

**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 ESSAR STEEL ALGOMA INC., ESSAR TECH ALGOMA INC.,  
ALGOMA HOLDINGS B.V., ESSAR STEEL ALGOMA (ALBERTA) ULC,  
CANNELTON IRON ORE COMPANY, AND ESSAR STEEL ALGOMA INC. USA

**(Applicants)**

**MOTION RECORD  
(Re: Approval of Fourth DIP Amendment)  
(Returnable May 23, 2017)**

May 16, 2017

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley John Taylor** LSUC#: 39932E  
Tel: (416) 869-5236  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Kathryn Esaw** LSUC#: 58264F  
Tel: (416) 869-5230  
Email: [kesaw@stikeman.com](mailto:kesaw@stikeman.com)

**Lee Nicholson** LSUC#: 66412I  
Tel: (416) 869-5604  
Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)  
Fax: (416) 947-0866

**Lawyers for the Applicants**

# INDEX

**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 ESSAR STEEL ALGOMA INC., ESSAR TECH ALGOMA INC.,  
ALGOMA HOLDINGS B.V., ESSAR STEEL ALGOMA (ALBERTA) ULC,  
CANNELTON IRON ORE COMPANY, AND ESSAR STEEL ALGOMA INC. USA

**(Applicants)**

**INDEX**

<b>TAB</b>	<b>DOCUMENT</b>
<b>1.</b>	Notice of Motion returnable May 23, 2017
<b>2.</b>	Affidavit of John Streck, sworn May 17, 2017
<b>A.</b>	Exhibit "A" - Term Sheet
<b>3.</b>	Draft Order (Re: Approval of Fourth DIP Amendment)

# TAB 1

**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 ESSAR STEEL ALGOMA INC., ESSAR TECH ALGOMA INC.,  
ALGOMA HOLDINGS B.V., ESSAR STEEL ALGOMA (ALBERTA) ULC,  
CANNELTON IRON ORE COMPANY AND ESSAR STEEL ALGOMA INC. USA.

**Applicants**

**NOTICE OF MOTION  
(Returnable May 23, 2017)**

Essar Steel Algoma Inc. ("**Algoma**"), Essar Tech Algoma Inc., Algoma Holdings B.V., Essar Steel Algoma (Alberta) ULC, Cannelton Iron Ore Company and Essar Steel Algoma Inc. USA (collectively, the "**Applicants**") will make a motion to a judge presiding over the Commercial List on May 23, 2017 at 10:00 a.m. at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order, substantially in the form contained at Tab 3 of the Applicants' Motion Record, authorizing the Applicants to enter into and approving the Fourth DIP Amendment (as that term is defined below);
2. Such further and other relief as this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

3. On November 9, 2015, the Applicants sought and received the Initial Order granting them protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c C-36 (the "CCAA"). Ernst & Young Inc. was appointed as monitor of the Applicants (the "**Monitor**") in these CCAA proceedings (the "**CCAA Proceedings**");

4. Following filing for protection, the Applicants sought and received approval of a DIP financing agreement (as amended, the "**DIP Agreement**") in order to fund their operations. The DIP Agreement initially provided a US\$200 million DIP facility from certain of the Applicants' prepetition term lenders (the "**DIP Lenders**");

5. The Applicants developed a two phase sale and investment solicitation process (the "**SISP**") to solicit interest in and opportunities for a sale, restructuring or recapitalization of their business. The successful bid under the SISP was determined to be a bid between certain of the Applicants' prepetition term lenders (the "**Term Lenders**") and KPS Capital Partners, LP ("**KPS**"). However, on July 13, 2016, the Applicants were advised by the Term Lenders that KPS and the Term Lenders had agreed to terminate the Consortium Agreement governing the terms of their bid;

6. The Term Lenders reiterated their commitment closing a going concern restructuring transaction. Pursuant to a Restructuring Support Agreement dated as of September 15, 2016, the Term Lenders and a majority of the senior secured noteholders agreed to support a comprehensive restructuring transaction for the Applicants;

7. On September 22, 2016, in order to facilitate an extension of the CCAA Proceedings to implement the going-concern restructuring transaction contemplated by the Restructuring Support Agreement, the Applicants and the DIP Lenders (many of whom are Term Lenders) agreed to an amendment of the DIP Agreement (the "**DIP Amendment**") which, among other things, increased the availability under the DIP Agreement to US\$220 million and extended the maturity date to January 31, 2017. The Court approved the DIP Amendment on September 23, 2016;

8. The DIP Agreement was further amended on January 31, 2017, extending to maturity date to March 31, 2017. The maturity date was further extended to April 30, 2017 pursuant to an amendment and forbearance agreement and consent dated March 31, 2017;

**Fourth DIP Amendment**

9. The DIP Agreement matured on April 30, 2017;

10. Prior to the maturity, the Applicants' engaged in an extensive DIP marketing process, with the assistance of the Applicants' financial advisor, Evercore Group L.L.C. ("**Evercore**"), and under the supervision of the Monitor;

11. The Applicants' received a DIP financing proposal from the DIP Lenders and another proposal from an interested DIP Lender;

12. The Applicants' reported to the Court on the DIP marketing process orally on May 1, 2017 and after receiving the report, the Court issued an endorsement stating that the Applicants were not to sign any DIP financing agreement pending further direction of the Court;

13. On May 10, 2017, the Applicants' delivered a written report to the Court on the DIP financing proposals received;

14. After evaluating the proposals received, the Applicants, in consultation with the Chief Restructuring Advisor, Evercore, counsel and the Monitor, determined on an informed basis and in good faith with a view to the best interests of the Applicants that the DIP Lenders proposal to extend the maturity of the DIP Agreement was the superior proposal under the current circumstances;

15. The DIP Lenders' proposal extends the maturity date of the DIP Agreement to August 30, 2017, with an automatic extension to September 29, 2017 if certain repayments are made;

16. The terms of the DIP Lenders' proposal are set out in a term sheet (the "**Term Sheet**") and are to be incorporated into the DIP Agreement by way of amending agreement (the "**Fourth DIP Amendment**");

17. A copy of the Term Sheet is attached to the affidavit of John Strek (the "**Strek Affidavit**") sworn May 17, 2017. The Applicants will provide a copy of the Fourth DIP Amendment to the Court and stakeholders as soon as possible;

18. The Fourth DIP Amendment will allow the Applicants to operate in the ordinary course and provide the necessary time for Algoma and its stakeholders to engage in constructive, meaningful negotiations to develop a comprehensive restructuring solution;

**General**

19. The provisions of the CCAA, including section 11.2 thereof;

20. The inherent and equitable jurisdiction of the Court;

21. Rules 2.03, 3.02 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

22. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Strek Affidavit;

2. The Thirty-First Report of the Monitor, to be filed; and

3. Such further and other materials as counsel may advise and this Court may permit.

May 16, 2017

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley John Taylor** LSUC#: 39932E  
Tel: (416) 869-5236  
E-mail: ataylor@stikeman.com

**Kathryn Esaw** LSUC#: 58264F  
Tel: (416) 869-5230  
Email: kesaw@stikeman.com

**Lee Nicholson** LSUC#: 66412I  
Tel: (416) 869-5604  
Email: leenicholson@stikeman.com  
Fax: (416) 947-0866

**Lawyers for the Applicants**

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 ESSAR STEEL ALGOMA INC., ET AL

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

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(RETURNABLE MAY 23, 2017)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley John Taylor** LSUC#: 39932E  
Tel: (416) 869-5236  
E-mail: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Kathryn Esaw** LSUC#: 58264F  
Tel: (416) 869-5230  
Email: [kesaw@stikeman.com](mailto:kesaw@stikeman.com)

**Lee Nicholson** LSUC#: 66412I  
Tel: (416) 869-5604  
Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)  
Fax: (416) 947-0866

Lawyers for the Applicants

# TAB 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF ESSAR STEEL ALGOMA INC., ESSAR TECH ALGOMA INC.,  
ALGOMA HOLDINGS B.V., ESSAR STEEL ALGOMA (ALBERTA) ULC,  
CANNELTON IRON ORE COMPANY AND ESSAR STEEL ALGOMA INC. USA

**(Applicants)**

**AFFIDAVIT OF JOHN STREK  
(Sworn May 17, 2017)**

I, JOHN STREK, of the City of Scarsdale, in the State of New York, MAKE OATH AND SAY:

1. I am a Senior Managing Director of CDG Group, LLC, the Court-appointed Chief Restructuring Advisor (the "**CRA**") to Essar Steel Algoma Inc. ("**Algoma**" or the "**Company**"), Essar Tech Algoma Inc., Algoma Holdings B.V., Essar Steel Algoma (Alberta) ULC, Cannelton Iron Ore Company and Essar Steel Algoma Inc. USA (collectively, the "**Applicants**"). As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated.

2. This affidavit is sworn in support of a motion brought by the Applicants for an order (the "**DIP Amendment Order**") authorizing the Applicants to enter into and approving the Fourth DIP Amendment (as that term is defined below) which, among other things, extends the maturity date under the DIP Agreement (as that term is defined below) to August 30, 2017, with an extension to September 29, 2017 if certain repayments are made. The extended runway afforded by the DIP Amendment Order will allow the Applicants to focus their restructuring efforts and resources towards completing and implementing a consensual and sustainable restructuring in the form of the Recapitalization Transaction which is supported by the Consenting Creditors (as those terms are defined below).

## A. BACKGROUND OF THE CCAA PROCEEDINGS

3. Algoma is one of the largest integrated steel producers in Canada, producing steel and steel products for customers throughout North America. On November 9, 2015, the Applicants sought and obtained protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to the Initial Order (as amended and restated, the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). Ernst & Young Inc. was appointed as monitor of the Applicants (the "**Monitor**") in these CCAA proceedings (the "**CCAA Proceedings**").

4. Since the commencement of the CCAA Proceedings, the Applicants have continued to operate their business in the ordinary course.

5. Following filing for protection, the Applicants sought and received approval of a DIP financing agreement (as amended, the "**DIP Agreement**") in order to fund their operations. The DIP Agreement initially provided a US\$200 million DIP facility from certain of the Applicants' prepetition term lenders (the "**DIP Lenders**") and enjoys a Court-ordered first ranking super-priority charge over all of Algoma's property and assets, subject to certain other Court-ordered charges.

6. Shortly after filing for CCAA protection, the Applicants, in consultation with the Monitor, the CRA and Evercore Group L.L.C. ("**Evercore**"), developed a two phase sale and investment solicitation process (the "**SISP**") to solicit interest and opportunities for a sale, restructuring or recapitalization of their business. This Court approved the SISP by order dated February 10, 2016.

7. The SISP was launched on February 12, 2016. Four bidders submitted Qualified Phase I Bids and moved into Phase II of the SISP. The only Phase II Bid received on the Phase II Bid Deadline was a bid (the "**Bid**") between certain of the Applicants' prepetition term lenders (the "**Term Lenders**") and KPS Capital Partners, LP ("**KPS**"). Following the Phase II Bid Deadline, the Applicants determined that the Bid was a "Qualified Phase II Bid". After substantial negotiations, the Applicants, in consultation with the Monitor, declared the Bid to be the "Successful Bid" in accordance with the SISP. The Applicants, the Term Lenders and KPS then

negotiated the terms of the sale transaction, which culminated in an asset purchase agreement (the “**APA**”).

8. On July 13, 2016, the Applicants were advised by the Term Lenders that KPS and the Term Lenders had agreed to terminate the Consortium Agreement governing the terms of their Bid. However, the Term Lenders reiterated their commitment to advancing the Bid and closing the transaction contemplated by the APA as quickly as possible. Since then, the Term Lenders and the Applicants have been working together cooperatively to conclude the sale.

9. Pursuant to a Restructuring Support Agreement dated as of September 15, 2016 (the “**Restructuring Support Agreement**”), the Term Lenders and certain holders of Algoma’s 9.50% prepetition senior secured notes due 2019 (the “**9.5% Noteholders**”, and together with the Term Lenders, the “**Consenting Creditors**”), agreed to support a comprehensive restructuring transaction for the Applicants to be implemented by way of a restructuring plan or an acquisition of substantially all of the assets of the Applicants (the “**Recapitalization Transaction**”).

10. The Recapitalization Transaction contemplates, among other things, (i) repayment of the DIP Agreement and prepetition revolving credit facility in full on closing of the Recapitalization Transaction, (ii) in exchange for their existing claims, the Term Lenders and the 9.5% Noteholders will receive in the aggregate 78% and 22%, respectively, of the direct or indirect equity of a restructured Algoma (if the Recapitalization Transaction is effected through a Plan) or the purchaser (if the Recapitalization Transaction is effected through an asset purchase), subject to dilution from the rights offering contemplated by the Restructuring Support Agreement; (iii) the injection of new capital of up to US\$300 million which will be backstopped by certain Consenting Creditors; and (iv) an additional asset-backed loan facility of US\$125 million or greater. In addition, the Recapitalization Transaction provides for the assumption of significant unsecured obligations relating to the Company’s pension plans and retiree benefits on the basis that the parties reach an acceptable collective bargaining agreement. To this end, the Applicants are committed to working with the Consenting Creditors, the Unions and the retiree representatives towards negotiating an acceptable collective bargaining agreement that best sets up Algoma for future success.

11. On September 22, 2016, to facilitate an extension of the CCAA Proceedings to implement the Recapitalization Transaction contemplated by the Restructuring Support Agreement, the Applicants and the DIP Lenders (many of whom are Term Lenders) agreed to an amendment to the DIP Agreement (the “**First DIP Amendment**”) which, among other things, increased the availability under the DIP Agreement to US\$220 million and extended the maturity date to January 31, 2017. The Court approved the First DIP Amendment on September 23, 2016.

12. The DIP Agreement was amended again (the “**Second DIP Amendment**”) on January 31, 2017, extending the maturity date to March 31, 2017, with an option to extend to April 30, 2017. The Court approved the Second DIP Amendment on January 31, 2017. The maturity date was further extended to April 30, 2017 pursuant to an amendment and forbearance agreement and consent dated March 31, 2017.

#### **B. STATUS OF THE UNION NEGOTIATIONS**

13. Pursuant to the Restructuring Support Agreement, the contemplated Recapitalization Transaction is conditional upon the Consenting Creditors reaching agreements with various governmental entities and USW Local 2251 (“**Local 2251**”) and USW Local 2724 (“**Local 2724**”) and together with Local 2251, the “**Unions**”) on various items, including their collective agreements. The Consenting Creditors have attempted to engage in comprehensive negotiations with these stakeholders since November 2016. The Consenting Creditors have made considerable progress with the Province of Ontario and the federal government on capital expenditure and environmental matters. I understand that the Consenting Creditors have also engaged with the City of Sault Ste. Marie (the “**City**”) in the hopes of reaching a consensual resolution to the City’s claims.

14. On December 27, 2016, the Court directed the Applicants, the Consenting Creditors, and the Unions to mediate outstanding issues between them before the Honourable Warren Winkler. However, having been advised of the status of the negotiations, Mr. Winkler advised that it was premature for him to intervene in the negotiations with mediation.

15. With negotiations stalled and recognizing that reaching terms on revised collective agreements with the Unions is critical to achieving any restructuring solution for Algoma, the Applicants decided to return to bargaining directly with the Unions under the *Labour Relations*

Act. Beginning the week of February 6, 2017, the Unions and the Applicants engaged in negotiations and discussions. A representative of the Consenting Creditors observed the negotiations.

16. At a case conference on March 6, 2017, with counsel to the Applicants, the Monitor, the Unions, and the Consenting Creditors present, the Court issued a consensual endorsement (the “**Mediation Order**”) ordering mediation between Algoma, the Consenting Creditors, the USW, the Unions and Algoma’s retirees from March 22, 2017 to March 31, 2017. The Honourable Warren Winkler was ordered to conduct the mediation.

17. As part of the Mediation Order, the Court stayed the ongoing negotiations between Algoma and the Unions under the *Labour Relations Act*, including the issuance of a “No Board Report”, until further order of the Court on the recommendation of Mr. Winkler.

18. Starting March 22, 2017, the Applicants, the Consenting Creditors, the Unions, and Algoma’s retirees engaged in negotiations at the mediation. On March 30, 2017, Mr. Winkler suspended the mediation for the time-being.

## C. AMENDMENT TO THE DIP AGREEMENT

### (i) DIP Financing Marketing Process

19. On April 30, 2017, the DIP Agreement matured. Prior to such maturity, Algoma, with the assistance of Evercore and under the supervision of the Monitor, commenced a DIP financing marketing process.

20. On April 11, 2017, the Applicants formally requested an extension of the scheduled maturity date under the DIP Agreement from the DIP Lenders. Additionally, beginning on April 14, 2017, Evercore reached out to 15 other prospective lenders to solicit proposals for a replacement DIP facility. Eight of the parties, including the DIP Lenders, requested and received due diligence materials from the Applicants.

21. The Applicants received three DIP financing proposals following the solicitation, including an initial proposal from the DIP Lenders. Algoma, with assistance from Evercore, engaged in extensive negotiations with these parties and facilitated due diligence, including

diligence calls and provision of various documents. One potential lender chose not to pursue its proposal further once the Applicants indicated that certain terms of their DIP financing proposal were unacceptable.

22. On April 28, 2017, the Court issued an endorsement requiring the Monitor and Algoma to file a confidential report on the status of the DIP Agreement and Applicants' DIP financing solicitation process. On May 1, 2017, the Court was provided with an oral report from the Monitor and Algoma on the status of the DIP marketing process, including the status of negotiations with potential DIP lenders. After receiving the report, the Court issued an endorsement stating that the Applicants were not to sign any DIP financing agreement pending further direction of the Court. The Court also ordered that it was to receive a written report on the DIP proposals no later than May 10, 2017.

23. On May 10, 2017, after receiving final proposals from the DIP Lenders and the other interested DIP lender, the Applicants and the Monitor reported to the Court on the DIP proposals.

24. After evaluating the proposals received, the Applicants, with the CRA, Evercore, and counsel, and in consultation with the Monitor, determined on an informed basis and in good faith with a view to the best interests of the Applicants that the DIP Lenders proposal to extend the maturity of the DIP Agreement was the superior proposal under the current circumstances. Following this determination, the Applicants engaged in further negotiations with the DIP Lenders to finalize the terms of the Fourth DIP Amendment.

25. The DIP Lenders' proposal addressed various issues with the current DIP Agreement including, removing the cost savings milestone described in my affidavit sworn April 24, 2017 in support of the last stay extension, alleviating certain reporting requirements of the Applicants, clarifying that the DIP Lenders cannot take control of the Applicants' receipt bank accounts without leave of the Court and removing the weekly cash sweep following repayments totalling at least US\$40 million. It also had a significantly lower cost of capital compared to the alternative DIP proposal. The alternative DIP proposal had fees approximately 4.5x higher than the DIP Lenders' proposed extension over the period to August 31, 2017.

26. Additionally, the Applicants were concerned regarding the direction the CCAA Proceedings may take if the alternative DIP proposal was selected. The Applicants were concerned that the DIP Lenders would oppose any replacement DIP financing that primed their prepetition term loans. The alternative DIP proposal provided that only limited funding would be released to Algoma until all appeals were exhausted or the relevant appeal period expired. Any litigation would be a serious distraction to the Applicants' restructuring efforts, resulting in delay at this critical time in the CCAA Proceedings. If the time period without committed financing was prolonged, Algoma's business could also be impacted as the uncertainty may cause customers and suppliers to lose confidence in Algoma's business. For the above reasons, among others, the Applicants selected to advance with DIP Lenders' proposal to extend the maturity date of the DIP Agreement to August 30, 2017, with an extension to September 29, 2017 if certain repayments are made.

**(ii) Summary of Fourth DIP Amendment**

27. The terms of the DIP Lenders' proposal are set out in a term sheet (the "**Term Sheet**") and are to be incorporated into the DIP Agreement by way of amending agreement (the "**Fourth DIP Amendment**"). A copy of the Term Sheet is attached hereto as Exhibit "**A**". A copy of the Fourth DIP Amendment will be provided to the Court and the Applicants' stakeholders as soon as it is available.

28. The terms contained in the Term Sheet are set out below:

- (a) **Term:** Initial extension of the maturity date to August 31, 2017, with a further extension to September 29, 2017, if (i) Algoma makes cumulative prepayments of the principal under the DIP Agreement equal to or exceeding US\$35 million, or (ii) with the consent of the "Requisite DIP Extension Lenders" being the DIP Lenders holding more than 60% of the aggregate principal amount of term loans then outstanding under the DIP Agreement, in each case subject to payment of an extension fee of US\$500,000 to be paid by increasing the principal amount of the term loans outstanding under the DIP Agreement;
- (b) **Further Extension:** The DIP Agreement will be amended to add that, if required, Algoma will request an extension to the maturity date no later than six weeks

prior to the current maturity date and the Requisite DIP Extension Lenders will have a maximum of two weeks from receipt of such request to respond with a proposal;

- (c) **Weekly Cash Sweep:** Retain the weekly cash sweep threshold at US\$25 million, but provided that if at any time before maturity Algoma makes cumulative prepayments of the principal under the DIP Agreement equal to or exceeding US\$40 million the weekly cash sweeps shall be suspended;
- (d) **Mandatory Prepayments:** Mandatory prepayments for each month such that at the end of each month the aggregate weekly sweep payments for that month are, in the aggregate, at least:
  - (i) May: US\$5 million;
  - (ii) June: US\$10 million;
  - (iii) July: US\$10 million;
  - (iv) August: US\$5 million; and
  - (v) September: US\$0.

Monthly prepayments in excess of the above amounts shall be applied towards the required monthly prepayments of the following month;

- (e) **Fees:** The fees under the Fourth DIP Amendment are:
  - (i) An extension fee of US\$1.639 million payable by increasing the amount of the term loans under the DIP Agreement, payable upon effectiveness of the Fourth DIP Amendment; and
  - (ii) As set out above, an extension fee of US\$500,000 payable by increasing the amount of the term loans under the DIP Agreement, payable if the maturity date is extended to September 29, 2017;

- (f) **Raw Materials:** The addition to the DIP Agreement of a covenant whereby Algoma agrees not to exceed inventory levels for iron ore and coal as specified in the approved budget by more than 15% as at the Friday nearest to month end, subject to a seven day cure period (the “**Inventory Covenant**”);
- (g) **Cash Management:** Algoma shall use commercially reasonable efforts to obtain a blocked account agreement (in similar form to the existing blocked accounts agreement with Royal Bank of Canada) with Bank of America in respect of the receipt accounts of Algoma held at Bank of America.

Revise current DIP Agreement to clarify that the DIP Lenders may only deliver an activation notice making the Applicants’ receipt bank accounts subject to written instructions only from the DIP agent with leave of the Court on at least four business days’ notice to the Applicants and the Monitor;

- (a) **Reporting:** The DIP Agreement will be amended to reflect that the budget up to September 29, 2017 attached to the Fourth DIP Amendment shall constitute the “Approved Budget” and reduce certain reporting obligations of the Applicants. The Inventory Covenant and permitted variances under the DIP Agreement will be tested against the Approved Budget; and
- (b) **Other:**
  - (i) Removal of the milestone in the DIP Agreement requiring the Applicants to achieve US\$22.2 million of annualized cost savings and waiver of the event of default related to failure to meet such milestone;
  - (ii) The covenant related to Algoma maintaining a minimum liquidity level shall be removed from the DIP Agreement; and
  - (iii) The revolving loan commitment under the DIP Agreement shall be terminated upon effectiveness of the Fourth DIP Amendment.

**D. THE FOURTH DIP AMENDMENT SHOULD BE APPROVED**

29. The Applicants' CCAA Proceedings are at a critical stage. To date, while considerable progress has been made with some key stakeholders, the Consenting Creditors and other key stakeholders have not successfully negotiated the necessary agreements to achieve a comprehensive going concern restructuring solution. The Consenting Creditors' negotiations with the various governmental entities have been constructive and are advancing. However, negotiations with the Unions have been difficult and progress has been slow. Steel prices have been favourable for a number of months but there is no certainty as to how long those prices will continue. The annual "winter build" will require additional financing and the most likely source of financing is from the eventual owner of Algoma's reorganized business.

30. It is imperative for all parties involved in Algoma's restructuring that negotiations progress and a consensual and sustainable restructuring be achieved. To that end, the Fourth DIP Amendment provides the necessary runway for Algoma, the Consenting Creditors and Algoma's other stakeholders, including the Unions, to engage in constructive, meaningful negotiations to achieve the settlements that are necessary to implement the Recapitalization Transaction.

31. The Recapitalization Transaction continues to represent Algoma's best prospect to continue as a going concern enterprise to the benefit of all of Algoma's stakeholders. The Recapitalization Transaction will, among other things,

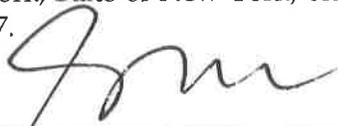
- (a) Significantly reduce the Applicants' debt by approximately \$1.2 billion;
- (b) Provide substantial new financing in excess of \$425 million to fund operations and CCAA exit costs;
- (c) Provide sufficient liquidity to fund the capital expenditures that are necessary over the next 5 years;
- (d) Preserve meaningful jobs in the City;
- (e) Reduce the cost structure of Algoma, thereby improving its financial performance and flexibility; and

- (f) Ensure that customers have confidence that Algoma's future is stable, and that they should place their business with Algoma.

32. It is a fundamental goal of the Company to successfully emerge from these CCAA Proceedings on a going concern basis and in a timely manner. The Applicants are mindful that if a consensual and sustainable restructuring solution is not achieved, then there could be material risk to the Applicants' stakeholders, its employees, retirees and the community of Sault Ste. Marie. The Applicants believe that the extended maturity afforded by the Fourth DIP Amendment, together with the concurrent appointment of a Restructuring Committee (as defined and further described in the my other affidavit sworn May 17, 2017), will allow Algoma, the Monitor and Algoma's stakeholders to focus their collective efforts towards a successful restructuring.

33. In short, after a thorough canvass of the market for alternate DIP financing opportunities, the Applicants, with assistance from their advisors and supervised by the Monitor, have determined that the terms offered under the Term Sheet (and corresponding Fourth DIP Amendment) represent the best proposal in the circumstances. I do not believe that any creditor will suffer material prejudice if the Fourth DIP Amendment is approved and implemented. For the foregoing reasons, the Applicants should be authorized to enter into the Fourth DIP Amendment and the DIP Amendment Order should be granted.

SWORN BEFORE ME at the City of  
New York, State of New York, on May  
17, 2017.



\_\_\_\_\_  
Commissioner for Taking Affidavits



\_\_\_\_\_  
JOHN STREK



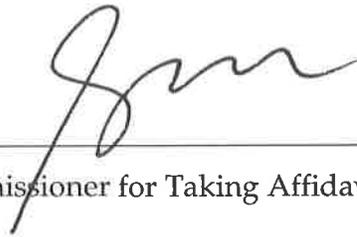
# EXHIBIT “A”

**EXHIBIT "A"**

referred to in the Affidavit of

**JOHN STREK**

Sworn May 17, 2017



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

Commissioner for Taking Affidavits



**ESSAR STEEL ALGOMA INC.**

**DIP AMENDMENT NO. 3 – TERMS**

1. Initial extension to August 31, 2017. A further extension to September 29, 2017 will automatically occur if either (a) cumulative prepayments of principal between May 1, 2017 and August 31, 2017 equal or exceed US\$35MM, or (b) otherwise if consented to by the “Requisite DIP Extension Lenders” (to be defined as Lenders holding more than 60% of the aggregate principal amount of Term Loans then outstanding), in each case subject to payment of an extension fee of US\$500,000 (in addition to those fees set forth in paragraph 9) to be paid by an increase of the outstanding principal amount of Term Loans equal to such amount. Addition of language regarding process for extension of DIP past maturity date which stipulates that Borrower will request an extension no later than six weeks prior to the maturity date and the Requisite DIP Extension Lenders will have a maximum of two weeks from receipt of such request to respond with a proposal.
2. Retain the weekly cash sweep threshold at US\$25MM but provide for suspension of the weekly sweep requirement if at any time before maturity cumulative prepayments of principal equal or exceed US\$40MM.
3. Mandatory prepayments for each month such that at the end of each month the aggregate weekly sweep payment is, in the aggregate, at least:
  - (a) May, US\$5MM;
  - (b) June, US\$10MM;
  - (c) July, US\$10MM;
  - (d) August, US\$5MM; and
  - (e) September, US\$0MM.

Monthly prepayments in excess of the above amounts shall be applied towards the required monthly prepayments of the following month.

4. Borrower to covenant not to exceed inventory levels for iron ore and coal as specified in the Approved Budget by more than 15% as at the Friday nearest to each month-end (subject to a 7 business day cure period).
5. Amend Cash Management System to require that the Borrower use commercially reasonable efforts to obtain blocked account agreements in favour of the Collateral Agent from Bank of America with respect to the Bank of America Accounts in similar form to the existing blocked account agreement in favour of the Collateral Agent with respect to the concentration accounts maintained by Royal Bank of Canada.
6. Remove the cost savings Milestone set forth in Section 10.17 of the DIP Credit Agreement and waive the related Event of Default pursuant to Section 12.01(c) of the DIP Credit Agreement.

Draft

7. (a) Amend the definition of “Approved Budget” to “shall mean the budget of weekly receipts and expenditures for the period up to and including September 29, 2017 attached hereto as Exhibit A”, (b) revise Section 10.01(e)(i) to “(i) no later than 12:00 noon (New York time) on Wednesday of every week, a comparison of actual performance against the Approved Budget for such week, with a narrative detailing the material variances”, (c) supplement Section 10.02(b) to provide that any conference calls or teleconferences with the Administrative Agent, such Lenders that choose to participate, and their advisors with respect to items delivered under Section 10.01(e) shall be held no more than once every two weeks and for no more than 30 minutes per conference call or teleconference and (d) revise the requirements in Section 10.01(e)(ii) and 10.01(f) to reflect that every other week, for informational purposes only (and not to amend the Approved Budget), the Borrower delivers an informational budget which will be comprised of the Approved Budget updated to reflect actual receipts and expenditures.
8. Revise Section 8.04(a)(i) to require delivery of a Borrowing Base Certificate biweekly rather than weekly (and corresponding consequential amendments in paragraph 8.04(a)).
9. Extension fee payable on effectiveness of DIP Amendment No. 3 for extension from May 1, 2017 to August 31, 2017 of US\$1,639,000 to be paid by an increase of the outstanding principal amount of Term Loans equal to such amount.
10. Upon the effectiveness of DIP Amendment No. 3, termination of the DIP revolving loan commitment.
11. Deletion of the covenant related to the minimum liquidity level of the Borrower.
12. (a) Amend language in clause (v) in the paragraph at the end of Section 12.01 to clarify that the issuance of an Activation Notice or similar notice of control under any Control Agreement is subject to the proviso related to notice and CCAA Court approval that clause (v) is subject to; and (b) amend Section 8.02(d) to replace “(which Activation Notice may be given by the Collateral Agent at any time an Event of Default has occurred and is continuing)” with “(which Activation Notice may be given by the Collateral Agent at any time an Event of Default has occurred and is continuing, subject to the Administrative Agent obtaining leave of the CCAA Court and providing the Credit Parties and Monitor with four (4) Business Days’ prior written notice of any motion or application seeking to obtain leave of the CCAA Court)”.
13. Delivery of information necessary to satisfy the DIP Agent’s KYC requirements, consistent with information already provided.

*[Remainder of page intentionally left blank]*

Draft

**Exhibit A**  
**Approved Budget**

Draft

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

Court File No. CV15-000011169-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF ESSAR STEEL ALGOMA INC., ET AL

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

Proceeding commenced at Toronto

**AFFIDAVIT OF JOHN STREK  
(SWORN MAY 17, 2017)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley John Taylor** LSUC#: 39932E  
Tel: (416) 869-5236  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Lee Nicholson** LSUC#: 66412I  
Tel: (416) 869-5604  
E-mail: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)  
Fax: (416) 947-0866

Lawyers for the Applicants

# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )  
JUSTICE NEWBOULD ) TUESDAY, THE 23<sup>rd</sup>  
DAY OF MAY, 2017

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 ESSAR STEEL ALGOMA INC., ESSAR TECH ALGOMA INC.,  
ALGOMA HOLDINGS B.V., ESSAR STEEL ALGOMA (ALBERTA) ULC,  
CANNELTON IRON ORE COMPANY AND ESSAR STEEL ALGOMA INC. USA

**Applicants**

**ORDER  
(Re Approval of Fourth DIP Amendment)**

**THIS MOTION**, made by Essar Steel Algoma Inc. (the "**Borrower**"), Essar Tech Algoma Inc., Algoma Holdings B.V., Essar Steel Algoma (Alberta) ULC, Cannelton Iron Ore Company and Essar Steel Algoma Inc. USA (together, the "**Applicants**") for an order authorizing the Applicants to enter into and approving the Fourth DIP Amendment (as that term is defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of John Strek sworn May 17, 2017, the Thirty-First Report of Ernst & Young Inc., in its capacity as Monitor of the Applicants (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, the Monitor, the DIP Lenders (defined below) and those other parties present, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Lee Nicholson, filed.

## SERVICE

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

## DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein have the same meanings ascribed to them in the Amended and Restated Initial Order of this Court dated November 9, 2015 (the “**Initial Order**”).

## APPROVAL OF THE FOURTH DIP AMENDMENT

3. **THIS COURT ORDERS** that the Applicants are hereby authorized and directed to execute the Amendment No. 3, Limited Waiver and Consent (the “**Fourth DIP Amendment**”) to the Amended and Restated Senior Secured, Priming and Superpriority Debtor-In-Possession Credit Agreement among the Applicants and Deutsche Bank AG New York Branch (the “**DIP Agent**”) and the Lenders party thereto (the “**DIP Lenders**”) dated as of November 9, 2016, (as amended and restated, supplemented or modified from time to time, the “**DIP Agreement**”), attached as Exhibit “●” to the Affidavit of ●.

4. **THIS COURT ORDERS** that the Fourth DIP Amendment is hereby approved and, the Applicants shall be authorized and empowered to extend the DIP Agreement (as amended by the Fourth DIP Amendment) in order to finance the Applicants’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Approved Budget.

5. **THIS COURT ORDERS** that, for greater certainty, paragraphs 46 to 65 of the Initial Order shall continue to apply to the DIP Agreement (as amended by the Fourth DIP Amendment) and the DIP Lenders’ Charge shall secure all amounts owing by the Borrower to the DIP Agent and the DIP Lenders under the DIP Agreement (as amended by the Fourth DIP Amendment), and the Definitive Documents.

6. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order or the DIP Agreement (as amended by the Fourth DIP Amendment) shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a “**Variation**”) whether by subsequent order of this Court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the protections, rights or remedies of the DIP Agent and the DIP Lenders, whether under this Order (as made prior to the Variation), the Initial Order, under the DIP Agreement (as amended by the Fourth DIP Amendment) or under any of the documentation delivered hereto or thereto (including the Definitive Documents) with respect to any advances made prior to the DIP Agent and the DIP Lenders being given notice of the Variation and with respect to any fees and amounts paid to the DIP Agent and the DIP Lenders in accordance with the terms of the DIP Agreement (as amended by the Fourth DIP Amendment), and the DIP Agent and the DIP Lenders shall be entitled to rely on this Order as issued (including without limitation, the DIP Lenders’ Charge) for all advances so made by the DIP Lenders and all fees and amounts so received by the DIP Lenders, prior to such Variation. Notwithstanding any person seeking a Variation, the Applicants, DIP Agent and DIP Lenders shall be permitted and required to perform their respective obligations in compliance with the DIP Agreement (as amended by the Fourth DIP Amendment).

7. **THIS COURT ORDERS** that if there has been a Variation to this Order or the DIP Agreement (as amended by the Fourth DIP Amendment) without the consent of the Requisite DIP Lenders (as defined in the DIP Agreement (as amended by the Fourth DIP Amendment)), then the date that is one (1) business day following the date of such Variation shall be deemed to be the Scheduled Maturity Date (as defined in the DIP Agreement (as amended by the Fourth DIP Amendment)).

#### **GENERAL**

8. **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 any other 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, including the U.S. Bankruptcy Court. All courts, tribunals, regulatory and administrative bodies are hereby

respectfully requested to make such orders and to provide such assistance to the Applicants and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

---

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

Court File No. CV15-000011169-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF ESSAR STEEL ALGOMA INC., ET AL

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

Proceeding commenced at Toronto

**ORDER  
(RE APPROVAL OF FOURTH DIP AMENDMENT)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley John Taylor** LSUC#: 39932E  
Tel: (416) 869-5236  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Kathryn Esaw** LSUC#: 58264F  
Tel: (416) 869-6820  
Email: [kesaw@stikeman.com](mailto:kesaw@stikeman.com)

**Lee Nicholson** LSUC#: 66412I  
Tel: (416) 869-5604  
Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)  
Fax: (416) 947-0866

**Lawyers for the Applicants**

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

Court File No. CV-15-000011169-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
ESSAR STEEL ALGOMA INC. ET AL.

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

Proceeding commenced at Toronto

**MOTION RECORD  
(Re: Approval of Fourth DIP Amendment)  
(Returnable May 23, 2017)**

**STIKEMAN ELLIOTT LLP**

Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley John Taylor** LSUC#: 39932E

Tel: (416) 869-5236

E-mail: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Kathryn Esaw** LSUC#: 58264F

Tel: (416) 869-5230

Email: [kesaw@stikeman.com](mailto:kesaw@stikeman.com)

**Lee Nicholson** LSUC#: 66412I

Tel: (416) 869-5604

E-mail: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

Fax: (416) 947-0866

**Lawyers for the Applicants**