



Court File No. CV14-10781-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE REGIONAL) WEDNESDAY, THE 3RD
SENIOR JUSTICE MORAWETZ) DAY OF DECEMBER, 2014

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 (each an "Applicant" and
collectively, the "Applicants")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Matthew Goldfarb sworn December 2, 2014 and the Exhibits thereto (the "**Goldfarb Affidavit**") and the Pre-Filing Report of the Proposed Monitor, FTI Consulting Canada Inc. ("**FTI**"), and on being advised that there are no secured creditors who are likely to be affected by the charges created herein other than those served, and on hearing the submissions of counsel for the Applicants, FTI, Marret Asset Management Inc. (on behalf of the beneficial holders of the Secured Notes (as defined below) (the "**Secured Noteholders**")), in such capacity "**Marret**") and such other counsel as were present, no one else appearing for any other party, and on reading the consent of FTI to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that each of the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court, individually or collectively, a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business in accordance with existing Business practices or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Goldfarb Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or

legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, commissions, bonuses, incentive payments, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order in respect of employees, contractors, directors, officers or other personnel providing services to the Applicants, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements and, without limiting the generality of the foregoing, the Applicants are authorized to have deposited with AIG Insurance Company of Canada an amount of up to \$50,000 for the purpose of obtaining a directors and officers run-off insurance policy;
- (b) all outstanding and future amounts owing to or in respect of individuals working as independent contractors in connection with the Business in respect of services provided to the Business and expenses payable in respect thereof, in each case in the ordinary course of business and consistent with existing policies and arrangements;
- (c) the fees and disbursements of any Assistants retained or employed by any of the Applicants in respect of these proceedings or any similar or ancillary proceedings in other jurisdictions or in respect of related corporate matters, including, for greater certainty, any counsel or advisors referred to in paragraph 29 of this Order, at their standard rates and charges, including the fees and disbursements of legal counsel, financial advisors and other professional advisors retained by the Applicants; and

- (d) any payment referred to in paragraphs 7(a) or 7(b) of this Order that was incurred during or that pertains to the period prior to the date of this Order if, in the opinion of the Applicants and with the consent of the Monitor, the supplier of the applicable good or service or the provider of the applicable license or permit, as applicable, is critical to the Business and the ongoing operations of the Applicants.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance, security services and any license fees, permit fees, royalties, user fees or levies in respect of the Business or the Property; and
- (b) payment for goods and services supplied or to be supplied to any of the Applicants, or to obtain the release of goods contracted for prior to the date of this Order.

8. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Applicant and the landlord from time to time (“Rent”), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; (c) to not grant credit or incur liabilities except in the ordinary course of the Business in accordance with existing Business practices; and (d) to make no payments in respect of equity claims or equity interests.

RESTRUCTURING

11. THIS COURT ORDERS that each of the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$750,000 in any one transaction or \$1.5 million in the aggregate, subject to the prior approval of Marret;

- (b) to sell assets not exceeding \$750,000 in any one transaction or \$1.5 million in the aggregate, subject to the prior approval of Marret;
- (c) terminate the employment of such of its employees or temporarily or indefinitely lay off such of its employees as it deems appropriate and on such terms as may be agreed by the applicable Applicant and the applicable employee, or, failing such agreement, to deal with the consequences thereof in the Plan;
- (d) in accordance with paragraphs 12 and 13, vacate, abandon or quit the whole but not part of any leased premises and disclaim any real property lease and any ancillary agreements relating to any leased premises, in accordance with Section 32 of the CCAA, on such terms as may be agreed upon between the applicable Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan, subject in each case to the prior approval of Marret;
- (e) disclaim, in whole or in part, such of its arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the applicable Applicant deems appropriate, in accordance with Section 32 of the CCAA, with such disclaimers to be on such terms as may be agreed upon between the applicable Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan, subject in each case to the prior approval of Marret;
- (f) subject to the consent of the Monitor and Marret, return any equipment that is subject to a valid first-ranking security to the applicable equipment provider holding such security in satisfaction of such equipment provider's claims on terms to be agreed between the applicable Applicant and such equipment provider, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (g) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. THIS COURT ORDERS that each of the Applicants shall provide each of the relevant landlords with notice of the applicable Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the applicable Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and such Applicant, or by further Order of this Court upon application by such Applicant on at least two (2) days notice to such landlord and any such secured creditors. If any of the Applicants disclaims a lease governing a premises leased by such Applicant in accordance with Section 32 of the CCAA, such Applicant shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the applicable Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. THIS COURT ORDERS that until and including December 31, 2014, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of any of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all

Proceedings currently under way against or in respect of any of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of any of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with any of the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, equipment leasing services, transportation services, utility or other services to the Business or any of the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the applicable Applicant, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each

case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the applicable Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that each of the Applicants shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the applicable Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for the indemnities

provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 32 and 34 hereof.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. THIS COURT ORDERS that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA and as set forth herein, and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise and assist the Applicants in their preparation of the Applicants' cash flow statements, which information shall be reviewed with the Monitor on a periodic basis;
- (d) advise and assist the Applicants in their development and implementation of the Plan and any amendments to the Plan;

- (e) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (g) assist the Applicants, to the extent required by the Applicants, with their restructuring activities;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) assist the Applicants, to the extent required by the Applicants, with any matters relating to any foreign proceedings commenced in relation to the Applicants, including retaining independent legal counsel, agents, experts, accountants or such other persons as the Monitor deems necessary or advisable; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the

Canadian Environmental Protection Act, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicants, the Chief Restructuring Officer of the Applicants (the “**CRO**”) and counsel to Marret shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or after the date of this Order, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Applicants, the CRO and counsel to Marret on a weekly basis, or on such basis as otherwise agreed by the Applicants and the applicable payee and, in addition, the Applicants are hereby authorized to have paid to the Monitor a retainer in the amount of \$50,000, to be held by the Monitor as security for payment of its fees and disbursements outstanding from time to time, and the Applicants are hereby

authorized to have paid to counsel to the Monitor a retainer in the amount of \$40,000, to be held by counsel to the Monitor as security for the payment of its fees and disbursements outstanding from time to time.

30. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicants, the CRO and counsel to Marret shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$350,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor, the CRO and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 32 and 34 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

32. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge; and

Second – Directors' Charge.

33. THIS COURT ORDERS that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

34. THIS COURT ORDERS that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, notwithstanding the order

of perfection or attachment, except for any security interest listed on Schedule "A" hereto that is validly perfected and enforceable.

35. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, including pursuant to the terms of the Plan, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, Marret and the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") affected thereby, or further Order of this Court. The Applicants shall not seek any further Court-ordered charges on their Property or Business without the prior approval of Marret. Unless otherwise ordered by this Court, the terms of the release and discharge of any of the Charges shall be acceptable to the applicable Chargees affected thereby.

36. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees under the Charges shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., c. B-3, as amended (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by any of the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by any of the Applicants pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances,

transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

37. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Applicants' interest in such real property leases.

THE INDENTURE TRUSTEE AND MARRET

38. THIS COURT ORDERS that, until the termination of these proceedings, further Order of this Court or as otherwise instructed in writing by the Secured Noteholders, Computershare Trust Company of Canada, in its capacity as indenture trustee (the "Trustee") in respect of the 10% senior secured bonds due June 15, 2014 (CUSIP 186905AA3 / ISIN CA 186905AA37) issued pursuant to the indenture dated December 13, 2011, as amended, and the 10% senior secured bonds due June 15, 2014 (CUSIP 186905AE5 / ISIN CA 186905AE58) issued pursuant to the indenture dated July 8, 2013, as amended (collectively the "Secured Notes") is hereby relieved of any obligation to take any further actions in these proceedings in respect of the Secured Notes and the indentures governing the Secured Notes (the "Indentures"), and Marret is hereby authorized and empowered to take all such actions in these proceedings, including without limitation: (i) filing claims of the Secured Noteholders in the CCAA claims process (provided that nothing herein prevents the Trustee from filing a proof of claim against the Applicants in relation to any unpaid fees and expenses incurred by it in the course of acting as Trustee in accordance with the Indentures); (ii) administering, soliciting and facilitating the casting of votes by the Secured Noteholders in respect of any plan of compromise or arrangement in respect of the Applicants; (iii) facilitating the distribution of consideration under the CCAA Plan to the Secured Noteholders; (iv) taking any steps or actions with respect to the security over the assets and property of the Applicants held by the Trustee in respect of the Secured Notes, including any waiver, discharge or enforcement of the security; and (v) taking any steps the Trustee is otherwise required or may be directed to take on behalf of the Secured Noteholders under the Indentures in respect of the Secured Notes. Notwithstanding the foregoing, upon agreement between Cline Mining Corporation, Marret and the Trustee, and with the consent of the Monitor, the Trustee may take such actions as are necessary to facilitate the distribution of consideration to the Secured Noteholders pursuant to the Plan. The Trustee is entitled to rely upon this

paragraph 38 and shall have no liability to any Person for complying with this paragraph 38. Cline Mining Corporation is hereby authorized to pay the reasonable and documented fees, expenses and disbursements of the Trustee (including the reasonable and documented fees, expenses and disbursements of the Trustee's counsel) incurred and payable in accordance with the Indentures up to an amount to be determined by agreement of the Applicants, the Trustee and the Monitor, or failing such agreement, by Order of the Court. In accordance with the Indentures, any amounts that are payable to the Trustee, in its individual corporate capacity, pursuant to the terms of the Indentures, if not paid in cash by the Applicants, shall be payable out of any distributions, dividends, securities or other consideration issued to the holders of the Secured Notes by the Applicants in any Plan, liquidation or otherwise.

SERVICE AND NOTICE

39. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail, the Denver Post and the Pueblo Chieftain a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any of the Applicants of more than \$1000, provided that with respect to contingent claims against the Applicants in respect of the WARN Act Class Action (as defined in the Goldfarb Affidavit), the Monitor shall only be required to send a notice to counsel of record for the representative plaintiffs in the WARN Act Class Action, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the names and addresses of individuals who are creditors publicly available and provided further that only the representative plaintiffs in the WARN Act Class Action shall be listed in respect of the contingent claims against the Applicants in respect of the WARN Act Class Action.

40. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service->

protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://cfcanada.fticonsulting.com/cline>.

41. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile or other electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

42. THIS COURT ORDERS that the Applicants are hereby relieved of any obligation to call and hold annual meetings of their shareholders until after the termination of these CCAA proceedings or further Order of this Court.

43. THIS COURT ORDERS that each of the Applicants and the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

44. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

45. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor

and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

46. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of these CCAA proceedings for the purpose of having these CCAA proceedings recognized in a jurisdiction outside Canada. Without limiting the generality of the foregoing, the Monitor is hereby authorized, as the foreign representative of the Applicants, to, if deemed advisable by the Monitor and the Applicants, apply for recognition of these CCAA proceedings and to act as the representative of these CCAA proceedings in any proceedings in the United States pursuant to Chapter 15, Title 11 of the United States Code.

47. THIS COURT ORDERS that any interested party (other than the Applicants or the Monitor) that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court on a date to be set by this Court upon the granting of this Order (the "**Comeback Date**"), and any such interested party shall give notice to any other party or parties likely to be affected by the order sought in advance of the Comeback Date.

48. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 3 - 2014

NB

SCHEDULE "A"

SECURITY REGISTRATIONS

Secured Party	Filing No.	Collateral Description	Equipment Serial No. (if applicable)	Jurisdiction
Bank of Montreal/Banque de Montreal	675927639 – 20120130 1837 1532 2055 (5 years)	Accounts, Other (relates to security for balances in respect of corporate credit cards provided by Bank of Montreal)	N/A	Ontario
Komatsu Financial Limited Partnership & Power Motive Corporation	2010F070368	Grader Wheel Loader Wheel Loader	51669 66173 55610	Colorado
Applied Industrial Technologies, Inc.	21012F002747	Purchase Money Security Interest in and to all Consignee's now held or hereafter acquired equipment consigned or shipped to Consignee by or on behalf of Consignor or others and under any product name, including all additions and accessions thereto and substitutions therefor and products thereof.	N/A	Colorado
Caterpillar Global Mining Virginia LLC	20122061314	Miscellaneous Assembly Drive Units & Parts	CO-0- 3529520146 888198	Colorado
Komatsu Financial Limited Partnership	20132010774	Crawler Dozer	11716	Colorado
Komatsu Financial Limited Partnership	20132011002	Crawler Dozer	81206	Colorado

Secured Party	Filing No.	Collateral Description	Equipment Serial No. (if applicable)	Jurisdiction
Applied Industrial Technologies, Inc.	098991194	Purchase Money Security Interest in and to all Consignee's now held or hereafter acquired equipment consigned or shipped to Consignee by or on behalf of Consignor or others and under any product name, including all additions and accessions thereto and substitutions therefor and products thereof.	N/A	Kansas
Komatsu Financial Limited Partnership	071129329	Motor Grader	51669	Kansas
Komatsu Financial Limited Partnership	071129386	Articulated Truck	A11045	Kansas
Komatsu Financial Limited Partnership	071129394	Articulated Truck	A11052	Kansas
Komatsu Financial Limited Partnership	071129402	Wheel Loader	55610	Kansas
Komatsu Financial Limited Partnership	071129410	Wheel Loader	66173	Kansas

**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**

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

Proceeding commenced at Toronto

INITIAL ORDER

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