

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

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

Applicants

**FACTUM OF THE APPLICANTS  
(CCAA Termination Motion Returnable July 30, 2015)**

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**PART I – INTRODUCTION**

1. On December 3, 2014, Cline Mining Corporation, New Elk Coal Company LLC and North Central Energy Company (collectively, the “**Applicants**”) sought and obtained an Order of this Court (the “**Initial Order**”), which, among other things, granted a stay of proceedings in respect of the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) and appointed FTI Consulting Canada Inc. (“**FTI**”) as the monitor of the Applicants (the “**Monitor**”).
2. The stated purpose of these CCAA proceedings was to restructure and recapitalize the Applicants pursuant to a plan of compromise and arrangement under the CCAA. The Applicants’ plan of compromise and arrangement (as amended, the “**Plan**”) has now been approved unanimously by creditors, sanctioned by the Court and implemented.
3. The Applicants are now in a position to terminate these CCAA proceedings. Accordingly, the Applicants are seeking an Order (the “**CCAA Termination Order**”), *inter alia*:
  - (a) terminating these CCAA proceedings;

- (b) approving the activities of FTI, in its capacity as Monitor, and approving the fees and disbursements of the Monitor and its counsel in these proceedings; and
- (c) discharging and releasing FTI as the Monitor.

## PART II – THE FACTS

### A. BACKGROUND

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

Affidavit of Matthew Goldfarb sworn July 24, 2015 (the “**Goldfarb Affidavit**”) at para. 7; Motion Record of the Applicants (the “**Motion Record**”), Tab 2.

5. The Monitor, as the foreign representative of the Applicants’ CCAA proceedings, also initiated ancillary proceedings under Chapter 15, Title 11 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) in the United States Bankruptcy Court for the District of Colorado. The Orders of the Court in these CCAA proceedings have been given full force and effect in the Chapter 15 Proceedings.

Goldfarb Affidavit at paras. 15-18; Motion Record, Tab 2.

6. Since the Initial Order, the Applicants have sought and obtained Orders extending the Stay Period (as defined in the Initial Order) to and including August 17, 2015, to give the Applicants additional time to implement the Plan.

Goldfarb Affidavit at paras. 8-14; Motion Record, Tab 2.

7. On January 27, 2015, this Court granted an Order (the “**Plan Sanction Order**”) approving the Plan, as amended, pursuant to the CCAA.

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

8. On June 1, 2015, this Court granted an Order (the “**Plan Amendment Order**”), *inter alia*: (i) approving certain amendments to the Plan; and (ii) confirming that the Plan, as amended pursuant to the Plan Amendment Order was the “Plan” for purposes of the Plan Sanction Order.

Goldfarb Affidavit at para. 14; Motion Record, Tab 2.

9. The Applicants, with the assistance of the Monitor, have completed the Claims Procedure in accordance with the Claims Procedure Order. With the exception of one remaining unresolved claim, all claims identified in the Claims Procedure have been resolved.

Goldfarb Affidavit at paras. 10 and 25; Motion Record, Tab 2.

10. The Applicants successfully implemented the Plan on July 8, 2015.

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

11. Since the implementation of the Plan, the Applicants have been attending to their business operations in the ordinary course, attending to certain post-closing matters and preparing to terminate these CCAA proceedings.

Goldfarb Affidavit at para. 24; Motion Record, Tab 2.

## **B. TERMINATION OF THE CCAA PROCEEDINGS**

12. The Applicants have achieved their stated purpose of restructuring and recapitalizing the Applicants pursuant to the Plan. Having implemented the Plan and restructured the Applicants’ business, there is no further need for these CCAA proceedings.

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

13. The Applicants have duly complied with their obligations and carried out their responsibilities under the CCAA and the Orders of this Court in the CCAA proceedings.

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

14. The Monitor supports the relief requested in the proposed CCAA Termination Order.

Goldfarb Affidavit at para. 33; Motion Record, Tab 2.

**C. FURTHER FACTUAL BACKGROUND**

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

**PART III – ISSUES AND THE LAW**

16. The issue to be considered on this motion is whether the Court should terminate these CCAA proceedings and discharge and release the Monitor on the terms set out in the proposed CCAA Termination Order.

**A. CCAA TERMINATION**

17. The Court has previously granted Orders terminating proceedings under the CCAA and discharging CCAA monitors on terms similar to those sought in the proposed CCAA Termination Order.

*Re Jaguar Mining Inc.*, Order granted December 2, 2014, Court File No. CV-13-10383-00CL (Ont. Sup. Ct.); Book of Authorities, Tab 1.

*Re Skylink Aviation Inc.*, Order granted June 18, 2013, Court File No. 13-10033-00CL (Ont. Sup. Ct.) [*Skylink*]; Book of Authorities, Tab 2.

*Re Canwest Publishing Inc. et al.*, Order granted April 24, 2013, Court File No. CV-10-8533-00CL (Ont. Sup. Ct.) [*Canwest Publishing*]; Book of Authorities, Tab 3.

18. Specifically, this Court has granted Orders terminating CCAA proceedings in which it has authorized the CCAA monitor to take such steps and actions as are necessary to complete or address any matters ancillary or incidental to its capacity as monitor that may arise notwithstanding the discharge of the monitor and the termination of the CCAA proceedings.

*Skylink, supra* at para. 12; Book of Authorities, Tab 2.

*Canwest Publishing, supra* at para. 7; Book of Authorities, Tab 3.

19. In the present case, FTI has agreed to carry out any steps or actions that are incidental to these proceedings and the Chapter 15 Proceedings following its discharge as Monitor, subject to the terms of the proposed CCAA Termination Order, including the ongoing protections afforded to the Monitor under the CCAA and the Orders granted in these proceedings.
20. The ongoing activities of FTI are not expected to be significant; however, FTI's involvement may be required to address certain follow-up matters, including attending to the remaining unresolved claim, the IRS Claim and the termination of the Chapter 15 Proceedings. Consequently, the Applicants submit that it is reasonable and appropriate for FTI to be authorized to complete these matters notwithstanding its discharge of the Monitor.
21. The Applicants submit that the other terms of the CCAA Termination Order are reasonable and consistent with the relief needed for the Applicants to exit CCAA protection and continue on as a recapitalized business. The Applicants submit that it is appropriate to grant the CCAA Termination Order at this time because:
  - (a) the Applicants have achieved their stated purpose of restructuring and recapitalizing their business pursuant to the Plan;
  - (b) the Applicants have completed the Claims Procedure and, with the exception of one remaining unresolved claim, all claims identified in the Claims Procedure have been resolved;
  - (c) it is unclear when the remaining unresolved claim can be resolved given the lack of engagement by the applicable claimant, so it is not appropriate to prolong these CCAA proceedings indefinitely on account of that remaining unresolved claim;
  - (d) there is no further need for these CCAA proceedings since the restructuring has been completed;

- (e) the Applicants have duly complied with their obligations and carried out their responsibilities under the CCAA and the Orders of this Court;
- (f) the Monitor has filed its Sixth Report outlining its compliance with its duties and providing the background required for the approval of its activities and its fees and disbursements and those of its counsel; and
- (g) the Applicants' motion is supported by the Monitor and consented to by Marret Asset Management Inc., which represented all of the holders of the senior-ranking secured debt against the Applicants in these proceedings.

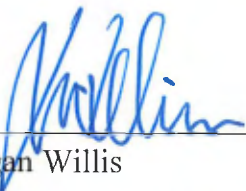
Goldfarb Affidavit at paras. 3 and 30-33; Motion Record, Tab 2.

**PART IV – ORDER REQUESTED**

- 22. The Applicants have successfully implemented the Plan, including making all payments required to be made under the Plan and taking all corporate steps required by the Plan. The Applicants have completed the stated objective of the CCAA proceedings, so it is now appropriate to terminate these CCAA proceedings and discharge FTI from its role as Monitor.
- 23. For the reasons set out above, the Applicants respectfully request that this Court grant the requested CCAA Termination Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

July 27, 2015

  
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Logan Willis

  
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Bradley Wiffen

**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

1. *Re Jaguar Mining Inc.*, Order granted December 2, 2014, Court File No. CV-13-10383-00CL (Ont. Sup. Ct.)
2. *Re Skylink Aviation Inc.*, Order granted June 18, 2013, Court File No. 13-10033-00CL (Ont. Sup. Ct.)
3. *Re Canwest Publishing Inc. et al.*, Order granted April 24, 2013, Court File No. CV-10-8533-00CL (Ont. Sup. Ct.)



**IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT  
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COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY**

Court File No.: CV14-10781-00CL

Applicants

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Proceeding commenced at Toronto

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