute, order, decree, judgment, rule, regulation, ordinance or other pronouncement having the effect of law whether in Canada, the United States or any other country, or any domestic or foreign state, county, province, city or other political subdivision of any Governmental Entity.

“**Articles**” means the articles and/or the notice of articles of Cline, as applicable.

“**Assessments**” has the meaning ascribed thereto in the Claims Procedure Order.

“**BCBCA**” means the *Business Corporations Act* (British Columbia), as amended.

“**Business Day**” means a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario and New York, New York.

“**Canadian Tax Act**” means the *Income Tax Act* (Canada), as amended.

“**CCAA**” has the meaning ascribed thereto in the recitals.

“**CCAA Proceeding**” means the proceeding commenced by the Applicants pursuant to the CCAA.

“**CDS**” means CDS Clearing and Depository Services Inc. or any successor thereof.

“**CDS Participants**” means CDS participant holders of the 2011 Notes and the 2013 Notes.

“**Chapter 15**” means Chapter 15, Title 11 of the United States Code.

“**Chapter 15 Proceeding**” means the proceeding to be commenced by the foreign representative of the Applicants pursuant to Chapter 15.

“**Charges**” means the Administration Charge and the Directors’ Charge, each as defined in the Initial Order.

“**Claim**” means:

- (a) any right or claim of any Person against any of the Applicants, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Applicant in existence on the Filing Date, and costs payable in respect thereof to and including the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessment and any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts which existed prior to the Filing Date and any other claims that would have been claims provable in bankruptcy had such Applicant become bankrupt on the Filing Date,

including for greater certainty any Equity Claim and any claim against any of the Applicants for indemnification by any Director or Officer in respect of a Director/Officer Claim (but excluding any such claim for indemnification that is covered by the Directors' Charge (as defined in the Initial Order)); and

- (b) any right or claim of any Person against any of the Applicants in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such Applicant to such Person arising out of the restructuring, disclaimer, rescission, termination or breach by such Applicant on or after the Filing Date of any contract, lease or other agreement whether written or oral and includes any other right or claim that is to be treated as a Restructuring Period Claim under the Plan,

provided that, for greater certainty, the definition of "Claim" herein shall not include any Director/Officer Claim.

"**Claims Bar Date**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Claims Procedure Order**" means the Order under the CCAA establishing a claims procedure in respect of the Applicants, as same may be further amended, restated or varied from time to time.

"**Class Action Counsel**" means The Gardner Firm, P.C., in its capacity as counsel to James Gerard Jr. and Michael Cox, on behalf of themselves and all others who are alleged to be similarly situated, in the WARN Act Class Action.

"**Class Action Initial Expense Reimbursement**" means an amount to be agreed by Class Action Counsel and James Gerard Jr. and Michael Cox, as representative plaintiffs in the WARN Act Class Action, in respect of: the reasonable attorneys fees, expenses and costs of the WARN Act Plaintiffs' counsel; the reasonable local attorneys fees, expenses and costs incurred by the WARN Act Plaintiffs' counsel; and class representative fees, expenses and costs in connection with the WARN Act Class Action. The Class Action Initial Expense Reimbursement is to be paid on the Plan Implementation Date and shall not exceed \$90,000 (being the maximum amount of the WARN Act Cash Payment).

"**Class Action Second Expense Reimbursement**" means an amount to be agreed by Class Action Counsel and James Gerard Jr. and Michael Cox, as representative plaintiffs in the WARN Act Class Action, in respect of the reasonable attorneys fees and expenses of the WARN Act Plaintiffs' counsel. The Class Action Second Expense Reimbursement is to be paid on the WARN Act Plan Entitlement Date and shall not exceed \$120,000 (being the maximum amount of the WARN Act Plan Entitlement).

"**Cline Common Shares**" means the common shares in the capital of Cline designated as Common Shares in the Notice of Articles of Cline.

"**Cline Companies**" means Cline, New Elk, North Central Energy Company, Raton Basin Analytical, LLC.

"**Company Advisors**" means Goodmans LLP, Moelis & Company and Aab & Botts, LLC.

“**Consolidation Ratio**” means, with respect to the Cline Common Shares, the ratio by which Cline Common Shares outstanding on the Plan Implementation Date at the relevant time (including, for the avoidance of doubt, any Cline Common Shares that are Existing Cline Shares and any Cline Common Shares that are New Cline Common Shares issued pursuant to the Plan) are consolidated pursuant to the Plan, as agreed by the Applicants, the Monitor and Marret (on behalf of the Secured Noteholders).

“**Convenience Claim**” means any Affected Unsecured Claim that is not more than \$10,000, provided that (i) no Claims of the Secured Noteholders shall constitute Convenience Claims; (ii) Creditors shall not be entitled to divide a Claim for the purpose of qualifying such Claim as a Convenience Claim; (iii) no Restructuring Period Claim referred to in section 3.5(d)(i) shall constitute a Convenience Claim, and (iv) for greater certainty, none of the WARN Act Claims shall constitute Convenience Claims.

“**Convenience Creditor**” means an Affected Unsecured Creditor having a Convenience Claim.

“**Court**” has the meaning ascribed thereto in the recitals.

“**Creditor**” means any Person having a Claim, but only with respect to and to the extent of such Claim, including the transferee or assignee of a transferred Claim that is recognized as a Creditor in accordance with the Claims Procedure Order or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person.

“**Directors**” means all current and former directors (or their estates) of the Applicants, in such capacity, and “**Director**” means any one of them.

“**Director/Officer Claim**” means any right or claim of any Person against one or more of the Directors and/or Officers howsoever arising, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, including any right of contribution or indemnity, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer.

“**Disputed Distribution Claim**” means an Affected Unsecured Claim or a WARN Act Claim (including a contingent Affected Unsecured Claim or WARN Act Claim that crystallizes upon the occurrence of an event or events occurring after the Filing Date) or such portion thereof that has not been Allowed, which is validly disputed for distribution purposes in accordance with the Claims Procedure Order and that remains subject to adjudication for distribution purposes in accordance with the Claims Procedure Order.

“**Disputed Distribution Claims Reserve**” means the reserve, if any, to be established by Cline, which shall be comprised of the following:

- (a) in respect of Affected Unsecured Claims that are Disputed Distribution Claims and are not Convenience Claims, an amount reserved on the Unsecured Plan Entitlement Date equal to the Unsecured Plan Entitlement Proceeds that would have been paid in respect of such Disputed Distribution Claims on the Unsecured Plan Entitlement Date if such Disputed Distribution Claims had been Allowed Claims as of the Promissory Note Maturity Date
- (b) in respect of Affected Unsecured Claims that are Disputed Distribution Claims and that are Convenience Claims, an amount reserved on the Plan Implementation Date equal to the amount that would have been paid in respect of such Disputed Distribution Claims on the Plan Implementation Date if such Disputed Distribution Claims had been Allowed Claims as of the Plan Implementation Date, and
- (c) in respect of WARN Act Claims that are Disputed Distribution Claims, an amount reserved on the WARN Act Plan Entitlement Date equal to the WARN Act Plan Entitlement Proceeds that would have been paid in respect of such Disputed Distribution Claims on the WARN Act Plan Entitlement Date if such Disputed Distribution Claims had been Allowed Claims as of the WARN Act Plan Entitlement Date.

“**Distribution Date**” means the date or dates from time to time set in accordance with the provisions of the Plan to effect distributions in respect of the Allowed Claims, excluding the Initial Distribution Date, and (i) in the case of distributions of Unsecured Plan Entitlement Proceeds, means the Unsecured Plan Entitlement Date or such later date from time to time established in accordance with the provisions of the Plan if any Affected Unsecured Claim is a Disputed Distribution Claim on the Unsecured Plan Entitlement Date; and (ii) in the case of distributions of WARN Act Plan Entitlement Proceeds, means the WARN Act Plan Entitlement Date or such later date from time to time established in accordance with the provisions of the Plan if any WARN Act Claim is a Disputed Distribution Claim on the WARN Act Plan Entitlement Date.

“**Effective Time**” means 12:01 a.m. (Toronto time) on the Plan Implementation Date or such other time on such date as the Applicants may determine.

“**Employee Priority Claims**” means the following Claims of Employees and former employees of the Applicants:

- (a) Claims equal to the amounts that such Employees and former employees would have been entitled to receive under paragraph 136(1)(d) of the *Bankruptcy and Insolvency Act* (Canada) if the applicable Applicant had become bankrupt on the Filing Date; and
- (b) Claims for wages, salaries, commissions or compensation for services rendered by such Employees and former employees after the Filing Date and on or before the Plan Implementation Date together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the Applicants’ business during the same period.



“**Employees**” means any and all (a) employees of the Applicants who are actively at work (including full-time, part-time or temporary employees) and (b) employees of the Applicants who are on approved leaves of absence (including maternity leave, parental leave, short-term disability leave, workers’ compensation and other statutory leaves), and who have not tendered notice of resignation as of the Filing Date, in each case.

“**Encumbrance**” means any charge, mortgage, lien, pledge, claim, restriction, hypothec, adverse interest, security interest or other encumbrance whether created or arising by agreement, statute or otherwise at law, attaching to property, interests or rights and shall be construed in the widest possible terms and principles known under the law applicable to such property, interests or rights and whether or not they constitute specific or floating charges as those terms are understood under the laws of the Province of Ontario.

“**Equity Claim**” means a Claim that meets the definition of “equity claim” in section 2(1) of the CCAA.

“**Equity Claimants**” means any Person with an Equity Claim or holding an Equity Interest, but only in such capacity, and for greater certainty includes the Existing Cline Shareholders in their capacity as such.

“**Equity Interests**” has the meaning ascribed thereto in section 2(1) of the CCAA and, for greater certainty, includes the Existing Cline Shares, the Existing New Elk Units, the Existing North Central Shares, the Existing Options and any other interest in or entitlement to shares or units in the capital of the Applicants but, for greater certainty, does not include the New Cline Common Shares issued on the Plan Implementation Date in accordance with the Plan.

“**Existing Cline Shareholder**” means any Person who holds, is entitled to or has any rights in or to the Existing Cline Shares or any shares in the authorized capital of Cline immediately prior to the Effective Time, but only in such capacity, and for greater certainty does not include any Person that is issued New Cline Common Shares on the Plan Implementation Date.

“**Existing Cline Shares**” means all shares in the capital of Cline that are issued and outstanding immediately prior to the Effective Time.

“**Existing New Elk Units**” means all units in the capital of New Elk that are issued and outstanding immediately prior to the Effective Time.

“**Existing North Central Shares**” means all shares in the capital of North Central that are issued and outstanding immediately prior to the Effective Time.

“**Existing Options**” means any options, warrants (including the Warrants), conversion privileges, puts, calls, subscriptions, exchangeable securities, or other rights, entitlements, agreements, arrangements or commitments (pre-emptive, contingent or otherwise) obligating any of the Applicants to issue, acquire or sell shares or units in the capital of the Applicants or to purchase any shares, units, securities, options or warrants, or any securities or obligations of any kind convertible into or exchangeable for shares or units in the capital of the Applicants, in each case that are existing or issued and outstanding immediately prior to the Effective Time, including any options to acquire shares, units or other equity securities of the Applicants issued under the Stock

Option Plans, any warrants exercisable for common shares, units or other equity securities of the Applicants (including the Warrants), any put rights exercisable against the Applicants in respect of any shares, units, options, warrants or other securities, and any rights, entitlements or other claims of any kind to receive any other form of consideration in respect of any prior or future exercise of any of the foregoing.

“**Filing Date**” has the meaning ascribed thereto in the recitals.

“**Final Order**” means any order, ruling or judgment of the Court, or any other court of competent jurisdiction, (i) that is in full force and effect; (ii) that has not been reversed, modified or vacated and is not subject to any stay and (iii) in respect of which all applicable appeal periods have expired and any appeals therefrom have been finally disposed of, leaving such order, ruling or judgment wholly operable.

“**Fractional Interests**” has the meaning given in section 4.12 hereof.

“**Government Priority Claims**” means all Claims of Governmental Entities against any of the Applicants in respect of amounts that are outstanding and that are of a kind that could be subject to a demand under:

- (a) subsections 224(1.2) of the Canadian Tax Act;
- (b) any provision of the Canada Pension Plan or the *Employment Insurance Act* (Canada) that refers to subsection 224(1.2) of the Canadian Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, or employee’s premium or employer’s premium as defined in the *Employment Insurance Act* (Canada), or a premium under Part VII. I of that Act, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the Canadian Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
  - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Canadian Tax Act; or
  - (ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a “province providing a comprehensive pension plan” as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a “provincial pension plan” as defined in that subsection.

“**Governmental Entity**” means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to

exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

“**Indentures**” means, collectively, the 2011 Indenture and the 2013 Indenture.

“**Indenture Trustee**” means Computershare Trust Company of Canada, as trustee in respect of the Secured Notes under the Indentures.

“**Individual Unsecured Plan Entitlement**” means, with respect to each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim that is not a Convenience Creditor and that is not a Secured Noteholder, its entitlement to receive its respective individual portion of the Unsecured Plan Entitlement Proceeds payable on the Unsecured Plan Entitlement Date, the quantum of which entitlement shall be calculated as follows at the relevant time:

(A) the Allowed Affected Unsecured Claim of such Affected Unsecured Creditor

divided by

(B) the total amount of all Allowed Affected Unsecured Claims and Disputed Distribution Claims of Affected Unsecured Creditors less the Secured Noteholders Allowed Unsecured Claim less the Marret Unsecured Claim less the amount of all Convenience Claims

multiplied by

(C) \$225,000.

“**Individual WARN Act Plan Entitlement**” means with respect to each WARN Act Plaintiff with an Allowed WARN Act Claim, its entitlement to receive its individual WARN Act Plaintiff's ~~Pro-Rata~~ Share of the WARN Act Plan Entitlement Proceeds payable on the WARN Act Plan Entitlement Date.

“**Information Statement**” means the information statement to be distributed by the Applicants concerning the Plan, the Meetings and the hearing in respect of the Sanction Order, as contemplated in the Meetings Order.

“**Initial Distribution Date**” means a date no more than two (2) Business Days after the Plan Implementation Date or such other date as the Applicants and the Monitor may agree.

“**Initial Order**” has the meaning ascribed thereto in the recitals.

“**Insurance Policy**” means any insurance policy maintained by any of the Applicants pursuant to which any of the Applicants or any Director or Officer is insured.

“**Insured Claim**” means all or that portion of a Claim arising from a cause of action for which the applicable insurer or a court of competent jurisdiction has definitively and unconditionally confirmed that the applicable Applicant is insured under an Insurance Policy, to the extent that such Claim, or portion thereof, is so insured.

“**Intercompany Claim**” means any Claim by any Applicant against another Applicant.

“**Marret**” has the meaning ascribed to it in the recitals.

“**Marret Unsecured Claim**” means all Claims of Marret, in its individual corporate capacity and not on behalf of the Secured Noteholders, against one or more of the Applicants, if any, including any secured Claims of Marret, in such capacity, in respect of which there is a deficiency in the realizable value of the security held by Marret relative to the amount of such secured Claim.

“**Material**” means a fact, circumstance, change, effect, matter, action, condition, event, occurrence or development that, individually or in the aggregate, is, or would reasonably be expected to be, material to the business, affairs, results of operations or financial condition of the Applicants (taken as a whole).

“**Meeting Date**” means the date on which the Meetings are held in accordance with the Meetings Order.

“**Meetings**” means, collectively, the Secured Noteholders Meeting, the Unsecured Creditors Meeting and the WARN Act Plaintiffs Meeting.

“**Meetings Order**” means the Order under the CCAA that, among other things, sets the date for the Meetings, as same may be amended, restated or varied from time to time.

“**Monitor**” means FTI Consulting Canada Inc., as Court-appointed Monitor of the Applicants in the CCAA Proceeding.

“**Monitor’s Website**” means <http://cfcanada.fticonsulting.com/cline>

“**New Cline Common Shares**” means the new Cline Common Shares to be issued pursuant to section 5.2(1) hereof.

“**New Credit Agreement**” means the credit agreement in respect of the New Secured Debt dated as of the Plan Implementation Date among Cline, as borrower, New Elk and North Central, as guarantors, and the New Secured Debt Agent.

“**New Secured Debt**” means the new secured indebtedness of Cline, which is to be guaranteed by New Elk and North Central, to be established on the Plan Implementation Date pursuant to section 5.2(2) hereof, the terms of which shall be consistent with the summary of terms set forth in Schedule “A” and which shall be governed by the New Credit Agreement.

“**New Secured Debt Agent**” means Marret Asset Management Inc., in its capacity as administrative and collateral agent under the New Credit Agreement.

“**Noteholder Advisors**” means Davies Ward Phillips & Vineberg LLP.

“**Notice of Claim**” has the meaning ascribed thereto in the Claims Procedure Order.

“**Officers**” means all current and former officers (or their estates) of the Applicants, in such capacity, and “**Officer**” means any one of them.

“**Order**” means any order of the Court made in connection with the CCAA Proceeding and any order of the U.S. Court made in connection with the Chapter 15 Proceeding.

“**Original Plan**” has the meaning ascribed thereto in the recitals.

“**Person**” means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government or any agency, officer or instrumentality thereof or any other entity.

“**Plan**” means ~~the~~this Amended and Restated Plan of Compromise and Arrangement filed by the Applicants pursuant to the CCAA, as it may be amended, supplemented or restated from time to time in accordance with the terms hereof.

“**Plan Implementation Date**” means the Business Day on which the Plan becomes effective, which shall be the Business Day on which, pursuant to section 9.2, the Applicants and Marret (on behalf of the Secured Noteholders) or their respective counsel deliver written notice to the Monitor (or its counsel) that the conditions set out in section 9.1 have been satisfied or waived in accordance with the terms hereof.

“**Post-Filing Trade Payables**” means trade payables that were incurred by any of the Applicants (a) after the Filing Date but before the Plan Implementation Date; and (b) in compliance with the Initial Order and other Orders issued in connection with the CCAA Proceeding and the Chapter 15 Proceeding.

“**Prior Ranking Secured Claims**” means Allowed Claims existing on both the Filing Date and the Plan Implementation Date, other than Government Priority Claims, Employee Priority Claims, and Claims secured by the Charges, that (a) are secured by a valid, perfected and enforceable security interest in, mortgage, encumbrance or charge over, lien against or other similar interest in, any of the assets that any of the Applicants owns or to which any of the Applicants is entitled, but only to the extent of the realizable value of the property subject to such security; and (b) would have ranked senior in priority to the Secured Noteholders Allowed Secured Claim if the Applicants had become bankrupt on the Filing Date, but only to the extent that it would have ranked senior in priority, including any Allowed Claims relating to the security registrations listed on Schedule “A” to the Initial Order, which, for greater certainty, includes the registration in favour of Bank of Montreal/Banque de Montreal listed thereon, to the extent that such Claims satisfy the terms of this definition.

“**Proof of Claim**” has the meaning ascribed thereto in the Claims Procedure Order.

“**Recapitalization**” means the transactions contemplated by the Plan.

“**Released Claims**” has the meaning ascribed thereto in section 7.1.

“**Released Director/Officer Claim**” means any Director/Officer Claim that is released pursuant to section 7.1.

“**Released Party**” and “**Released Parties**” have the meaning ascribed thereto in section 7.1.

“**Restructuring Period Claim**” has the meaning ascribed thereto in the Claims Procedure Order.

**“Required Majorities”** means with respect to each Voting Class, a majority in number of Affected Creditors representing at least two thirds in value of the Voting Claims of Affected Creditors, in each case who are entitled to vote at the Meetings in accordance with the Meetings Order and who are present and voting in person or by proxy on the resolution approving the Plan at the applicable Meeting.

**“Sanction Order”** means the Order of the Court sanctioning and approving the Plan.

**“Secured Noteholders”** means the holders of the Secured Notes, and **“Secured Noteholder”** means any one of them.

**“Secured Noteholders Allowed Claim”** has the meaning ascribed thereto in the Claims Procedure Order, and the aggregate amount of such Claim is \$110,173,897.

**“Secured Noteholders Allowed Secured Claim”** has the meaning ascribed thereto in the Claims Procedure Order, and, for the purpose of voting at the Secured Noteholders Meeting and receiving distributions under the Plan, the aggregate amount of such Claims is \$92,673,897.

**“Secured Noteholders Allowed Unsecured Claim”** has the meaning ascribed thereto in the Claims Procedure Order, and, for the purpose of voting at the Unsecured Creditors Meeting, the aggregate amount of such Claims is \$17,500,000.

**“Secured Noteholders Class”** means the class of Secured Noteholders collectively holding the Secured Noteholders Allowed Secured Claim entitled to vote on this Plan at the Secured Noteholders Meeting in accordance with the terms of the Meetings Order.

**“Secured Noteholders Meeting”** means the meeting of the Secured Noteholders Class to be held on the Meeting Date for the purpose of considering and voting on the Plan pursuant to the CCAA and includes any adjournment, postponement or other rescheduling of such meeting in accordance with the Meetings Order.

**“Secured Noteholder’s Share”** means, with respect to each Secured Noteholder, either: (i) the principal amount of Secured Notes held by such Secured Noteholder as at the Filing Date divided by the total aggregate principal amount of all Secured Notes as at the Filing Date; or (ii) such other proportionate share as may be agreed by the Applicants, Marret (on behalf of the Secured Noteholders) and the Monitor and as confirmed by Marret (on behalf of the Secured Noteholders) to the Indenture Trustee in writing.

**“Secured Note Obligations”** means all obligations, liabilities and indebtedness of the Applicants or any of the Cline Companies (whether as guarantor, surety or otherwise) to the Indenture Trustee, the Secured Noteholders and/or Marret (whether on behalf of the Secured Noteholders or in its individual corporate capacity) under, arising out of or in connection with the Secured Notes, the Indentures or the guarantees granted in connection with any of the foregoing as well as any other agreements or documents relating thereto as at the Plan Implementation Date.

**“Secured Notes”** has the meaning ascribed thereto in the recitals.

**“Stock Option Plans”** means any options plans, stock-based compensation plans or other obligations of any of the Applicants in respect of shares, options or warrants for equity in any of

the Cline Companies, in each case as such plans or other obligations may be amended, restated or varied from time to time in accordance with the terms thereof.

“**Tax**” or “**Taxes**” means any and all federal, provincial, state, municipal, local, Canadian, U.S. and foreign taxes, assessments, reassessments and other governmental charges, duties, impositions and liabilities including for greater certainty taxes based upon or measured by reference to income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, all licence, franchise and registration fees and all employment insurance, health insurance and federal, provincial, state, municipal, local, Canadian, U.S., foreign and other government pension plan premiums or contributions, together with all interest, penalties, fines and additions with respect to such amounts.

“**Taxing Authorities**” means any one of Her Majesty the Queen, Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, the United States Internal Revenue Service, any similar revenue or taxing authority of the United States and each and every state of the United States, and any Canadian, American or other government, regulatory authority, government department, agency, commission, bureau, minister, court, tribunal or body or regulation making entity exercising taxing authority or power, and “**Taxing Authority**” means any one of the Taxing Authorities.

“**Unaffected Claim**” means any:

- (a) Claim secured by any of the Charges;
- (b) Insured Claim;
- (c) Intercompany Claim;
- (d) Post-Filing Trade Payable;
- (e) Unaffected Secured Claim;
- (f) Claim by an Unaffected Trade Creditor arising from an Unaffected Trade Claim;
- (g) Claim that is not permitted to be compromised pursuant to section 19(2) of the CCAA;
- (h) Employee Priority Claims; and
- (i) Government Priority Claims.

“**Unaffected Creditor**” means a Creditor who has an Unaffected Claim, but only in respect of and to the extent of such Unaffected Claim.

**“Unaffected Secured Claims”** means: (i) the Prior Ranking Secured Claims; and (ii) all other Claims against one or more of the Applicants that (a) are secured by a valid security interest over assets or property of the Applicants and (b) the Applicants have identified to the Monitor in writing prior to the Plan Implementation Date as Unaffected Claims under the Plan.

**“Unaffected Trade Claim”** means an Allowed Claim of an Unaffected Trade Creditor that (i) is not a Post-Filing Trade Payable, (ii) arises out of or in connection with any contract, license, lease, agreement, obligation, arrangement or document with any of the Applicants related to the business of the Applicants and (iii) the Applicants have identified to the Monitor in writing prior to the Plan Implementation Date as an Unaffected Claim.

**“Unaffected Trade Creditor”** means any Person that has been designated by the Applicants, with the consent of the Monitor, as a critical supplier in accordance with the Initial Order.

**“Undeliverable Distribution”** has the meaning ascribed thereto in section 4.10 hereof.

**“Unsecured Creditors Meeting”** means a meeting of Affected Unsecured Creditors to be held on the Meeting Date called for the purpose of considering and voting on the Plan pursuant to the CCAA, and includes any adjournment, postponement or other rescheduling of such meeting in accordance with the Meetings Order.

**“Unsecured Plan Entitlement”** means an unsecured, non-interest-bearing entitlement of the Affected Unsecured Creditors, other than Convenience Creditors, with Allowed Affected Unsecured Claims to receive \$225,000 in cash (collectively, and not individually) from Cline on the date that is eight years from the Plan Implementation Date, which entitlement shall be subordinated to all present and future secured indebtedness and obligations of Cline and may be paid by Cline at any time without penalty.

**“Unsecured Plan Entitlement Date”** means the earlier of the date that is eight years following the Plan Implementation Date and the date on which the Unsecured Plan Entitlement is paid by Cline.

**“Unsecured Plan Entitlement Proceeds”** means the amounts payable to the beneficiaries of the Unsecured Plan Entitlement on the Unsecured Plan Entitlement Date.

**“U.S. Court”** means the United States Bankruptcy Court for the District of Colorado.

**“Voting Claims”** means any Claim or portion thereof that has been finally allowed as a Voting Claim (as defined in the Claims Procedure Order) for purposes of voting at a Meeting in accordance with the Claims Procedure Order or a Final Order of the Court.

**“Voting Classes”** means the Secured Noteholders Class, the Affected Unsecured Creditors Class and the WARN Act Plaintiffs Class.

**“WARN Act”** means the U.S. federal Worker Adjustment and Retraining Notification Act of 1988 (29 U.S.C. §§ 2101 – 2109).

**“WARN Act Cash Payment”** means the cash payment in the amount of \$90,000 less the Class Action Initial Expense Reimbursement, which cash payment is to be made to the Class Action



Counsel on the Plan Implementation Date for the benefit of WARN Act Plaintiffs with Allowed WARN Act Claims.

“**WARN Act Claim**” means any Claim against any of the Applicants advanced by the WARN Act Plaintiffs in the WARN Act Class Action and any other Claims of individuals similarly situated to the WARN Act Plaintiffs that may be asserted against any of the Applicants pursuant to the WARN Act.

“**WARN Act Class Action**” means the class action lawsuit filed against Cline and New Elk by the WARN Act Plaintiffs in the United States District Court for the District of Colorado, Case Number 1:13-CV-00277, as amended.

“**WARN Act Plaintiffs**” means the plaintiffs in the WARN Act Class Action and all others who are alleged in the WARN Act Class Action to be similarly situated, and any other individual who is similarly situated to the plaintiffs in the WARN Act Class Action who asserts Claims against any of the Applicants pursuant to the WARN Act.

“**WARN Act Plaintiffs Class**” means the class of WARN Act Plaintiffs entitled to vote on the Plan at the WARN Act Plaintiffs Meeting in accordance with the terms of the Meetings Order.

“**WARN Act Plaintiffs Meeting**” means a meeting of WARN Act Plaintiffs Class to be held on the Meeting Date called for the purpose of considering and voting on the Plan pursuant to the CCAA, and includes any adjournment, postponement or other rescheduling of such meeting in accordance with the Meetings Order.

“**WARN Act Plaintiff’s ~~Pro-Rata Share~~**” means, at the relevant time, with respect to each WARN Act Plaintiff, ~~(x) the~~ with an Allowed WARN Act Claim, the applicable share of such WARN Act Plaintiff ~~divided by (y) the total amount of all in the distributions to be made to the WARN Act Plaintiffs with Allowed WARN Act Claims and Disputed Distribution Claims of WARN Act Plaintiffs hereunder, as determined by Class Action Counsel in accordance with the parameters of the WARN Act Class Action.~~

“**WARN Act Plan Entitlement**” means the unsecured, non-interest-bearing entitlement of the WARN Act Plaintiffs with Allowed WARN Act Claims to receive ~~\$100,000~~ 120,000 less the amount of the Class Action Second Expense Reimbursement in cash (collectively, and not individually) from ~~Cline~~ New Elk on the date that is eight years from the Plan Implementation Date, which entitlement shall be subordinated to all present and future secured indebtedness and obligations of Cline and may be paid by Cline at any time without penalty.

“**WARN Act Plan Entitlement Date**” means the earlier of the date that is eight years following the Plan Implementation Date and the date on which the WARN Act Plan Entitlement is paid by Cline.

“**WARN Act Plan Entitlement Proceeds**” means the amounts payable to the beneficiaries of the WARN Act Plan Entitlement on the WARN Act Plan Entitlement Date.

“**Warrants**” means all warrants, options, rights or entitlements for the purchase of Cline Common Shares that are issued and outstanding immediately prior to the Effective Time.

## 1.2 Certain Rules of Interpretation

For the purposes of the Plan:

- (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;
- (b) any reference in the Plan to an Order or an existing document or exhibit filed or to be filed means such Order, document or exhibit as it may have been or may be amended, modified, or supplemented;
- (c) unless otherwise specified, all references to currency are in Canadian dollars;
- (d) the division of the Plan into “articles” and “sections” and the insertion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of “articles” and “sections” intended as complete or accurate descriptions of the content thereof;
- (e) the use of words in the singular or plural, or with a particular gender, including a definition, shall not limit the scope or exclude the application of any provision of the Plan or a schedule hereto to such Person (or Persons) or circumstances as the context otherwise permits;
- (f) the words “includes” and “including” and similar terms of inclusion shall not, unless expressly modified by the words “only” or “solely”, be construed as terms of limitation, but rather shall mean “includes but is not limited to” and “including but not limited to”, so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (g) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (Toronto time) on such Business Day;
- (h) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;
- (i) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation; and

- (j) references to a specified “article” or “section” shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specified article or section of the Plan, whereas the terms “the Plan”, “hereof”, “herein”, “hereto”, “hereunder” and similar expressions shall be deemed to refer generally to the Plan and not to any particular “article”, “section” or other portion of the Plan and include any documents supplemental hereto.

### **1.3 Successors and Assigns**

The Plan shall be binding upon and shall enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person or party directly or directly named or referred to in or subject to Plan.

### **1.4 Governing Law**

The Plan shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of the Plan and all proceedings taken in connection with the Plan and its provisions shall be subject to the jurisdiction of the Court, provided that the Chapter 15 Proceeding shall be subject to the jurisdiction of the U.S. Court.

### **1.5 Schedules**

The following are the Schedules to the Plan, which are incorporated by reference into the Plan and form a part of it:

Schedule “A”	New Secured Debt – Summary of Terms
Schedule “B”	Alternate Plan – Summary of Terms

## **ARTICLE 2 PURPOSE AND EFFECT OF THE PLAN**

### **2.1 Purpose**

The purpose of the Plan is:

- (a) to implement a recapitalization of the Applicants;
- (b) to provide for a settlement of, and consideration for, all Allowed Affected Claims;
- (c) to effect a release and discharge of all Affected Claims and Released Claims; and
- (d) to ensure the continuation of the Applicants,

in the expectation that the Persons who have a valid economic interest in the Applicants will derive a greater benefit from the implementation of the Plan than they would derive from a bankruptcy of the Applicants.

## **2.2 Persons Affected**

The Plan provides for a full and final release and discharge of the Affected Claims and Released Claims, a settlement of, and consideration for, all Allowed Affected Claims and a recapitalization of the Applicants. The Plan will become effective at the Effective Time in accordance with its terms and in the sequence set forth in section 5.3 and shall be binding on and enure to the benefit of the Applicants, the Affected Creditors, the Released Parties and all other Persons directly or indirectly named or referred to in or subject to Plan.

## **2.3 Persons Not Affected**

The Plan does not affect the Unaffected Creditors, subject to the express provisions hereof providing for the treatment of Insured Claims and the unsecured deficiency portion of Unaffected Secured Claims. Nothing in the Plan shall affect the Applicants' rights and defences, both legal and equitable, with respect to any Unaffected Claims including all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims.

# **ARTICLE 3**

## **CLASSIFICATION AND TREATMENT OF CREDITORS AND RELATED MATTERS**

### **3.1 Claims Procedure**

The procedure for determining the validity and quantum of the Affected Claims for voting and distribution purposes under the Plan shall be governed by the Claims Procedure Order, the Meetings Order, the CCAA, the Plan and any further Order of the Court.

### **3.2 Classification of Creditors**

In accordance with the Meetings Order and subject to section 10.5(d) hereof, the classes of creditors for the purposes of considering and voting on the Plan will be (i) the Secured Noteholders Class, (ii) the Affected Unsecured Creditors Class and (iii) the WARN Act Plaintiffs Class. For greater certainty, Equity Claimants shall constitute a separate class but shall not be entitled to attend the Meetings, vote on the Plan or receive any distributions under or in respect of the Plan.

### **3.3 Creditors' Meetings**

The Meetings shall be held in accordance with the Meetings Order and any further Order of the Court. The only Persons entitled to attend and vote at the Meetings are those specified in the Meetings Order.

### **3.4 Treatment of Affected Claims**

An Affected Claim shall receive distributions as set forth below only to the extent that such Claim is an Allowed Affected Claim and has not been paid, released, or otherwise satisfied prior to the Plan Implementation Date.

**(1) Secured Noteholders Class**

In accordance with the steps and sequence set forth in section 5.3, under the supervision of the Monitor, and in full and final satisfaction of the Secured Noteholders Allowed Secured Claim, each Secured Noteholder will receive its Secured Noteholder's Share of the following consideration on the Plan Implementation Date:

- (a) the New Cline Common Shares issued on the Plan Implementation Date; and
- (b) the New Secured Debt.

The Claims comprising the Secured Noteholders Allowed Claim and the Secured Note Obligations shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date. For greater certainty, the Secured Noteholders Allowed Unsecured Claim, the Marret Unsecured Claim and any portion of any other Affected Claim that is validly secured but in respect of which there is a deficiency in the realizable value of the security held in respect of such Claim, shall be deemed to be and shall be treated as Allowed Affected Unsecured Claims notwithstanding that they are secured by a valid security interest over the assets or property of the Applicants.

**(2) Affected Unsecured Creditors Class**

In accordance with the steps and sequence set forth in section 5.3, under the supervision of the Monitor, and in full and final satisfaction of all Affected Unsecured Claims, each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim will receive the following consideration:

- (a) with respect to Affected Unsecured Creditors with Allowed Affected Unsecured Claims that are not Convenience Creditors, each such Affected Unsecured Creditor shall become entitled on the Plan Implementation Date to its Individual Unsecured Plan Entitlement (which, for greater certainty, shall not be payable until the Unsecured Plan Entitlement Date); and
- (b) with respect to Convenience Creditors with Allowed Affected Unsecured Claims, each such Convenience Creditor shall receive a cash payment on the Plan Implementation Date equal to the lesser of (i) \$10,000; and (ii) the amount of its Allowed Affected Unsecured Claim.

The Secured Noteholders and Marret (on behalf of the Secured Noteholders and in its individual corporate capacity) hereby waive, and shall not receive, any distributions in respect of the Secured Noteholders Allowed Unsecured Claim and the Marret Unsecured Claim, respectively. All Affected Unsecured Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date.

**(3) WARN Act Plaintiffs Class**

If the Required Majorities of the WARN Act Plaintiffs Class vote to approve the Plan at the WARN Act Plaintiffs Meeting and the Plan is implemented in accordance with its terms, then:

- (a) the Proof of Claim dated January 13, 2015 filed by Class Action Counsel in respect of the WARN Act Claims shall be deemed to be Allowed as an aggregate Distribution Claim in the amount set forth on such Proof of Claim, provided that the WARN Act Claims (including the associated attorneys' fees included therein) shall be deemed to be unsecured and to have no security or priority status, and the 307 individuals identified in such Proof of Claim shall be deemed to be WARN Act Plaintiffs with Allowed WARN Act Claims in amounts to be determined by Class Action Counsel in accordance with the parameters of the WARN Act Class Action, with all such amounts totalling the aggregate amount set forth on such Proof of Claim;
- (b) ~~In~~ in accordance with the steps and sequence set forth in section 5.3, under the supervision of the Monitor, and in full and final satisfaction of all WARN Act Claims, ~~each WARN Act Plaintiff with an Allowed WARN Act Claim shall become entitled on the Plan Implementation Date to its Individual WARN Act Plan Entitlement (which, for greater certainty, shall not be payable until the WARN Act Plan Entitlement Date). All WARN Act Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date.;~~
- (i) each WARN Act Plaintiff with an Allowed WARN Act Claim shall become entitled on the Plan Implementation Date to the following:
- (A) its Individual WARN Act Plan Entitlement (which, for greater certainty, shall not be payable until the WARN Act Plan Entitlement Date); and
- (B) its WARN Act Plaintiff's Share of the WARN Act Cash Payment (which for greater certainty shall be payable to Class Action Counsel, for the benefit of the WARN Act Plaintiffs, on the Plan Implementation Date); and
- (ii) New Elk shall pay the Class Action Initial Expense Reimbursement to Class Action Counsel on the Plan Implementation Date.

All WARN Act Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date, provided that neither the foregoing nor the provisions of Article 7 hereof releases any defendants presently named in the WARN Act Class Action other than the Applicants. Forthwith following the Plan Implementation Date, Class Action Counsel shall irrevocably terminate and discontinue the WARN Act Class Action against the Applicants and no Person shall take any steps or actions against the Applicants in furtherance of a WARN Act Claim. Forthwith following the Plan Implementation Date, the Applicants shall provide Class Action Counsel with addresses and social security numbers of the individual WARN Act Plaintiffs to the extent that such information is available based on the Applicants' books and records for the purpose of enabling Class Action Counsel to make distributions to such individuals.

**(4) Equity Claimants**

Equity Claimants shall not receive any distributions or other consideration under the Plan or otherwise recover anything in respect of their Equity Claims or Equity Interests and shall not be entitled to attend or vote on the Plan at the Meetings. On the Plan Implementation Date, in accordance with the steps and sequences set out in section 5.3, all Equity Interests shall be cancelled and extinguished and all Equity Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred, provided that, notwithstanding anything to the contrary herein: (i) the Existing New Elk Units shall not be cancelled or extinguished and shall remain outstanding and shall remain solely owned by Cline following completion of the steps and sequences set out in section 5.3; and (ii) the Existing North Central Units shall not be cancelled or extinguished and shall remain outstanding and shall remain solely owned by New Elk following completion of the steps and sequences set out in section 5.3.

**3.5 Unaffected Claims**

- (a) Unaffected Claims shall not be compromised, released, discharged, cancelled or barred by the Plan.
- (b) Unaffected Creditors will not receive any consideration or distributions under the Plan in respect of their Unaffected Claims, and they shall not be entitled to vote on the Plan at the Meetings in respect of their Unaffected Claims.
- (c) Notwithstanding anything to the contrary herein, Insured Claims shall not be compromised, released, discharged, cancelled or barred by the Plan, provided that from and after the Plan Implementation Date, any Person having an Insured Claim shall be irrevocably limited to recovery in respect of such Insured Claim solely from the proceeds of the applicable Insurance Policies, and Persons with any Insured Claims shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any Person, including any of the Applicants, any of the Cline Companies or any Released Party, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies. This section 3.5(c) may be relied upon and raised or pled by any of the Applicants, any of the Cline Companies or any Released Party in defence or estoppel of or to enjoin any claim, action or proceeding brought in contravention of this section. Nothing in the Plan shall prejudice, compromise, release or otherwise affect any right or defence of any insurer in respect of an Insurance Policy or any insured in respect of an Insured Claim.
- (d) Notwithstanding anything to the contrary herein, in the case of Unaffected Secured Claims, at the election of the Applicants:
  - (i) the Applicants may satisfy any Unaffected Secured Claims by returning the applicable property of the Applicants that is secured as collateral for such Claims, in which case the Unaffected Secured Claim shall be deemed to be fully satisfied, provided that if the applicable Unaffected Secured Creditor asserts that there is a deficiency in the value of the applicable collateral relative the value of the Unaffected Secured Claim, such Creditor shall be

permitted to file such unsecured deficiency Claim as a Restructuring Period Claim prior to the Restructuring Period Claims Bar Date (as defined in the Claims Procedure Order) in accordance with the Claims Procedure Order, and such unsecured deficiency Claim shall be treated as an Affected Unsecured Claim for the purpose of this Plan, the Meetings Order and all related matters; and

- (ii) if the Applicants do not elect to satisfy an Unaffected Secured Claim in the manner described in section 3.5(d)(i), then such Unaffected Secured Claim shall continue unaffected as against the applicable Applicants following the Plan Implementation Date.

### **3.6 Disputed Distribution Claims**

Any Affected Creditor with a Disputed Distribution Claim shall not be entitled to receive any distribution hereunder with respect to such Disputed Distribution Claim unless and until such Claim becomes an Allowed Affected Claim. A Disputed Distribution Claim shall be resolved in the manner set out in the Claims Procedure Order. Distributions pursuant to section 3.4 shall be made in respect of any Disputed Distribution Claim that is finally determined to be an Allowed Affected Claim in accordance with the Claims Procedure Order.

### **3.7 Director/Officer Claims**

All Released Director/Officer Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without consideration on the Plan Implementation Date. Any Director/Officer Claim that is not a Released Director/Officer Claim will not be compromised, released, discharged, cancelled and barred. For greater certainty, any Claim of a Director or Officer against the Applicants for indemnification or contribution in respect of any Director/Officer Claim that is not otherwise covered by the Directors' Charge shall be treated for all purposes under the Plan as an Affected Unsecured Claim.

### **3.8 Extinguishment of Claims**

On the Plan Implementation Date, in accordance with the terms and in the sequence set forth in section 5.3 and in accordance with the provisions of the Sanction Order, the treatment of Affected Claims and all Released Claims, in each case as set forth herein, shall be final and binding on the Applicants, all Affected Creditors and any Person having a Released Claim (and their respective heirs, executors, administrators, legal personal representatives, successors and assigns), and all Affected Claims and all Released Claims shall be fully, finally, irrevocably and forever released, discharged, cancelled and barred, and the Applicants and the Released Parties shall thereupon have no further obligation whatsoever in respect of the Affected Claims or the Released Claims; *provided that* nothing herein releases the Applicants or any other Person from their obligations to make distributions in the manner and to the extent provided for in the Plan and *provided further* that such discharge and release of the Applicants shall be without prejudice to the right of a Creditor in respect of a Disputed Distribution Claim to prove such Disputed Distribution Claim in accordance with the Claims Procedure Order so that such Disputed Distribution Claim may become an Allowed Claim entitled to receive consideration under section 3.4 hereof.



### **3.9 Guarantees and Similar Covenants**

No Person who has a Claim under any guarantee, surety, indemnity or similar covenant in respect of any Claim that is compromised and released under the Plan or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of a Claim that is compromised under the Plan shall be entitled to any greater rights than the Person whose Claim is compromised under the Plan.

### **3.10 Set-Off**

The law of set-off applies to all Claims.

## **ARTICLE 4 PROVISIONS REGARDING DISTRIBUTIONS AND PAYMENTS**

### **4.1 Distributions of New Cline Common Shares and New Secured Debt**

- (a) Upon receipt of and in accordance with written instructions from the Monitor, the Indenture Trustee shall instruct CDS to, and CDS shall, block any further trading in the Secured Notes effective as of the close of business on the Business Day immediately prior to the Plan Implementation Date, all in accordance with the customary procedures of CDS.
- (b) The distribution mechanics with respect to the New Cline Common Shares and the Secured Noteholders' respective entitlements to the New Secured Debt in accordance with section 3.4(1) shall be agreed by the Applicants, Marret (on behalf of the Secured Noteholders) and the Monitor in writing, in consultation with the Indenture Trustee, if applicable, prior to the Plan Implementation Date. If it is deemed necessary by any of the Applicants, the Monitor or Marret (on behalf of the Secured Noteholders), any such party shall be entitled to seek an Order of the Court, in the Sanction Order or otherwise, providing advice and directions with respect to such distribution mechanics.
- (c) Except as may be otherwise agreed in writing by the Applicants and the Monitor, the Applicants and the Monitor shall have no liability or obligation in respect of deliveries of consideration issued under this Plan: (i) from Marret to any Secured Noteholder; (ii) from CDS, or its nominee, to CDS Participants, if applicable; (iii) from CDS Participants to beneficial holders of the Secured Notes, if applicable; or (iv) from the Indenture Trustee to beneficial holders of the Secured Notes, if applicable.

### **4.2 Distribution Mechanics with respect to the Unsecured Plan Entitlement**

- (a) Each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim, other than the Secured Noteholders and the Convenience Creditors, shall become entitled to its Individual Unsecured Plan Entitlement on the Plan Implementation Date without any further steps or actions by the Applicants, such Affected Unsecured Creditor or any other Person.

- (b) From and after the Plan Implementation Date, and until all Unsecured Plan Entitlement Proceeds have been distributed in accordance with the Plan, Cline shall maintain a register of the Individual Unsecured Plan Entitlements as well as the address and notice information set forth on each applicable Affected Unsecured Creditor's Notice of Claim or Proof of Claim. Any applicable Affected Unsecured Creditor whose address or notice information changes shall be solely responsible for notifying Cline of such change. Cline shall also record on the register the aggregate amount of any applicable Disputed Distribution Claims. Within ten (10) Business Days following the Plan Implementation Date, the Applicants shall notify each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim of such Affected Unsecured Creditor's Individual Unsecured Plan Entitlement as at the Plan Implementation Date.
- (c) On the Unsecured Plan Entitlement Date, Cline shall calculate the amount of the Unsecured Plan Entitlement Proceeds to be paid to each applicable Affected Unsecured Creditor with an Allowed Unsecured Claim. Cline shall also calculate the amount of the Unsecured Plan Entitlement Proceeds that are not to be distributed as a result of Disputed Distribution Claims that remain outstanding, if any. Cline shall then distribute the applicable amount by way of cheque sent by prepaid ordinary mail to each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim (other than the Secured Noteholders and the Convenience Creditors who, for greater certainty, shall have no Individual Unsecured Plan Entitlement). With respect to any portion of the Unsecured Plan Entitlement Proceeds that are reserved in respect of Disputed Distribution Claims, Cline shall segregate such amounts to and hold such amounts in the Disputed Distribution Claims Reserve.

#### **4.3 Distribution Mechanics with respect to Convenience Claims**

On the Plan Implementation Date, under the supervision of the Monitor, Cline shall pay each Convenience Creditor with an Allowed Convenience Claim the amount that is required to be paid to each such Creditor under this Plan by way of cheque sent by prepaid ordinary mail to the address set forth on such Convenience Creditor's Notice of Claim or Proof of Claim. Under the supervision of the Monitor, Cline shall also calculate the aggregate amount of Convenience Claims that are Disputed Distribution Claims on the Plain Implementation Date and shall segregate such amounts and hold such amounts in the Disputed Distribution Claims Reserve.

#### **4.4 Distribution Mechanics with respect to the WARN Act Plan Entitlement and the WARN Act Cash Payment**

- (a) Each WARN Act Plaintiff with an Allowed WARN Act Claim shall become entitled to its Individual WARN Act Plan Entitlement on the Plan Implementation Date without any further steps or actions by the Applicants, such WARN Act Plaintiffs, Class Action Counsel or any other Person.
- ~~(b) From and after the Plan Implementation Date, and until all WARN Act Plan Entitlement Proceeds have been distributed in accordance with the Plan, Cline shall maintain a register of the Individual WARN Act Plan Entitlements as well as the~~

~~address and notice information set forth on each applicable WARN Act Plaintiff's Proof of Claim. Any applicable WARN Act Plaintiff whose address or notice information changes shall be solely responsible for notifying Cline of such change. Cline shall also record on the register the aggregate amount of any applicable Disputed Distribution Claims. Within ten (10) Business Days following the Plan Implementation Date, the Applicants shall notify each WARN Act Plaintiff with an Allowed WARN Act Claim of such WARN Act Plaintiff's WARN Act Plan Entitlement as at the Plan Implementation Date.~~

- (b) ~~(c)~~ On the WARN Act Plan Entitlement Date, Cline shall calculate the amount of the WARN Act Plan Entitlement Proceeds to be paid to each applicable WARN Act Plaintiff with an Allowed WARN Act Claim. Cline shall also calculate the amount of the WARN Act Plan Entitlement Proceeds that are not to be distributed as a result of Disputed Distribution Claims that remain outstanding, if any. Cline shall then distribute the applicable amount by way of cheque sent by prepaid ordinary mail to each WARN Act Plaintiff with an Allowed WARN Act Claim. With respect to any portion of the WARN Act Plan Entitlement Proceeds that are reserved in respect of Disputed Distribution Claims, Cline shall segregate such amounts to and hold such amounts in the Disputed Distribution Claims Reserve. New Elk shall pay an amount equal to the WARN Act Plan Entitlement to Class Action Counsel for the benefit of the WARN Act Plaintiffs with Allowed WARN Act Claims. Class Action Counsel shall distribute such amounts among the applicable WARN Act Plaintiffs. New Elk shall also pay the Class Action Second Expense Reimbursement to Class Action Counsel on the WARN Act Plan Entitlement Date. The WARN Act Plan Entitlement payment and the Class Action Second Expense Reimbursement shall be paid to Class Action Counsel in a single check or wire transfer of \$120,000.
- (c) On the Plan Implementation Date, New Elk shall pay an amount equal to the WARN Act Cash Payment to Class Action Counsel for the benefit of WARN Act Plaintiffs with Allowed WARN Act Claims. Class Action Counsel shall distribute all such amounts among the applicable WARN Act Plaintiffs with Allowed WARN Act Claims. New Elk shall also pay the Class Action Initial Expense Reimbursement to Class Action Counsel on the Plan Implementation Date. The WARN Act Cash Payment and the Class Action Initial Expense Reimbursement shall be paid to Class Action Counsel in a single check or wire transfer of \$90,000.
- (d) The Applicants and the Monitor shall have no responsibility or liability whatsoever for determining the allocation of the WARN Act Plan Entitlement or the WARN Act Cash Payment among the WARN Act Plaintiffs or for ensuring payments from Class Action Counsel to the WARN Act Plaintiffs.

#### 4.5 Modifications to Distribution Mechanics

Subject to the consent of the Monitor, the Applicants shall be entitled to make such additions and modifications to the process for making distributions pursuant to the Plan (including the process for delivering and/or registering the New Cline Common Shares and/or the Secured Noteholders' respective entitlements to the New Secured Debt) as the Applicants deem necessary or desirable in

order to achieve the proper distribution and allocation of consideration to be distributed pursuant to the Plan, and such additions or modifications shall not require an amendment to the Plan or any further Order of the Court.

#### **4.6 Cancellation of Certificates and Notes**

Following completion of the steps in the sequence set forth in section 5.3, all debentures, notes (including the Secured Notes), certificates, agreements, invoices and other instruments evidencing Affected Claims, Secured Note Obligations or Equity Interests (other than the Existing New Elk Units owned by Cline and the North Central Shares owned by New Elk, which are unaffected by the Plan and which shall remain outstanding) will not entitle any holder thereof to any compensation or participation other than as expressly provided for in the Plan and will be cancelled and will be null and void. Notwithstanding the foregoing, if and to the extent the Indenture Trustee is required to transfer consideration issued pursuant to this Plan to the Secured Noteholders, then the Indentures shall remain in effect solely for the purpose of and to the extent necessary to: (i) allow the Indenture Trustee to make such distributions to the Secured Noteholders on the Initial Distribution Date and each subsequent Distribution Date (if applicable); and (ii) maintain all of the protections the Indenture Trustee enjoys pursuant to the Indentures, including its lien rights with respect to any distributions under the Plan, until all distributions are made to the Secured Noteholders hereunder. For greater certainty, any and all obligations of the Applicants and the Cline Companies (as guarantor, surety or otherwise) under and with respect to the Secured Notes and the Indentures, including the Secured Note Obligations, shall be extinguished on the Plan Implementation Date and shall not continue beyond the Plan Implementation Date.

#### **4.7 Currency**

Unless specifically provided for in the Plan or the Sanction Order, all monetary amounts referred to in the Plan shall be denominated in Canadian dollars and, for the purposes of distributions under the Plan, Claims shall be denominated in Canadian dollars and all payments and distributions provided for in the Plan shall be made in Canadian dollars. Any Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon exchange rate in effect at the Filing Date.

#### **4.8 Interest**

Interest shall not accrue or be paid on Affected Claims on or after the Filing Date, and no holder of an Affected Claim shall be entitled to interest accruing on or after the Filing Date.

#### **4.9 Allocation of Distributions**

All distributions made to Creditors pursuant to the Plan shall be allocated first towards the repayment of the principal amount in respect of such Creditor's Claim and second, if any, towards the repayment of all accrued but unpaid interest in respect of such Creditor's Claim.

#### **4.10 Treatment of Undeliverable Distributions**

If any Creditor's distribution under this Article 4 is returned as undeliverable (an "**Undeliverable Distribution**"), no further distributions to such Creditor shall be made unless and until the Applicant is notified by such Creditor of such Creditor's current address, at which time all such

distributions shall be made to such Creditor. All claims for Undeliverable Distributions must be made on or before the date that is six months following the final Distribution Date, after which date any entitlement with respect to such Undeliverable Distribution shall be forever discharged and forever barred, without any compensation therefor, notwithstanding any federal, state or provincial laws to the contrary, at which time any such Undeliverable Distributions shall be returned to Cline. Nothing contained in the Plan shall require the Applicant to attempt to locate any Person to whom a distribution is payable. No interest is payable in respect of an Undeliverable Distribution. Unless otherwise expressly agreed by the Monitor and the Applicants in writing, any distribution under the Plan on account of the Secured Notes shall be deemed made when delivered to Marret, CDS, the CDS Participants or the Indenture Trustee, as applicable, and any distribution under the Plan to the WARN Act Plaintiffs shall be deemed made when delivered to Class Action Counsel. With respect to distributions to be made by Class Action Counsel to WARN Act Plaintiffs with Allowed WARN Act Claims: (i) Class Action Counsel shall not be responsible or liable for any undeliverable distributions to WARN Act Plaintiffs who cannot be located based on deficiencies in the address information to be provided by the Applicants pursuant to section 3.4(3) hereof; and (ii) if any distributions to the WARN Act Plaintiffs are returned as undeliverable or the applicable WARN Act Plaintiff cannot reasonably be located, and no claim has been made for such distribution by such WARN Act Plaintiff within six months following the WARN Act Plan Entitlement Date, then Class Action Counsel shall be permitted to donate such amounts to a cy-près recipient in accordance with customary class action practice in the United States.

#### **4.11 Withholding Rights**

The Applicants, the Monitor and, to the extent CDS or the Indenture Trustee are required to transfer consideration to Secured Noteholders pursuant to this Plan, then CDS and the Indenture Trustee, shall be entitled to deduct and withhold from any consideration payable to any Person such amounts as the Applicants, the Monitor, CDS or the Indenture Trustee, as applicable, are required to deduct and withhold with respect to such payment under the Canadian Tax Act, or other Applicable Laws, or entitled to withhold under section 116 of the Canadian Tax Act or corresponding provision of provincial or territorial law. To the extent that amounts are so withheld or deducted, such withheld or deducted amounts shall be treated for all purposes hereof as having been paid to the Person in respect of which such withholding was made, provided that such amounts are actually remitted to the appropriate Taxing Authority. The Applicants, the Monitor CDS and/or the Indenture Trustee, as applicable, are hereby authorized to sell or otherwise dispose of such portion of any such consideration in their possession as is necessary to provide sufficient funds to the Applicants, the Monitor, CDS and/or the Indenture Trustee, as applicable, to enable them to comply with such deduction or withholding requirement or entitlement, and the Applicants, the Monitor, CDS and/or the Indenture Trustee, as applicable, shall notify the Person thereof and remit to such Person any unapplied balance of the net proceeds of such sale.

#### **4.12 Fractional Interests**

No fractional interests of New Cline Common Shares (“**Fractional Interests**”) will be issued under the Plan. Recipients of New Cline Common Shares will have their entitlements adjusted downwards to the nearest whole number of New Cline Common Shares to eliminate any such Fractional Interests and no compensation will be given for any Fractional Interests.

#### **4.13 Calculations**

All amounts of consideration to be received hereunder will be calculated to the nearest cent (\$0.01). All calculations and determination made by the Monitor and/or the Applicants and agreed to by the Monitor for the purposes of and in accordance with the Plan, including, without limitation, the allocation of consideration, shall be conclusive, final and binding upon the Affected Creditors and the Applicants.

### **ARTICLE 5 RECAPITALIZATION**

#### **5.1 Corporate Actions**

The adoption, execution, delivery, implementation and consummation of all matters contemplated under the Plan involving corporate actions of the Applicants will occur and be effective as of the Plan Implementation Date, and shall be deemed to be authorized and approved under the Plan and by the Court, where applicable, as part of the Sanction Order, in all respects and for all purposes without any requirement of further action by shareholders, directors or officers of the Applicants. All necessary approvals to take actions shall be deemed to have been obtained from the directors, officers or the shareholders of the Applicants, as applicable, including the deemed passing by any class of shareholders of any resolution or special resolution and any shareholders' agreement or agreement between a shareholder and another Person limiting in any way the right to vote shares held by such shareholder or shareholders with respect to any of the steps contemplated by the Plan shall be deemed to have no force or effect.

#### **5.2 Issuance of Plan Consideration**

##### **(1) New Cline Common Shares**

On the Plan Implementation Date, in the sequence set forth in section 5.3 and under the supervision of the Monitor, Cline shall issue the Agreed Number of New Cline Common Shares, and such New Cline Common Shares shall be allocated and distributed in the manner set forth in the Plan.

##### **(2) New Secured Debt**

On the Plan Implementation Date, in the sequence set forth in section 5.3 and under the supervision of the Monitor, (i) the New Credit Agreement shall become effective in accordance with its terms and the Applicants shall become bound to satisfy their obligations thereunder and (ii) the entitlements to the New Secured Debt shall be allocated among the Secured Noteholders in the manner and in the amounts set forth in the Plan.

##### **(3) Unsecured Plan Entitlement**

On the Plan Implementation Date, in the sequence set forth in section 5.3 and under the supervision of the Monitor, the Unsecured Plan Entitlements shall become effective and the Individual Unsecured Plan Entitlements shall be allocated in the manner and in the amounts set forth in the Plan.

**(4) Convenience Claim Payments**

On the Plan Implementation Date, in the sequence set forth in section 5.3 and under the supervision of the Monitor, Cline shall pay the applicable amounts to the Convenience Creditors with Allowed Convenience Claims and reserve the applicable amounts into the Disputed Claims Reserve in respect of Convenience Creditors with Disputed Distribution Claims, in each case in the manner and in the amounts set forth in the Plan.

**(5) WARN Act Plan Entitlement and WARN Act Cash Payment**

On the Plan Implementation Date, in the sequence set forth in section 5.3 and under the supervision of the Monitor; (i) the WARN Act Plan Entitlement shall become effective and the Individual WARN Act Plan Entitlements shall be allocated in the manner and in the amounts set forth in the Plan; and (ii) New Elk shall make the WARN Act Cash Payment to Class Action Counsel for the benefit of WARN Act Plaintiffs with Allowed WARN Act Claims.

**5.3 Sequence of Plan Implementation Date Transactions**

The following steps and compromises and releases to be effected in the implementation of the Plan shall occur, and be deemed to have occurred in the following order in five minute increments (unless otherwise noted), without any further act or formality on the Plan Implementation Date beginning at the Effective Time:

- (a) all Existing Options shall be cancelled and terminated without any liability, payment or other compensation in respect thereof;
- (b) the Stock Option Plans shall be terminated;
- (c) Cline shall issue to each Secured Noteholder its Secured Noteholder's Share of the New Cline Common Shares and the Applicants shall become bound to satisfy their obligations in respect of the New Secured Debt, all in accordance with section 3.4(1), in full consideration for the irrevocable, final and full compromise and satisfaction of the Secured Noteholders Allowed Claim and all Secured Noteholder Obligations;
- (d) simultaneously with step 5.3(c), and in accordance with sections 3.4(2) and 5.2(4), Cline shall pay to each Convenience Creditor with an Allowed Affected Unsecured Claim the amount in cash that it is entitled to receive pursuant to section 3.4(2)(b) in full consideration for the irrevocable, final and full compromise and satisfaction of such Convenience Creditor's Affected Unsecured Claim;
- (e) simultaneously with step 5.3(c), Cline shall reserve the applicable amount of cash in respect of Convenience Claims that are Disputed Distribution Claims and shall hold such cash in the Disputed Distribution Claims Reserve;
- (f) simultaneously with step 5.3(c), and in accordance with sections 3.4(2) and 5.2(3), each Affected Unsecured Creditor with an Allowed Affected Unsecured Claim that is not a Convenience Creditor or a Secured Noteholder shall become entitled to its Individual Unsecured Plan Entitlement (as it may be adjusted based on the final

determination of Disputed Distribution Claims in the manner set forth herein) in full consideration for the irrevocable, final and full compromise and satisfaction of such Affected Unsecured Creditor's Affected Unsecured Claim;

- (g) simultaneously with step 5.3(c), and in accordance with sections 3.4(3) and 5.2(5), and in full consideration for the irrevocable, final and full compromise and satisfaction of such WARN Act Claim: (i) each WARN Act Plaintiff with an Allowed WARN Act Claim shall become entitled to its Individual WARN Act Plan Entitlement (as it may be adjusted based on the final determination of Disputed Distribution Claims in the manner set forth herein) in full consideration for the irrevocable, final and full compromise and satisfaction of such WARN Act Claim and (ii) New Elk shall pay the WARN Act Cash Payment to Class Action Counsel for the benefit of the WARN Act Plaintiffs with Allowed WARN Act Claims, and simultaneously therewith, New Elk shall pay the Class Action Initial Expense Reimbursement;
- (h) the Articles shall be altered to, among other things, (i) consolidate the issued and outstanding Cline Common Shares (including, for the avoidance of doubt, Cline Common Shares that are Existing Cline Shares and New Cline Common Shares issued pursuant to Section 5.3(c)) on the basis of the Consolidation Ratio; and (ii) provide for such additional changes to the rights and conditions attached to the Cline Common Shares as may be agreed to by the Applicants, the Monitor and Marret (on behalf of the Secured Noteholders);
- (i) any fractional Cline Common Shares held by any holder of Cline Common Shares immediately following the consolidation of the Cline Common Shares referred to in section 5.3(h) shall be cancelled without any liability, payment or other compensation in respect thereof, and the Articles shall be altered as necessary to achieve such cancellation;
- (j) all Equity Interests (for greater certainty, not including any Cline Common Shares that remain issued and outstanding immediately following the cancellation of fractional interests in section 5.3(i)) shall be cancelled and extinguished without any liability, payment or other compensation in respect thereof and all Equity Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without any liability, payment or other compensation in respect thereof, provided that, notwithstanding anything to the contrary herein, the Existing New Elk Units shall not be cancelled or extinguished and shall remain outstanding and solely owned by Cline and the Existing North Central Shares shall not be cancelled or extinguished and shall remain outstanding and solely owned by New Elk;
- (k) Cline shall pay in cash all fees and expenses incurred by the Indenture Trustee, including its reasonable legal fees, in connection with the performance of its duties under the Indentures and the Plan;



- (l) subject only to section 4.6 hereof, all of the Secured Notes, the Indentures and all Secured Note Obligations shall be deemed to be fully, finally, irrevocably and forever compromised, released, discharged cancelled and barred;
- (m) all Affected Claims remaining after the step referred to in section 5.3(l) shall be fully, finally, irrevocably and forever compromised, released, discharged cancelled and barred without any liability, payment or other compensation in respect thereof; and
- (n) the releases set forth in Article 7 shall become effective.

The steps described in sub-sections (h) and (i) of this section 5.3 will be implemented pursuant to section 6(2) of the CCAA and shall constitute a valid alteration of the Articles pursuant to a court order under the BCBCA.

#### **5.4 Issuances Free and Clear**

Any issuance of any securities or other consideration pursuant to the Plan will be free and clear of any Encumbrances.

#### **5.5 Stated Capital**

The aggregate stated capital for purposes of the BCBCA for the New Cline Common Shares issued pursuant to the Plan will be as determined by the new board of directors of Cline appointed pursuant to the Sanction Order.

### **ARTICLE 6 PROCEDURE FOR DISTRIBUTIONS REGARDING DISPUTED DISTRIBUTION CLAIMS**

#### **6.1 No Distribution Pending Allowance**

An Affected Creditor holding a Disputed Distribution Claim will not be entitled to receive a distribution under the Plan in respect of such Disputed Distribution Claim or any portion thereof unless and until, and then only to the extent that, such Disputed Distribution Claim becomes an Allowed Claim.

#### **6.2 Disputed Distribution Claims**

- (a) On the Plan Implementation Date, under the supervision of the Monitor, an amount equal to each Disputed Distribution Claim of the Convenience Creditors shall be reserved and held by Cline, in the Disputed Distribution Claims Reserve, for the benefit of the Convenience Creditors with Allowed Convenience Claims, pending the final determination of the Disputed Distribution Claim in accordance with the Claims Procedure Order and the Plan.
- (b) On the Unsecured Plan Entitlement Date, distributions of Unsecured Plan Entitlement Proceeds in relation to a Disputed Distribution Claim of any Affected Unsecured Creditor (other than Convenience Creditors and Secured Noteholders)

in existence at the Unsecured Plan Entitlement Date will be reserved and held by Cline, in the Disputed Distribution Claims Reserve, for the benefit of the Affected Unsecured Creditors (other than Convenience Creditors and Secured Noteholders) with Allowed Affected Unsecured Claims until the final determination of the Disputed Distribution Claim in accordance with the Claims Procedure Order and the Plan.

- ~~(c) On the WARN Act Plan Entitlement Date, distributions of WARN Act Plan Entitlement Proceeds in relation to a Disputed Distribution Claim of WARN Act Plaintiff in existence at the Unsecured Plan Entitlement Date will be reserved and held by Cline, in the Disputed Distribution Claims Reserve, for the benefit of the WARN Act Plaintiffs with Allowed WARN Act Claims until the final determination of the Disputed Distribution Claim in accordance with the Claims Procedure Order and the Plan.~~
- (c) ~~(d)~~ To the extent that any Disputed Distribution Claim becomes an Allowed Affected Unsecured Claim in accordance with the Claims Procedure and it is a Convenience Claim, Cline shall distribute (on the next Distribution Date), under the supervision of the Monitor, the applicable amount of such Allowed Claim to the holder of such Allowed Claim in accordance with section 3.4(2)(b) hereof from the Disputed Distribution Claims Reserve.
- (d) ~~(e)~~ To the extent that any Disputed Distribution Claim becomes an Allowed Affected Unsecured Claim in accordance with the Claims Procedure Order and it is not a Convenience Claim or the Claim of a Secured Noteholder, the applicable Affected Unsecured Creditor shall become entitled to its applicable Individual Unsecured Plan Entitlement, and if this occurs after the Unsecured Plan Entitlement Date, Cline shall distribute (on the next Distribution Date) to the holder of such Allowed Claim an amount from the Disputed Distribution Claims Reserve equal to the applicable Affected Unsecured Creditor's Individual Unsecured Plan Entitlement.
- ~~(f) To the extent that any Disputed Distribution Claim becomes an Allowed WARN Act Claim in accordance with the Claims Procedure Order, the applicable WARN Act Plaintiff shall become entitled to its Individual WARN Act Plan Entitlement, and if this occurs after the WARN Act Plan Entitlement Date, Cline shall distribute (on the next Distribution Date) to the holder of such Allowed Claim an amount from the Disputed Distribution Claims Reserve equal to the applicable WARN Act Plaintiff's Individual WARN Act Plan Entitlement.~~
- (e) ~~(g)~~ At any applicable time, Cline shall be permitted, with the consent of the Monitor, to release and retain for itself any amounts in the Disputed Distribution Claims Reserve that were reserved to pay Convenience Claims that have been definitively not been Allowed in accordance with the Claims Procedure Order.
- (f) ~~(h)~~ Prior to any Distribution Date and under the supervision of the Monitor, Cline shall re-calculate the Individual Unsecured Plan Entitlements and the Individual WARN Act Plan Entitlements of the Affected Unsecured Creditors (other than

Convenience Creditors and Secured Noteholders) and WARN Act Plaintiffs having ~~Distribution Claims~~, in each case to reflect any applicable Disputed Distribution Claims that were definitively not Allowed, and such Creditors shall become entitled to their re-calculated Individual Unsecured Plan Entitlements ~~and the Individual WARN Act Plan Entitlements~~, as applicable. If this occurs after the Unsecured Plan Entitlement Date ~~or the WARN Act Plan Entitlement Date~~, as applicable, Cline shall (on the next Distribution Date) distribute to such Creditors the applicable amounts from the Disputed Distribution Claims Reserve as are necessary to give effect to their re-calculated Individual Unsecured Plan Entitlements ~~and the Individual WARN Act Plan Entitlements~~, as applicable.

- (g) ~~(i)~~ On the date that all Disputed Distribution Claims have been finally resolved in accordance with the Claims Procedure Order, Cline shall, with the consent of the Monitor, release all remaining cash, if any, from the Disputed Distribution Claims Reserve and shall be entitled to retain such cash.

## ARTICLE 7 RELEASES

### 7.1 Plan Releases

On the Plan Implementation Date, in accordance with the sequence set forth in section 5.3, (i) the Applicants, the Applicants' employees and contractors, the Directors and Officers, ~~the Cline Companies~~ and (ii) the Monitor, the Monitor's counsel, the Indenture Trustee, Marret (on behalf of the Secured Noteholders and in its individual corporate capacity), the Secured Noteholders, the Company Advisors, the Noteholder Advisors and each and every present and former shareholder, affiliate, subsidiary, director, officer, member, partner, employee, auditor, financial advisor, legal counsel and agent of any of the foregoing Persons (each of the Persons named in (i) or (ii) of this section 7.1, in their capacity as such, being herein referred to individually as a "**Released Party**" and all referred to collectively as "**Released Parties**") shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature, including claims for contribution or indemnity which any Creditor or other Person may be entitled to assert, whether known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan, that constitute or are in any way relating to, arising out of or in connection with any Claims, any Director/Officer Claims and any indemnification obligations with respect thereto, the Secured Notes and related guarantees, the Indentures, the Secured Note Obligations, the Equity Interests, the Stock Option Plans, the New Cline Common Shares, the New Secured Debt, the New Credit Agreement, the Unsecured Plan Entitlement, the WARN Act Plan Entitlement, any payments to Convenience Creditors, the business and affairs of the Applicants whenever or however conducted, the administration and/or management of the Applicants, the Recapitalization, the Plan, the CCAA Proceeding, the Chapter 15 Proceeding or any document, instrument, matter or transaction involving any of the Applicants or the Cline Companies taking

place in connection with the Recapitalization or the Plan (referred to collectively as the “**Released Claims**”), and all Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, all to the fullest extent permitted by Applicable Law; provided that nothing herein will waive, discharge, release, cancel or bar (x) the right to enforce the Applicants’ obligations under the Plan, (y) the Applicants from or in respect of any Unaffected Claim or any Claim that is not permitted to be released pursuant to section 19(2) of the CCAA, or (z) any Director or Officer from any Director/Officer Claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

## **7.2 Limitation on Insured Claims**

Notwithstanding anything to the contrary in section 7.1, Insured Claims shall not be compromised, released, discharged, cancelled or barred by the Plan, provided that from and after the Plan Implementation Date, any Person having an Insured Claim shall be irrevocably limited to recovery in respect of such Insured Claim solely from the proceeds of the applicable Insurance Policies, and Persons with an Insured Claim shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries in respect thereof from the Applicants, any of the Cline Companies, any Director or Officer or any other Released Party, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies.

## **7.3 Injunctions**

All Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all Released Claims, from (i) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property; (iii) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or (iv) taking any actions to interfere with the implementation or consummation of the Plan; provided, however, that the foregoing shall not apply to the enforcement of any obligations under the Plan. For greater certainty, the provisions of this section 7.3 shall apply to Insured Claims in the same manner as Released Claims, except to the extent that the rights of such Persons to enforce such Insured Claims against an insurer in respect of an Insurance Policy are expressly preserved pursuant to section 3.5(c) and/or section 7.2, and provided further that, notwithstanding the restrictions on making a claim that are set forth in sections 3.5(c) and 7.2, any claimant in respect of an Insured Claim that was duly filed with the Monitor by the Claims Bar Date shall be permitted to file a statement of claim in respect thereof to the extent necessary solely for the purpose of preserving such claimant’s ability to pursue such Insured Claim against an insurer in respect of an Insurance Policy in the manner authorized pursuant to section 3.5(c) and/or section 7.2.

## **7.4 Applicants’ Release of Class Action Counsel**

On the Plan Implementation Date, any and all claims of the Applicants against Class Action Counsel, Lankenau & Miller LLP and/or Himelfarb Proszanski and any other counsel of record for the WARN Act Plaintiffs in the WARN Act Class Action, in their capacity as counsel to

the WARN Act Plaintiffs, shall be released, discharged, cancelled and barred automatically and without any further act or formality, provided that nothing herein shall waive, discharge, release, cancel or bar the obligations of Class Action Counsel to make any distributions to WARN Act Plaintiffs with Allowed WARN Act Claims that they are required to make pursuant to the Plan.

## ARTICLE 8 COURT SANCTION

### 8.1 Application for Sanction Order

If the Required Majorities of the Affected Creditors in each Voting Class approve the Plan, the Applicants shall apply for the Sanction Order on or before the date set for the hearing of the Sanction Order or such later date as the Court may set.

### 8.2 Sanction Order

The Applicants shall seek a Sanction Order that, among other things:

- (a) declares that (i) the Plan has been approved by the Required Majorities of Affected Creditors in each Voting Class in conformity with the CCAA; (ii) the activities of the Applicants have been in reasonable compliance with the provisions of the CCAA and the Orders of the Court made in this CCAA Proceeding in all respects; (iii) the Court is satisfied that the Applicants have not done or purported to do anything that is not authorized by the CCAA; and (iv) the Plan and the transactions contemplated thereby are fair and reasonable;
- (b) declares that as of the Effective Time, the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby are approved pursuant to section 6 of the CCAA, binding and effective as herein set out upon and with respect to the Applicants, all Affected Creditors, the Directors and Officers, any Person with a Director/Officer Claim, the Released Parties and all other Persons named or referred to in or subject to Plan;
- (c) declares that the steps to be taken and the compromises and releases to be effective on the Plan Implementation Date are deemed to occur and be effected in the sequential order contemplated by section 5.3 on the Plan Implementation Date, beginning at the Effective Time;
- (d) declare that the releases effected by this Plan shall be approved and declared to be binding and effective as of the Plan Implementation Date upon all Affected Creditors and all other Persons affected by this Plan and shall enure to the benefit of such Persons;
- (e) declares that, subject to performance by the Applicants of their obligations under the Plan and except as provided in the Plan, all obligations, agreements or leases to which any of the Applicants or Cline Companies is a party on the Plan Implementation Date shall be and remain in full force and effect, unamended, as at the Plan Implementation Date and no party to any such obligation or agreement shall on or following the Plan Implementation Date, accelerate, terminate, refuse to

renew, rescind, refuse to perform or otherwise disclaim or resiliate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of any such obligation or agreement, by reason:

- (i) of any event which occurred prior to, and not continuing after, the Plan Implementation Date, or which is or continues to be suspended or waived under the Plan, which would have entitled such party to enforce those rights or remedies;
- (ii) that the Applicants have sought or obtained relief or have taken steps as part of the Plan or under the CCAA or Chapter 15;
- (iii) of any default or event of default arising as a result of the financial condition or insolvency of the Applicants;
- (iv) of the effect upon the Applicants of the completion of any of the transactions contemplated by the Plan; or
- (v) of any compromises, settlements, restructurings, recapitalizations or reorganizations effected pursuant to the Plan,

and declares that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any non-competition agreement or obligation, provided that such agreement shall terminate or expire in accordance with the terms thereof or as otherwise agreed by the Applicants and the applicable Persons;

- (f) authorizes the Monitor to perform its functions and fulfil its obligations under the Plan to facilitate the implementation of the Plan;
- (g) subject to payment of any amounts secured thereby, declares that each of the Charges shall be terminated, discharged and released upon a filing of the Monitor of a certificate confirming the termination of the CCAA Proceedings;
- (h) provides advice and directions with respect to the distribution mechanics in respect of the New Cline Common Shares and the Secured Noteholders' respective entitlements to the New Secured Debt, as both are referred to in section 4.1(b);
- (i) declares that the Applicants and the Monitor may apply to the Court for advice and direction in respect of any matters arising from or under the Plan; and
- (j) declares the Persons to be appointed to the boards of directors of the Applicants on the Plan Implementation Date shall be the Persons named on a certificate to be filed with the Court by the Applicants prior to the Plan Implementation Date, provided that such certificate and the Persons listed thereon shall be subject to the prior consent of Marret (on behalf of the Secured Noteholders).

**ARTICLE 9**  
**CONDITIONS PRECEDENT AND IMPLEMENTATION**

**9.1 Conditions Precedent to Implementation of the Plan**

The implementation of the Plan shall be conditional upon satisfaction of the following conditions prior to or at the Effective Time, each of which is for the benefit of the Applicants and may be waived only by the Applicants, provided that the conditions in paragraphs (a), (b) and (c) of this section 9.1 shall also be for the benefit of Marret (on behalf of the Secured Noteholders) and may be waived only by the mutual agreement of both the Applicants and Marret:

- (a) all definitive agreements in respect of the Recapitalization and the new (or amended) Articles, by-laws and other constating documents, and all definitive legal documentation in connection with all of the foregoing shall be in a form satisfactory to the Applicants and Marret (on behalf of the Secured Noteholders);
- (b) the New Credit Agreement governing the New Secured Debt, together with all guarantees and security agreements contemplated thereunder, shall have been entered into and become effective, subject only to the implementation of the Plan, and all required filings related to the security as contemplated in the security agreements shall have been made;
- (c) the terms of the New Cline Common Shares and the New Credit Agreement shall be satisfactory to the Applicants and Marret (on behalf of the Secured Noteholders);
- (d) there shall not be in effect any preliminary or final decision, order or decree by a Governmental Entity, no application shall have been made to any Governmental Entity, and no action or investigation shall have been announced, threatened or commenced by any Governmental Entity, in consequence of or in connection with the Recapitalization or the Plan that restrains, impedes or prohibits (or if granted could reasonably be expected to restrain, impede or inhibit), the Recapitalization or the Plan or any part thereof or requires or purports to require a variation of the Recapitalization or the Plan;
- (e) the Plan shall have been approved by the Required Majorities of each Voting Class;
- (f) all orders made and judgments rendered by any competent court of law, and all rulings and decrees of any competent regulatory body, agent or official in relation to the CCAA Proceeding, the Chapter 15 Proceeding, the Recapitalization or the Plan shall be satisfactory to the Applicants, including all court orders made in relation to the Recapitalization, and without limiting the generality of the foregoing:
  - (i) the Sanction Order shall have been made on terms acceptable to the Applicants, and it shall have become a Final Order;
  - (ii) the Sanction Order shall have been recognized and deemed binding and enforceable in the United States pursuant to an Order of the US Court in the

Chapter 15 Proceeding on terms acceptable to the Applicants, and such Order shall have become a Final Order; and

- (iii) any other Order deemed necessary by the Applicants for the purpose of implementing the Recapitalization shall have been made on terms acceptable to the Applicants, and any such Order shall have become a Final Order;
- (g) all material agreements, consents and other documents relating to the Recapitalization and the Plan shall be in form and in content satisfactory to the Applicants;
- (h) any and all court-imposed charges on any assets, property or undertaking of the Applicants shall have been discharged as at the Effective Time on terms acceptable to the Applicants, acting reasonably;
- (i) all Material filings under Applicable Laws shall have been made and any Material regulatory consents or approvals that are required in connection with the Recapitalization shall have been obtained and, in the case of waiting or suspensory periods, such waiting or suspensory periods shall have expired or been terminated;
- (j) all securities of the Applicants, when issued and delivered, shall be duly authorized, validly issued and fully paid and non-assessable and the issuance thereof shall be exempt from all prospectus and registration requirements of Applicable Laws;
- (k) all necessary filings in respect of the alteration of the Articles shall have been made on terms providing that they will become effective in accordance with and at the times of section 5.3(h) and 5.3(i); and
- (l) all fees and expenses owing to the Company Advisors and the Noteholder Advisors as of the Plan Implementation Date shall have been paid, and the Applicants shall be satisfied that adequate provision has been made for any fees and expenses due or accruing due to the Company Advisors and the Noteholder Advisors from and after the Plan Implementation Date.

## **9.2 Monitor's Certificate**

Upon delivery of written notice from the Company Advisors (on behalf of the Applicants) of the satisfaction or waiver of the conditions set out in section 9.1, the Monitor shall forthwith deliver to the Company Advisors a certificate stating that the Plan Implementation Date has occurred and that the Plan is effective in accordance with its terms and the terms of the Sanction Order. As soon as practicable following the Plan Implementation Date, the Monitor shall file such certificate with the Court and with the US Court.



**ARTICLE 10  
GENERAL**

**10.1 Binding Effect**

The Plan will become effective on the Plan Implementation Date. On the Plan Implementation Date:

- (a) the treatment of Affected Claims and Released Claims under the Plan shall be final and binding for all purposes and shall be binding upon and enure to the benefit of the Applicants, all Affected Creditors, any Person having a Released Claim and all other Persons directly or indirectly named or referred to in or subject to Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns;
- (b) all Affected Claims shall be forever discharged and released;
- (c) all Released Claims shall be forever discharged and released;
- (d) each Affected Creditor, each Person holding a Released Claim and each of the Existing Shareholders shall be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety; and
- (e) each Affected Creditor and each Person holding a Released Claim shall be deemed to have executed and delivered to the Applicants and to the Released Parties, as applicable, all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

**10.2 Waiver of Defaults**

From and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of the Applicants then existing or previously committed by any of the Applicants, or caused by any of the Applicants, by any of the provisions in the Plan or steps or transactions contemplated in the Plan or the Recapitalization, or any non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, indenture, note, lease, guarantee, agreement for sale or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and any of the Applicants, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith shall be deemed to have been rescinded and of no further force or effect, provided that nothing shall be deemed to excuse the Applicants from performing their obligations under the Plan or be a waiver of defaults by any of the Applicants under the Plan and the related documents.

**10.3 Deeming Provisions**

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

#### **10.4 Non-Consummation**

The Applicants reserve the right to revoke or withdraw the Plan at any time prior to the Plan Implementation Date. If the Applicants revoke or withdraw the Plan, or if the Sanction Order is not issued or if the Plan Implementation Date does not occur, (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against any of the Applicants or any other Person; (ii) prejudice in any manner the rights of the Applicants or any other Person in any further proceedings involving any of the Applicants; or (iii) constitute an admission of any sort by any of the Applicants or any other Person.

#### **10.5 Modification of the Plan**

- (a) The Applicants reserve the right, at any time and from time to time, to amend, restate, modify and/or supplement the Plan, provided that any such amendment, restatement, modification or supplement must be contained in a written document and (i) if made prior to or at the Meetings, communicated to the Affected Creditors prior to or at the Meetings; and (ii) if made following the Meetings, approved by the Court following notice to the Affected Creditors.
- (b) Notwithstanding section 10.5(a), any amendment, restatement, modification or supplement may be made by the Applicants with the consent of the Monitor and Marret (on behalf of the Secured Noteholders), without further Court Order or approval, provided that it concerns a matter which, in the opinion of the Applicants, acting reasonably, is of an administrative nature required to better give effect to the implementation of the Plan and the Sanction Order or to cure any errors, omissions or ambiguities and is not materially adverse to the financial or economic interests of the Affected Creditors.
- (c) Any amended, restated, modified or supplementary plan or plans of compromise or arrangement filed with the Court and, if required by this section, approved by the Court, shall, for all purposes, be and be deemed to constitute the Plan.
- (d) Notwithstanding anything to the contrary herein or in the Plan, if the requisite quorum is not present at the WARN Act Plaintiffs Meeting or if it is determined in accordance with the Claims Procedure Order that there are no Voting Claims in the WARN Act Plaintiffs Class, the Applicants shall be entitled, but not required, to amend the Plan without further Order of the Court to combine the WARN Act Plaintiffs Class with the Affected Unsecured Creditors Class on such terms as may be set forth in such amended Plan (including on the basis that the WARN Act Plan Entitlement shall not be payable under the Plan), in which case the Applicants shall have no further obligation to hold the WARN Act Plaintiffs Meeting or otherwise seek a vote of the WARN Act Plaintiffs Class with respect to the resolution to approve the Plan or any other matter.

- (e) Without limiting the generality of anything in this section 10.5, if (i) the Plan is not approved by the Required Majorities of the Affected Unsecured Creditors Class, or (ii) the Applicants determine, in their discretion, that the Plan may not be approved by the Required Majorities of the Affected Unsecured Creditors Class, then the Applicants are permitted, without any further Order, to file an amended and restated Plan (the “**Alternate Plan**”) with the attributes described on Schedule B to the Plan and to proceed with a meeting of the Secured Noteholders Class for the purpose of considering and voting on the resolution to approve the Alternate Plan, in which case the Applicants and the Monitor will have no obligation whatsoever to proceed with the Unsecured Creditors Meeting or the WARN Act Plaintiff’s Meeting.
- (f) Notwithstanding the references herein to the New Credit Agreement and the New Secured Debt Agent, the Applicants and Marret, with the consent of the Monitor, shall be entitled to modify the form and structure of the New Secured Debt and the manner in which the New Secured Debt is held by the Secured Noteholders to allow such debt to be issued as secured notes or in such other form as may be agreed by the Applicants and Marret with the consent of the Monitor, provided that such modifications do not affect the material economic attributes of the New Secured Debt. In the event of the foregoing, no formal amendment to the Plan (or the Alternate Plan, as applicable) shall be required and the steps and provisions of this Plan (and any Alternate Plan) pertaining to the New Secured Debt shall be read so as to give effect to such modified form and structure of the New Secured Debt.

#### **10.6 Marret and the Secured Noteholders**

For the purposes of the Plan, so long as Marret exercises sole investment discretion and control over the all of the Secured Noteholders, then the Applicants, the Company Advisors, the Monitor, the Indenture Trustee, CDS and all other interested parties with respect to the Plan shall be entitled to rely on confirmation from Marret or the Noteholder Advisors that the Secured Noteholders have agreed to, waived, consented to or approved a particular matter, even if such confirmation would otherwise require the action or agreement of the Indenture Trustee.

#### **10.7 Paramountcy**

From and after the Effective Time on the Plan Implementation Date, any conflict between:

- (a) the Plan or any Order in the CCAA Proceeding or the Chapter 15 Proceeding; and
- (b) the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, note, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between one or more of the Affected Creditors and the Applicants as at the Plan Implementation Date or the notice of articles, articles or bylaws of the Applicants at the Plan Implementation Date;

will be deemed to be governed by the terms, conditions and provisions of the Plan and the applicable Order, which shall take precedence and priority, provided that any settlement agreement executed by the Applicants and any Person asserting a Claim or a Director/Officer Claim that was entered into from and after the Filing Date shall be read and interpreted in a manner that assumes such settlement agreement is intended to operate congruously with, and not in conflict with, the Plan.

#### **10.8 Severability of Plan Provisions**

If, prior to the Sanction Date, any term or provision of the Plan is held by the Court to be invalid, void or unenforceable, the Court, at the request of the Applicants and with the consent of the Monitor, shall have the power to either (a) sever such term or provision from the balance of the Plan and provide the Applicants with the option to proceed with the implementation of the balance of the Plan, (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted; or (c) withdraw the Plan. Provided that the Applicants proceed with the implementation of the Plan, then notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

#### **10.9 Responsibilities of the Monitor**

FTI Consulting Canada Inc. is acting in its capacity as Monitor in the CCAA Proceeding and as foreign representative in the Chapter 15 Proceeding with respect to the Applicants, the CCAA Proceedings and this Plan and not in its personal or corporate capacity, and will not be responsible or liable for any obligations of the Applicants under the Plan or otherwise.

#### **10.10 Different Capacities**

Persons who are affected by the Plan may be affected in more than one capacity. Unless expressly provided to the contrary herein, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not affect such Person in any other capacity, unless expressly agreed by the Applicants and the Person in writing or unless its Claims overlap or are otherwise duplicative.

#### **10.11 Notices**

Any notice or other communication to be delivered hereunder must be in writing and reference the Plan and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail or by facsimile or email addressed to the respective parties as follows:

If to the Applicants:

c/o Cline Mining Corporation  
161 Bay Street  
26th Floor  
Toronto, Ontario, Canada  
M5J 2S1

Attention: Matthew Goldfarb  
Fax: (416) 572-2094  
Email: mgoldfarb@clinemining.com

with a copy to:

Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7

Attention: Robert Chadwick / Logan Willis  
Fax: (416) 979-1234  
Email: rchadwick@goodmans.ca / lwillis@goodmans.ca

If to Marret or the Secured Noteholders:

Marret Asset Management Inc.  
200 King Street West, Suite 1902  
Toronto, Ontario M5H 3T4

Attention: Dorothea Mell  
Fax: (647) 439-6471  
Email: dmell@marret.com

with a copy to:

Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto, Ontario M5V 3J7

Attention: Jay A. Swartz  
Fax: (416) 863-5520  
Email: jswartz@dwpv.com

If to an Affected Creditor (other than Marret or the Secured Noteholders), to the mailing address, facsimile address or email address provided on such Affected Creditor's Notice of Claim or Proof of Claim;

If to the Monitor:

FTI Consulting Canada Inc.

TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M5K 1G8

Attention: Pamela Luthra  
Fax: (416) 649-8101  
Email: cline@fticonsulting.com

with a copy to:

Osler, Hoskin & Harcourt LLP  
100 King Street West,  
Toronto, Ontario M5X 1B8

Attention: Marc Wasserman / Michael De Lellis  
Fax: 416.862.6666  
Email: mwasserman@osler.com / mdelellis@osler.com,

or to such other address as any party may from time to time notify the others in accordance with this section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed or sent before 5:00 p.m. (Toronto time) on such day; otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

#### **10.12 Further Assurances**

Each of the Persons directly or indirectly named or referred to in or subject to Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of the Plan and to give effect to the transactions contemplated herein.

**DATED** as of the 3<sup>rd</sup> 20<sup>th</sup> day of ~~December, 2014.~~ January, 2015.

## SCHEDULE A

### SUMMARY OF TERMS OF NEW SECURED DEBT

- \$55,000,000 aggregate principal amount.
- Cline is the borrower and New Elk and North Central are the guarantors of the New Secured Debt.
- 7-year term.
- Interest equal to the aggregate of:
  - (i). base interest at a rate of 0.01% per annum payable annually; and
  - (ii). additional interest payable quarterly equal to 5% of the consolidated operating revenues of the Applicants for the preceding fiscal quarter, provided that such additional interest shall only be applicable if the consolidated operating revenues of the Applicants exceed \$1.25 million in such preceding fiscal quarter, and provided further that such additional interest shall not exceed 11.99% per annum of the principal amount of the New Secured Debt in any year.
- Subject to 10.5(f) of the Plan, the New Secured Debt will be governed by (i) the New Credit Agreement between the Applicants and Marret (as administrative and collateral agent for the Secured Noteholders) and (ii) guarantees of the New Secured Debt executed by New Elk and North Central, in each case in form and in content satisfactory to the Applicants and Marret.
- The New Credit Agreement will contain a prepayment premium equal to 10% of the aggregate principal amount of the New Secured Debt, payable if the New Secured Debt is repaid or accelerated at any time prior to its stated maturity.
- Other than as set out herein or as may be agreed by the Applicants and Marret in writing, the material financial terms of the Credit Agreement are to be substantially similar to the terms of the trust indenture in respect of the 2011 Notes.
- The New Secured Debt will be secured by a first-ranking security interest in all or substantially all of the assets and property of Cline, New Elk and North Central.
- Each of the Secured Noteholders will be entitled to its Secured Noteholder's Share of the New Secured Debt, as described in the Plan.
- Marret Asset Management Inc. will act as the administrative and collateral agent in respect of the New Secured Debt and the corresponding security on behalf of the Secured Noteholders.

Schedule B

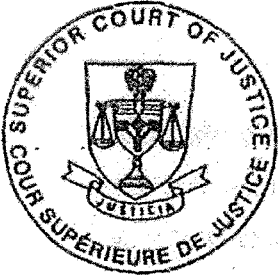
**ALTERNATE PLAN – SUMMARY OF TERMS**

- All unsecured Claims and all WARN Act Claims:
  - (i). are treated as Unaffected Claims;
  - (ii). are not entitled to vote or attend any creditors' meeting in respect of the Alternate Plan, including the Meeting of Secured Noteholders Class;
  - (iii). receive no distributions or consideration of any kind whatsoever under the Alternate Plan.
- The only Affected Creditors under the Alternate Plan are the Secured Noteholders.
- The only Voting Class under the Alternate Plan is the Secured Noteholders Class.
- The New Cline Common Shares, the New Secured Debt, the Unsecured Plan Entitlement, the payments to Convenience Creditors and the WARN Act Plan Entitlement will not be distributed or established or become payable under the Alternate Plan.
- The Alternate Plan would provide that all assets and property of the Applicants will be transferred to an entity designated by the Secured Noteholders and/or Marret (on behalf of the Secured Noteholders), free and clear of all claims and encumbrances, in exchange for the cancellation of the Secured Notes and a release of all Secured Noteholder Obligations.

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## Appendix "B"



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

THE HONOURABLE REGIONAL ) TUESDAY, THE 27<sup>TH</sup>  
SENIOR JUSTICE MORAWETZ ) DAY OF JANUARY, 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**

**PLAN SANCTION ORDER**

**THIS MOTION** made by Cline Mining Corporation ("Cline"), New Elk Coal Company LLC ("New Elk") and North Central Energy Company ("North Central" and, together with Cline and New Elk, the "Applicants") for an Order (the "Plan Sanction Order"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), sanctioning the Amended and Restated Plan of Compromise and Arrangement dated January 20, 2015, which is attached as Schedule "A" hereto (and as it may be further amended, varied or supplemented from time to time in accordance with the terms thereof, the "Plan"), was heard on January 27, 2015 at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion, the Affidavit of Matthew Goldfarb sworn January 21, 2015 (the "Goldfarb Affidavit"), filed, the second report (the "Second Report") and third report (the "Third Report") of FTI Consulting Canada Inc., in its capacity as monitor of the Applicants (the "Monitor"), filed, and on hearing the submissions of counsel for each of the Applicants, the Monitor, Marret Asset Management Inc. (on behalf of the Applicants' secured noteholders), and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service, filed.

**DEFINED TERMS**

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Plan Sanction Order shall have the meanings ascribed to such terms in the Plan and the Meetings Order granted by this Court on December 3, 2014 (the “**Meetings Order**”), as applicable.

**SERVICE, NOTICE AND MEETING**

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record in support of this motion, the Second Report and the Third Report be and are hereby abridged and validated so that the motion is properly returnable today and service upon any interested party other than those parties served is hereby dispensed with.
3. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service and delivery of the Meetings Order, the Information Package and the Plan to all Persons upon which notice, service and delivery was required, and that the Meetings were duly convened and held on January 21, 2015, in conformity with the CCAA and the Meetings Order.

**SANCTION OF THE PLAN**

4. **THIS COURT DECLARES** that the relevant Voting Classes of Affected Creditors of the Applicants are the Secured Noteholders Class, the Affected Unsecured Creditors Class and the WARN Act Plaintiffs Class and that the Plan has been approved by the Required Majorities of Affected Creditors in each Voting Class, as required by the Meetings Order, and in conformity with the CCAA.
5. **THIS COURT DECLARES** that the activities of the Applicants have been in compliance with the provisions of the CCAA, the Initial Order granted by this Court on December 3, 2014 (the “**Initial Order**”), the Claims Procedure Order granted by this Court on December 3, 2014 (the “**Claims Procedure Order**”) and the Meetings Order (together with the Initial Order and the Claims Procedure Order, the “**Orders**”), the Court is satisfied that the Applicants have not done or purported to do anything that is not

authorized by the CCAA and the Plan and the transactions contemplated thereby are fair and reasonable.

6. **THIS COURT ORDERS AND DECLARES** that the Plan is hereby sanctioned and approved pursuant to section 6 of the CCAA.

#### **PLAN IMPLEMENTATION**

7. **THIS COURT ORDERS** that each of the Applicants and the Monitor are authorized and directed to take all steps and actions, and do all things, necessary or appropriate to implement the Plan in accordance with its terms and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, deliveries, allocations and agreements contemplated by the Plan. All payments and distributions to be made by the Applicants to the WARN Act Plaintiffs pursuant to the Plan shall be made to Class Action Counsel, and Class Action Counsel shall allocate and distribute such payments in accordance with the Plan. Neither the Applicants nor the Monitor shall incur any liability as a result of acting in accordance with the terms of the Plan and the Plan Sanction Order.
8. **THIS COURT ORDERS AND DECLARES** that the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby shall be deemed to be implemented, binding and effective in accordance with the provisions of the Plan as of the Plan Implementation Date, and the steps required to implement the Plan, including without limitation the release of all Affected Claims, Released Director/Officer Claims and Released Claims in accordance with the terms of the Plan, shall be deemed to occur and to take effect in the sequential order and at the times contemplated in section 5.3 of the Plan, without any further act or formality, on the Plan Implementation Date, beginning at the Effective Time.
9. **THIS COURT ORDERS** that, pursuant to section 6(2) of the CCAA, the Articles of Cline shall be amended on the Plan Implementation Date in accordance with the provisions of, and as required to implement, the Plan. Any fractional Cline Common Shares held by any holder of Cline Common Shares immediately following the

consolidation of the Cline Common Shares referred to in section 5.3(h) of the Plan shall be cancelled without any liability, payment or other compensation in respect thereof and all Equity Interests (for greater certainty, not including any Cline Common Shares that remain issued and outstanding immediately following the cancellation of fractional interests pursuant to section 5.3(i) of the Plan) shall be cancelled without any liability, payment or other compensation in respect thereof.

10. **THIS COURT ORDERS** that upon the satisfaction or waiver of the conditions precedent set out in section 9.1 of the Plan in accordance with the terms of the Plan, as confirmed by the Applicants and Marret or their counsel in writing, the Monitor is authorized and directed to deliver to counsel to the Applicants a certificate substantially in the form attached hereto as Schedule "B" (the "**Monitor's Certificate**") signed by the Monitor, certifying that the Plan Implementation Date has occurred and that the Plan is effective in accordance with its terms and the terms of the Plan Sanction Order. The Monitor shall file the Monitor's Certificate with this Court and the U.S. Court promptly following the Plan Implementation Date.
11. **THIS COURT ORDERS** that, subject to the payment of any amounts secured by the Charges that remain owing on the Plan Implementation Date, if any, each of the Charges shall be terminated, discharged and released on the Plan Implementation Date.

#### **EFFECT OF PLAN AND CCAA ORDERS**

12. **THIS COURT ORDERS** that, from and after the Plan Implementation Date, the Plan shall inure to the benefit of and be binding upon the Applicants, the Released Parties, the Affected Creditors, the Directors and Officers, any Person with a Director/Officer Claim or a Released Claim, and all other Persons and parties named or referred to in or affected by the Plan, including, without limitation, their respective heirs, administrators, executors, legal representatives, successors, and assigns.
13. **THIS COURT ORDERS** that, without limiting the provisions of the Claims Procedure Order, any Person that did not file a Proof of Claim, a Notice of Dispute or a Notice of Dispute of Revision or Disallowance, as applicable, by the Claims Bar Date, the

Restructuring Period Claims Bar Date or such other bar date provided for in the Claims Procedure Order, as applicable, whether or not such Person received direct notice of the claims process established by the Claims Procedure Order, shall be and is hereby forever barred from making any Claim or any Director/Officer Claim and shall not be entitled to any consideration under the Plan, and such Person's Claim or Director/Officer Claim, as applicable, shall be and is hereby forever barred and extinguished.

14. **THIS COURT ORDERS AND DECLARES** that, subject to performance by the Applicants of their obligations under the Plan and except as provided in the Plan, all obligations, agreements or leases to which any of the Applicants is a party on the Plan Implementation Date shall be and remain in full force and effect, unamended, as at the Plan Implementation Date and no party to any such obligation or agreement shall on or following the Plan Implementation Date, accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise disclaim or resiliate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of any such obligation or agreement, by reason: (i) that the Applicants sought or obtained relief or have taken steps in connection with the Plan or under the CCAA; (ii) of any default or event of default arising as a result of the financial condition or insolvency of the Applicants on or prior to the Plan Implementation Date; (iii) of the effect upon the Applicants of the completion of any of the transactions contemplated under the Plan; or (iv) of any compromises, settlements, restructurings, recapitalizations or reorganizations effected pursuant to the Plan.

#### **THE MONITOR**

15. **THIS COURT ORDERS** that the activities and conduct of the Monitor prior to the date hereof in relation to the Applicants, the CCAA Proceedings, and in conducting and administering the Meetings on January 21, 2015 be and are hereby ratified and approved.
16. **THIS COURT ORDERS** that the pre-filing report of the Monitor dated December 2, 2015, the first report of the Monitor dated December 16, 2015 and the Second Report, and the conduct and activities of the Monitor as described therein are hereby approved.

17. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and the powers provided to the Monitor herein and in the Orders and the Plan, shall be and is hereby authorized, directed and empowered to perform its functions and fulfill its obligations under the Plan to facilitate the implementation of the Plan.
18. **THIS COURT ORDERS** that the Monitor has satisfied all of its obligations up to and including the date of this Plan Sanction Order, and that: (i) in carrying out the terms of this Plan Sanction Order and the Plan, the Monitor shall have all the protections given to it by the CCAA, the Initial Order, the Meetings Order, the Claims Procedure Order, and as an officer of the Court, including the stay of proceedings in its favour; (ii) the Monitor shall incur no liability or obligation as a result of carrying out the provisions of this Plan Sanction Order and/or the Plan and in performing its duties as Monitor in the CCAA Proceedings, save and except for any gross negligence or wilful misconduct on its part; (iii) the Monitor shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants without independent investigation; and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, or with respect to any such information disclosed to or provided by the Monitor, including with respect to reliance thereon by any Person.
19. **THIS COURT ORDERS** that as of the Effective Time on the Plan Implementation Date, the Monitor shall be discharged and released from its duties other than those obligations, duties and responsibilities: (i) necessary or required to give effect to the terms of the Plan and this Plan Sanction Order, (ii) in relation to the claims procedure and all matters relating thereto as set out in the Claims Procedure Order, and (iii) in connection with the completion by the Monitor of all other matters for which it is responsible in connection with the Plan or pursuant to the Orders of this Court made in the CCAA Proceedings.
20. **THIS COURT ORDERS** that upon completion by the Monitor of its duties in respect of the Applicants pursuant to the CCAA, the Plan and the Orders, the Monitor may file with

the Court a certificate stating that all of its duties in respect of the Applicants pursuant to the CCAA, the Plan and the Orders have been completed and thereupon, FTI Consulting Canada Inc. shall be deemed to be discharged from its duties as Monitor and released of all claims relating to its activities as Monitor.

**BOARD OF DIRECTORS OF CLINE**

21. **THIS COURT ORDERS AND DECLARES** that those persons listed on a certificate to be filed with the Court by the Applicants prior to the Plan Implementation Date shall be deemed to be appointed as the board of directors of Cline on the Plan Implementation Date, provided that such certificate and the persons listed thereon shall be subject to the prior written consent of Marret, on behalf of the Secured Noteholders. Concurrently with the appointment of such directors, all directors serving immediately prior to the Plan Implementation Date shall be deemed to resign (unless they are re-appointed in accordance with this paragraph).

**EXTENSION OF THE STAY OF PROCEEDINGS**

22. **THIS COURT ORDERS** that the Stay Period, as such term is defined in and used throughout the Initial Order, be and is hereby extended to and including 11:59 p.m. on April 1, 2015, and that all other terms of the Initial Order shall remain in full force and effect, unamended, except as may be required to give effect to this paragraph or otherwise provided in the Plan or this Plan Sanction Order.

**EFFECT, RECOGNITION AND ASSISTANCE**

23. **THIS COURT ORDERS** that the Applicants and the Monitor may apply to this Court for advice and direction with respect to any matter arising from or under the Plan or this Plan Sanction Order.
24. **THIS COURT ORDERS** that this Plan Sanction Order shall have full force and effect in all provinces and territories of Canada and abroad as against all persons and parties against whom it may otherwise be enforced.



25. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to give effect to this Order or 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 or the Monitor and their respective agents in carrying out the terms of this Order. Without limiting the generality of the foregoing, the Monitor is hereby authorized, as foreign representative of the Applicants to, if deemed advisable by the Monitor and the Applicants, apply for recognition of this Plan Sanction Order in any proceedings in the United States pursuant to Chapter 15, Title 11 of the United States Code.

**GENERAL**

26. **THIS COURT ORDERS** that this Plan Sanction Order shall be posted on the Monitor's Website at <http://cfcanda.fticonsulting.com/cline> and is only required to be served upon the parties on the Service List and those parties who appeared at the hearing of the motion for this Plan Sanction Order.

  
\_\_\_\_\_

ENTERED AT L'ESCRIT À TORONTO  
ON BOOK NO.  
LE JOURNAL DE REGISTRE NO.

JAN 27 2015



## Appendix "C"

**Cline Mining Corporation**

**APPLICANTS EXTENDED 13-WEEK CASH FLOW FORECAST**

(CAD in thousands)

Week Ending	25-Nov-15	01-Feb-15	08-Feb-15	15-Feb-15	22-Feb-15	01-Mar-15	08-Mar-15	15-Mar-15	22-Mar-15	29-Mar-15	05-Apr-15	12-Apr-15	19-Apr-15	26-Apr-15	03-May-15	10-May-15	17-May-15	24-May-15	31-May-15	07-Jun-15	14-Jun-15	21-Jun-15	28-Jun-15		
Forecast Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23		
Cash Flow from Operations																									
Receipts	317.1	-	-	-	-	-	-	323.9	-	-	-	-	326.8	-	-	-	-	-	-	-	-	-	-	567.8	
Operating Disbursements	(162.6)	(50.7)	(197.6)	(134.2)	(103.3)	(140.8)	(186.6)	(227.3)	(99.4)	(412.1)	(251.0)	(770.8)	(143.8)	(524.8)	(129.7)	(167.0)	(80.9)	(140.9)	(250.9)	(150.9)	(103.6)	(7.2)	(283.5)	(3,395.1)	
Operating Cash Flows	154.4	(50.7)	(197.6)	(134.2)	(103.3)	(140.8)	(186.6)	(103.4)	(99.4)	(412.1)	(251.0)	(770.8)	(17.0)	(524.8)	(129.7)	(167.0)	(80.9)	(140.9)	(250.9)	(150.9)	(109.6)	(7.2)	(283.5)	(7,327.6)	
Restructuring/ Non-Recurring Disbursements	(357.4)	-	(84.9)	(131.1)	-	(121.9)	(25.6)	(41.8)	(2.6)	(208.0)	(82.9)	(51.9)	(11.9)	(19.9)	(21.9)	(51.9)	(11.9)	(19.9)	(21.9)	(51.9)	(11.9)	(16.9)	(24.9)	(1,370.9)	
Projected Net Cash Flow	(203.0)	(50.7)	(282.5)	(265.3)	(103.3)	(262.7)	(212.2)	(145.2)	(102.0)	(206.2)	(183.9)	(812.7)	(28.9)	(544.7)	(151.6)	(218.9)	(92.8)	(160.8)	(272.8)	(202.8)	(115.5)	(24.1)	(308.4)	(4,649.4)	
Beginning Cash Balance	8,616.3	8,649.7	8,399.0	8,116.5	7,851.2	7,747.9	7,485.2	7,273.0	7,127.8	7,025.8	7,232.0	6,898.0	6,075.4	6,046.5	5,501.8	5,350.2	5,131.4	5,038.6	4,877.8	4,604.9	4,402.1	4,286.7	4,262.6	4,262.6	8,816.3
Ending Cash Balance	<b>8,413.3</b>	<b>8,399.0</b>	<b>8,116.5</b>	<b>7,851.2</b>	<b>7,747.9</b>	<b>7,485.2</b>	<b>7,273.0</b>	<b>7,127.8</b>	<b>7,025.8</b>	<b>7,232.0</b>	<b>6,898.0</b>	<b>6,075.4</b>	<b>6,046.5</b>	<b>5,501.8</b>	<b>5,350.2</b>	<b>5,131.4</b>	<b>5,038.6</b>	<b>4,877.8</b>	<b>4,604.9</b>	<b>4,402.1</b>	<b>4,286.7</b>	<b>4,262.6</b>	<b>4,262.6</b>	<b>3,954.2</b>	<b>5,954.2</b>

**Notes:**

- [1] The purpose of this cash flow forecast is to determine the liquidity requirements of the Applicants during the forecast period.
- [2] The Applicants operations at the New Elk Mine are currently under care and maintenance. Anticipated Receipts are the result of HST refunds and the sale of coal in Inventory.
- [3] Forecast Operating Disbursement assumptions are based on existing Accounts Payable, vendor payment terms, payroll funding dates, board of director fee arrangements and terms of property leases, among others.
- [4] Restructuring/Non-Recurring Disbursements include professional fees associated with the CCAA Proceedings, the Applicants' restructuring efforts, and certain non-recurring tax liabilities. Professional fee disbursement assumptions are based on budgeted time and expenses for the various legal and financial advisors expected to participate in the CCAA Proceedings.

**Appendix "D"**

**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**

**AFFIDAVIT OF PAUL BISHOP  
(Sworn March 25, 2015)**

**I, PAUL BISHOP**, of the City of Toronto, in the Province of Ontario, **MAKE OATH  
AND SAY:**

1. I am a Senior Managing Director of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the court appointed monitor for Cline Mining Corporation, New Elk Coal Company LLC and North Central Energy Company (collectively, the "**Applicants**") and, as such, I have knowledge of the matters to which I hereinafter depose. Where I have relied on other sources for information, I have identified such sources and believe the information to be true.

2. On December 3, 2014, the Applicants obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to the initial order granted by the Honourable Justice Morawetz (the "**Initial Order**"). Pursuant to the Initial Order, FTI was appointed as monitor (the "**Monitor**") of the Applicants. The proceedings commenced by the Applicants under the CCAA will be referred to herein as the "**CCAA Proceedings**".

3. This affidavit is made in support of a motion (the “**Motion**”) for, *inter alia*, the approval of the fees and disbursements of FTI in its capacity as Monitor for the period from December 3, 2014 to March 15, 2015.

4. FTI’s invoices for the period from December 3, 2014 to March 15, 2015 disclose in detail: (i) the names, hourly rates and time expended by each person who rendered services; (ii) the dates on which the services were rendered; (iii) the time expended each day; and (iv) the total charges and rates for each of the categories of services rendered for the relevant time period. Attached and marked collectively as Exhibit “A” to this affidavit are true copies of the accounts rendered to the Applicants in connection with the CCAA Proceedings for the period of December 3, 2014 to March 15, 2015 (redacted for confidential information).

5. During the period from December 3, 2014 to March 15, 2015, FTI docketed 199.6 hours in respect of the CCAA Proceedings and billed a total of \$171,481.09, amounting to fees of \$97,451.00 and disbursements and other charges of \$54,302.18 plus Harmonized Sales Tax of \$19,727.91.

6. Attached hereto as Exhibit “B” is a schedule summarizing each invoice in Exhibit “A”.

7. Attached hereto as Exhibit “C” is a schedule summarizing the billing rates of each member of FTI that rendered services in the CCAA Proceedings from December 3, 2014 to March 15, 2015, as well as the average hourly rate for the restructuring services provided by FTI.

8. The hourly billing rates applied in the invoices of FTI are FTI’s normal hourly rates which were in effect from December 3, 2014 to March 15, 2015 and are comparable to the hourly rates charged by FTI for services rendered in relation to similar proceedings.

9. The rates charged by FTI throughout the course of the CCAA Proceedings are comparable to the rates charged by other firms in the Toronto market for the provision of similar restructuring services.

10. I have been actively involved in this matter. The hours spent on this matter involved monitoring the Applicants and dealing with a number of CCAA issues (as more particularly described in the Monitor's reports) and I believe that the time expended and the fees charged by FTI are reasonable, fair and appropriate in light of the complexity of the proceeding, the nature of services performed and the prevailing market rates for such services.

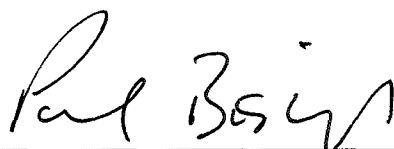
11. I swear this affidavit in support of the Motion and for no improper purpose.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, on  
March 25, 2015.



Commissioner for Taking Affidavits

David Rosimblat




PAUL BISHOP

THIS IS EXHIBIT "A" REFERRED TO IN THE

AFFIDAVIT OF PAUL BISHOP

SWORN BEFORE ME ON MARCH 25, 2015



---

A COMMISSIONER FOR TAKING AFFIDAVITS

*David Rosenblatt*





*Invoice Remittance*

Mr. Matt Goldfarb  
Cline Mining Corp.  
161 Bay Street, 27th Floor  
Toronto, Ontario  
M5J 2S1

December 31, 2014  
FTI Invoice No. 29001261  
FTI Job No. 434343.0003  
Terms: Payment on Presentation

Current Invoice Period: Charges Posted through December 31, 2014

	<i>CAD (\$)</i>
Professional Services.....	\$43,593.00
Expenses.....	<u>\$43,861.99</u>
Total Fees and Expenses.....	\$87,454.99
HST Registration No. 835718024RT0001 .....	<u>\$11,369.15</u>
Total Amount Due this Period.....	\$98,824.14
<b>Total Amount Due.....</b>	<b><u><u>\$98,824.14</u></u></b>

*Please Wire Transfer To:*

Bank of Nova Scotia  
Scotia Plaza, 44 King Street West  
Toronto, ONT M5H 1H1  
Swift Code: NOSCCATT  
Bank Number: 002  
Beneficiary: FTI Consulting Canada Inc.  
Beneficiary account number: 476960861715



*Invoice Summary*

Mr. Matt Goldfarb  
Cline Mining Corp.  
161 Bay Street, 27th Floor  
Toronto, Ontario  
M5J 2S1

December 31, 2014  
FTI Invoice No. 29001261  
FTI Job No. 434343.0003  
Terms Payment on Presentation

Current Invoice Period: Charges Posted through December 31, 2014

---

<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Total</b>
Paul Bishop	Senior Managing Director	\$600.00	7.9	\$4,740.00
Pamela Luthra	Senior Director	\$500.00	63.5	\$31,750.00
Daniel Magder	Senior Consultant	\$375.00	17.5	\$6,562.50
Linda Kelly	Administrative Professional	\$115.00	4.7	\$540.50
<b>Total Hours and Fees</b>			<b>93.6</b>	<b>\$43,593.00</b>

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Other/Miscellaneous \$43,861.99

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**Total Expenses** **\$43,861.99**

**HST Registration No. 835718024RT0001** **\$11,369.15**

**Cline Mining Corporation**  
**434343.0002 - December 31, 2014**

Date	TK#	Name	Hours	Amount	Narrative
12/03/14	17647	Daniel Magder	3.50	\$ 1,470.00	Post filing work with PL, review of notices, review of information summary. email set up on comp.
12/04/14	17647	Daniel Magder	7.00	\$ 2,940.00	Continuation of work for CCAA required information, prep for Newspaper advertisings, various discussions with the 3 papers to get the ads place. Notices, forms
12/05/14	17647	Daniel Magder	2.50	\$ 1,050.00	Calls and scheduling with the printing house, as well as finalization of the notice to creditors. Continued work with newspapers for ads.
12/08/14	17647	Daniel Magder	4.50	\$ 1,890.00	Newspaper adjustments for notices, Form 2 sent to the OSB, response received confirming receipt and additional information required.
12/17/14	18441	Linda Kelly	0.40	\$ 46.00	Posting documents to Cline Website.
12/03/14	18441	Linda Kelly	2.00	\$ 230.00	Updating Cline website, preparing documents for website, posting documents to website following court proceedings.
12/04/14	18441	Linda Kelly	0.60	\$ 69.00	Updating website and posting documents online.
12/05/14	18441	Linda Kelly	0.50	\$ 57.50	Posting documents to Cline website for Chapter 15 Proceedings.
12/22/14	18441	Linda Kelly	0.40	\$ 46.00	Posting Documents to Cline website.
12/08/14	18441	Linda Kelly	0.40	\$ 46.00	Posting Documents to Cline Mining Website.
12/09/14	18441	Linda Kelly	0.20	\$ 23.00	Updating Cline website
12/11/14	18441	Linda Kelly	0.20	\$ 23.00	Posting documents to website.
12/23/14	14888	Pamela Luthra	0.50	\$ 310.00	Responding to the Monitor's hotline; Correspondence with WARN Act Counsel
12/11/14	14888	Pamela Luthra	0.60	\$ 372.00	Review of revised cash flow forecast
12/12/14	14888	Pamela Luthra	1.70	\$ 1,054.00	Review of revised cash flow forecast; Preparation of First Report of the Monitor
12/08/14	14888	Pamela Luthra	7.60	\$ 4,712.00	Preparation of claims packages; updates to the monitor's website; forms for the superintendent of bankruptcy; preparation of known creditor listing
12/09/14	14888	Pamela Luthra	7.20	\$ 4,464.00	Preparation of Claims Packages, Information Packages, and mailings to creditors; Review of disbursements; Coordination regarding notices; Preparation of first report of the Monitor
12/10/14	14888	Pamela Luthra	6.50	\$ 4,030.00	Preparation of First Report of the Monitor, Review of Disbursements, Responding to the Monitor's hotline
12/17/14	14888	Pamela Luthra	0.80	\$ 496.00	Review of disbursement requests; call with L. Head regarding the same
12/18/14	14888	Pamela Luthra	1.10	\$ 682.00	Responding to the Monitor's hotline; Call with Goodmans regarding claims process; update of Monitor's website
12/19/14	14888	Pamela Luthra	2.40	\$ 1,488.00	Responding to the Monitor's hotline; Review of Proof of Claim and preparation of Notice of Revision/Disallowance; Update of Claims Schedule; Review of Creditors Proxy
12/22/14	14888	Pamela Luthra	4.20	\$ 2,604.00	Attendance in Court; Responding to the Monitor's hotline; Correspondence with WARN Act Counsel; Correspondence with US counsel; Call with L. Head regarding utilities; Update of the Monitor's website
12/31/14	14888	Pamela Luthra	0.20	\$ 124.00	Various e-mails, review of notice of dispute, responding to the Monitor's hotline
12/03/14	14888	Pamela Luthra	9.80	\$ 6,076.00	Set up of Monitors website; Preparation of notices for filing; Preparation of Known Creditor Listing; Preparation of Claims Schedule
12/04/14	14888	Pamela Luthra	8.30	\$ 5,146.00	Set up of Monitors website; Preparation of notices for filing; Preparation of Known Creditor Listing; Preparation of Claims Schedule; Review of disbursement request
12/05/14	14888	Pamela Luthra	8.20	\$ 5,084.00	Set up of Monitors website; Preparation of notices for filing; Preparation of Known Creditor Listing; Preparation of Claims Schedule; Call with L. Head and M. Goldfarb regarding creditor listing
12/15/14	14888	Pamela Luthra	3.70	\$ 2,294.00	Review of actual results to date and preparation of AvB analysis; Responding to the Monitor's hotline; Preparation of the First Report of the Monitor
12/16/14	14888	Pamela Luthra	0.70	\$ 434.00	Call with L. Head regarding disbursements; Finalizing the Pre-filing report of the Monitor
12/23/14	14800	Paul Bishop	0.80	\$ 664.00	Correspondence re security opinions, deposits and other matters
12/01/14	14800	Paul Bishop	1.20	\$ 996.00	Finalise court report and comments on other material
12/03/14	14800	Paul Bishop	1.40	\$ 1,162.00	Attend at court, prep for same, discussions with counsel

**Cline Mining Corporation**  
**434343.0002 - December 31, 2014**

<b>Date</b>	<b>TK#</b>	<b>Name</b>	<b>Hours</b>	<b>Amount</b>	<b>Narrative</b>
12/16/14	14800	Paul Bishop	0.70	\$ 581.00	Review of correspondence and update with PL
12/19/14	14800	Paul Bishop	0.80	\$ 664.00	Correspondence review and update re utility
12/08/14	14800	Paul Bishop	0.80	\$ 664.00	Review of US material and judgements
12/09/14	14800	Paul Bishop	0.70	\$ 581.00	Cline filing status update and correspondence
12/10/14	14800	Paul Bishop	0.30	\$ 249.00	Status update, call with RC
12/11/14	14800	Paul Bishop	0.40	\$ 332.00	Update and correspondence
12/12/14	14800	Paul Bishop	0.80	\$ 664.00	Update and review draft report
				<b>\$ 53,817.50</b>	
<b>LESS: VOLUNTARY REDUCTION</b>				<b>\$ (10,224.50)</b>	
<b>TOTAL</b>			<b>93.60</b>	<b>\$ 43,593.00</b>	

**Cline Mining Corporation**  
**434343.0002 - December 31, 2014**

<b>Date</b>	<b>TK#</b>	<b>Name</b>	<b>Qty.</b>	<b>Amount</b>	<b>Narrative</b>
12/15/14	17647	Daniel Magder	1	\$ 837.74	Copying and Binding - Daniel Magder. newspaper Advert
12/09/14	17647	Daniel Magder	1	\$ 431.63	Copying and Binding - Daniel Magder. Notice to Crechitors mailings
12/09/14	17647	Daniel Magder	1	\$ 2,025.61	Delivery & Courier
12/03/14	14888	Pamela Luthra	1	\$ -	Entertainment - Pamela Luthra. Trip cancellation due to work commitments - non refundable (\$75.08 + \$10.96) x 2 tickets = \$172.08 US
12/17/14	14888	Pamela Luthra	1	\$ 2,367.00	Purchased Services - The Print House, Pamela Luthra. Printing and mailing of Notices
12/03/14	14888	Pamela Luthra	1	\$ -	Change Fees - Pamela Luthra. Trip cancellation due to work commitments - non refundable (\$90/ticket x 2 tickets x 13% taxes = \$203.40 fee for refund)
12/03/14	14888	Pamela Luthra	1	\$ -	Change Fees - Pamela Luthra. Trip cancellation due to work commitments - non refundable (USD \$336.20)
12/03/14	14888	Pamela Luthra	1	\$ -	Change Fees - Pamela Luthra. Trip cancellation due to work commitments - non refundable (non- refundable tax. tax paid = \$113.56 refund issued = \$0)
12/04/14	14800	Paul Bishop	1	\$ 5,663.89	Miscellaneous Expenses - Denver Newspaper Agency LLP DBA Denver Post, Rocky Mountain Cline Mining CCAA - Newspaper Ads
12/08/14	14800	Paul Bishop	1	\$ 12,823.06	Miscellaneous Expenses - The Globe and Mail Newspaper Ads
12/08/14	14800	Paul Bishop	1	\$ 11,774.42	Miscellaneous Expenses - The Globe and Mail Newspaper Ads
12/08/14	14800	Paul Bishop	1	\$ 5,039.26	Miscellaneous Expenses - The Globe and Mail Newspaper ADS
12/11/14	14800	Paul Bishop	1	\$ 2,899.38	Miscellaneous Expenses - Denver Newspaper Agency LLP DBA Denver Post, Rocky Mountain Newspaper Ads
<b>TOTAL</b>			<b>13</b>	<b>\$ 43,861.99</b>	



*Invoice Remittance*

Mr. Matt Goldfarb  
Cline Mining Corp.  
161 Bay Street, 27th Floor  
Toronto, Ontario  
M5J 2S1

January 22, 2015  
FTI Invoice No. 29001277  
FTI Job No. 434343.0003  
Terms: Payment on Presentation

Current Invoice Period: Charges Posted through January 18, 2015

	<i>CAD (\$)</i>
Professional Services.....	\$25,494.50
Expenses.....	\$8,124.20
Total Fees and Expenses.....	\$33,618.70
HST Registration No. 835718024RT0001 .....	\$4,370.43
Total Amount Due this Period.....	\$37,989.13
<b>Total Amount Due.....</b>	<b><u>\$37,989.13</u></b>

*Please Wire Transfer To:*

**Bank of Nova Scotia**  
**Scotia Plaza, 44 King Street West**  
**Toronto, ONT M5H 1H1**  
**Swift Code: NOSCCAT**  
**Bank Number: 002**  
**Beneficiary: FTI Consulting Canada Inc.**  
**Beneficiary account number: 476960861715**



*Invoice Summary*

Mr. Matt Goldfarb  
Cline Mining Corp.  
161 Bay Street, 27th Floor  
Toronto, Ontario  
M5J 2S1

January 22, 2015  
FTI Invoice No. 29001277  
FTI Job No. 434343.0003  
Terms Payment on Presentation

Current Invoice Period: Charges Posted through January 18, 2015

---

<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Total</b>
Paul Bishop	Senior Managing Director	\$600.00	9.6	\$5,760.00
Pamela Luthra	Senior Director	\$500.00	39.4	\$19,700.00
Linda Kelly	Administrative Professional	\$115.00	0.3	\$34.50
<b>Total Hours and Fees</b>			<b>49.3</b>	<b>\$25,494.50</b>
Other/Miscellaneous				\$8,124.20
<b>Total Expenses</b>				<b>\$8,124.20</b>
<b>HST Registration No. 835718024RT0001</b>				<b>\$4,370.43</b>

**Cline Mining Corporation**  
**434343.0002 - January 18, 2015**

Date	TK#	Name	Hours	Amount	Narrative
01/15/15	18441	Linda Kelly	0.30	\$ 34.50	Posting documents to Cline Mining website.
01/11/15	14888	Pamela Luthra	0.80	\$ 496.00	Preparation of Second Report of the Monitor
01/12/15	14888	Pamela Luthra	6.50	\$ 4,030.00	Review of notice of transfer; assisting with disputed claims; review of revised cash flow forecast; preparation of Monitor's second report;
01/13/15	14888	Pamela Luthra	8.20	\$ 5,084.00	Review of notice of transfer; assisting with disputed claims; review of revised cash flow forecast; preparation of Monitor's second report; preparation of claims and meetings summaries; responding to the Monitor's Hotline
01/14/15	14888	Pamela Luthra	5.30	\$ 3,286.00	Preparation of second report of the Monitor; Preparation of draft materials for the meetings
01/15/15	14888	Pamela Luthra	4.20	\$ 2,604.00	Update of the Monitor's website; Preparation of draft materials for the meetings; assisting with disputed claims; call with M. Goldfarb regarding New Elk
01/16/15	14888	Pamela Luthra	3.20	\$ 1,984.00	Review of Proof of Claim; Preparation of meeting materials;
01/09/15	14888	Pamela Luthra	3.00	\$ 1,860.00	Update of claims register; Preparation of Second Report of the Monitor; Call with M. Goldfarb; Call with Marret
01/08/15	14888	Pamela Luthra	0.30	\$ 186.00	Review of Notice of Transfer; Update of Claims Register
01/07/15	14888	Pamela Luthra	1.30	\$ 806.00	Call with A&O regarding pre-filing amounts; Review of Chapter 15 materials
01/06/15	14888	Pamela Luthra	3.90	\$ 2,418.00	Call with M. Goldfarb regarding claims; responding to questions from creditors regarding claims; Update of claims register; Review of form of Master Voting List
01/05/15	14888	Pamela Luthra	2.40	\$ 1,488.00	Correspondence regarding [REDACTED]; Review of proof of claims and proxies received; Calls with A&O, L. Head, and T. Lachina
01/02/15	14888	Pamela Luthra	0.30	\$ 186.00	Responding to the Monitor's hotline and e-mails
01/16/15	14800	Paul Bishop	1.80	\$ 1,494.00	Review of correspondence re Warn Act, correspondence with counsel re same, call with RC (Sunday) re same
01/15/15	14800	Paul Bishop	0.80	\$ 664.00	Review of US materials, review of report
01/14/15	14800	Paul Bishop	1.70	\$ 1,411.00	Finalise report, review claims, discuss same with PL, review correspondence re security opinions
01/13/15	14800	Paul Bishop	1.30	\$ 1,079.00	Review claims and correspondence, review draft report edits, correspondence re opinions
01/12/15	14800	Paul Bishop	1.20	\$ 996.00	Update status, review of correspondence re security opinions and draft report
01/09/15	14800	Paul Bishop	0.80	\$ 664.00	Correspondence re security opinions and other matters
01/07/15	14800	Paul Bishop	1.20	\$ 996.00	Review of filing material
01/06/15	14800	Paul Bishop	0.80	\$ 664.00	Update and correspondence
				\$ 32,430.50	
<b>LESS: VOLUNTARY REDUCTION</b>				\$ (6,936.00)	
<b>TOTAL</b>			<b>48.20</b>	<b>\$ 25,494.50</b>	



**Cline Mining Corporation**  
**434343.0002 - January 18, 2015**

<b>Date</b>	<b>TK#</b>	<b>Name</b>	<b>Qty.</b>	<b>Amount</b>	<b>Narrative</b>
12/22/14	14800	Paul Bishop	1	\$ 5,803.00	Miscellaneous Expenses - Holland & Hart LLP Retainer for Title Option Update
12/22/14	14800	Paul Bishop	1	\$ 2,321.20	Miscellaneous Expenses - Bensing and Associates Inc Retainer for Records Search
<b>TOTAL</b>			<b>2</b>	<b>\$ 8,124.20</b>	



*Invoice Remittance*

Mr. Matt Goldfarb  
Cline Mining Corp.  
161 Bay Street, 27th Floor  
Toronto, Ontario  
M5J 2S1

January 31, 2015  
FTI Invoice No. 29001298  
FTI Job No. 434343.0003  
Terms: Payment on Presentation

Current Invoice Period: Charges Posted through January 31, 2015

	<i>CAD (\$)</i>
Professional Services.....	\$21,351.00
Expenses.....	<u>\$0.00</u>
Total Fees and Expenses.....	\$21,351.00
HST Registration No. 835718024RT0001 .....	<u>\$2,775.63</u>
Total Amount Due this Period.....	\$24,126.63
<b>Total Amount Due.....</b>	<b><u><u>\$24,126.63</u></u></b>

*Please Wire Transfer To:*

**Bank of Nova Scotia**  
**Scotia Plaza, 44 King Street West**  
**Toronto, ONT M5H 1H1**  
**Swift Code: NOSCCATT**  
**Bank Number: 002**  
**Beneficiary: FTI Consulting Canada Inc.**  
**Beneficiary account number: 476960861715**



*Invoice Summary*

Mr. Matt Goldfarb  
Cline Mining Corp.  
161 Bay Street, 27th Floor  
Toronto, Ontario  
M5J 2S1

January 31, 2015  
FTI Invoice No. 29001298  
FTI Job No. 434343.0003  
Terms Payment on Presentation

Current Invoice Period: Charges Posted through January 31, 2015

---

<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Total</b>
Paul Bishop	Senior Managing Director	\$600.00	9.1	\$5,460.00
Pamela Luthra	Senior Director	\$500.00	29.6	\$14,800.00
Ellen Dong	Senior Consultant	\$395.00	2.5	\$987.50
Linda Kelly	Administrative Professional	\$115.00	0.9	\$103.50
<b>Total Hours and Fees</b>			<b>42.1</b>	<b>\$21,351.00</b>

**HST Registration No. 835718024RT0001**

**\$2,775.63**

**Cline Mining Corporation**  
**434343.0002 - January 31, 2015**

Date	TK#	Name	Hours	Amount	Narrative
01/19/15	17571	Ellen Dong	2.00	\$ 790.00	Drafting affidavit of fees
01/20/15	17571	Ellen Dong	0.50	\$ 197.50	Drafting affidavit of fees
01/27/15	18441	Linda Kelly	0.30	\$ 34.50	Posting documents to website.
01/21/15	18441	Linda Kelly	0.20	\$ 23.00	Updating documents to website.
01/23/15	18441	Linda Kelly	0.40	\$ 46.00	Posting documents to website.
01/26/15	14888	Pamela Luthra	0.70	\$ 448.00	Various e-mails regarding proxies and claims in preparation for Sanction Hearing; Responding to Monitor's hotline; Review of revised cash flow
01/27/15	14888	Pamela Luthra	2.10	\$ 1,344.00	Attendance in Court; Update of Monitor's website; Responding to various e-mails from T. Lachiana;
01/28/15	14888	Pamela Luthra	2.70	\$ 1,728.00	Responding to the Monitor's hotline; Follow up with legal counsel and Applicants regarding claims process; Update of Monitor's website; [REDACTED]
01/29/15	14888	Pamela Luthra	1.60	\$ 1,024.00	[REDACTED], Assisting with the claims process; Responding to the Monitor's hotline
01/30/15	14888	Pamela Luthra	0.40	\$ 256.00	Assisting with the claims process;
01/19/15	14888	Pamela Luthra	3.20	\$ 2,048.00	Review of disbursement requests; Various e-mails regarding claims process; preparation of Notice of Disallowance; Preparation for creditors meetings
01/20/15	14888	Pamela Luthra	9.30	\$ 5,952.00	Preparation of Third Report; assisting with disputed claims; preparation of materials for creditor meetings; tabulation of proxies and master voting list; review of draft Court materials; review of cash flow forecast
01/21/15	14888	Pamela Luthra	4.20	\$ 2,688.00	Preparation and attendance of creditors meetings
01/22/15	14888	Pamela Luthra	3.10	\$ 1,984.00	Third Report; Scrutineers report; review of cash flow forecast
01/23/15	14888	Pamela Luthra	2.30	\$ 1,472.00	Third Report of the Monitor
01/23/15	14800	Paul Bishop	1.80	\$ 1,512.00	Review and approve docs and report
01/21/15	14800	Paul Bishop	2.20	\$ 1,848.00	Creditor meetings, prep for same, review of material for service
01/20/15	14800	Paul Bishop	1.60	\$ 1,344.00	Finalise documents, prep for meeting, correspondence with counsel
01/19/15	14800	Paul Bishop	2.10	\$ 1,764.00	Review of final documents, calls and emails re Warn Act claim, review of meeting materials
01/27/15	14800	Paul Bishop	0.50	\$ 420.00	Correspondence and matter update
01/29/15	14800	Paul Bishop	0.90	\$ 756.00	Review of final docs, correspondence
				\$ 27,679.00	
<b>LESS: VOLUNTARY REDUCTION</b>				\$ (6,328.00)	
<b>TOTAL</b>			<b>39.60</b>	<b>\$ 21,351.00</b>	



*Invoice Remittance*

Mr. Matt Goldfarb  
Cline Mining Corp.  
161 Bay Street, 27th Floor  
Toronto, Ontario  
M5J 2S1

February 18, 2015  
FTI Invoice No. 29001314  
FTI Job No. 434343.0003  
Terms: Payment on Presentation

Current Invoice Period: Charges Posted through February 15, 2015

	<i>CAD (\$)</i>
Professional Services.....	\$5,739.00
Less Voluntary Reduction.....	-\$1,246.00
Net Professional Fees.....	\$4,493.00
Expenses.....	\$0.00
Total Fees and Expenses.....	\$4,493.00
HST Registration No. 835718024RT0001 .....	\$584.09
Total Amount Due this Period.....	\$5,077.09
<b>Total Amount Due.....</b>	<b><u>\$5,077.09</u></b>

*Please Wire Transfer To:*

**Bank of Nova Scotia**  
**Scotia Plaza, 44 King Street West**  
**Toronto, ONT M5H 1H1**  
**Swift Code: NOSCCATT**  
**Bank Number: 002**  
**Beneficiary: FTI Consulting Canada Inc.**  
**Beneficiary account number: 476960861715**



*Invoice Summary*

Mr. Matt Goldfarb  
Cline Mining Corp.  
161 Bay Street, 27th Floor  
Toronto, Ontario  
M5J 2S1

February 18, 2015  
FTI Invoice No. 29001314  
FTI Job No. 434343.0003  
Terms Payment on Presentation

Current Invoice Period: Charges Posted through February 15, 2015

---

<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Total</b>
Paul Bishop	Senior Managing Director	\$840.00	3.5	\$2,940.00
Pamela Luthra	Senior Director	\$640.00	2.9	\$1,856.00
Ellen Dong	Senior Consultant	\$395.00	2.3	\$908.50
Linda Kelly	Administrative Professional	\$115.00	0.3	\$34.50
<b>Total Hours and Fees</b>			<b>9.0</b>	<b>\$5,739.00</b>
<b>Less Voluntary Reduction</b>				<b>-\$1,246.00</b>
<b>Total Net Fees</b>				<b>\$4,493.00</b>
<b>HST Registration No. 835718024RT0001</b>				<b>\$584.09</b>

**Cline Mining Corporation**  
**434343.0002 - February 15, 2015**

<b>Date</b>	<b>TK#</b>	<b>Name</b>	<b>Hours</b>	<b>Amount</b>	<b>Narrative</b>
02/09/15	17571	Ellen Dong	1.00	\$ 395.00	Budget to actual analysis
02/12/15	17571	Ellen Dong	0.20	\$ 79.00	Responding to the Monitor's hotline/emails
02/13/15	17571	Ellen Dong	0.10	\$ 39.50	Responding to the Monitor's hotline/emails
02/04/15	17571	Ellen Dong	1.00	\$ 395.00	Review of the claims procedure order
02/03/15	18441	Linda Kelly	0.30	\$ 34.50	Posting documents to website.
02/02/15	14888	Pamela Luthra	0.70	\$ 448.00	Review of disbursement request; Update of claims schedule; Responding to the Monitor's hotline
02/04/15	14888	Pamela Luthra	0.40	\$ 256.00	Update of Disbursement Request; Update of claims register
02/05/15	14888	Pamela Luthra	1.80	\$ 1,152.00	Update of claims register and preparation of unsecured plan entitlement analysis; responding to the Monitor's hotline; review of notice of transfer
02/09/15	14888	Pamela Luthra	0.70	\$ 448.00	Review of disbursement request; Update of claims schedule; Responding to the Monitor's hotline
02/09/15	14888	Pamela Luthra	-0.70	\$ (448.00)	Review of disbursement request; Update of claims schedule; Responding to the Monitor's hotline
02/11/15	14888	Pamela Luthra	0.40	\$ 256.00	Update of Disbursement Request; Update of claims register
02/11/15	14888	Pamela Luthra	-0.40	\$ (256.00)	Update of Disbursement Request; Update of claims register
02/12/15	14888	Pamela Luthra	1.80	\$ 1,152.00	Update of claims register and preparation of unsecured plan entitlement analysis; responding to the Monitor's hotline; review of notice of transfer
02/12/15	14888	Pamela Luthra	-1.80	\$ (1,152.00)	Update of claims register and preparation of unsecured plan entitlement analysis; responding to the Monitor's hotline; review of notice of transfer
02/10/15	14800	Paul Bishop	0.90	\$ 756.00	Correspondence and update of status
02/12/15	14800	Paul Bishop	0.90	\$ 756.00	Correspondence and call with MG
02/04/15	14800	Paul Bishop	0.90	\$ 756.00	Status update
02/06/15	14800	Paul Bishop	0.80	\$ 672.00	Update with PL
<b>TOTAL</b>			<b>9.00</b>	<b>\$ 5,739.00</b>	



*Invoice Remittance*

Mr. Matt Goldfarb  
Cline Mining Corp.  
161 Bay Street, 27th Floor  
Toronto, Ontario  
M5J 2S1

February 28, 2015  
FTI Invoice No. 29001331  
FTI Job No. 434343.0003  
Terms: Payment on Presentation

Current Invoice Period: Charges Posted through February 28, 2015

	<i>CAD (\$)</i>
Professional Services.....	\$1,852.00
Less Voluntary Reduction.....	<u>-\$168.00</u>
Net Professional Fees.....	\$1,684.00
Expenses.....	<u>\$0.00</u>
Total Fees and Expenses.....	\$1,684.00
HST Registration No. 835718024RT0001 .....	<u>\$218.92</u>
Total Amount Due this Period.....	\$1,902.92
Previous Balance Due.....	<u>\$5,077.09</u>
<b>Total Amount Due.....</b>	<b><u>\$6,980.01</u></b>

*Please Wire Transfer To:*

**Bank of Nova Scotia**  
**Scotia Plaza, 44 King Street West**  
**Toronto, ONT M5H 1H1**  
**Swift Code: NOSCCATT**  
**Bank Number: 002**  
**Beneficiary: FTI Consulting Canada Inc.**  
**Beneficiary account number: 476960861715**





## Invoice Summary

Mr. Matt Goldfarb  
Cline Mining Corp.  
161 Bay Street, 27th Floor  
Toronto, Ontario  
M5J 2S1

February 28, 2015  
FTI Invoice No. 29001331  
FTI Job No. 434343.0003  
Terms Payment on Presentation

Current Invoice Period: Charges Posted through February 28, 2015

---

Name	Title	Rate	Hours	Total
Paul Bishop	Senior Managing Director	\$840.00	0.7	\$588.00
Ellen Dong	Senior Consultant	\$395.00	3.2	\$1,264.00
<b>Total Hours and Fees</b>			<b>3.9</b>	<b>\$1,852.00</b>
<b>Less Voluntary Reduction</b>				<b>-\$168.00</b>
<b>Total Net Fees</b>				<b>\$1,684.00</b>
<b>HST Registration No. 835718024RT0001</b>				<b>\$218.92</b>

**Cline Mining Corporation**  
**434343.0002 - February 28, 2015**

<b>Date</b>	<b>TK#</b>	<b>Name</b>	<b>Hours</b>	<b>Amount</b>	<b>Narrative</b>
02/26/15	17571	Ellen Dong	2.00	\$ 790.00	Preparation of claims filing information
02/26/15	17571	Ellen Dong	0.20	\$ 79.00	Discussion with the company re: treatment of the deposit for [REDACTED]
02/17/15	17571	Ellen Dong	0.40	\$ 158.00	Review of the Information Statement
02/17/15	17571	Ellen Dong	0.60	\$ 237.00	Responding to the Monitor's hotline/emails
02/17/15	14800	Paul Bishop	0.70	\$ 588.00	Review of status, payment review and approval, correspondence
<b>TOTAL</b>			<b>3.90</b>	<b>\$ 1,852.00</b>	



*Invoice Remittance*

Mr. Matt Goldfarb  
Cline Mining Corp.  
161 Bay Street, 27th Floor  
Toronto, Ontario  
M5J 2S1

March 18, 2015  
FTI Invoice No. 29001352  
FTI Job No. 434343.0003  
Terms: Payment on Presentation

Current Invoice Period: Charges Posted through March 15, 2015

	<i>CAD (\$)</i>
Professional Services.....	\$1,027.50
Less Voluntary Reduction.....	-\$192.00
Net Professional Fees.....	\$835.50
Expenses.....	\$2,315.99
Total Fees and Expenses.....	\$3,151.49
HST Registration No. 835718024RT0001 .....	\$409.69
Total Amount Due this Period.....	\$3,561.18
Previous Balance Due.....	\$1,902.92
<b>Total Amount Due.....</b>	<b><u>\$5,464.10</u></b>

*Please Wire Transfer To:*

**Bank of Nova Scotia**  
**Scotia Plaza, 44 King Street West**  
**Toronto, ONT M5H 1H1**  
**Swift Code: NOSCCATT**  
**Bank Number: 002**  
**Beneficiary: FTI Consulting Canada Inc.**  
**Beneficiary account number: 476960861715**



## Invoice Summary

Mr. Matt Goldfarb  
Cline Mining Corp.  
161 Bay Street, 27th Floor  
Toronto, Ontario  
M5J 2S1

March 18, 2015  
FTI Invoice No. 29001352  
FTI Job No. 434343.0003  
Terms Payment on Presentation

Current Invoice Period: Charges Posted through March 15, 2015

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Name	Title	Rate	Hours	Total
Paul Bishop	Senior Managing Director	\$840.00	0.8	\$672.00
Ellen Dong	Senior Consultant	\$395.00	0.9	\$355.50
<b>Total Hours and Fees</b>			<b>1.7</b>	<b>\$1,027.50</b>
<b>Less Voluntary Reduction</b>				<b>-\$192.00</b>
<b>Total Net Fees</b>				<b>\$835.50</b>
Other/Miscellaneous				\$2,315.99
<b>Total Expenses</b>				<b>\$2,315.99</b>
HST Registration No. 835718024RT0001				\$409.69
<b>Invoice Total for Current Period</b>				<b>\$3,561.18</b>

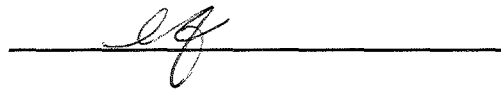
Cline Mining Corporation  
434343.0002 - March 15, 2015

Date	TK#	Name	Hours	Amount	Narrative
03/04/15	17571	Ellen Dong	0.70	\$ 276.50	Review of the claims register for the [REDACTED] Responding to the Monitor's hotline/emails
03/06/15	17571	Ellen Dong	0.20	\$ 79.00	Review of expenses for approval
03/02/15	14800	Paul Bishop	0.80	\$ 672.00	Correspondence re equipment, review of invoices
<b>TOTAL</b>			<b>1.70</b>	<b>\$ 1,027.50</b>	

THIS IS EXHIBIT "B" REFERRED TO IN THE

AFFIDAVIT OF PAUL BISHOP

SWORN BEFORE ME ON MARCH 25, 2015

A handwritten signature in black ink, appearing to read "DR", is written over a solid horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

*David Rosenblatt*

Summary of FTI Monitor Fees

Services Rendered December 3, 2014- March 15, 2015

Invoice #	Date	Fees	Expenses	HST	Total
29001261	31-Dec-14	\$ 43,593.00	\$ 43,861.99	\$ 11,369.15	\$ 98,824.14
29001277	18-Jan-15	\$ 25,494.50	\$ 8,124.20	\$ 4,370.43	\$ 37,989.13
29001298	31-Jan-15	\$ 21,351.00	\$ -	\$ 2,775.63	\$ 24,126.63
29001314	15-Feb-15	\$ 4,493.00	\$ -	\$ 584.09	\$ 5,077.09
29001331	28-Feb-15	\$ 1,684.00	\$ -	\$ 218.92	\$ 1,902.92
29001352	15-Mar-15	\$ 835.50	\$ 2,315.99	\$ 409.69	\$ 3,561.18
<b>TOTAL</b>		<b>\$ 97,451.00</b>	<b>\$ 54,302.18</b>	<b>\$ 19,727.91</b>	<b>\$ 171,481.09</b>

THIS IS EXHIBIT "C" REFERRED TO IN THE

AFFIDAVIT OF PAUL BISHOP

SWORN BEFORE ME ON MARCH 25, 2015

A handwritten signature in cursive script, appearing to read "David Posenblat", is written over a solid horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

*David Posenblat*



Summary of FTI Monitor Fees

Services Rendered December 3, 2014- March 15, 2015

Professional	Title	Hours	Hourly Rate	Total
Paul Bishop	Senior Managing Director	31.60	\$ 600.00	\$ 18,960.00
Pamela Luthra	Senior Director	135.40	\$ 500.00	\$ 67,700.00
Ellen Dong	Senior Consultant	8.90	\$ 395.00	\$ 3,515.50
Daniel Magder	Senior Consultant	17.50	\$ 375.00	\$ 6,562.50
Linda Kelly	Administrative Professional	6.20	\$ 115.00	\$ 713.00
<b>TOTAL</b>		<b>199.60</b>		<b>\$ 97,451.00</b>

Average Hourly Rate: \$ 488.23

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF PAUL BISHOP**

**OSLER, HOSKIN & HARCOURT LLP**

P.O. Box 50, 100 King Street West  
1 First Canadian Place  
Toronto, Ontario M5X 1B8

Marc Wasserman (LSUC#: 44066M)

Tel: 416.862.4908

Fax: 416.862.6666

Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

Michael De Lellis (LSUC#:48038U)

Tel: 416.862.5997

Fax: 416.862.6666

Email: [mdelellis@osler.com](mailto:mdelellis@osler.com)

Lawyers for the Monitor, FTI Consulting Canada Inc.

**Appendix "E"**

**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**

**AFFIDAVIT OF MICHAEL DE LELLIS  
(Sworn March 25, 2015)**

**I, MICHAEL DE LELLIS**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Partner in the law firm of Osler, Hoskin & Harcourt LLP ("**Osler**"), lawyers for FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the court appointed monitor for Cline Mining Corporation, New Elk Coal Company LLC and North Central Energy Company (collectively, the "**Applicants**") and, as such, I have knowledge of the matters to which I hereinafter depose. Where I have relied on other sources for information, I have identified such sources and believe the information to be true.

2. On December 3, 2014, the Applicants obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to the initial order granted by the Honourable Justice Morawetz (the "**Initial Order**"). Pursuant to the Initial Order, FTI was appointed as monitor (the "**Monitor**") of the Applicants. The proceedings commenced by the Applicants under the CCAA will be referred to herein as the "**CCAA Proceedings**".

3. This affidavit is made in support of a motion (the “**Motion**”) for, *inter alia*, the approval of the fees and disbursements of Osler in its capacity as legal counsel for the Monitor for the period from December 3, 2014 to February 28, 2015.

4. Osler’s invoices for the period from December 3, 2014 to February 28, 2015 disclose in detail: (i) the names, hourly rates and time expended by each person who rendered services; (ii) the dates on which the services were rendered; (iii) the time expended each day; and (iv) the total charges and rates for each of the categories of services rendered for the relevant time period. Attached and marked collectively as Exhibit “A” to this affidavit are true copies of the accounts rendered to FTI in connection with the CCAA Proceedings for the period of December 3, 2014 to February 28, 2015 (redacted for confidential information).

5. During the period from December 3, 2014 to February 28, 2015 Osler docketed 262.70 hours in respect of the CCAA Proceedings and billed a total of \$164,180.04, amounting to legal fees of \$143,280.00 and disbursements and other charges of \$2,012.07 plus Harmonized Sales Tax of \$18,887.97.

6. Attached hereto as Exhibit “B” is a schedule summarizing each invoice in Exhibit “A”.

7. Attached hereto as Exhibit “C” is a schedule summarizing the billing rates of each of the members of Osler who acted on behalf of the Monitor in the CCAA Proceedings from December 3, 2014 to February 28, 2015, as well as the average hourly rate for the legal services provided by Osler.

8. The hourly billing rates applied in the invoices of Osler are Osler’s normal hourly rates which were in effect from December 3, 2014 to February 28, 2015 and are comparable to the hourly rates charged by Osler for services rendered in relation to similar proceedings.

10. The rates charged by Osler throughout the course of the CCAA Proceedings are comparable to the rates charged by other law firms in the Toronto market for the provision of similar services.

11. I have been actively involved in this matter. The hours spent on this matter involved assisting FTI in the monitoring of the Applicants and dealing with a number of CCAA issues (as more particularly described in the Monitor's reports) and I believe that the time expended and the fees charged by Osler are reasonable, fair and appropriate in light of the complexity of the proceeding, the nature of services performed and the prevailing market rates for such services.

12. I swear this affidavit in support of the Motion and for no improper purpose.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, on  
March 25, 2015.



Commissioner for Taking Affidavits


David Rosenblatt

  
MICHAEL DE LELLIS

THIS IS EXHIBIT "A" REFERRED TO IN THE

AFFIDAVIT OF MICHAEL DE LELLIS

SWORN BEFORE ME ON MARCH 25, 2015



---

A COMMISSIONER FOR TAKING AFFIDAVITS

*David Rosenblatt*

Osler, Hoskin & Harcourt LLP  
1 First Canadian Place  
PO BOX 50  
Toronto ON M5X 1B8  
CANADA  
416.362.2111 MAIN  
416.862.6666 FACSIMILE

# OSLER

FTI Consulting Canada Inc.  
TD Waterhouse Tower, 79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, ON M5K 1G8  
CANADA

Invoice No.: 11741337  
Date: January 30, 2015  
Client No.: 223352  
GST/HST No.: 121983217 RT0001

Attention: Paul Bishop

Contact: Marc Wasserman  
Direct Dial: (416) 862-4908  
E-mail: MWasserman@Osler.com

For professional services rendered for Project Ki (F#1161186).

OUR FEE HEREIN	52,519.00
REIMBURSABLE EXPENSES	1,243.56
HST @ 13%	6,989.13
<b>TOTAL (CAD):</b>	<b>60,751.69</b>

**PAYMENT DUE ON OR BEFORE MARCH 1, 2015**



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FINANCE & ACCOUNTING  
(RECEIPTS)  
1 First Canadian Place  
PO BOX 50  
Toronto, Ontario M5X 1B8  
Canada

Invoice No.: 11741337  
Client No.: 223352  
Amount: 60,751.69 CAD

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**FEE SUMMARY**

NAME	HRS	RATE	FEEs
<u>PARTNER</u>			
Michael De Lellis	37.20	660	24,552.00
Marc Wasserman	4.30	740	3,182.00
<u>ASSOCIATE</u>			
Daniel Michaels	8.40	375	3,150.00
David Rosenblat	55.00	375	20,625.00
Paraprofessionals	2.10		359.00
<u>CORPORATE SEARCHES FIXED FEES</u>			
Corporate Searches by Elizabeth E. Buchanan			651.00
<b>TOTAL FEES (CAD):</b>	<b>107.00</b>		<b>52,519.00</b>

**FEE DETAIL**

DATE	NAME	DESCRIPTION	HRS
Dec-03-14	Michael De Lellis	Reviewing correspondence; preparing for court attendance; attending court in respect of the Initial Order, Claims Procedure Order and Meeting Order; conference calls and correspondence with L. Willis of Goodmans with respect to various issues; corresponding with P. Bishop; attending at Commercial List with L. Willis at request of Justice Morawetz and reviewing materials in respect of same; corresponding with J. Swartz of Davies; reviewing additional submissions provided to court by Goodmans; corresponding with K. Coleman of Allen & Overy.	6.50
Dec-03-14	David Rosenblat	Compiling security documentation and commencing review of same; reviewing correspondence.	0.70
Dec-03-14	Marc Wasserman	Attending court regarding motion for approval of CCAA filing; engaged in discussions with P. Bishop and M. De Lellis regarding same.	2.00
Dec-04-14	Michael De Lellis	Reviewing correspondence; corresponding with K. Coleman of Allen & Overy; corresponding with P. Bishop; meeting with D. Rosenblat to discuss security review issues; reviewing form of creditor notice.	1.10
Dec-04-14	David Rosenblat	Reviewing previous security opinions; compiling associated documentation; discussing same with L. Willis; discussing same with J. Prieto; reviewing correspondence.	2.10

Dec-08-14	Michael De Lellis	Reviewing correspondence; meeting with D. Rosenblat to discuss security review issues and diligence; meeting with D. Rosenblat to discuss issues in connection with the Monitor's First Report; considering scope of the Monitor's First Report and drafting reporting email to FTI with respect to same.	2.10
Dec-08-14	David Rosenblat	Discussing security documentation with M. De Lellis; reviewing correspondence; compiling additional security documentation.	0.50
Dec-08-14	Marc Wasserman	Discussions with M. De Lellis regarding Monitor's report and upcoming stay extension; engaged in multiple discussions regarding same.	0.70
Dec-09-14	Michael De Lellis	Reviewing correspondence; multiple correspondence with P. Luthra with respect to various issues; responding to inquiries from P. Luthra; multiple correspondence with L. Willis of Goodmans with respect to various issues; corresponding with K. Coleman of Allen & Overy with respect to timing of recognition proceedings and draft rider with respect to the Monitor's First Report in respect of same; discussing various issues with D. Rosenblat; corresponding with P. Bishop.	1.10
Dec-09-14	David Rosenblat	Reviewing and compiling security and note documentation as part of review of security; reviewing correspondence; responding to emails.	5.70
Dec-10-14	Corporate Searches by Elizabeth E. Buchanan	Receiving instructions from D. Rosenblat; conducting corporate history, Ontario Bank Act, Official Receiver and Execution searches in Toronto and province wide respecting Cline Mining Corporation and two former names and reporting thereon.	
Dec-10-14	Michael De Lellis	Reviewing correspondence; considering issues with respect to a proposed equipment sale; corresponding with P. Luthra with respect to various issues; corresponding with L. Willis with respect to various issues; meeting with D. Rosenblat to discuss ongoing security review process; corresponding with J. Cho of Allen & Overy with respect to the Chapter 15 Proceedings.	1.20
Dec-10-14	David Rosenblat	Coordinating various searches for the purpose of security review; discussing same with E. Buchanan; reviewing correspondence; reviewing security documentation.	2.30
Dec-10-14	Julie Verconich	Receiving instructions from D. Rosenblat; email and discussion with E. Buchanan regarding history; ordering Ontario and British Columbia PPSA searches.	0.60
Dec-11-14	Michael De Lellis	Reviewing correspondence; reviewing update with respect to Chapter 15 proceedings; corresponding with J. Cho of Allen & Overy.	0.90
Dec-11-14	Julie Verconich	Receiving and reviewing British Columbia and Ontario PPSA searches; forwarding same to D. Rosenblat.	0.70

Dec-12-14	Michael De Lellis	Reviewing correspondence; corresponding with L. Willis with respect to various issues; corresponding with P. Luthra with respect to various issues; discussing materials delivered by Goodmans and the draft Monitor's First Report with D. Rosenblat.	1.50
Dec-12-14	David Rosenblat	Discussing outstanding items with M. De Lellis; reviewing correspondence.	0.60
Dec-13-14	David Rosenblat	[REDACTED] [REDACTED]; reviewing correspondence.	3.30
Dec-14-14	Michael De Lellis	Reviewing correspondence; [REDACTED] [REDACTED], drafting reporting email to L. Willis with respect to comments on motion materials; reviewing draft monitor's report, noting comments and revisions to same and participating in conference call with D. Rosenblat with respect to same; corresponding with P. Bishop and P. Luthra.	3.90
Dec-14-14	David Rosenblat	Reviewing, revising and commenting on draft Monitor's report; drafting email to M. De Lellis regarding general comments on all draft materials; discussing draft report and outstanding issues with M. De Lellis; revising report pursuant to comments received from M. De Lellis.	7.20
Dec-15-14	Michael De Lellis	Reviewing correspondence; reviewing underlying materials in connection with reviewing Monitor's First Report; reviewing revised Monitor's First Report; drafting revisions and comments to same and corresponding with P. Bishop and P. Luthra with respect to same; multiple correspondence with L. Willis; multiple correspondence with Allen & Overy with respect to security review; reviewing service motion materials; reviewing revised Monitor's First Report.	5.40
Dec-15-14	David Rosenblat	Attending multiple meetings with M. De Lellis regarding Monitor's Report; revising same pursuant to comments received thereon; continuing review of security documentation; reviewing correspondence; responding to emails.	5.10
Dec-16-14	Michael De Lellis	Reviewing correspondence; meeting with M. Wasserman to discuss various issues; multiple correspondence with P. Luthra at FTI with respect to various issues; [REDACTED] [REDACTED], reviewing and finalizing Monitor's First Report and arranging for service of same; corresponding with K. Coleman at Allen & Overy.	1.40
Dec-16-14	David Rosenblat	Reviewing, revising and finalizing first monitor's report; reviewing correspondence; responding to emails; continuing review of security documentation; discussing same with M. De Lellis.	5.90

Dec-17-14	Michael De Lellis	Reviewing correspondence; participating in conference call with K. Coleman and J. Cho at Allen & Overy to discuss security review issues; participating in meeting with D. Rosenblat to discuss Canadian Security review issues; drafting email to M. Buttery at Davis with respect to required B.C. security review opinion; corresponding with P. Bishop and P. Luthra to provide security review update.	1.50
Dec-17-14	David Rosenblat	Attending call with US counsel regarding security review; discussing outstanding items with M. De Lellis; reviewing correspondence; continuing review of security documentation; reviewing search results associated with security review.	3.90
Dec-17-14	Marc Wasserman	Engaged in discussions with M. De Lellis regarding security review and other matters; email correspondence from D. Rosenblat regarding same.	1.10
Dec-18-14	Michael De Lellis	Reviewing correspondence; corresponding with Davis LLP with respect to BC security review issues; corresponding with Allen & Overy with respect to U.S. security review issues; corresponding with P. Bishop and P. Luthra with respect to security review issues; corresponding with M. Wasserman with respect to timing issues.	0.90
Dec-18-14	David Rosenblat	Discussing security documentation with J. Prieto; discussing outstanding issues with M. De Lellis; discussing real property aspect of security review with D. Michaels; reviewing previous security opinions regarding 2011 and 2013 note issuances; reviewing searches conducted in connection with security review; reviewing security documentation; reviewing correspondence.	3.10
Dec-18-14	Marc Wasserman	Further email correspondence on security review; discussion with M. De Lellis regarding same.	0.50
Dec-19-14	Michael De Lellis	Reviewing correspondence with respect to a [REDACTED] issue and considering issues with respect to same; corresponding with P. Luthra at FTI; corresponding with Allen & Overy with respect to US security review opinion issues.	0.60
Dec-19-14	David Rosenblat	Completing review of previous security opinions; reviewing correspondence; discussing US aspect of security review with US counsel; coordinating BC security review; responding to emails; discussing outstanding issues with M. De Lellis.	1.20
Dec-21-14	Michael De Lellis	Reviewing correspondence; reviewing motion record and Monitor's First Report in preparation for court attendance.	1.60
Dec-21-14	David Rosenblat	Finalizing review of security documentation; commencing drafting of associated security opinions; reviewing correspondence; summarizing analysis of security documentation.	4.20

Dec-22-14	Michael De Lellis	Reviewing correspondence; preparing for court attendance; attending court with P. Luthra at FTI; multiple correspondence and discussions with P. Luthra at FTI with respect to various issues; corresponding with L. Willis at Goodmans; meeting with D. Rosenblat to discuss Ontario security review and issues with respect to same; considering security review issues; meeting with D. Rosenblat to discuss scope of Monitor's report in respect of the CCAA Plan; corresponding with BC counsel with respect to BC security review issues; discussing Ontario real property security review issues with D. Rosenblat.	5.70
Dec-22-14	Daniel Michaels	Meeting with D. Rosenblat to receive instructions on preparation of an opinion on the real property security in Ontario; reviewing closing book indexes provided by D. Rosenblat to identify relevant documents to review in respect of opinion to be prepared; reviewing Mining Act legislation on consent requirements to charge mining leases.	1.60
Dec-22-14	David Rosenblat	Meeting with D. Michaels to discuss real property security review; drafting transaction overview email for BC counsel; reviewing correspondence; responding to emails; drafting transaction overview chart; discussing analysis of security with M. De Lellis; discussing upcoming Monitor's report with M. De Lellis.	4.90
Dec-23-14	Michael De Lellis	Reviewing correspondence; corresponding with P. Luthra at FTI with respect to various issues; multiple correspondence with Allen & Overy; participating in conference call with M. Wasserman.	1.80
Dec-23-14	Daniel Michaels	Arranging for title to be pulled for the Ontario real estate properties of Cline Mining Corporation; reviewing the title and financial encumbrances on title to the Ontario real estate properties of Cline Mining Corporation.	0.70
Dec-23-14	Lorna Storm	Conducting search of title to obtain current PIN abstract and copies of registered documents; reporting same to D. Michaels.	0.80
Dec-24-14	Daniel Michaels	Reviewing title in Ontario for Cline Mining Corporation real property.	0.20
Dec-26-14	David Rosenblat	Preparing initial draft of security opinion regarding 2011 notes; compiling associated materials and appendices thereto.	3.10
Dec-29-14	Daniel Michaels	Reviewing the Ontario security and related loan documents in order to prepare an opinion on the Ontario real property security.	5.10
Dec-29-14	David Rosenblat	Reviewing previous Monitor's reports; preparing outline for second Monitor's Report.	1.20
Dec-30-14	Daniel Michaels	Preparing a draft opinion on the real estate security in Ontario.	0.80

**TOTAL HOURS:**

**107.00**

**EXPENSE SUMMARY**

<b>DESCRIPTION</b>	<b>AMOUNT</b>
<u>EXPENSES - TAXABLE</u>	
Bank Act Fees	44.34
Corporate Search Charges	24.00
Courier Expenses	26.80
On-line Database Services	8.50
Printing Costs	551.55
Telecommunications - External	3.42
Agent's Fees & Expenses	213.50
Cyberbahn Fees for Searches/Certificates/Filings	16.00
Execution Search	91.95
OnCorp Fees for Searches/Certificates/Filings	207.50
Title-Related Searches-Toronto	56.00
<b>TOTAL (CAD):</b>	<b><u>1,243.56</u></b>

Osler, Hoskin & Harcourt LLP  
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416.862.6666 FACSIMILE

# OSLER

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Toronto, ON M5K 1G8  
CANADA

Invoice No.: 11762040  
Date: February 28, 2015  
Client No.: 223352  
GST/HST No.: 121983217 RT0001

Attention: Paul Bishop

Contact: Marc Wasserman  
Direct Dial: (416) 862-4908  
E-mail: MWasserman@Osler.com

For professional services rendered for Project Ki (F#1161186).

OUR FEE HEREIN	90,761.00
REIMBURSABLE EXPENSES	768.51
HST @ 13%	11,898.84
<b>TOTAL (CAD):</b>	<b>103,428.35</b>

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**FEE SUMMARY**

NAME	HRS	RATE	FEES
<u>PARTNER</u>			
Rodney Davidge	3.70	770	2,849.00
Michael De Lellis	70.40	690	48,576.00
Marc Wasserman	7.60	770	5,852.00
<u>ASSOCIATE</u>			
Daniel Michaels	7.10	440	3,124.00
David Rosenblat	69.00	440	30,360.00
<b>TOTAL FEES (CAD):</b>	<b>157.80</b>		<b>90,761.00</b>

**FEE DETAIL**

DATE	NAME	DESCRIPTION	HRS
Jan-02-15	Michael De Lellis	Reviewing correspondence; reviewing multiple previously issued security review opinions in connection with each of the 2011 and 2013 Bonds; considering various security opinion issues; drafting reporting email to D. Rosenblat with respect to security review opinion issues; reviewing notice of dispute and considering issues with respect to same.	2.30
Jan-02-15	Daniel Michaels	Preparing a draft real property security opinion.	1.00
Jan-02-15	David Rosenblat	Reviewing correspondence; responding to emails.	0.20
Jan-03-15	David Rosenblat	Reviewing Plan; finalizing outline for Second Report of the Monitor; reviewing 2011 secured notes opinion.	2.90
Jan-04-15	Daniel Michaels	Drafting a real estate security opinion.	2.70
Jan-04-15	David Rosenblat	Preparing initial draft of Second Report of the Monitor; reviewing correspondence.	8.40
Jan-05-15	Rodney Davidge	Reviewing draft opinion and meeting with D. Michaels regarding diligence.	2.00
Jan-05-15	Michael De Lellis	Meeting with D. Rosenblat to discuss security review issues.	0.50
Jan-05-15	Daniel Michaels	Revising real property security opinion based on comments from R. Davidge.	1.10



Jan-05-15	David Rosenblat	Reviewing correspondence; discussing real property security review with D. Michaels; finalizing initial draft of 2013 secured notes opinion; finalizing initial draft of 2011 secured notes opinion; reviewing real property security opinion.	3.00
Jan-06-15	Michael De Lellis	Reviewing correspondence; corresponding with P. Luthra; considering ██████████ issue and corresponding with M. Wasserman with respect to same; considering master voting list issue; discussing same with D. Rosenblat and corresponding with P. Luthra with respect to reviewing draft Monitor's second report and various emails with respect to same.	3.00
Jan-06-15	Daniel Michaels	Speaking to D. Rosenblat and discussing the security opinion.	0.30
Jan-06-15	David Rosenblat	Reviewing real estate security opinion; revising 2011 secured note opinion and 2013 secured note opinion to reflect real estate security review; reviewing meetings order; discussing outstanding issues with M. De Lellis; discussing outstanding issues with D. Michaels.	3.10
Jan-07-15	Rodney Davidge	Reviewing revised opinions.	1.00
Jan-07-15	Michael De Lellis	Reviewing correspondence; meeting with D. Rosenblat to discuss security review opinion and Monitor report issues; reviewing U.S. motion materials and draft order; reviewing comments received in respect of same, drafting comments with respect to same and drafting reporting email with respect to same; corresponding with J. Cho at Allen & Overy with respect to U.S. security review issues; responding to inquiries from P. Luthra at FTI and corresponding with respect to same; participating in conference call with B.C. counsel with respect to security opinion update; corresponding with L. Willis at Goodmans.	3.20
Jan-07-15	Daniel Michaels	Revising security review prepared by D. Rosenblat to ensure that the real estate component was properly integrated into the opinion; discussing security opinion with R. Davidge.	1.20
Jan-07-15	David Rosenblat	Discussing outstanding issues with M. De Lellis; reviewing correspondence; attending call with B.C. counsel regarding security review; reviewing and commenting on U.S. sanction motion materials; reviewing opinion revisions provided by real estate counsel; responding to emails.	3.20
Jan-08-15	Michael De Lellis	Reviewing correspondence; participating in conference call with L. Willis at Goodmans; meeting with D. Rosenblat to discuss Plan report and security review issues; reviewing revised Chapter 15 materials and commenting on same; corresponding with P. Luthra with respect to Plan report; meeting with M. Wasserman to discuss Plan report and security review issues.	2.90

Jan-08-15	David Rosenblat	Attending call with M. De Lellis and L. Willis; reviewing Plan; revising draft Monitor's report per comments received thereon; discussing outstanding issues with M. De Lellis; discussing upcoming Monitor's report with M. De Lellis and M. Wasserman; revising revised U.S. motion materials.	6.60
Jan-08-15	Marc Wasserman	Engaged in internal discussion regarding report; email correspondence with respect thereto and with respect to opinion from U.S.	1.30
Jan-09-15	Michael De Lellis	Reviewing correspondence; corresponding with P. Luthra; reviewing draft Monitor's second report; considering revisions and comments to same and meeting with M. Wasserman to discuss scope of the report; meeting with D. Rosenblat to discuss issues relating to the Ontario security review and Monitor's second report.	2.80
Jan-09-15	Daniel Michaels	Discussing question on the real estate portion of the opinion with D. Rosenblat.	0.10
Jan-09-15	David Rosenblat	Finalizing revised version of Monitor's report; discussing outstanding issues with M. De Lellis; reviewing correspondence; responding to emails; compiling appendices to security opinions; discussing same with D. Michaels.	3.30
Jan-09-15	Marc Wasserman	Engaged in discussions with M. De Lellis regarding status of meeting and report in respect thereof.	0.70
Jan-10-15	Michael De Lellis	Reviewing correspondence; reviewing report rider prepared by P. Luthra; corresponding with D. Rosenblat.	1.00
Jan-10-15	David Rosenblat	Reviewing additional materials received regarding claims process results and other developments in proceedings; revising draft Monitor's report accordingly; reviewing correspondence; responding to emails.	0.80
Jan-11-15	Michael De Lellis	Reviewing correspondence; multiple correspondence with D. Rosenblat with respect to various issues; reviewing CCAA Plan of the applicants; reviewing revised draft second Monitor's report; drafting revisions and comments to same and drafting reporting email to D. Rosenblat with respect to same; drafting reporting email to L. Willis with respect to various information points required for inclusion in the Monitor's second report; drafting reporting email to FTI with respect to various issues; responding to inquiries from P. Luthra.	7.00
Jan-11-15	David Rosenblat	Reviewing correspondence; responding to emails; revising draft Monitor's report.	2.70
Jan-12-15	Rodney Davidge	Reviewing suggested opinion revisions.	0.50

Jan-12-15	Michael De Lellis	Reviewing correspondence; reviewing responses to inquiries received from L. Willis and P. Luthra; reviewing subsequently revised Monitor's second report and drafting revisions and comments to same; finalizing initial draft of the Monitor's second report; multiple correspondence with P. Luthra with respect to the Monitor's second report; considering claims process issue.	6.00
Jan-12-15	Daniel Michaels	Preparing paragraph for the Monitor's report to summarize opinion findings on real property for D. Rosenblat.	0.70
Jan-12-15	David Rosenblat	Finalizing revised draft of Monitor's Report; discussing same with M. De Lellis; discussing security opinions with M. De Lellis; revising correspondence.	4.20
Jan-12-15	Marc Wasserman	Reviewing draft report and engaged in discussions with M. De Lellis regarding same.	1.50
Jan-13-15	Michael De Lellis	Reviewing correspondence; multiple correspondence with Allen & Overy in connection with security review opinions; considering issues in connection with various claims; corresponding with L. Willis at Goodmans; reviewing materials received in respect of filed claims; reviewing revised Monitor's report; considering issues in connection with same; drafting revisions in connection with same and multiple correspondence with various parties in connection with same; reviewing comments on Monitor's report from FTI; correspondence with Goodmans in connection with the Monitor's report; reviewing updated claims summary and providing FTI with comments to same.	4.30
Jan-13-15	David Rosenblat	Reviewing U.S. counsel opinions and providing comments on same; discussing security opinions with M. De Lellis and M. Wasserman; reviewing correspondence; revising draft Plan report; discussing outstanding issues with M. De Lellis.	5.20
Jan-13-15	Marc Wasserman	Engaged in discussions with M. De Lellis regarding report; reviewing same and providing comments thereon.	1.00
Jan-14-15	Michael De Lellis	Reviewing correspondence; reviewing revised Monitor's report and drafting revisions and comments to same; finalizing Monitor's second report; multiple correspondence with Allen & Overy in connection with security review opinion issues; [REDACTED], reviewing master voting list.	2.80
Jan-14-15	David Rosenblat	Revising Monitor's report; reviewing comments received thereon and further revising accordingly; reviewing correspondence; responding to emails; discussing outstanding issues with M. De Lellis; coordinating service and filing of Monitor's report.	2.80

Jan-14-15	Marc Wasserman	Discussions with M. De Lellis regarding title opinions in U.S. jurisdictions; discussions regarding report; reviewing same and providing comments thereon; engaged in discussions regarding status of filing; multiple discussions with M. De Lellis regarding same.	1.50
Jan-15-15	Michael De Lellis	Reviewing correspondence; responding to creditor inquiry; responding to inquiries from P. Luthra at FTI and reviewing materials in connection with same; meeting with D. Rosenblat in connection with various issues; meeting with M. Wasserman to discuss various issues.	2.20
Jan-15-15	David Rosenblat	Discussing outstanding matters with M. De Lellis; reviewing correspondence.	0.30
Jan-16-15	Michael De Lellis	Reviewing correspondence; participating in conference calls with L. Willis at Goodmans; reviewing the 2011 Ontario security review opinion and drafting revisions and comments to same; reviewing the 2013 Ontario security review opinion and drafting revisions and comments to same.	3.00
Jan-16-15	David Rosenblat	Discussing outstanding items with M. De Lellis; drafting email to U.S. counsel regarding outstanding security opinion considerations; reviewing correspondence.	0.30
Jan-16-15	Marc Wasserman	Discussions with M. De Lellis regarding status of conversations on WARN Act issues; email correspondence with respect thereto.	1.10
Jan-17-15	Michael De Lellis	Reviewing correspondence; multiple correspondence with L. Willis at Goodmans with respect to various claims and process; multiple correspondence with P. Bishop at FTI with respect to various issues; corresponding with M. Wasserman.	1.40
Jan-18-15	Rodney Davidge	Reviewing and responding to email on opinion matters.	0.20
Jan-18-15	Michael De Lellis	Reviewing correspondence; multiple correspondence and conference calls with L. Willis at Goodmans; correspondence with M. Wasserman; reviewing correspondence from Allen & Overy with respect to U.S. security review opinions.	1.70
Jan-18-15	David Rosenblat	Reviewing correspondence; discussing outstanding issues with M. De Lellis; [REDACTED] reviewing U.S. security opinions; commencing drafting of riders for Monitor's report; following up with R. Davidge on outstanding items.	1.70

Jan-19-15	Michael De Lellis	Reviewing correspondence; reviewing claims information; multiple correspondence and conference calls with P. Luthra of FTI with respect to various issues; reviewing meeting materials and responding to inquiries from P. Luthra with respect to same; considering WARN Act claim issues [REDACTED]; [REDACTED]; multiple correspondence and conference calls with L. Willis at Goodmans with respect to various issues; reviewing various proofs of claim received; reviewing various notices of revisions of disallowance and commenting on same; [REDACTED]; corresponding with P. Bishop at FTI with respect to various issues; reviewing reporting email from L. Willis with respect to claims; reviewing scope of Monitor's third report and drafting email to P. Luthra with respect to same; reviewing plan resolutions.	6.20
Jan-19-15	David Rosenblat	Completing review of U.S. security opinions; discussing outstanding items with M. De Lellis; drafting additional portions for Monitor's report; reviewing meeting order; responding to emails; reviewing correspondence.	4.60
Jan-20-15	Michael De Lellis	Reviewing correspondence; multiple correspondence and conference calls with P. Luthra and P. Bishop with respect to various issues in connection with the amended and restated CCAA Plan, the various claims and the upcoming creditor meetings; multiple correspondence and conference calls with R. Chadwick and L. Willis with respect to various issues; reviewing particulars of settlement with the WARN Act plaintiffs; [REDACTED]; [REDACTED]; [REDACTED] reviewing meeting script, revised Plan resolutions, proxies and ballots.	5.80
Jan-20-15	David Rosenblat	Reviewing correspondence; responding to emails; discussing outstanding matters with M. De Lellis; attending call with U.S. counsel regarding security review; reviewing amended plan and commenting on same; revising opinions.	2.20
Jan-21-15	Michael De Lellis	Reviewing correspondence; preparing for creditor meetings; attending the WARN Act creditors meeting, the unsecured creditors' meeting and the secured noteholders meeting; reviewing draft sanction order and drafting revisions and comments to same; multiple correspondence and conference calls with P. Luthra and P. Bishop.	2.80
Jan-21-15	David Rosenblat	[REDACTED] attending call with U.S. counsel regarding opinions; discussing same with M. De Lellis and M. Wasserman; reviewing correspondence; responding to emails.	3.20
Jan-21-15	Marc Wasserman	Attending creditors meeting; engaged in discussions with M. De Lellis regarding same.	0.50

Jan-22-15	Michael De Lellis	Reviewing correspondence; [REDACTED]; reviewing Monitor's third report; drafting revisions and comments to same; multiple correspondence and conference calls with FTI with respect to same; multiple correspondence with P. Luthra and P. Bishop with respect to various issues.	5.40
Jan-22-15	David Rosenblat	Reviewing, revising and commenting on draft Monitor's report; reviewing amended plan; discussing outstanding items with M. De Lellis; responding to emails; reviewing correspondence.	2.90
Jan-23-15	Michael De Lellis	Reviewing correspondence; corresponding with P. Bishop with respect to various issues; reviewing revised Monitor's third report and commenting on same; [REDACTED]; corresponding with L. Willis; finalizing Monitor's third report; multiple correspondence with P. Luthra with respect various issues.	1.80
Jan-23-15	David Rosenblat	Reviewing revised report and providing comments thereon; discussing report and other outstanding items with M. De Lellis; finalizing report; coordinating filing of Monitor's report; service of same.	3.80
Jan-26-15	Michael De Lellis	Reviewing correspondence; [REDACTED]; reviewing materials in preparation for sanction hearing; corresponding with P. Luthra; corresponding with K. Coleman; [REDACTED].	1.90
Jan-26-15	David Rosenblat	Preparing and coordinating filing of affidavit of service [REDACTED]; [REDACTED]; discussing same with L. Willis.	0.50
Jan-27-15	Michael De Lellis	Reviewing correspondence; attending Sanction Hearing; corresponding with P. Luthra; discussing closing mechanics with L. Willis.	1.70
Jan-27-15	David Rosenblat	Compiling materials for court appearance; attending court; finalizing Ontario security opinions; compiling B.C. and U.S. security opinions.	2.00
Jan-29-15	Michael De Lellis	Reviewing correspondence; considering issues with respect to employer health taxes and with respect to claims process and ability to file late claims and corresponding with P. Luthra with respect to same; discussing personal property and real property registration issues with D. Rosenblat.	0.70
Jan-29-15	David Rosenblat	Discussing outstanding items with M. De Lellis; attending calls with B.C. counsel and Colorado counsel regarding security reviews; reviewing correspondence; responding to emails.	0.90
Jan-30-15	David Rosenblat	Attending call with Colorado counsel; drafting update email regarding same.	0.20

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TOTAL HOURS:

157.80

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**EXPENSE SUMMARY**


<b>DESCRIPTION</b>	<b>AMOUNT</b>
<u>EXPENSES - TAXABLE</u>	
Printing Costs	380.20
Telecommunications Charges	1.81
Agent's Fees & Expenses	235.00
OnCorp Fees for Searches/Certificates/Filings	151.50
<b>TOTAL (CAD):</b>	<b>768.51</b>

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THIS IS EXHIBIT "B" REFERRED TO IN THE

AFFIDAVIT OF MICHAEL DE LELLIS

SWORN BEFORE ME ON MARCH 25, 2015



---

A COMMISSIONER FOR TAKING AFFIDAVITS

*David Rosenblat*



EXHIBIT "B"


Osler - Summary of Invoices

Invoice #	Date	Fee	Disbursements	Taxes	Total
11741337	30-Jan-15	\$ 52,519.00	\$ 1,243.56	\$ 6,989.13	\$ 60,751.69
11762040	28-Feb-15	\$ 90,761.00	\$ 768.51	\$ 11,898.84	\$ 103,428.35
<b>TOTALS</b>		\$ 143,280.00	\$ 2,012.07	\$ 18,887.97	\$ 164,180.04

THIS IS EXHIBIT "C" REFERRED TO IN THE

AFFIDAVIT OF MICHAEL DE LELLIS

SWORN BEFORE ME ON MARCH 25, 2015



---

A COMMISSIONER FOR TAKING AFFIDAVITS

David Rosenblatt -

EXHIBIT "C"

Osler Fees - December 3, 2014 to January 30, 2015

Name	Hours	Hourly Rate*	Product
Rodney Davidge	3.70	\$770	2,849.00
Michael De Lellis	37.20	\$660	24,552.00
Michael De Lellis	70.40	\$690	48,576.00
Marc Wasserman	4.30	\$740	3,182.00
Marc Wasserman	7.60	\$770	5,852.00
Daniel Michaels	8.40	\$375	3,150.00
Daniel Michaels	7.10	\$440	3,124.00
David Rosenblat	55.00	\$375	20,625.00
David Rosenblat	69.00	\$440	30,360.00
Elizabeth Buchanan	-	-	651.00
Paraprofessionals	-	-	359.00
<b>Total</b>	<b>262.70</b>		<b>143,280.00</b>

*\*The average hourly rate for the legal services provided by Osler is \$545.57*

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF MICHAEL DE LELLIS**

**OSLER, HOSKIN & HARCOURT LLP**

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Lawyers for the Monitor, FTI Consulting Canada Inc.

## Appendix 'F'

Court File No. CV14-10781-00CL

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

THIRD REPORT  
OF FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR OF THE APPLICANTS

January 23, 2015



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

THIRD REPORT OF FTI CONSULTING CANADA INC.,  
in its capacity as Monitor of the Applicants

January 23, 2015

**INTRODUCTION**

1. On December 3, 2014 (the "**Filing Date**"), Cline Mining Corporation ("**Cline**"), New Elk Coal Company LLC ("**New Elk**") and North Central Energy Company ("**North Central**") (collectively, the "**Applicants**") filed for and obtained protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Pursuant to the Order of this Honourable Court (the "**Initial Order**") dated December 3, 2014, FTI Consulting Canada Inc. ("**FTI**") was appointed as the Monitor of the Applicants (the "**Monitor**") in these CCAA proceedings (the "**CCAA Proceedings**"). The Initial Order provided, *inter alia*, for a stay of proceedings through to and including December 31, 2014 for the Applicants.

2. On the Filing Date, this Honourable Court also granted an Order that approved a claims process for the identification and determination of claims against the Applicants and their present and former directors and officers (the "**Claims Procedure Order**") and an Order

authorizing the Applicants to file a plan of compromise and arrangement (the "**Plan**", attached as Appendix "A" hereto) and to convene meetings of their affected secured creditors, affected unsecured creditors, and the WARN Act Plaintiffs (as defined in the Claims Procedure Order) (collectively, the "**Meetings**") to consider and vote on the Plan (the "**Meetings Order**").

3. On December 3, 2014, the Monitor commenced ancillary cases in the United States by filing petitions (the "**U.S. Petitions**") under chapter 15 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Colorado (the "**Bankruptcy Court**").

4. On December 4, 2014 the Monitor, as foreign representative of the Applicants, obtained certain relief from the Bankruptcy Court, including (i) the joint administration of the Chapter 15 Proceedings, (ii) approval of the form and manner of notice of the Chapter 15 Proceedings, and (iii) the entry of a temporary restraining order (the "**TRO**") staying the commencement or continuation of proceedings against the Applicants and preventing parties from exercising contractual rights triggered by the commencement of insolvency proceedings in respect of the Applicants.

5. On December 11, 2014, the Bankruptcy Court entered a preliminary injunction extending the relief granted in the TRO pending further determination in the Chapter 15 Proceedings.

6. Pursuant to the Initial Order, a comeback date (the "**Comeback Date**") was scheduled for December 22, 2014. The Initial Order provided that any interested party (other than the Applicants or the Monitor) that wished to amend or vary the Initial Order was entitled to appear or bring a motion before this Honourable Court on the Comeback Date. No such amendment or variation to the Initial Order was sought or obtained on the Comeback Date.



7. On December 22, 2014, this Honourable Court issued an Order approving an extension of the Stay Period (as defined in the Initial Order) to and including March 1, 2015.

8. On January 15, 2015 the Bankruptcy Court entered an Order granting recognition of the CCAA Proceedings and giving full force and effect in the United States to the Initial Order, Claims Procedure Order, and Meetings Order (the "**Recognition Order**").

9. On January 20, 2015 the Applicants filed an amended and restated plan of compromise and arrangement (the "**Amended and Restated Plan**", attached as Appendix "B" hereto).

10. The Applicants' stated objectives for the CCAA Proceedings include permitting them to pursue a recapitalization with a view to maximizing value for the benefit of their stakeholders. The Applicants believe that without the benefit of CCAA protection there could be significant erosion in the value of the Cline Group (being the Applicants and Raton Basin Analytical LLC, collectively) that could result in the loss of tax attributes and various exploration, mining and environmental permits.

11. Unless otherwise stated, all monetary amounts contained in this third report of the Monitor (the "**Third Report**") are expressed in Canadian dollars. Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the Amended and Restated Plan and the affidavit of Matthew Goldfarb sworn December 2, 2014 (the "**Pre-Filing Goldfarb Affidavit**"), as applicable.

12. The following appendices have been attached to this Third Report of the Monitor

- a) Appendix "A" – The Plan;

- b) Appendix “B” – The Amended and Restated Plan;
- c) Appendix “C” – The January 19 Forecast (as defined herein);
- d) Appendix “D” – The Scrutineer’s report regarding attendance at the Meetings;
- e) Appendix “E” – WARN Act Plaintiffs Class Plan Resolution (as defined herein);
- f) Appendix “F” – Affected Unsecured Creditors Class Plan Resolution (as defined herein);
- g) Appendix “G” – Secured Noteholder Class Plan Resolution (as defined herein);  
and
- h) Appendix “H” – Scrutineer’s report regarding the voting results on the motions to approve the plan resolutions.

**PURPOSE**

13. The purpose of the Monitor’s Third Report is to provide information to this Honourable Court and the Applicant’s stakeholders in respect of the following:

- a) an update on the status of the Applicants’ CCAA proceedings;
- b) information regarding the Chapter 15 Proceedings to date;
- c) an update on the state of the Applicants’ financial affairs, including:
  - i. an update regarding the Applicants’ actual receipts and disbursements for the period from January 12, 2015 to January 18, 2015; and

- ii. an update regarding the Applicants' post-filing consolidated cash position and liquidity as detailed in the January 19 Forecast;
- d) an update regarding the review of security granted by the Applicants in connection with the Secured Notes;
- e) an update regarding the claims procedure;
- f) an update regarding the Meetings, including an overview of the conduct of the Meetings and a summary of the voting results of the Meetings;
- g) a summary of key terms in the Amended and Restated Plan;
- h) information relating to the Applicants' request for an Order, *inter alia*, sanctioning and approving the Amended and Restated Plan;
- i) a summary of the Monitor's activities since the Filing Date; and
- j) the Monitor's conclusions and recommendations, including the Monitor's conclusions and recommendations regarding the Applicants' motion for an Order that grants an extension of the Stay Period.

#### TERMS OF REFERENCE

14. In preparing this report, the Monitor has relied upon audited and unaudited financial information of the Applicants, the Applicants' books and records (where appropriate), certain financial information prepared by the Applicants and discussions with various parties, including the Applicants' management and counsel to the Applicants (collectively, the "Information").

15. Except as described in this Third Report:
- a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
  - b) the Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.

#### **GENERAL BACKGROUND**

16. The Cline Group is in the business of locating, exploring and developing mineral resource properties, with a particular focus on gold and metallurgical coal.

17. Further background information regarding the Applicants and the CCAA Proceedings is provided in, *inter alia*, the Pre-Filing Goldfarb Affidavit, the affidavit of Matthew Goldfarb sworn December 15, 2014, the affidavit of Matthew Goldfarb sworn January 21, 2015 (the “**Third Goldfarb Affidavit**”), FTT’s pre-filing report dated December 2, 2014 (the “**Pre-Filing Report**”), the first report of the Monitor dated December 16, 2014 (the “**First Report**”), and the second report of the Monitor dated January 14, 2015 (the “**Second Report**”). Copies of these materials, the Orders and other documentation relating to these CCAA Proceedings have been posted on the Monitor’s website at <http://cfcanada.fticonsulting.com/cline>.

## STATUS OF THE CCAA PROCEEDINGS

18. In the Monitor's Second Report, the Monitor reported on, amongst other things, the status of the CCAA Proceedings, including the Plan and the Applicant's business affairs and financial affairs.

## INFORMATION REGARDING THE CHAPTER 15 PROCEEDINGS

19. On January 12, 2015, the Monitor, as foreign representative of the Applicants, filed a motion requesting that the Bankruptcy Court enter an order giving full force and effect in the United States to an order granted by this Honourable Court sanctioning the Applicants' Amended and Restated Plan. The relief sought is subject to this Honourable Court granting such an order and was made in an effort to coordinate the Chapter 15 Proceedings with the CCAA Proceedings. The hearing to consider whether to grant such relief is currently scheduled for January 29, 2015. The Bankruptcy Court has set an objection deadline for January 27, 2015 in connection with this hearing.

20. The Bankruptcy Court set January 9, 2015 as the last day for filing objections or other responses to the U.S. Petitions and no objection or response was filed or received. Thus, on January 14, 2015, the Bankruptcy Court granted the U.S. Petitions without a hearing and entered the Recognition Order recognizing the CCAA Proceedings as a "foreign main proceeding" and giving full force and effect in the United States to the Initial Order, Claims Procedure Order, and Meetings Order of this Honourable Court. Notice of the Recognition Order has been given by United States mail, first-class postage prepaid, or overnight courier, to (i) Known Creditors, and (ii) the plaintiffs and proposed class counsel in the class action proceeding captioned Gerard, Jr. et al v. New Elk Coal Company, LLC, et al, 1:13-cv-00277-

RM-KMT, pending in the United States District Court for the District of Colorado, to the extent addresses could be obtained by the Monitor from the Applicants.

### THE APPLICANTS' FINANCIAL AFFAIRS

21. Since the Filing Date, the Monitor has continued reviewing the actual receipts and disbursements of the Applicants as well as the Applicants' cash flow statements.

#### *Actual Receipts and Disbursements for the Period from January 12, 2015 to January 18, 2015*

22. The Applicants' actual net cash flow from the period of January 12, 2015 to January 18, 2015 (the "Current Period") together with an explanation of key variances as compared to the cash flow forecast provided in the Monitor's Second Report is described below. Actual net cash flows for the Current Period were approximately \$0.6 million higher than forecast and are summarized as follows:

	Forecast	Actual	Variance
<i>\$ thousands</i>			
Cash Flow from Operations			
Receipts	-	1.5	1.5
Operating Disbursements	(375.7)	(188.5)	187.2
Operating Cash Flows	(375.7)	(187.1)	188.6
Restructuring/ Non-Recurring Disbursements	(645.2)	(208.1)	437.1
Projected Net Cash Flow	(1,020.9)	(395.2)	625.7
Beginning Cash Balance	8,819.8	8,932.7	(112.9)
Ending Cash Balance	7,798.9	8,537.6	738.7

23. The variance in actual receipts and disbursements is comprised primarily of the following:

- a) a positive variance in operating disbursements of \$0.2 million, primarily due to the delay in the payment of a utility deposit (the "Utility Deposit"), which is anticipated to be paid in the upcoming weeks; and

- b) a positive variance in restructuring/non-recurring disbursements of \$0.4 million relating to legal and professional fees, which are primarily timing differences that are anticipated to be temporary in nature and reverse in future weeks.

24. Additionally, a positive variance in the opening cash balance of \$0.1 million has been recognized to reflect the impact of the appreciation of the U.S. Dollar relative to the Canadian Dollar, since the Filing Date, on the funds held at New Elk.

*The Applicants' Revised Cash Flow Forecast*

25. The Applicants prepared a cash flow forecast for the period from January 19, 2015 to April 5, 2015, attached as Exhibit "E" to the Third Goldfarb Affidavit

26. Subsequent to the service of the Third Goldfarb Affidavit, an amendment was made to this cash flow forecast to reflect the anticipated payment of the Utility Deposit of approximately \$0.2 million in the upcoming weeks. The revised cash flow forecast for the period from January 19, 2015 to April 5, 2015 (the "January 19 Forecast") is attached as Appendix "C" hereto. The January 19 Forecast shows a negative cash flow of approximately \$3.3 million and is summarized below:

(CAD in millions)	
Cash Flow from Operations	
Receipts	0.4
Operating Disbursements	(2.6)
Operating Cash Flows	(2.2)
Restructuring/ Non-Recurring Disbursements	(1.0)
Projected Net Cash Flow	(3.2)
Beginning Cash Balance	3.6
Ending Cash Balance	0.4

27. It is anticipated that the Applicants' projected liquidity requirements through to April 1, 2015, being the end of the requested Stay Period, will be met by existing cash available to the Applicants.

#### **UPDATE REGARDING THE REVIEW OF THE SECURITY GRANTED IN RELATION TO THE SECURED NOTES**

28. As described in previous reports of the Monitor, as security for the payment and performance by the Applicants of obligations under the Secured Notes, the Applicants granted security interests in favour of the Trustee (in its capacities as trustee for each of the 2011 Notes and the 2013 Notes) over substantially all of their real and personal property<sup>1</sup> by way of certain security documents (the "**Security Documents**") which were executed in connection with the Secured Notes.

29. The Monitor is advised by the CRO that Cline holds personal and/or real property in Ontario (Canada), British Columbia (Canada) and Colorado (U.S.). Accordingly, the Monitor engaged counsel in such jurisdictions for the purpose of providing opinions (the "**Opinions**") with respect to the security interests granted in favour of the Trustee by way of the Security Documents.<sup>2</sup>

30. The Monitor is in receipt of the Opinions, which provide, in respect of the personal property and subject to standard assumptions and qualifications, that, among other

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<sup>1</sup> The Monitor is advised by the CRO that the Trustee has discharged its security interest in the share capital of Iron Ore Corporation Madagascar S.A.R.L. currently owned by Cline to facilitate a sale thereof by Cline.

<sup>2</sup> Given the number of security opinions that are customary to obtain in U.S. jurisdictions in respect of real property, the Monitor independently retained U.S. counsel ("**Local U.S. Counsel**") who previously provided security opinions to Cline in connection with each issuance of the Secured Notes in order to be cost-effective. In this way, the Monitor was able to obtain the benefit of prior title opinions while simultaneously updating each opinion in favour of the Monitor. In addition, both Canadian and U.S. counsel to the Monitor reviewed the updated U.S. opinions and the prior U.S. opinions, and discussed such opinions with Local U.S. Counsel.



things, the Security Documents create valid security interests in favour of the Trustee in the personal property collateral described therein in which the Applicants have rights and are sufficient to create valid security interests in favour of the Trustee in any such collateral in which the Applicants subsequently acquire any rights, and such security interest, to the extent capable of perfection by registration of a financing statement under applicable legislation and to the extent that such legislation applies to the perfection of such collateral, has been validly perfected. The Opinions also provide, in respect of the real property, that, among other things, the Security Documents create valid charges in favour of the Trustee in the real property interests described therein in which the Applicants have rights, subject to (i) certain standard assumptions and qualifications and (ii) certain issues relating to certain leases and assets, but not the perfection of security thereon, which were identified and known to the parties at the time the security was originally taken and perfected.

31. The Monitor notes that no opinions were given as to the rank or priority of any mortgage, assignment, pledge, charge or security interest created by, or purported to be created by, any of the Security Documents.

32. The Monitor did not obtain opinions in connection with security granted by the Applicants in favour of Marret (in its individual capacity, as opposed to its capacity as a holder and/or manager of the Secured Notes, whose security is held by the Trustee). The Monitor is advised that no amounts are presently owing directly to Marret in its individual capacity, other than amounts owed in respect of the Secured Notes held or controlled by Marret, so it was determined that no such opinions were necessary.

## CLAIMS PROCEDURE

33. On the Filing Date, this Honourable Court issued the Claims Procedure Order that approved a process for the identification and quantification of claims against the Applicants and their present and former directors and officers.

34. As further detailed in the Monitor's Second Report, the Monitor received 4 Notices of Dispute of Claim (as defined in the Claims Procedure Order) from Known Creditors, one of which has been subsequently resolved. The Applicants continue to be engaged in discussions with Known Creditors in order to attempt to resolve the remaining disputes.

35. The Monitor received a consolidated Proof of Claim with respect to the WARN Act Claims on January 13, 2015. Legal counsel to the Applicants, with the assistance of the Monitor, engaged in discussions with counsel to the WARN Act Plaintiffs. As further detailed in the Third Goldfarb Affidavit, on January 20, 2015, the Applicants reached an agreement with Class Action Counsel on the terms of a settlement to resolve their claim. As more particularly described herein, such terms are reflected in the amendments contained in the Amended and Restated Plan. Accordingly, the WARN Act Claims have been allowed for voting and distribution purposes provided that:

- a) the WARN Act Claims (including the associated attorneys' fees included therein) shall be deemed to be unsecured and to have no security or priority status; and
- b) the Amended and Restated Plan is implemented in accordance with its terms.

36. The Monitor received 3 Proofs of Claims from Affected Unsecured Creditors against the Applicants on or before the Claims Bar Date. Each of these claims were disallowed

as submitted. The period during which a Notice of Dispute of Revision or Disallowance can be submitted to the Monitor has expired for one of these claims and, consequently, it has been disallowed as set out in the Notice of Revision or Disallowance.

37. Set out below are tables summarizing the number and value of claims against the Applicants from Affected Unsecured Creditors (other than the Secured Noteholders Allowed Unsecured Claim) and WARN Act Plaintiffs as at January 23, 2015 that have been accepted or disputed.

<b>Affected Unsecured Creditors Class</b>	<b>Number of Claims</b>	<b>Value of Claims (\$ 000's)</b>
Allowed Claims	108	2,552
Disputed Claims	5	1,150
<b>Total</b>	<b>113</b>	<b>\$ 3,702</b>

*Note: Excludes the Secured Noteholders Allowed Unsecured Claim*

<b>WARN Act Plaintiffs Class</b>	<b>Number of Claims</b>	<b>Value of Claims (\$ 000's)</b>
Allowed Claims	1	4,203
<b>Total</b>	<b>1</b>	<b>\$ 4,203</b>

*Note: A consolidated Proof of Claim was submitted for the WARN Act Plaintiffs Class.*

## MEETINGS

38. Pursuant to the Meetings Order, the Applicants were authorized to hold the Meetings for each of the Voting Classes (as described in further detail in the Pre-Filing Report), for the purpose of considering and voting on a resolution to approve the Amended and Restated Plan, at Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, Ontario, on January 21, 2015. The Monitor commenced these meetings on January 21, 2015 at 10:00 a.m. for the WARN Act Plaintiffs Class, 11:00 a.m. for the Affected Unsecured Creditors Class and 11:15 am for the Secured Noteholders Class.

39. In accordance with the Meetings Order, the Monitor:

- a) caused a copy of the Information Package (as defined in the Meetings Order), the Meeting Order, and the Pre-Filing Report to be posted on the Monitor's website;
- b) sent the Information Package (without the Secured Noteholders Proxy, as defined in the Meetings Order) to all Known Creditors and the WARN Act Class Action Counsel (as defined in the Meetings Order); and
- c) provided an electronic copy of the Information Package (other than the Creditors Proxy, as defined in the Meetings Order) to Marret on behalf of all Secured Noteholders.

40. In advance of the Meeting, the Monitor also served and filed the Monitor's Second Report on January 14, 2015 in accordance with section 23(1)(d.1) of the CCAA.

41. Prior to the Meetings, on January 20, 2015, the Applicants presented the Chair (as defined herein) with the Amended and Restated Plan.

42. On January 20, 2015, the Amended and Restated Plan was provided to the Service List and electronic copies were sent to creditors with known e-mail addresses by the Monitor. Additionally, the Amended and Restated Plan was posted on the Monitor's website on January 21, 2015 prior to the Meetings. Accordingly, the Amended and Restated Plan is in compliance with the amendment provisions provided for in the Plan and Meetings Order.

43. In accordance with the Meetings Order and the Amended and Restated Plan:

- a) each beneficial holder of the Secured Notes was entitled to one vote as a member of each of the Secured Noteholders Class and the Affected Unsecured Creditors Class;
- b) each Affected Unsecured Creditor was entitled to one vote as a member of the Affected Unsecured Creditors Class; and
- c) each WARN Act Plaintiff was entitled to cast one vote as a member of the WARN Act Plaintiffs Class.

44. The Meetings Order requires the Monitor to file this Monitor's Third Report with the Court prior to the Sanction Hearing, with respect to the results of the vote, including:

- a) whether the Plan has been accepted by the Required Majorities in each Voting Class;
- b) whether the votes cast in respect of Disputed Voting Claims, if applicable, would affect the result of that vote; and
- c) for reporting purposes only, the impact of the votes cast in respect of the Secured Noteholders Allowed Unsecured Claim on the vote of the Affected Unsecured Creditors Class.

*Conduct of the Meetings*

45. The Meetings were held at the offices of Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, Ontario, on January 21, 2015 at 10:00 a.m. for the WARN Act Plaintiffs Class, 11:00 a.m. for the Affected Unsecured Creditors Class and 11:15 a.m. for the Secured Noteholders Class.

46. In accordance with the Meetings Order, Paul Bishop, an officer of FTI, acted as the chair (the “**Chair**”) of the Meetings. Pamela Luthra of FTI acted as secretary (the “**Secretary**”) and scrutineer (the “**Scrutineer**”) of the Meetings.

47. The Chair held 2 proxies from the WARN Act Plaintiffs Class, thereby satisfying the requirement that a quorum of at least one WARN Act Plaintiff was present either in person or by proxy. Accordingly the Chair declared that the Meeting of the WARN Act Plaintiffs Class was properly constituted. The Scrutineer’s report with respect to attendance at the WARN Act Plaintiffs Class Meeting is attached hereto as Appendix “D”.

48. The Chair held 4 proxies from Affected Unsecured Creditors. Additionally, Jay A. Swartz of Davies Ward Philips & Vineberg LLP attended and acted on behalf of the Secured Noteholders for the Secured Noteholders Allowed Unsecured Claim, as per the Secured Noteholder Proxy, thereby satisfying the requirement that a quorum of at least one Affected Unsecured Creditor was present either in person or by proxy. Accordingly the Chair declared that the Meeting of the Affected Unsecured Creditors Class was properly constituted. The Scrutineer’s report with respect to attendance at the Unsecured Creditors Class Meeting is attached hereto as Appendix “D”.

49. Jay A. Swartz attended and acted on behalf of the Secured Noteholders at the Secured Noteholders Meeting, as per the Secured Noteholder Proxy, thereby satisfying the requirement that a quorum of at least one Secured Noteholder was present either in person or by proxy. Accordingly the Chair declared that the Meeting of the Secured Noteholders Class was properly constituted. The Scrutineer’s report with respect to attendance at the Secured Noteholders Class Meeting is attached hereto as Appendix “D”.

*Results of the Voting at the WARN Act Plaintiffs Class Meeting*

50. The Chair, as a proxy for one or more WARN Act Plaintiffs, proposed a motion that the resolution with respect to the Amended and Restated Plan (the “**WARN Act Plaintiffs Class Plan Resolution**”) be approved, ratified, and confirmed at the WARN Act Plaintiffs Meeting. A copy of the WARN Act Plaintiffs Class Plan Resolution is attached hereto as Appendix “E”.

51. Paul Bishop of FTI Consulting Canada Inc., in its capacity as Monitor, as a proxy for one or more WARN Act Plaintiffs, seconded the motion to approve the WARN Act Plaintiffs Class Plan Resolution and a vote by confidential written ballot was called for by the Chair at the WARN Act Plaintiffs Meeting.

52. The Scrutineer tabulated the votes cast in respect of the Amended and Restated Plan and the Chair reported the results of the WARN Act Plaintiffs Class Meeting. The Scrutineer’s report, attached hereto as Appendix “H”, showed that the WARN Act Plaintiffs Class Plan Resolution has been duly carried by 100% of the votes in number and value of those present (in person or by proxy) at the WARN Act Plaintiffs Class Meeting, and the Chair declared the WARN Act Plaintiffs Class Plan Resolution approved by the holders of WARN Act Claims.

53. A summary of the Voting Claims of WARN Act Plaintiffs or their proxy holders on the motion to approve the WARN Act Plaintiffs Class Plan Resolution is as follows:

	<b>Number</b>	<b>% Number</b>	<b>% Value</b>
In Favour	2	100%	100%
Against	-	0%	0%
<b>Total</b>	<b>2</b>	<b>100%</b>	<b>100%</b>

54. The Scrutineer's report on the results of the vote on the motion to approve the WARN Act Plaintiffs Class Plan Resolution noted that there were no votes cast by WARN Act Plaintiffs with Disputed Voting Claims.

55. The Chair declared that the requisite majority required by the Meetings Order and section 6 of the CCAA had been obtained for the WARN Act Plaintiffs Class and the WARN Act Plaintiffs Class Plan Resolution was approved by the WARN Act Plaintiffs Class.

56. The WARN Act Plaintiffs Class Meeting was terminated at approximately 10:15 a.m.

*Results of the Voting at the Affected Unsecured Creditor Class Meeting*

57. The Chair, as a proxy for one or more Affected Unsecured Creditors, proposed a motion that the resolution with respect to the Amended and Restated Plan (the "**Affected Unsecured Creditors Class Plan Resolution**") be approved, ratified, and confirmed at the Affected Unsecured Creditors Class Meeting. A copy of the Affected Unsecured Creditors Class Plan Resolution is attached hereto as Appendix "F".

58. Jay A. Swartz, as a proxy holder acting on behalf of the Secured Noteholders for the Secured Noteholders Allowed Unsecured Claim, seconded the motion to approve the Affected Unsecured Creditors Class Plan Resolution and a vote by confidential written ballot was called for by the Chair at the Affected Unsecured Creditors Meeting.

59. The Scrutineer tabulated the votes cast in respect of the Amended and Restated Plan and the Chair reported the results of the Affected Unsecured Creditors Class Meeting. The Scrutineer's report, attached hereto as Appendix "H", showed that the Affected Unsecured Creditors Class Plan Resolution has been duly carried by 100% of the votes in number and value



of those present (in person or by proxy) at the Affected Unsecured Creditors Class Meeting, and the Chair declared the Affected Unsecured Creditors Class Plan Resolution approved by the holders of Affected Unsecured Claims.

60. A summary of the Voting Claims of Affected Unsecured Creditors or their proxy holders on the motion to approve the Affected Unsecured Creditors Class Plan Resolution is as follows:

	<b>Number</b>	<b>Value (\$000's)</b>	<b>% Number</b>	<b>% Value</b>
In Favour	82	\$ 18,520	100%	100%
Against	-	\$ -	0%	0%
<b>Total</b>	<b>82</b>	<b>\$ 18,520</b>	<b>100%</b>	<b>100%</b>

61. The Scrutineer's report on the results of the vote on the motion to approve the Affected Unsecured Creditors Class Plan Resolution noted that there were no votes cast by Affected Unsecured Creditors with Disputed Voting Claims.

62. The votes cast in respect of the Secured Noteholders Allowed Unsecured Claim on the vote of the Affected Unsecured Creditors Class were determined to have no impact on the outcome of the vote. A summary of the Voting Claims of Affected Unsecured Creditors or their proxy holders, excluding the Secured Noteholders Allowed Unsecured Claim, on the motion to approve the Affected Unsecured Creditors Class Plan Resolution is as follows:

	<b>Number</b>	<b>Value (\$000's)</b>	<b>% Number</b>	<b>% Value</b>
In Favour	66	\$ 1,020	100%	100%
Against	-	\$ -	0%	0%
<b>Total</b>	<b>66</b>	<b>\$ 1,020</b>	<b>100%</b>	<b>100%</b>

63. The Chair declared that the requisite majority required by the Meetings Order and section 6 of the CCAA had been obtained for the Affected Unsecured Creditors Class and the

Affected Unsecured Creditors Class Plan Resolution was approved by the Affected Unsecured Creditors Class.

64. The Affected Unsecured Creditors Class Meeting was terminated at approximately 11:15 a.m.

*Results of the Voting at the Secured Noteholder Creditor Class Meeting*

65. Jay A. Swartz, acting on behalf of the Secured Noteholders as per the Secured Noteholders proxy, proposed a motion that the resolution with respect to the Amended and Restated Plan (the “Secured Noteholders Class Plan Resolution”) be approved, ratified, and confirmed at the Secured Noteholders Class Meeting. A copy of the Secured Noteholders Class Plan Resolution is attached hereto as Appendix “G”.

66. The Scrutineer tabulated the votes cast in respect of the Amended and Restated Plan and the Chair reported the results of the Secured Noteholders Class Meeting. The Scrutineer’s report, attached hereto as Appendix “H”, showed that the Secured Noteholders Plan Resolution has been duly carried by 100% of the votes in number and value of those present (in person or by proxy) at the Secured Noteholders Class Meeting, and the Chair declared the Secured Noteholders Plan Resolution approved by the holders of Secured Noteholders Allowed Secured Claims.

67. A summary of the Voting Claims of the Secured Noteholders or their proxy holders on the motion to approve the Secured Noteholders Class Plan Resolution is as follows:

	<b>Number</b>	<b>Value (\$000's)</b>	<b>% Number</b>	<b>% Value</b>
In Favour	16	\$ 92,674	100%	100%
Against	-	\$ -	0%	0%
<b>Total</b>	<b>16</b>	<b>\$ 92,674</b>	<b>100%</b>	<b>100%</b>

68. The Chair declared that the requisite majority required by the Meetings Order and section 6 of the CCAA had been obtained for the Secured Noteholders Class and the Secured Noteholders Class Plan Resolution was approved by the Secured Noteholders Class.

69. The Secured Noteholders Class Meeting was terminated at approximately 11:25 a.m.

#### **SUMMARY OF KEY TERMS IN THE AMENDED AND RESTATED PLAN**

70. As described in the Second Report, the Monitor received a Proof of Claim with respect to the WARN Act Claims on January 13, 2015. The aggregate value of this Proof of Claim was \$4.2 million and, since the date of the Second Report, being January 14, 2015, the Applicants, with the assistance of their legal counsel, the Monitor and Marret, have engaged in discussions with counsel to the WARN Act Plaintiffs (“**WARN Class Counsel**”) in order to resolve this claim.

71. **WARN Class Counsel** had previously advised that the WARN Act Plaintiffs would not vote in favour of the Plan without enhanced recovery. Discussions between counsel to the Applicants and **WARN Class Counsel**, with the input from Marret and the Monitor, have led to the development a proposed resolution (the “**WARN Act Resolution**”) of the WARN Act Claim by way of amendments to the Plan contained in the Amended and Restated Plan. These key amendments include the following:

- a) the WARN Act Claims will be fully and forever compromised, released and discharged in respect of the Applicants in exchange for a \$90,000 cash payment (the “**WARN Payment**”) to be made on the Plan Implementation Date and an unsecured, non-interest bearing entitlement to receive \$120,000 in cash on the

date that is eight years from the Plan Implementation Date (the “**WARN Entitlement**”);

- b) The WARN Payment and the WARN Entitlement are to be paid to WARN Class Counsel;
- c) Certain reasonable fees, costs and expenses will be funded out of the WARN Payment and the WARN Entitlement in amounts to be determined by agreement between WARN Class Counsel and representative plaintiffs in the WARN Act Class Action; and
- d) WARN Class Counsel will be responsible for distributing the remainder of the WARN Payment and the WARN Entitlement to the WARN Act Plaintiffs.

72. In addition to the above, the Plan was amended to facilitate the terms of settlement agreed to by the Applicants and WARN Class Counsel, including with respect to (a) distribution mechanics and (b) the manner in which the WARN Act Class Action is to be terminated and discontinued in respect of the Applicants forthwith following the implementation of the Amended and Restated Plan.

73. As more particularly described above, the Amended and Restated Plan is in compliance with the amendment provisions provided for in the Plan and the Meeting Order.

74. The Monitor notes that the amendments contained in the Amended and Restated Plan do not impact the consideration to be received by Affected Unsecured Creditors under the Plan. Additionally, the Monitor is advised that Marret (on behalf of the Secured Noteholders), supports the Amended and Restated Plan. Furthermore, by way of the WARN Act Resolution,

longstanding litigation in respect of the Applicants is resolved and delays to completion of the Recapitalization are avoided.

75. As described in this Third Report, the representative plaintiffs in the WARN Act Class Action voted in favour of the Amended and Restated Plan at the WARN Act Plaintiffs Meeting.

#### **REQUEST FOR SANCTIONING THE AMENDED AND RESTATED PLAN**

76. The Monitor outlined the details of the Plan and provided its view on the fairness and reasonableness of the Plan in the Monitor's Second Report. In this Monitor's Third Report, the Monitor has outlined the details of the amendments provided for in the Amended and Restated Plan, which provide for enhanced recovery to the WARN Act Plaintiffs Class while not affecting the recovery to the Affected Unsecured Creditors Class.

77. Based on all of the factors more particularly described in the Monitor's Second Report and herein, on balance, the Monitor holds the view that it appears that the likely alternative to the Amended and Restated Plan would be the Alternate Plan (as defined in the Amended and Restated Plan).

78. The obligations owed by the Applicants in respect of the Secured Notes appears to exceed the realizable value of the Cline Group at the present time, therefore:

- (a) the Secured Noteholders would likely suffer a significant shortfall in amounts owed to them if they were to enforce their security;

- (b) there would likely be no value left to pay the Cline Group's unsecured creditors or the WARN Act Plaintiffs if the Secured Noteholders were to enforce their security; and
- (c) the existing equity interests in Cline likely have no economic value.

79. The Monitor notes that, as a result of the circumstances facing the Applicants (as more particularly described above), it appears that the Amended and Restated Plan is the best viable, going-concern alternative available to the Applicants and will provide a recovery to the largest number of the Applicants' stakeholders.

80. As described above, 100% in number and 100% in value of each of the Secured Noteholders Class, Affected Unsecured Creditors Class, and WARN Act Plaintiffs Class present in person or by proxy at the applicable Meeting voted to approve the Amended and Restated Plan, and the Amended and Restated Plan was therefore approved by each class of creditors.

81. The Amended and Restated Plan satisfies the requirements of the CCAA, in particular the requirements contained in section 6 thereof.

#### **MONITORS ACTIVITIES**

82. Since its appointment, the Monitor has been involved with numerous aspects of the CCAA Proceedings with a view to fulfilling its statutory and court-ordered duties and obligations, as well as assisting the Applicants and their stakeholders in addressing restructuring issues. FTI Consulting Canada Inc. described some of the more significant matters that it was involved in prior to the Filing Date in the Pre-Filing Report. In addition, the Monitor described some of the more significant matters it was involved in since the Filing Date through December

16, 2014 in the Monitor's First Report. Since then, some of the more significant matters that the Monitor has been involved in, and assisted with, include, but are not limited to the following:

- a) posting various materials relating to the CCAA Proceedings on its website <http://cfcanada.fticonsulting.com/cline> and continuing to update the website by posting, among other things, the Monitor's reports, motion materials, and Orders granted in the CCAA Proceedings;
- b) maintaining a toll free hotline number (416-649-8099/1-855-398-7390) and a dedicated email inbox ([cline@fticonsulting.com](mailto:cline@fticonsulting.com)) to allow creditors and other interested parties to contact the Monitor to obtain additional information concerning the CCAA Proceedings and responding in a timely manner;
- c) participating in numerous discussions with senior management of the Applicants and the Applicants' legal advisors in connection with the Applicants' business and financial affairs, generally, and in connection with the preparation of the Applicants' cash flow forecasts;
- d) participating in numerous discussions with the Applicants and the Applicants' legal advisors in connection with matters related to the Plan, the Amended and Restated Plan, the Claims Procedure Order and Meetings Order;
- e) assisting the Applicants with the review of the Applicants' receipts and disbursements, the preparation of cash flow forecasts and the reporting thereon;
- f) preparing and delivering the Monitor's Second Report in accordance with Section 23(1)(d.1) of the CCAA, and this Monitor's Third Report;

- g) reviewing materials relating to the Secured Notes and engaging and corresponding with counsel in Ontario (Canada), British Columbia (Canada) and Colorado (U.S.) with respect to the validity of the security interests and charges created in favour of the Trustee in the Applicants' real and personal property, as applicable, by way of the Security Documents, and reviewing the Opinions obtained in connection therewith;
- h) assisting the Applicants in preparing for and conducting the Meetings;
- i) assisting the Applicants with the review and resolution of various claims asserted in and outside of the claims process set out in the Claims Procedure Order; and
- j) responding to enquiries from creditors regarding the Plan and the claims process set out in the Claims Procedure Order.

## **CONCLUSIONS AND RECOMMENDATION**

83. The current Stay Period granted by this Honourable Court under the Stay Extension Order granted on December 22, 2014 currently expires on March 1, 2015. In order to allow the Applicants sufficient time to continue towards their restructuring goals and implement the Amended and Restated Plan, the Applicants are requesting that the Stay Period be extended to April 1, 2015.

84. It is the Monitor's view that the Applicants continue to act with due diligence and in good faith and have not breached any requirements under the CCAA or any other Order of the Court.



85. The Monitor further believes that the proposed extension is fair and reasonable in the circumstances and that the Applicants will require the protection of the stay of proceedings in order to carry out the Amended and Restated Plan.

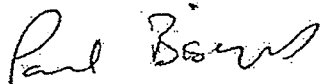
86. The Monitor is also of the view that the Amended and Restated Plan is fair and reasonable and recommends that the Amended and Restated Plan be sanctioned and approved by this Honourable Court.

87. The Monitor also respectfully requests that this Honourable Court approve the Pre-Filing Report, the Monitor's First Report and the Monitor's Second Report and the activities of the proposed Monitor and Monitor described therein.

All of which is respectfully submitted this 23<sup>rd</sup> day of January, 2015.

FTI Consulting Canada Inc.,  
in its capacity as Monitor of Cline Mining Corporation, New Elk Coal Company LLC and North  
Central Energy Company

Per

A handwritten signature in cursive script that reads "Paul Bishop".

Paul Bishop

Senior Managing Director

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

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

Proceeding commenced at Toronto

**THIRD REPORT OF THE MONITOR**

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

Court File No: CV14-10781-00C

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

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

Proceeding commenced at Toronto

**FOURTH REPORT OF THE MONITOR**

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