Court File No.: CV-15-10936-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36

FIRST REPORT OF THE INFORMATION OFFICER
DELOITTE RESTRUCTURING INC.
MAY 19, 2015

INTRODUCTION

1. On April 6, 2015 (the "**Petition Date**"), Xinergy Ltd., which is incorporated pursuant to the laws of the Province of Ontario ("**Xinergy**" or the "**Applicant**"), and 25 subsidiaries of Xinergy incorporated in the United States (the "**U.S. Subsidiaries**" and together with Xinergy, the "**Chapter 11 Debtors**") commenced voluntary reorganization proceedings (the "**Chapter 11 Proceedings**") in the United States Bankruptcy Court for the Western District of Virginia (the "**U.S. Court**") by each filing a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). A listing of the Chapter 11 Debtors is attached as **Appendix A**.

2. Xinergy has no Canadian operations or Canadian employees. Xinergy's only nexus to Canada is that it was incorporated pursuant to the laws of the Province of Ontario, was listed on the Toronto Stock Exchange (the "**TSX**") until it was de-listed on May 12, 2015, and has one bank account and four known creditors domiciled in Canada. Xinergy, as the ultimate parent of the U.S. Subsidiaries, determined that recognition of the Chapter 11 Proceedings in Canada is necessary so that, among other things, certain assets of Xinergy, including net operating loss carryforwards, will receive appropriate protection in Canada to the extent those assets may be subject to the Court's jurisdiction.

3. Beginning on the Petition Date and continuing until the following day, the Chapter 11 Debtors filed various motions for interim and/or final orders (the "**First Day Motions**") in the Chapter 11 Proceedings to permit the Chapter 11 Debtors to continue to operate their business in the ordinary course. The First Day Motions included a motion for entry of an order (the "**Foreign Representative Order**") authorizing Xinergy to act as foreign representative on behalf of the Chapter 11 Debtors' estates (the "**Foreign Representative**").

4. On April 7, 2015, the U.S. Court entered the Foreign Representative Order and on April 7, 2015 and April 8, 2015, the U.S. Court entered certain other orders in respect of the First Day Motions.

5. On April 14, 2015, Xinergy, as the proposed Foreign Representative for itself only (and not the other Chapter 11 Debtors as discussed in the Preliminary Report of the Proposed Information Officer (the "**Preliminary Report**")), commenced, via a notice of application (the "**Notice of Application**"), an application before the Ontario Superior Court of Justice

(Commercial List) (the "**Court**") pursuant to Part IV of the Companies' Creditors Arrangement Act ("**CCAA**") for the following relief and orders:

(a) An initial recognition order (the "**Initial Recognition Order**"), *inter alia*:

(i) Declaring that the Applicant is the "foreign representative" as such term is defined in section 45 of the CCAA;

(ii) Declaring that the centre of main interests (the "**COMI**") for Xinergy is the United States, and declaring that the Chapter 11 Proceedings are recognized as a "foreign main proceeding" as such term is defined in section 45 of the CCAA;

(iii) Staying, until further Court order, all actions and proceedings against Xinergy in accordance with section 48 of the CCAA; and,

(iv) Prohibiting Xinergy from selling or otherwise disposing of (A) any of its property in Canada related to the business outside the ordinary course of its business, and (B) any of its other property in Canada.

(b) A supplemental order (the "**Supplemental Order**") pursuant to section 49 of the CCAA, inter alia:

(i) Recognizing in Canada and giving full force and effect to certain orders of the U.S. Court made in the Chapter 11 Proceedings;

(ii) Appointing Deloitte Restructuring Inc. ("**Deloitte**") as the Information Officer in respect of this proceeding (the "**Information Officer**");

(iii) Granting the Information Officer and its counsel a super-priority first-ranking charge on the assets of Xinergy in Canada, which charge shall not exceed $100,000, as security for their professional fees and disbursements incurred in respect of this proceeding (the "**Administration Charge**"); and,

(iv) Granting a super-priority second-ranking charge (subordinate only to the Administration Charge) in favour of the post petition lender under the post petition credit facility approved by the U.S. Court pursuant to the Interim DIP Facility Order (as defined in the Preliminary Report).

6. On April 23, 2015, the Court granted the relief requested and issued the Initial Recognition Order and the Supplemental Order.

7. Between April 21, 2015 and May 12, 2015, the U.S. court entered certain further orders, of which three are described in more detail below. Please refer to **Appendix B** for a listing of all Orders that have been entered in the Chapter 11 Proceedings as at May 15, 2015.

8. On May 13, 2015 the Foreign Representative, via notice of motion, made a motion to the Court returnable May 21, 2015 pursuant to the CCAA for:

   (a) An order pursuant to section 49 of the CCAA, inter alia, recognizing in Canada and giving full force and effect to the following orders of the U.S. Court made in the Chapter 11 Proceedings:

      (i) Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant To 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 (the "**Final DIP Order**");

      (ii) Final Order (I) Authorizing Debtors to Maintain Existing Bank Accounts and Business Forms and Continue to Use Existing Cash Management System; (II) Granting Administrative Expense Status For Intercompany Claims; and (III) Waiving the Requirements Of Section 345(b) Of the Bankruptcy Code (the "**Final Cash Management Order**"); and,

      (iii) Final Trading Order Establishing Notification Procedures and Approving Restrictions On Certain Transfers Of Equity Interests In the Debtors' Estates (the "**Final NOL Order**").

9. Other than this proceeding (the "**CCAA Recognition Proceeding**"), there are no other foreign proceedings in respect of Xinergy or any of the other Chapter 11 Debtors.

10. Motion materials and other documentation filed in the CCAA Recognition Proceeding, including the Preliminary Report, and a website link for the materials filed in the Chapter 11 Proceedings, are available on the Information Officer's website at http://www.insolvencies.deloitte.ca/xinergy.

TERMS OF REFERENCE

11. In preparing this First Report of the Information Officer (the "**First Report**"), the Information Officer has been provided with, and has relied upon, unaudited financial information, declarations and affidavits of Xinergy executive officers, and financial information prepared by Xinergy, and public information available filed as part of the Chapter 11 Proceedings (collectively, the "**Information**"). The Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided; however, the Information Officer has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook, and accordingly, the Information Officer expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.

12. Any future oriented financial information referred to in this First Report was prepared based on management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, and the variations could be significant.

13. The Information Officer has requested that Xinergy bring to its attention any significant matters that were not addressed in the course of its specific inquiries. Accordingly, this report is based solely on the Information made available to the Information Officer.

14. This First Report should be read in conjunction with the Preliminary Report and the Affidavit of Michael R. Castle, sworn May 13, 2015, which was included as a part of Xinergy's Motion Record and which can also be found (without appendices) attached as **Appendix C** for reference.

15. All references to currency in this report are in United States dollars unless otherwise noted.

16. Defined terms are either as defined in the Preliminary Report or this First Report.

PURPOSE OF REPORT

17. The purpose of this First Report is to assist the Court in considering the Foreign Representative's request for recognition of certain orders of the U.S. Court made in the Chapter 11 Proceedings, and to provide the Court with certain pertinent background and other information in order to do so, including the following:

    (a) Summary of activities of the Information Officer;
    (b) Certain matters relating to the Chapter 11 Proceedings, including an update on the May 5, 2015 hearing in the U.S. Court;
    (c) Update on the shareholder requisition dated April 16, 2015 to call a meeting of the shareholders to consider removing and appointing certain directors (the "**Shareholder Requisition**");
    (d) Information related to the Canadian operations and in particular, the Canadian creditors; and,
    (e) Conclusion.

ACTIVITIES OF THE INFORMATION OFFICER

18. To date, the activities of the Information Officer have included the following:

    (a) Attending to various telephone discussions with Xinergy's Canadian legal counsel and the Information Officer's legal counsel regarding the status of the matters related to the Chapter 11 Proceedings;
    (b) Reviewing materials filed by various parties in the Chapter 11 Proceedings for the hearing on May 5, 2015 and those materials filed to date in the CCAA Recognition Proceeding;
    (c) Arranging the publication of a notice of the Chapter 11 Proceedings and CCAA Recognition Proceeding (the "**Notice**") in the Globe & Mail (National Edition) on Thursday, April 30, 2015 and Thursday, May 7, 2015 in accordance with the Supplemental Order – copies of the published Notices are attached as **Appendix D**;
    (d) Establishing and maintaining a website to make available copies of the orders granted in the CCAA Recognition Proceeding, as well as other relevant motional materials and reports: http://www.insolvencies.deloitte.ca/xinergy; and,
    (e) Responding to creditor inquiries regarding the Canadian Proceedings.

THE CHAPTER 11 PROCEEDINGS

19. As set out in the Castle Affidavit, on May 5, 2015, the U.S. Court held a hearing on additional motions to approve final versions of certain interim orders which had been entered by the U.S. Court on April 7, 2015. These included the Final DIP Order, the Final NOL Order and the Final Cash Management Order.

20. On April 28, 2015, Jon Nix, a shareholder of Xinergy, filed a limited objection in the U.S. Court (the "**Nix Objection**") to certain motions, including the motion for approval of the Final DIP Order. A copy of the Nix Objection is attached as **Appendix E**.

21. The U.S. Court overruled the Nix Objection and granted the orders requested by Xinergy on May 5, 2015. The Final DIP Order was entered on the docket on May 5, 2015 and the Final NOL Order and the Final Cash Management Order were entered on May 8, 2015.

22. The Final DIP Order is in substantially the same form as the interim order recognized by this Court save for the fact that the Final DIP Order:

    (a) Makes effective certain additional liens on collateral in the form of proceeds of certain types of actions that may be brought under the Bankruptcy Code;
    (b) Reflects the fact that the refinancing of the pre-filing debt (which was approved in the interim order and recognized by this Court in the Supplemental Order) has been completed;
    (c) Confirms that Seaport Global Securities LLC will not be entitled to a fee in connection with the financing approved in the Final DIP Order;
    (d) Modifies the "challenge period" (in which parties may challenge the liens and claims of the pre-filing secured lenders) to reflect the fact that no official committee of creditors had been appointed in the Chapter 11 Proceedings as of the date of the Final DIP Order and that such challenge period therefore could not be calculated based on the appointment date of any such committee;
    (e) Provides for payment of the fees for counsel to the prepetition indenture trustee in connection with the Chapter 11 Proceedings; and,
    (f) Modifies the timing of the budget reports prepared by the Chapter 11 Debtors for the agent under the post-filing credit agreement.

23. The Final NOL Order is in substantially the same form as the interim order recognized by this Court.

24. The Final Cash Management Order is in substantially the same form as the interim order recognized by this Court save for the fact that Xinergy is no longer seeking a waiver of certain investment guidelines in the Bankruptcy Code in connection with its bank accounts due to the agreement of one of Xinergy's banks to comply with additional bonding requirements and that Xinergy must provide notice to the Office of the United States Trustee if it intends to open any new accounts.

25. The Information Officer, having considered the circumstances of this case believes that the recognition of the Final DIP Order, the Final NOL Order and the Final Cash Management Order appears to be reasonable.

THE SHAREHOLDER REQUISITION

26. As previously described in the Preliminary Report, in a letter to Xinergy dated April 16, 2015 (the "**Wildeboer Letter**"), Wildeboer Dellelce LLP on behalf of a shareholder that claims to hold not less than 5% of the voting common shares requisitioned the directors of Xinergy pursuant to Section 105 of the *Business Corporations Act* to call a meeting of the shareholders to consider removing and appointing certain directors. The requisitioning shareholder is John Nix, who was the founder of Xinergy Corp. and served as Chairman and Chief Executive Officer from March 2008, until May, 2012. The Wildeboer Letter and the Shareholder Requisition are attached for reference as **Appendix F** and **Appendix G.**

27. Counsel to Mr. Nix appeared at the application before this Court for the Initial Recognition Order and the Supplemental Order.

28. On May 7, 2015, counsel for Xinergy wrote to Mr. Nix's counsel advising that after careful review and consideration of the Shareholder Requisition, Xinergy determined that scheduling the requested meeting would not be in the best interests of Xinergy and the other Chapter 11 Debtors. Among other things, the letter stated that scheduling the meeting would be highly disruptive to operations and the restructuring process, costly to the estates and potential recoveries, risk default and termination of the Chapter 11 Debtors' post-petition financing, and seriously jeopardize the Chapter 11 Debtors' ability to continue as a going

concern and reorganize through their Chapter 11 proceedings. The letter is attached for reference as **Appendix H.**

29. On May 8, 2015, Xinergy and the other Chapter 11 Debtors issued a Complaint for Injunctive and Declaratory Relief in respect of the Shareholder Requisition in the U.S. Court (the "**Complaint**"). The Complaint seeks, among other things, a declaration that Xinergy has no obligation to hold a special shareholder meeting prior to confirmation of a plan or further order of the U.S. Court, and an injunction pursuant to the Bankruptcy Code prohibiting Mr. Nix from taking further actions to call or hold a special shareholder meeting. The Complaint (without appendices) is attached for reference as **Appendix I.**

30. On May 13, 2015, Mr. Nix provided notice of a special meeting of shareholders of Xinergy to be held on June 19, 2015 in the Globe and Mail. A copy of the notice from the Globe and Mail is attached as **Appendix J**.

31. On May 14, 2015, Mr. Nix served a motion returnable May 21, 2015 for an order, inter alia:

    (a) Declaring that the stay of proceeding granted pursuant to the Initial Recognition Order does not apply to the shareholder meeting that was requisitioned by Mr. Nix (the "**Shareholder Meeting**");

    (b) In the alternative, declaring that the stay of proceedings in the Initial Recognition Order shall be lifted for the limited purpose of holding the Shareholder Meeting; and

    (c) Granting certain administrative relief regarding the conduct of the Shareholder Meeting.

32. The Information Officer understands that Xinergy has confirmed a 9:30 scheduling appointment with the Court on May 20, 2015 to discuss the scheduling of Mr. Nix's motion.

33. The Information Officer understands that on May 19, 2015 Xinergy filed a motion with the U.S. Court seeking a preliminary injunction enjoining Mr. Nix from taking any further action to call or hold a special shareholder meeting of Xinergy. A copy of the motion is attached as **Appendix K**.

UPDATE ON XINERGY'S ACTIVITIES IN CANADA

34. As noted in the Preliminary Report, Xinergy has no Canadian operations or Canadian employees. Xinergy's only nexus to Canada is that it was incorporated pursuant to the laws of the Province of Ontario, was listed on the TSX until it was delisted on May 12, 2015, has a bank account in Canada and four known creditors domiciled in Canada.

35. As of the date of this First Report, neither Xinergy nor the Information Officer is aware of any additional Canadian creditors other than the four creditors that were noted in the Preliminary Report.

CONCLUSION

36. Based on the information provided in this First Report, the Information Officer believes the relief requested by Xinergy in its Notice of Motion dated May 13, 2015 appears to be reasonable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Toronto, Ontario this 19th day of May, 2015.

DELOITTE RESTRUCTURING INC., solely
in its capacity as the Information Officer of
Xinergy Ltd. and not in its personal or corporate capacity

Per: _____
Adam Bryk

APPENDIX A
Listing of the Chapter 11 Debtors

Chapter 11 Debtors

1. Xinergy Ltd.
2. Xinergy Corp.
3. Xinergy Finance (US), Inc.
4. Pinnacle Insurance Group LLC
5. Xinergy of West Virginia, Inc.
6. Xinergy Straight Creek, Inc.
7. Xinergy Sales, Inc.
8. Xinergy Land, Inc.
9. Middle Fork Mining, Inc.
10. Big Run Mining, Inc.
11. Xinergy of Virginia, Inc.
12. South Fork Coal Company, LLC
13. Sewell Mountain Coal Co., LLC
14. Whitewater Contracting, LLC
15. Whitewater Resources, LLC
16. Shenandoah Energy, LLC
17. High MAF, LLC
18. Wise Loading Services, LLC
19. Strata Fuels, LLC
20. True Energy, LLC
21. Raven Crest Mining, LLC
22. Brier Creek Coal Company, LLC
23. Bull Creek Processing Company, LLC
24. Raven Crest Minerals, LLC
25. Raven Crest Leasing, LLC
26. Raven Crest Contracting, LLC

APPENDIX B
Listing of all Orders issued in the Chapter 11 Proceedings
As at May 15, 2015

Listing of all Orders issued in the Chapter 11 Proceedings as at May 15, 2015
(excluding Orders Granting Motion to Appear)

FILING DATE	DESCRIPTION
April 7, 2015	INTERIM ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364 AND (III) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c)
April 7, 2015	ORDER AUTHORIZING XINERGY LTD. TO ACT AS FOREIGN REPRESENTATIVE PURSUANT TO 11 U.S.C. § 1505
April 7, 2015	INTERIM TRADING ORDER ESTABLISHING NOTIFICATION PROCEDURES AND APPROVING RESTRICTIONS ON CERTAIN TRANSFERS OF EQUITY INTERESTS IN THE DEBTORS' ESTATES
April 8, 2015	ORDER DIRECTING JOINT ADMINISTRATION OF CHAPTER 11 CASES
April 8, 2015	ORDER SETTING AN EXPEDITED HEARING ON "FIRST DAY MOTIONS" AND RELATED RELIEF
April 8, 2015	ORDER APPROVING THE FORM AND MANNER OF NOTICE OF COMMENCEMENT OF THE CHAPTER 11 CASES
April 8, 2015	ORDER AUTHORIZING DEBTORS TO (I) PREPARE A LIST OF CREDITORS IN LIEU OF SUBMITTING A FORMATTED MAILING MATRIX AND (II) FILE A CONSOLIDATED LIST OF DEBTORS' 30 LARGEST UNSECURED CREDITORS

FILING DATE	DESCRIPTION
April 8, 2015	ORDER (I) EXTENDING THE TIME TO FILE SCHEDULES AND STATEMENTS OF FINANCIAL AFFAIRS AND (II) EXTENDING THE TIME TO SCHEDULE THE MEETING OF CREDITORS
April 8, 2015	INTERIM ORDER (I) AUTHORIZING DEBTORS TO MAINTAIN EXISTING BANK ACCOUNTS AND BUSINESS FORMS AND CONTINUE TO USE EXISTING CASH MANAGEMENT SYSTEM; (II) GRANTING ADMINISTRATIVE EXPENSE STATUS FOR INTERCOMPANY CLAIMS; AND (III) WAIVING THE REQUIREMENTS OF SECTION 45(b) OF THE BANKRUPTCY CODE
April 8, 2015	ORDER (I) AUTHORIZING DEBTORS TO PAY PREPETITION WAGES, SALARIES AND BENEFITS; (II) AUTHORIZING DEBTORS TO CONTINUE EMPLOYEE BENEFIT PROGRAMS IN THE ORDINARY COURSE OF BUSINESS; (III) AUTHORIZING CURRENT AND FORMER EMPLOYEES TO PROCEED WITH WORKERS COMPENSATION CLAIMS; AND (IV) DIRECTING APPLICABLE FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS
April 8, 2015	ORDER (i) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICE, (ii) DEEMING UTILITY COMPANIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE AND (iii) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE
April 8, 2015	INTERIM ORDER AUTHORIZING (I) PAYMENT OF CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS; (II) PAYMENT OF 503(b)(9) CLAIMS TO CERTAIN CRITICAL VENDORS; AND (III) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

FILING DATE	DESCRIPTION
April 8, 2015	INTERIM ORDER AUTHORIZING (I) DEBTORS TO CONTINUE AND RENEW THEIR LIABILITY, PROPERTY, CASUALTY AND OTHER INSURANCE PROGRAMS AND HONOR ALL OBLIGATIONS IN RESPECT THEREOF AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS
April 8, 2015	INTERIM ORDER AUTHORIZING (I) DEBTORS TO CONTINUE AND RENEW SURETY BOND PROGRAM AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS
April 8, 2015	INTERIM ORDER AUTHORIZING (I) DEBTORS TO PAY CERTAIN PREPETITION TAXES, GOVERNMENTAL ASSESSMENTS AND FEES AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS
April 9, 2015	ORDER AUTHORIZING THE APPOINTMENT OF AMERICAN LEGAL CLAIMS SERVICES, LLC AS CLAIMS, NOTICING AND BALLOTING AGENT
April 21, 2015	ORDER (PRE-HEARING) IN RELIEF FROM STAY MOTION WITH ATTACHMENTS SIGNED ON 4/21/2015 RE PAMELA MYLES
April 21, 2015	ORDER (PRE-HEARING) IN RELIEF FROM STAY MOTION WITH ATTACHMENTS SIGNED ON 4/21/2015 RE JANET K. WILLIAMS
April 23, 2015	ORDER GRANTING MOTION TO SHORTEN NOTICE REQUIREMENT
April 28, 2015	ORDER WITHDRAWING MOTION TO RECONSIDER

FILING DATE	DESCRIPTION
May 4, 2015	ORDER GRANTING MOTION BY SUZANNE JETT TORWBRIDGE, COUNSEL FOR WHAYNE-WALKER TO PARTICIPATE TELEPHONICALLY IN 05/05/2015 HEARING
May 5, 2015	ORDER GRANTING MOTION FOR ENTRY OF FINAL ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POST PETITION FINANCING PURSUANT TO 11 USC Â§Â§ 105, 361, 362, 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1) AND 364(E) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 USC Â§ 363 AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 USC Â§Â§ 361, 362, 363, AND 364
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF ORDER AUTHORIZING (I) PAYMENT OF CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS; (II) PAYMENT OF 503(B)(9) CLAIMS TO CERTAIN CRITICAL VENDORS; AND (III) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS. LIMITED OBJECTION WITHDRAWN
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF ORDER ESTABLISHING CERTAIN NOTICE, CASE MANAGEMENT AND ADMINISTRATIVE PROCEDURES
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF ORDER AUTHORIZING (I) DEBTORS TO CONTINUE AND RENEW SURETY BOND PROGRAM AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

FILING DATE	DESCRIPTION
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF ORDER (I) AUTHORIZING DEBTORS TO MAINTAIN EXISTING BANK ACCOUNTS AND BUSINESS FORMS AND CONTINUE TO USE EXISTING CASH MANAGEMENT SYSTEM; (II) GRANTING ADMINISTRATIVE EXPENSE STATUS FOR INTERCOMPANY CLAIMS; AND (III) WAIVING THE REQUIREMENTS OF SECTION 345(B) OF THE BANKRUPTCY CODE
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF ORDER AUTHORIZING (I) DEBTORS TO CONTINUE AND RENEW THEIR LIABILITY, PROPERTY, CASUALTY AND OTHER INSURANCE PROGRAMS AND HONOR ALL OBLIGATIONS IN RESPECT THEREOF AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF ORDER AUTHORIZING (I) DEBTORS TO PAY CERTAIN PREPETITION TAXES, GOVERNMENTAL ASSESSMENTS AND FEES AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS
May 8, 2015	FINAL ORDER APPROVING/DIRECTING JOINT ADMINISTRATION OF CHAPTER 11 CASES
May 8, 2015	ORDER GRANTING MOTION FOR ENTRY OF ORDER APPROVING PROCEDURES FOR THE RETENTION AND COMPENSATION OF CERTAIN ORDINARY COURSE PROFESSIONALS OF THE DEBTORS, RETROACTIVE TO THE PETITION DATE

FILING DATE	DESCRIPTION
May 8, 2015	ORDER GRANTING MOTION FOR ENTRY OF ORDER ESTABLISHING PROCEDURES FOR INTERIM MONTHLY COMPENSATION AND REIMBURSEMENT
May 8, 2015	ORDER GRANTING APPLICATION TO EMPLOY HUNTON & WILLIAMS LLP AS COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE
May 8, 2015	ORDER GRANTING/AUTHORIZING THE EMPLOYMENT AND RETENTION OF CASSELS BROCK & BLACKWELL LLP AS SPECIAL COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE. LIMITED OBJECTION WITHDRAWN.
May 8,2015	ORDER GRANTING/AUTHORIZING EMPLOYMENT AND RETENTION OF MICHAEL WILSON PLC AS SPECIAL CONFLICTS COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE. LIMITED OBJECTION WITHDRAWN.
May 8, 2015	ORDER GRANTING/AUTHORIZING EMPLOYMENT AND RETENTION OF STUBBS ALDERTON & MARKILES, LLP AS SPECIAL CORPORATE COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE. LIMITED OBJECTION WITHDRAWN.
May 8, 2015	FINAL TRADING ORDER ESTABLISHING NOTIFICATION PROCEDURES AND APPROVING RESTRICTIONS ON CERTAIN TRANSFERS OF EQUITY INTERESTS IN THE DEBTORS' ESTATES
May 8, 2015	INTERIM ORDER ESTABLISHING CERTAIN NOTICE, CASE MANAGEMENT AND ADMINISTRATIVE PROCEDURES

FILING DATE	DESCRIPTION
May 12, 2015	ORDER APPROVING MOTION TO SHORTEN NOTICE AND ORDER CONTINUING MOTION FOR RELIEF FROM STAY FOR FINAL HEARING
May 12, 2015	ORDER APPROVING MOTION TO SHORTEN NOTICE AND ORDER CONTINUING MOTION FOR RELIEF FROM STAY FOR FINAL HEARING SIGNED ON 5/12/2015
May 12, 2015	ORDER GRANTING APPLICATION TO EMPLOY AND RETAIN SEAPORT GLOBAL SECURITIES AS FINANCIAL ADVISORS AND INVESTMENT BANKERS TO DEBTORS AND DEBTORS IN POSSESSION AS OF THE PETITION DATE

APPENDIX C
Castle Affidavit

Court File No. CV-15-10936-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AFFIDAVIT OF MICHAEL R. CASTLE
(SWORN MAY 13, 2015)

I, Michael R. Castle, of the City of Knoxville in the state of Tennessee, MAKE OATH AND SAY that:

1. I am the Chief Financial Officer of Xinergy Ltd. (the "**Applicant**" or "**Xinergy**"), a corporation formed under the laws of Ontario. As such, I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and verily believe it to be true.

2. This Affidavit is filed in support of the Applicant's motion for an order, *inter alia*, recognizing in Canada and giving full force and effect in all provinces and territories of Canada pursuant to section 49 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C. 36, as amended (the "**CCAA**"), certain orders of the United States Bankruptcy Court for the Western District of Virginia (the "**US Bankruptcy Court**") made in the case (the "**Chapter 11 Case**") commenced by Xinergy in the US Bankruptcy Court under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§101-1532 (the "**Bankruptcy Code**").

Corporate Overview

3. Xinergy, a public Ontario corporation, is the ultimate parent of 26 subsidiaries, 25 of which are incorporated in the United States.

4. Xinergy and the 25 U.S. subsidiaries (collectively, the "**Chapter 11 Debtors**") are a U.S. producer of metallurgical and thermal coal with mineral reserves, mining operations and coal properties located in the Central Appalachian regions of West Virginia and Virginia. The Chapter 11 Debtors' principal operations include two active mining complexes known as South Fork and Raven Crest located in Greenbrier and Boone Counties, West Virginia. The Chapter 11 Debtors also lease or own the mineral rights to properties located in Fayette, Nicholas and Greenbrier Counties, West Virginia and Wise County, Virginia.

5. All management, operations, employees and substantially all of the assets of Xinergy are located in the United States.

6. Xinergy's common shares are listed on the Toronto Stock Exchange (the "**TSX**"). I am advised by counsel and believe that the shares will be de-listed as of the close of business on May 12, 2015.

Background on Proceedings

7. On April 6, 2015, the Chapter 11 Debtors filed voluntary petitions for relief under the Bankruptcy Code to commence proceedings in the United States (the "**Chapter 11 Cases**").

8. On April 7, 2015, Xinergy obtained an order from the US Bankruptcy Court authorizing it to act as the foreign representative of the Debtors, pursuant to section 1505 of the Bankruptcy Code, in any judicial or other proceeding, including these proceedings.

9. In order to ensure the protection of Xinergy's Canadian assets and potential US tax attributes related to the transfers to Xinergy's common shares, and to ensure that this Court and the Canadian stakeholders are kept properly informed of Xinergy's Chapter 11 Case, pursuant to its appointment as foreign representative, Xinergy sought and obtained from this Court on April 23, 2015, recognition of its Chapter 11 Case as a "foreign main proceeding" under the CCAA. A copy of the recognition order of April 23, 2015 is attached hereto as **Exhibit "A"**. A copy of the reasons of Justice Newbould of April 24, 2015 is attached as **Exhibit "B".**

10. On April 23, 2015, this Court also granted a Supplemental Recognition Order, which, among other things, appointed Deloitte Restructuring Inc. as Information Officer, recognized the order of the US Bankruptcy Court appointing Xinergy as the foreign representative, and recognized certain interim orders (the "**Interim Orders**") of the US Bankruptcy Court, which have

now been superseded by final orders. A copy of the Supplemental Recognition Order (without schedules) is attached to this my affidavit at **Exhibit "C"**.

Foreign Orders

11. On April 6, 2015 and April 7, 2015, Xinergy filed motion materials seeking from the US Bankruptcy Court, certain orders, including the Interim Orders. Copies of the motions filed in respect of the Foreign Orders are attached to the Affidavit of Michael R. Castle, sworn April 15, 2015 in support of the initial application in these proceedings.

12. After the orders were granted on April 7, 2015, a hearing on additional motions and the motions to approve the final versions of the Interim Orders was scheduled for May 5, 2015. Among the final orders requested and issued were the following (collectively, the "**Foreign Orders**"):

(a) *Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant To 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* (the "**Final DIP Order**")

(b) *Final Order (I) Authorizing Debtors to Maintain Existing Bank Accounts and Business Forms and Continue to Use Existing Cash Management System; (II) Granting Administrative Expense Status For Intercompany Claims; and (III) Waiving the Requirements Of Section 345(b) Of the Bankruptcy Code* (the "**Final Cash Management Order**")

(c) *Final Trading Order Establishing Notification Procedures and Approving Restrictions On Certain Transfers Of Equity Interests In the Debtors' Estates* (the "**Final NOL Order**");

Copies of the Foreign Orders are attached at **Exhibits "D"- "F"** to this my affidavit.

13. On April 28, 2015, Jon Nix, a shareholder of Xinergy, filed a limited objection[1] (the "**Nix Objection**") to certain motions, including the motion for approval of the Final DIP Order. Among other things, Mr. Nix asked the US Bankruptcy Court to (i) order revisions to the post-filing credit agreement to eliminate an event of default related to changes to the Board of Directors; and (ii) require the Chapter 11 Debtors to provide additional support for the quantum of financing requested, the proposed timeline for the Chapter 11 Cases, the interest rate and the security granted. As described in further detail below, the Nix Objection advised the US Bankruptcy Court of Mr. Nix's intent to seek relief from this Court.

14. Prior to or at the hearing, the Nix Objection was withdrawn with respect to all of the motions, with the exception of motions requesting the Final DIP Order and a motion seeking an order approving the retention of Seaport Global Securities LLC ("**Global**") as advisor (the "**Global Retention Order**"). Recognition of the Global Retention Order is not being sought in Canada at this time.

15. The US Bankruptcy Court overruled the Nix Objection and granted the orders requested by Xinergy on May 5, 2015. The Final DIP Order was entered on the docket on May 5, 2015 and the Final NOL Order and the Final Cash Management Order were entered on May 8, 2015.

Recognition

16. The Final DIP Order is in substantially the same form as the interim order recognized by this Court save for the fact that the Final DIP Order:

(a) makes effective certain additional liens on collateral in the form of proceeds of certain types of actions that may be brought under the Bankruptcy Code;

(b) reflects that fact that the refinancing of the pre-filing debt (which was approved in the interim order and recognized by this Court in the Supplemental Recognition Order) has been completed;

[1] *Limited Objection Of Jon Nix To (A) Motion Of Debtors And Debtors In Possession For Entry Of Final Order (I) Authorizing Debtors To Obtain Postpetition Financing And To Utilize Cash Collateral And (II) Granting Adequate Protection To Prepetition Secured Lenders, (B) Motion Of Debtors And Debtors In Possession For Entry Of Final Order Authorizing (I) Payment Of Certain Prepetition Claims Of Critical Vendors, (II) Payment Of 503(b)(9) Claims To Certain Critical Vendors And (III) Financial Institutions To Honor And Process Related Checks And Transfers And (C) Docket Nos. 102 Through 108.*

(c) confirms that Global will not be entitled to a fee in connection with the financing approved in the Final DIP Order;

(d) modifies the "challenge period" (in which parties may challenge the liens and claims of the pre-filing secured lenders) to reflect the fact that no official committee of creditors has been appointed in the Chapter 11 Cases and that such challenge period therefore cannot be calculated based on the appointment date of any such committee;

(e) provides for payment of the fees for counsel to the prepetition indenture trustee in connection with the Chapter 11 Cases;

(f) modifies the timing of the budget reports prepared by the Chapter 11 Debtors for the agent under the post-filing credit agreement; and

(g) waives certain additional remedies under the Bankruptcy Code.

17. Xinergy believes that recognition of the Final DIP Order, by this Court is necessary for the protection of the Xinergy's property and the interests of its creditors for the following reasons:

(a) The Final DIP Order provides for an additional US$12,500,000 to be made available to the Chapter 11 Debtors, including Xinergy, to conduct their business and effect a restructuring through these cross-border proceedings; and

(b) Absent recognition of the Final DIP Order, Xinergy will have no access to financing in Canada during its Chapter 11 Case and this proceeding.

18. The Final Cash Management Order is in substantially the same form as the interim order recognized by this Court, save for the fact that Xinergy is no longer seeking a waiver of certain investment guidelines in the US Bankruptcy Code in connection with its bank accounts due to the agreement of one of Xinergy's banks to comply with additional bonding requirements and that Xinergy must provide notice to the Office of the United States Trustee if it intends to open any new accounts.

19. Xinergy believes that recognition of the Final Cash Management Order, by this Court is necessary for the protection of the Xinergy's property and the interests of its creditors for the following reasons:

(a) Xinergy maintains a bank account in Ontario (the "**Account**"), which is used for transactions in Canadian funds; and

(b) Xinergy requires access to and protection of the funds in the Account during the course of its Chapter 11 Case and this proceeding.

20. The Final NOL Order is in substantially the same form as the order previously recognized by this Court.

21. Xinergy believes that recognition of the Final NOL Order, by this Court is necessary for the protection of the Xinergy's property and the interests of its creditors for the following reasons

(a) Xinergy's common shares are listed on the TSX, although I am advised by counsel and believe that the shares are scheduled to be delisted on May 12, 2015. As such, a substantial number of Xinergy's shareholders may be located in Canada;

(b) The Final NOL Order provides for procedures to restrict trades of Xinergy's common shares. In light of the rules under the Internal Revenue Code in the United States, transfers of the shares may, through no fault of the Chapter 11 Debtors, deprive the Chapter 11 Debtors of important tax benefits; and

(c) The Final NOL Order also provides for notice procedures to avoid potential negative tax consequences.

22. For the foregoing reasons, Xinergy is requesting that this Court recognize and enforce the Foreign Orders pursuant to section 49 of the CCAA.

Nix Complaint

23. On April 16, 2015, counsel for Mr. Nix delivered a letter and requisition for a shareholder meeting to the Board of Directors at Xinergy's registered office (which is the office of its Canadian solicitors). Mr. Nix's requisition demanded that Xinergy call a meeting to consider changes to the board of directors, notwithstanding the potential harm to the Chapter 11 Debtors that could result from a change in direction at this point in their restructuring proceedings.

24. The Board of Directors reviewed the letter and the requisition with counsel and determined not to call a meeting at this time. A copy of the letter from Xinergy's counsel to Mr. Nix's counsel, responding to the shareholder meeting requisition is attached at **Exhibit "G"** to this my affidavit.

25. On May 8, 2015, Xinergy filed a complaint with the US Bankruptcy Court seeking a declaration that the automatic stay in the Chapter 11 Cases relieves Xinergy of the requirement to call a shareholder's meeting in response to Mr. Nix's requisition and, alternatively, an injunction enjoining Mr. Nix from taking any further action to call or hold a meeting. A copy of the complaint is attached at **Exhibit "H"** to this my affidavit.

26. I make this affidavit in support of the motion of Xinergy returnable May 21, 2015 and for no other or improper purpose.

SWORN/AFFIRMED BEFORE
me at the City of Knoxville
in the State of Tennessee
this 13th day of May
2015.

Kathy Southerland
Notary Public

Michael R. Castle
Name: Michael R. Castle

KATHY SOUTHERLAND
STATE OF TENNESSEE
NOTARY PUBLIC
CAMPBELL COUNTY

APPENDIX D
Globe & Mail Notices

ECONOMY

Fed expects moderate growth, blames weather for slowdown

BINYAMIN APPELBAUM
WASHINGTON

The U.S. Federal Reserve said Wednesday that it expected economic growth to rebound after a weak first quarter, suggesting that it still intends to raise its benchmark interest rate later this year.

The economy expanded by just 0.2 per cent during the first three months of the year, the government separately estimated Wednesday. The Fed, acknowledging that slowdown, said the improvement of the labour market also had stalled and that inflation remained lower than it regards as healthy.

But the Fed, in a statement released after a two-day meeting of its policy-making committee, described the slowdown as partly a result of "transitory factors" such as a cold winter and labour disruptions at West Coast ports.

"Although growth in output and employment slowed during the first quarter, the committee continues to expect that, with appropriate policy accommodation, economic activity will expand at a moderate pace," it said.

Some of the weakness is probably temporary. Cold weather during the winter months once again disrupted economic activity, as did a labour dispute at West Coast ports. But growth also is being suppressed by a strong dollar, which has reduced exports and increased imports, a trend likely to persist.

The Fed did not directly address when it might start to raise short-term rates, which it has held near zero since December, 2008. Officials have said previously that they would begin to consider such an increase at the committee's next meeting, in June. Analysts generally predict the Fed will not act before September, and possibly later.

New York Times News Service

FROM PAGE 1

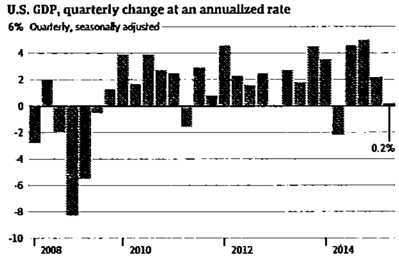
Parkinson: U.S. economy hasn't cashed in on oil shock the way many anticipated

» U.S. retail sales fell for the quarter. So did industrial production. Exports slumped badly. So did business investment. Job growth in March slowed to less than half the average for the prior 12 months.

The nasty winter will be blamed for much of the slowdown – and not without compelling precedent. Last year, U.S. GDP contracted 2.1 per cent annualized in the first quarter, amid unusually cold and snowy weather in many key regions of the country. But the pent-up demand from the winter was unleashed with a vengeance once warmer weather arrived: GDP grew at annual rates of nearly 5 per cent over the next two quarters.

Based on nationwide temperature statistics, this year's U.S. winter was just as cold as last year's. So if winter merely delayed the U.S. economy and primed it for a rebound a year ago, it may well repeat the trick this year. You could argue that with a winter like that, the fact that the U.S. economy managed any growth at all is evidence of its underlying strength.

U.S. GDP, quarterly change at an annualized rate



THE GLOBE AND MAIL » SOURCE: BLOOMBERG

That would be the optimistic spin – perhaps the one that Bank of Canada Governor Stephen Poloz, who has sounded remarkably upbeat in the face of unimpressive economic data lately, will embrace. His expectation is that strong demand from a robust U.S. economic expansion will fuel Canadian export growth that will soon overwhelm the oil-shock funk that has hung over Canada's economy in the first few months of this year.

But the details of the U.S. first-quarter GDP estimate place a couple of big question marks over this positive scenario.

First, what little growth the U.S. economy appears to have managed in the first quarter was top-heavy with inventory build-ups. Without inventory growth, first-quarter GDP would have contracted by 0.5 per cent annualized. All that inventory suggests that even if/when demand snaps back, companies are well stocked to meet it without ramping up their production or expanding capacity – or order a whole raft of Canadian goods and raw materials.

The second, and bigger, issue is slumping U.S. business investment in the quarter. Mr. Poloz has pointed to several key Canadian non-energy export sectors that have been leading the export recovery – machinery and equipment, building materials, metals – as critical evidence of the strengthening fundamentals in the U.S. recovery, as they suggest capacity expansion among U.S. businesses, a vital foundation for economic growth. Suddenly, that storyline looks compromised by the investment retreat in the first quarter.

A big part of that investment downturn reflects a plunge in spending in the energy sector – evidence that the U.S. economy hasn't cashed in on the oil shock the way many observers had anticipated. Just as Canada has experienced, the oil shock in the United States has had a rapid downside, in dramatic and immediate spending cuts at energy-sector companies. The anticipated upside, in increased disposable income for consumers due to their savings on fuel costs that should fuel increased consumption, is a more gradual and less certain process. Just because you put money in a consumer's pocket doesn't mean he or she will spend it. It hasn't happened yet.

The Canadian dollar was a beneficiary of the weak GDP numbers Wednesday, as the news suggested that an early interest-rate hike from the U.S. Federal Reserve looks less likely in view of the first-quarter economic setback – sending investors out of the U.S. dollar, though not necessarily toward the Canadian currency. But make no mistake, this is not good news for Canada. Without a U.S. resurgence, the foundation on which this year's Canadian economic prospects are built crumbles pretty quickly.

For now, then, let's blame the weather. And cross our fingers.

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MEETING NOTICES

NOTICE OF MEETING Computershare

Notice is hereby given that the following meeting of shareholders has been declared.

Issuer	Type	Record Date	Meeting Date	Meeting Location
Ridley Inc.	Special	May 8, 2015	June 12, 2015	Toronto, ON

MEETING NOTICES

The Great-West Life Assurance Company
London Life
Canada Life

NOTICE OF MEETINGS OF SHAREHOLDERS AND POLICYHOLDERS

Notice is hereby given that the Annual Meetings of Shareholders and Policyholders of The Great-West Life Assurance Company and The Canada Life Assurance Company and the Annual and Special Meeting of Shareholders and Policyholders of London Life Insurance Company will be held at the head office of The Canada Life Assurance Company, 330 University Avenue, Toronto, Ontario, on May 7, 2015, at 11:00 o'clock in the morning, local time.

Policyholders may receive a copy of the Notice of Meeting and related proxy materials upon written request sent to 100 Osborne Street North, Winnipeg, Manitoba, R3C 1V3 Attention: Corporate Secretary or by calling 1-888-873-8813.

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LEGALS

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 CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

NOTICE OF RECOGNITION ORDERS

PLEASE BE ADVISED that this Notice is being published pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court"), granted on April 23, 2015.

PLEASE TAKE NOTICE that on April 6, 2015, Xinergy Ltd. and its U.S. subsidiaries (the "Chapter 11 Debtors") filed voluntary petitions under chapter 11 of title 11 of the United States Code (collectively, the "Chapter 11 Proceedings") in the United States Bankruptcy Court for the Western District of Virginia (the "U.S. Court"). The Chapter 11 Debtors include one Canadian company, namely, Xinergy Ltd. ("Xinergy"). The shares of Xinergy are traded on the Toronto Stock Exchange under the ticker XRG. In connection with the Chapter 11 Proceedings, the U.S. Court has appointed Xinergy as the foreign representative of the estates of the Chapter 11 Debtors (the "Foreign Representative").

PLEASE TAKE FURTHER NOTICE that, upon the application made by the Foreign Representative under section 46 of the *Companies' Creditors Arrangement Act* (the "CCAA Recognition Proceedings"), the Canadian Court has, on April 23, 2015, granted an Initial Recognition Order and a Supplemental Order that, among other things: (i) recognize the Chapter 11 Proceeding of Xinergy as a "foreign main proceeding"; (ii) recognize Xinergy as the Foreign Representative in respect of the Chapter 11 Proceedings; (iii) recognize certain orders granted by the U.S. Court in the Chapter 11 Proceedings; (iv) stay all claims against Xinergy and its directors and officers in Canada; and, (v) appoint Deloitte Restructuring Inc. as Information Officer with respect to the CCAA Recognition Proceedings.

PLEASE TAKE FURTHER NOTICE that the Foreign Representative may be contacted through its Canadian legal counsel at the address below:

CASSELS BROCK & BLACKWELL LLP
40 King Street West, 2100 Scotia Plaza
Toronto, ON M5H 3C2
Attention: Michael Wunder
Telephone: 416-860-6484
Facsimile: 416-640-3206
Email: mwunder@casselsbrock.com

PLEASE TAKE FURTHER NOTICE that the Information Officer may be contacted at the address below:

DELOITTE RESTRUCTURING INC.
181 Bay Street
Brookfield Place, Suite 1400
Toronto, ON M5J 2V1
Attention: Adam Bryk
Telephone: 416-643-8252
Email: abryk@deloitte.ca

PLEASE TAKE FURTHER NOTICE that motions, orders and notices filed with the U.S. Court in the Chapter 11 Proceedings are available at: https://www.americanlegal.com/xinergy.

PLEASE TAKE FURTHER NOTICE that the Initial Recognition Order, Supplemental Order, and any other orders issued in the CCAA Recognition Proceedings by the Canadian Court, together with reports of the Information Officer and such other materials as the Canadian Court may order are available at: http://www.insolvencies.deloitte.ca/xinergy.

DELOITTE RESTRUCTURING INC.
(solely in its capacity as Information Officer of Xinergy Ltd. and not in its personal or corporate capacity)

Deloitte.

REGULATION

New CRTC roaming limits 'benign' shift for Big Three

CHRISTINE DOBBY
TELECOM REPORTER

Tech · Telecom · Media

A ruling from Canada's telecom regulator that will put limits on what the country's national cellular carriers can charge their competitors for roaming access is being hailed as manageable for the industry's biggest players.

Many stock watchers took the intervention on wholesale roaming rates by the Canadian Radio-television and Telecommunications Commission (CRTC) in stride, variously calling it "benign," "neutral" and "manageable" for the Big Three wireless providers – Rogers Communications Inc., Telus Corp. and BCE Inc. At the same time, they pointed out that the commission has yet to finalize the rates and that the process could be lengthy.

The CRTC released its decision Tuesday on wholesale roaming, the rates carriers pay to other wireless providers when their customers roam on one another's networks. It found the Big Three collectively have the ability and incentive to impose conditions that make the wholesale market uncompetitive. Based on this finding, the CRTC said it will regulate the rates the three charge their competitors under a new regime that will be in place for five years.

"The commission, since the dawn of cellular service, has been pretty hands-off this area," CRTC chairman Jean-Pierre Blais said in an interview in the regulator's Gatineau, Que., headquarters. But the wireless business has grown dramatically, he said, noting it now serves about 28 million subscribers and accounts for close to half of the $45-billion in annual revenues Canada's overall telecommunications industry takes in.

"If you think about it, our intervention – first with the wireless code, and now this on the wholesale level – I think is not insignificant," Mr. Blais said, referencing the commission's 2013 national code governing retail service standards and contract terms. "But it also represents the importance that wireless has in our lives," he added.

Scotia Capital Inc. analyst Jeff Fan increased his price targets Wednesday on all three of the incumbents and upgraded his ratings on Telus and Rogers to "buy" (he already had a "buy" rating on BCE, which owns 15 per cent of The Globe and Mail).

For the interim, the CRTC is limiting the wholesale rates the Big Three can charge competitors to no more than the highest rate they are currently charging under temporary government caps introduced last year. BCE, Telus and Rogers must all file proposed tariffs detailing their actual costs by Nov. 4 and the CRTC will conduct another analysis using an approach that adds a markup to calculate final rates.

Mr. Fan said that approach is likely to result in a rate "well below the interim rate," but added, "we estimate it will take at least a year for the CRTC to issue a final decision given the lack of history with wireless costing and the time typically required for tariff decisions."

Although the decision is largely beneficial for new entrants Wind Mobile Corp. and Quebecor Inc.'s Videotron Ltd., some analysts said the wait for those final rates could delay potential plans. Wind still needs to persuade investors to put more capital into its network, and Videotron has long been mulling an expansion outside Quebec without making a firm commitment.

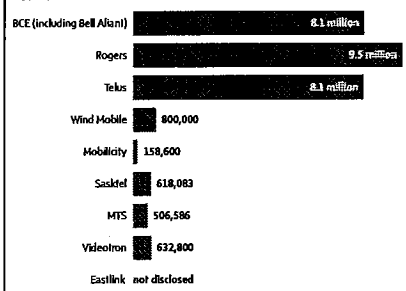
In a statement Wednesday, Quebecor welcomed the decision but did not directly address expansion, noting simply, "The final rates set by the CRTC will be decisively important for the viability of genuine competition."

National Bank Financial analyst Adam Shine wrote in a report Tuesday, the "incumbents have to be generally pleased with this outcome."

"While some may argue that today's decisions will add incremental pressure for Bell, Rogers and Telus, there was no big bone thrown to the new entrants, who at best appear to have received perhaps a few extra crumbs," he said.

USERS BY CARRIER

Total wireless subscribers as of the end of 2014



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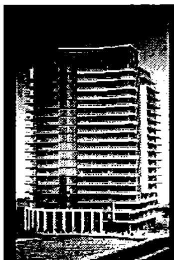

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LEGALS

In the matter of the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*, as amended (the "CCAA"), and

In the matter of a Plan of Compromise or Arrangement of Great Western Minerals Group Ltd. (the "Company")

NOTICE TO CREDITORS

NOTICE IS HEREBY GIVEN that on April 30, 2015, the Company sought and obtained from the Ontario Superior Court of Justice (Commercial List), an initial order (the "Initial Order") pursuant to the CCAA, under Court File No.CV-15-10953-00CL. Pursuant to the Initial Order, PricewaterhouseCoopers Inc. was appointed as monitor of the Company (the "Monitor"). This notice is provided in accordance with section 23(1)(a) of the CCAA and paragraph 51 of the Initial Order.

NOTICE IS HEREBY GIVEN that a copy of the Initial Order and other public information in respect of these CCAA proceedings are available on the Monitor's website at www.pwc.com/car-greatwesternmineralsgroup, or may be obtained by contacting the Monitor directly at:

PricewaterhouseCoopers Inc., Monitor
Great Western Minerals Group Ltd.
PwC Tower
18 York Street, Suite 2600
Toronto ON M5J 0B2
Attention: Donna Smith
Telephone +1 416 941 8383, Extension 14288

DATED at Toronto, Ontario this 7th day of May, 2015.

pwc

DIVIDENDS

centerraGOLD

DIVIDEND NOTICE

Notice is hereby given that the Board of Directors of Centerra Gold Inc. has declared a dividend of Cdn$0.04 per common share payable on June 4, 2015 to shareholders of record on May 21, 2015.

The dividend is an eligible dividend for Canadian income tax purposes.

By Order of the Board of Directors

Frank Herbert
General Counsel and Corporate Secretary

Toronto, Ontario
April 30, 2015

Agrium

NOTICE OF DIVIDEND

Notice is hereby given that the Board of Directors of Agrium Inc. has declared a dividend of U.S. $0.875 (87.5 cents US) per common share, payable on July 16, 2015 to shareholders of record at the close of business on June 30, 2015.

By Order of the Board of Directors
Gary J. Daniel,
Corporate Secretary

Calgary, Alberta
May 7, 2015

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BUSINESS TO BUSINESS

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LEGALS

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 CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

NOTICE OF RECOGNITION ORDERS

PLEASE BE ADVISED that this Notice is being published pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court"), granted on April 23, 2015.

PLEASE TAKE NOTICE that on April 6, 2015, Xinergy Ltd. and its U.S. subsidiaries (the "Chapter 11 Debtors") filed voluntary petitions under chapter 11 of title 11 of the United States Code (collectively, the "Chapter 11 Proceedings") in the United States Bankruptcy Court for the Western District of Virginia (the "U.S. Court"). The Chapter 11 Debtors include one Canadian company, namely, Xinergy Ltd. ("Xinergy"). The shares of Xinergy are traded on the Toronto Stock Exchange under the ticker XRG. In connection with the Chapter 11 Proceedings, the U.S. Court has appointed Xinergy as the foreign representative of the estates of the Chapter 11 Debtors (the "Foreign Representative").

PLEASE TAKE FURTHER NOTICE that, upon the application made by the Foreign Representative under section 46 of the *Companies' Creditors Arrangement Act* (the "CCAA Recognition Proceedings"), the Canadian Court has, on April 23, 2015, granted an Initial Recognition Order and a Supplemental Order that, among other things: (i) recognize the Chapter 11 Proceeding of Xinergy as a "foreign main proceeding"; (ii) recognize Xinergy as the Foreign Representative in respect of the Chapter 11 Proceedings; (iii) recognize certain orders granted by the U.S. Court in the Chapter 11 Proceedings; (iv) stay all claims against Xinergy and its directors and officers in Canada; and, (v) appoint Deloitte Restructuring Inc. as Information Officer with respect to the CCAA Recognition Proceedings.

PLEASE TAKE FURTHER NOTICE that the Foreign Representative may be contacted through its Canadian legal counsel at the address below:

CASSELS BROCK & BLACKWELL LLP
40 King Street West, 2100 Scotia Plaza
Toronto, ON M5H 3C2
Attention: Michael Wunder
Telephone: 416-860-6484
Facsimile: 416-640-3206
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PLEASE TAKE FURTHER NOTICE that the Information Officer may be contacted at the address below:

DELOITTE RESTRUCTURING INC.
181 Bay Street
Brookfield Place, Suite 1400
Toronto, ON M5J 2V1
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PLEASE TAKE FURTHER NOTICE that motions, orders and notices filed with the U.S. Court in the Chapter 11 Proceedings are available at: https://www.americanlegal.com/xinergy.

PLEASE TAKE FURTHER NOTICE that the Initial Recognition Order, Supplemental Order, and any other orders issued in the CCAA Recognition Proceedings by the Canadian Court, together with reports of the Information Officer and such other materials as the Canadian Court may order are available at: http://www.insolvencies.deloitte.ca/xinergy.

DELOITTE RESTRUCTURING INC.
(solely in its capacity as Information Officer of Xinergy Ltd. and not in its personal or corporate capacity)

Deloitte.

APPENDIX E
Nix Objection

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

In re: **XINERGY LTD., *et al.*,** **Debtors.**[1]	**Chapter 11** **Case No. 15-70444 (PMB)** **(Jointly Administered)**

LIMITED OBJECTION OF JON NIX TO (A) MOTION OF DEBTORS AND DEBTORS IN POSSESSION FOR ENTRY OF FINAL ORDER (I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING AND TO UTILIZE CASH COLLATERAL AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED LENDERS, (B) MOTION OF DEBTORS AND DEBTORS IN POSSESSION FOR ENTRY OF FINAL ORDER AUTHORIZING (I) PAYMENT OF CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS, (II) PAYMENT OF 503(B)(9) CLAIMS TO CERTAIN CRITICAL VENDORS AND (III) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS AND (C) DOCKET NOS. 102 THROUGH 108

Mr. Jon Nix, the holder of approximately eighteen and one half percent (18.5%) of the issued and outstanding voting shares of Xinergy Ltd. ("Xinergy" and, together with the remaining above-captioned debtors and debtors in possession, the "Debtors"), hereby files this limited objection (the "Limited Objection") to the following motions and applications filed by the Debtors in these jointly administered chapter 11 cases:

[1] The Debtors, along with the last four digits of each Debtors' federal tax identification number, are listed on Schedule 1 attached hereto.

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Counsel for Jon Nix

- *Motion of Debtors and Debtors in Possession, Pursuant to 11 U.S.C. Sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) for Entry of Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, and (II) Granting Adequate Protection to Prepetition Secured Lenders*, dated April 7, 2015 [Dkt. No. 22] (the "DIP Financing Motion");

- *Motion of Debtors and Debtors in Possession for Entry of Final Order Authorizing (I) Payment of Certain Prepetition Claims of Critical Vendors, (II) Payment of 503(b)(9) Claims to Certain Critical Vendors and (III) Financial Institutions to Honor and Process Related Checks And Transfers*, dated April 6, 2015 [Dkt. No . 11] (the "Critical Vendor Motion");

- *Motion of Debtors and Debtors in Possession for Entry of an Order Approving Procedures for the Retention and Compensation of Ordinary Course Professionals Effective as of the Petition Date*, dated April 21, 2015 [Dkt. No. 102];

- *Motion of Debtors and Debtors in Possession to Establish Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Retained Professionals*, dated April 21, 2015 [Dkt. No. 103];

- *Application of the Debtors and Debtors in Possession for Entry of an Order Authorizing the Employment and Retention of Hunton & Williams LLP as Counsel for the Debtors and Debtors in Possession Effective as the of Petition Date*, dated April 21, 2015 [Dkt. No. 104];

- *Application of the Debtors and Debtors in Possession for Entry of an Order Authorizing the Employment and Retention of Cassels Brock & Blackwell LLP as Special Counsel for the Debtors and Debtors in Possession Effective as of the Petition Date*, dated April 21, 2015 [Dkt. No. 105];

- *Application of the Debtors and Debtors in Possession for Entry of an Order Authorizing the Employment and Retention of Stubbs Alderton & Markiles, LLP as Special Corporate Counsel for the Debtors and Debtors in Possession Effective as of the Petition Date*, dated April 21, 2015 [Dkt. No. 106];

- *Application of the Debtors and Debtors in Possession for Entry of an Order Authorizing the Employment and Retention of Michael Wilson PLC as Special Conflicts Counsel for the Debtors and Debtors in Possession Effective as of the Petition Date*, dated April 21, 2015 [Dkt. No. 107]; and

- *Application of the Debtors and Debtors in Possession for Entry of an Order Authorizing the Employment and Retention of Seaport Global Securities LLC as their Financial Advisors and Investment Bankers Effective as of the Petition Date*, dated April 21, 2015 [Dkt. No. 108] (Docket numbers 102 through 108 described

above are collectively referred to herein as the "Employment Motions and Applications").

In support hereof, Mr. Nix submits the *Declaration of Jon Nix in Support of Limited Objection of Jon Nix to (A) Motion of Debtors and Debtors in Possession for Entry of Final Order (I) Authorizing Debtors to Obtain Postpetition Financing and to Utilize Cash Collateral, and (II) Granting Adequate Protection to Prepetition Secured Lenders, (B) Motion of Debtors and Debtors in Possession for Entry of Final Order Authorizing (I) Payment of Certain Prepetition Claims of Critical Vendors, (II) Payment of 503(b)(9) Claims to Certain Critical Vendors and (III) Financial Institutions to Honor and Process Related Checks And Transfers and (C) Docket Nos. 102 Through 108*, filed contemporaneously herewith and incorporated herein by reference (the "Nix Declaration"), and respectfully represents as follows:

PRELIMINARY STATEMENT

Xinergy is a publicly held company traded on the Toronto Stock Exchange with approximately 65.8 million shares outstanding. Jon Nix is the founder and former CEO and Chairman of Xinergy. Since at least February 2015, a number of Xinergy's significant shareholders, including Mr. Nix, have sought to make changes to the composition of Xinergy's board. Xinergy's existing board of directors have delayed and frustrated these efforts. As discussed in more detail below, Mr. Nix and certain other shareholders believe that, in the months leading up to the commencement of these chapter 11 cases, the existing board made—and in some cases, failed to make—business decisions that have diminished the Debtors' financial resources, exacerbated the Debtors' deteriorating financial condition, and otherwise damaged the Debtors, their creditors, and other parties in interest.

Due to these actions and inactions, multiple requests have been made by a requisite number of Xinergy's shareholders for Xinergy to either (a) replace certain members of the

current board of directors, or (b) call a special meeting of shareholders to conduct a vote on whether to replace certain members of the current board of directors. Xinergy's current board, however, has ignored these requests, refused to call the shareholder meeting, and steadfastly moved forward with the Debtors' bankruptcy filings and requests for relief in these cases, notwithstanding the obvious rift concerning the Debtors' decision-making process.

Mr. Nix and certain other shareholders are compelled by the board's refusal to act to pursue appropriate relief in the Superior Court of Justice, Ontario to compel a shareholder meeting to consider a vote on the replacement of certain of Xinergy's board members. It is anticipated that a hearing on such a motion to compel will be held within the next several weeks, and, following the shareholder meeting, Xinergy's board of directors will be reconstituted with directors that will act in the best interest of the Debtors' estates.

In light of this impending shareholder meeting and ongoing dispute over Xinergy's board's composition, Mr. Nix is filing this Limited Objection to address certain discrete issues in these chapter 11 cases and to obtain additional information regarding certain of the relief requested by the Debtors. First, Mr. Nix requests that any final order entered in connection with the Debtors' request for approval of post-petition financing make clear that (a) any reconstitution of Xinergy's board of directors will not cause an Event of Default to occur under the post-petition financing documents, and that the chapter 11 plan milestones in connection with the postpetition financing be extended to allow any reconstituted board of directors sufficient opportunity to develop a chapter 11 plan that is in the best interest of the Debtors' estates. Xinergy and its existing board have been aware of the ongoing dispute over the board's composition since well prior to the filing of these chapter 11 cases, so it would be entirely inappropriate for the board to bind the Debtors to post-petition financing provisions that could

limit the shareholders' exercise of their rights and hinder a new board's ability to propose a chapter 11 plan in these cases.

Second, Mr. Nix requests that the Debtors furnish additional information to support certain of the relief requested by the Debtors, including (a) an explanation for the need for the $40 million in postpetition financing in light of the Debtors' anticipated accounts receivable as set forth in the budget attached to the DIP Financing Motion, (b) evidence of whether the fourteen percent (14%) rate of interest on the postpetition financing is consistent with market rates of interest on comparable loans, (c) an explanation on the need for avoidance action proceeds to be included as part of the postpetition agent's and lenders' collateral, and (d) additional information on the need for critical vendor payments of up to $7.5 million, as requested in the Critical Vendor Motion.

Third, Mr. Nix requests that this Court adjourn any hearing on the Employment Motions and Applications until after the special meeting of shareholders is held. Such an adjournment will not prejudice the Debtors or their estates and is appropriate because the new board should be given a sufficient opportunity to make business decisions regarding non-emergency relief on behalf of the Debtors' estates without being constrained by prior decisions of the board with respect to such issues.

Mr. Nix submits that such relief is just and appropriate under the circumstances and should be granted by this Court.

RELEVANT BACKGROUND

A. Actions of the Board and Requests for a Shareholder Meeting.

1. As set forth in the *Declaration of Michael R. Castle in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings*, dated April 6, 2015 [Dkt. No. 18] (the "Castle

Declaration"), Xinergy is a Canadian corporation incorporated under the Business Corporations Act (Ontario). Xinergy's common stock is listed on the Toronto Stock Exchange ("TSX") under the ticker "XRG" and, as of the date of Xinergy's most recent quarterly public filing, there were approximately 58.3 million voting common shares of Xinergy's stock issued and outstanding, and approximately 7.5 million non-voting common shares Xinergy's stock issued and outstanding. The provincial regulators in Canada have issued an order providing that trading of Xinergy's common stock shall cease, and such stock will be delisted by the TSX at the close of business on May 12, 2015.

2. In the months leading up to the Debtors' bankruptcy filings, the Debtors were facing liquidity constraints, but were also presented with several viable and attractive options for improving their liquidity position. For example, in late January 2015, Xinergy was presented with a term sheet to enter into a sale-leaseback agreement of up to $25 million with respect to the Wash Plant Load Out located in Greenbrier County, West Virginia, that was on favorable terms and would have provided Xinergy with substantial and much needed liquidity. The sale-leaseback was discussed and structured with input from the Chairman of Xinergy as well as through guidance from counsel as early as mid-December. Xinergy's board of directors, however, without justification, failed to timely act on this offer, which damaged Xinergy's financial situation. *See* Nix Declaration at ¶ 4.

3. In addition, Xinergy's board of directors previously represented to certain investors that it would (a) make requisite filings under the Securities Act of 1933 for Xinergy's common stock to be traded in the United States, which would have increased Xinergy's liquidity and positioned itself for a capital raise, (b) divest itself of various unprofitable assets and monetize other non-core assets, and (c) engage an investor relations and media firm to enhance

Xinergy's investment profile. Xinergy's board of directors, however, without justification, failed to take any of these actions, which significantly impaired Xinergy's liquidity position. *See id.* at ¶ 5.

4. Accordingly, Mr. Nix, with the support of a significant percentage of other holders of outstanding voting shares, requested that Xinergy call a meeting of shareholders for the purposes of, among other things, removing certain individuals from their positions as directors of Xinergy and electing new directors to serve until successors are duly appointed or elected. Mr. Nix and the other shareholders believed that such action was (and is) necessary because of their belief that the directors were not acting in the best interests of all shareholders. *See id.* at ¶ 6.

5. In early March 2015, the current board informed Mr. Nix that it was prepared to make the requested changes to the board's composition provided that Mr. Nix could show he had the support of shareholders holding approximately fifty percent (50%) of the outstanding shares. *See id.* at ¶ 7. The board, however, only allowed Mr. Nix to approach fifteen (15) shareholders. Despite this restriction, he obtained the support of 49.5% of the outstanding shares. If he was not so limited by the current board, Mr. Nix clearly would have obtained in excess of 50%.

6. Subsequently, in spite of the fact that Mr. Nix secured significant shareholder support, the board reneged on its agreement and informed Mr. Nix and his counsel that none of the current board members were prepared to resign. The current board has since refused to call a special meeting of shareholders. *See id.* at ¶ 8.

7. The timing of the chapter 11 filing is at best suspect. There appears to be no compelling reason, in the Debtors' myriad of submissions, why the filing occurred when it did, months before the next scheduled debt payment. One can only conclude the timing was

motivated by an attempt to frustrate the legitimate efforts of shareholders to exercise proper governance.

8. On April 16, 2015, Mr. Nix caused to be delivered to Xinergy a requisition (the "Requisition") pursuant to Section 105 of the Business Corporations Act, R.S.O. 1999, c. B.16, requisitioning that the directors of Xinergy call a special meeting of the shareholders for the purposes of, among other things, removing certain individuals from their positions as directors of Xinergy and electing new directors to serve until successors are duly appointed or elected. *See id.* at ¶ 9. A copy of the Requisition is attached to the Nix Declaration as Exhibit 1.

9. The Requisition requested that Xinergy confirm by no later than 5:00 p.m. (ET) on April 20, 2015, whether Xinergy intended to call the special meeting to conduct the business set forth in the Requisition. As of the date of this Limited Objection, there has been no response. *See id.* at ¶ 10.

B. Commencement of These Chapter 11 Cases and the CCAA Proceedings.

10. On April 6, 2015 (the "Petition Date"), each of the Debtors filed with this Court their respective voluntary petitions for relief under chapter 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 cases. The driving consideration for commencing these cases on the Petition Date in unclear in light of the liquidity options available to Xinergy.

11. On April 14, 2015, Xinergy filed an application with the Superior Court of Justice, Ontario (the "Ontario Court") under the Companies' Creditors Arrangement Act (Canada), R.S.C. 1985, c. C-36, (as amended, "CCAA"), seeking recognition of (a) these chapter 11 cases as foreign main proceedings and (b) certain orders of this Court entered in these chapter 11 cases. The proceedings are currently pending in the Ontario Court as CV-15-10936-00CL (the "CCAA Proceedings").

12. A hearing was held in the CCAA Proceedings on April 23, 2015, in connection with Xinergy's application for recognition and, at the hearing, counsel for Mr. Nix advised the Ontario Court of, among other things, the pending dispute over the composition of Xinergy's board of directors, that a Requisition for a special meeting of shareholders was made, and Xinergy's failure to respond to the Requisition.[2]

13. It is anticipated that a hearing will take place within the next several weeks in Ontario Court for consideration of a motion by Mr. Nix to compel Xinergy to call a meeting of shareholders for the purpose of voting on the removal and election of directors to Xinergy's board.

C. The DIP Financing Motion, Critical Vendor Motion, and Employment Motions and Applications.

14. On April 7, 2015, the Debtors filed the DIP Financing Motion seeking authorization to obtain post-petition financing in an aggregate amount of $40 million pursuant to the terms of a Superpriority Secured Debtor-in-Possession Credit Agreement, a copy of which is attached to the DIP Financing Motion as Exhibit B (the "DIP Credit Agreement").

15. Section 9.1 of the DIP Credit Agreement provides for a number of Events of Default, including, among others, the occurrence of any "Change of Control." *See* DIP Credit Agreement § 9.1(f). The term "Change of Control" is defined in the DIP Credit Agreement as including the situation where "as of any date a majority of the Board of Directors of [Xinergy] consists (other than vacant seats) of individuals who were not either (i) directors of [Xinergy] as of the Agreement Date, (ii) selected or nominated to become directors by the Board of Directors

[2] The pending dispute over the composition of Xinergy's board of directors was also briefly disclosed in the CCAA Proceedings in the *Preliminary Report of the Proposed Information Officer Deloitte Restructuring Inc.*, dated April 21, 2015 (the "Preliminary Report"), filed with the Ontario Court. A copy of the Preliminary Report is attached to the Nix Declaration as Exhibit 2. To the best of Mr. Nix's knowledge, the pending dispute over the composition of Xinergy's board has not yet been disclosed in this Court.

of [Xinergy] of which a majority consisted of individuals described in clause (i), or (iii) selected or nominated to become directors by the Board of Directors of [Xinergy] of which a majority consisted of individuals described in clause (i) and individuals described in clause (ii)." *See* DIP Credit Agreement § 1.1.

16. On April 7, 2015, this Court entered an order, among other things, authorizing the Debtors to obtain post-petition financing under the DIP Credit Agreement on an interim basis [Dkt. No. 43] (the "Interim DIP Order").

17. On April 6, 2015, the Debtors filed the Critical Vendor Motion seeking authorization for the Debtors to pay prepetition obligations of certain unnamed vendors that the Debtors deem "critical" up to a total of $7.5 million. As set forth in the Debtors' consolidated list of largest unsecured creditors filed in these cases, the twenty (20) largest unsecured creditors have prepetition claims totaling approximately $9.6 million, with the two largest unsecured creditors listed as holding claims totaling approximately $5.9 million.

18. On April 21, 2015, the Debtors filed each of the Employment Motions and Applications seeking, among other things, authorization to retain and employ various professionals in these cases pursuant to sections 327, 328, and 329 of the Bankruptcy Code and to establish procedures for the payment of compensation to such professionals.

19. A hearing to consider the Employment Motions and Applications and approval of the Critical Vendor Motion and DIP Financing Motion on a final basis is currently scheduled to be held on May 5, 2015 at 10:00 a.m.

LIMITED OBJECTION

A. Limited Objection to DIP Financing Motion.

20. As set forth above, Xinergy and its current board of directors have been aware for at least the past two months that shareholders have been actively seeking a change in the composition of Xinergy's board, including through the removal and replacement of several current directors. Xinergy and its board of directors have also been aware that if the board did not voluntarily hold a special meeting of shareholders, Mr. Nix, with the support of holders of a substantial amount of issued and outstanding voting shares, would take action in Ontario Court to compel Xinergy to hold the special meeting.

21. Xinergy current board has an obligation to hold the requested shareholder meeting as a matter of law, but has simply been seeking to delay such meeting to frustrate Xinergy's corporate governance. *See In re Marvel Entertainment Grp., Inc.*, 209 B.R. 832, 838 (D. Del. 1997) ("It is well settled that the right of shareholders to compel a shareholders' meeting for the purpose of electing a new board of directors subsists during reorganization proceedings.") (internal quotation marks omitted); *see also In re Heck's Properties, Inc.*, 151 B.R. 739, 760 (S.D.W. Va. 1992). Mr. Nix is moving expeditiously to compel the meeting to be called, and there is no legitimate reason for Xinergy's board to stall any further. *See In re Marvel*, 209 B.R. at 838 ("The right of shareholders to be represented by directors of their choice and thus to control corporate policy is paramount.") (internal quotation marks omitted).

22. In fact, there is no legitimate reason for the current board to refuse to schedule such a meeting, nor is there any justification for their inaction which is requiring Mr. Nix to compel a meeting. Despite their receipt of the Requisition, they have failed to even respond.

23. Notwithstanding the pending and inevitable changes to the composition of Xinergy's board of directors, Xinergy and its affiliate Debtors entered into and are seeking Court approval of the DIP Credit Agreement that provides for an Event of Default if there is a change in a majority of Xinergy's board of directors. An Event of Default would result in, among other things, all loan amounts plus a prepayment premium equal to one percent (1%) of the outstanding term loans becoming immediately due and payable. *See* DIP Credit Agreement § 2.6(a).

24. The "Change of Control" Event of Default provision can have one of two consequences: (a) dissuade a reconstitution of the board of directors which would cause a majority of its membership to change; or (b) place the Debtors in a precarious financial situation by Xinergy's existing board entering into a financing agreement containing a provision that the board knows may trigger an Event of Default.

25. Accordingly, Mr. Nix objects to the inclusion of Section 9.1(f) of the DIP Credit Agreement and requests that any final order on the DIP Financing Motion make clear that Section 9.1(f) is stricken from the DIP Credit Agreement and any change in the composition of Xinergy's board will not result in an Event of Default.

26. In addition, Mr. Nix asserts the following limited objections to the DIP Financing Motion:

- The DIP Credit Agreement contains several milestones for the Debtors to file a disclosure statement and chapter 11 plan of reorganization and to obtain Court approval and confirmation of such documents. *See* DIP Credit Agreement § 6.25. In light of the impending changes to Xinergy's board of directors, these milestones should be extended to allow the new board sufficient time and opportunity to develop a chapter 11 plan that they believe is in the best interest of the Debtors' estates and all parties in interest.

- The Debtors have not provided sufficient information to demonstrate the need for a $40 million postpetition financing facility (which includes a substantial

roll-up of prepetition indebtedness). The budget attached to the DIP Financing Motion (the "DIP Budget") projects steady accounts receivable that should be sufficient to provide for the Debtors' reasonable operating and chapter 11 expenses. The DIP Budget provides for a single draw on the postpetition financing in the amount of $10,975,000, the result of which is only to significantly increase the Debtors' cash ending balance as set forth on the budget. Indeed, the projected cash ending balance for the weeks of May 1, 2015 through June 19, 2015 ranges from a low of $8,113,818 to a high of $10,139,187, despite the fact that the DIP Credit Agreement only requires the Debtors to maintain cash on hand of $500,000 at all times. *See* DIP Credit Agreement § 8.15.

- The applicable rate of interest under the DIP Credit Agreement on the outstanding principal of the loans is fourteen percent (14%). *See* DIP Credit Agreement § 2.3(a). The Debtors should be required to submit additional information and evidence demonstrating that this rate of interest is consistent with the market rate of interest for loans of a similar size and nature.

- The Debtors should provide a detailed explanation as to why it is appropriate under the circumstances to grant the postpetition agent and lenders a lien on avoidance action proceeds. *See* DIP Credit Agreement §6.11(f). In the absence of an appropriate explanation, such avoidance action proceeds should be removed from the postpetition agent's and lenders' collateral package.

27. Mr. Nix reserves the right to object to the sufficiency of any evidence adduced by the Debtors in support of their burden under section 364 of the Bankruptcy Code.

B. Limited Objection to Critical Vendor Motion.

28. Mr. Nix requests that the Debtors provide additional information and evidence supporting the need for the proposed critical vendor payments of up to $7.5 million, as requested in the Critical Vendor Motion. The Critical Vendor Motion contains little detail on the identity of the vendors and the urgent need for such payments. Such information is pertinent in light of the magnitude of the proposed payments.

29. Indeed, the Debtors are seeking authority to make payments that likely will pay in full a substantial majority of the unsecured creditor body. Indeed, the payments requested amount to nearly eighty percent (80%) of the twenty (20) largest general unsecured claims listed by the Debtors in these cases, with the remaining general unsecured creditors listed as holding

unsecured claims of no more than $87,000 each. Accordingly, the Debtors should be required to furnish sufficient information to allow the Court and parties in interest in these cases to properly evaluate the need for such substantial payments.

C. Limited Objection to the Employment Motions and Applications.

30. Mr. Nix also requests that consideration of the Employment Motions and Applications be adjourned until after a meeting of Xinergy's shareholders is held for the purpose of reconstituting Xinergy's board of directors.

31. While Mr. Nix understands the need for immediate relief in these chapter 11 cases for certain limited operational issues, such as payment of employee wages, tax obligations, and insurance obligations, Mr. Nix submits that any non-urgent relief requested by the Debtors, such as the relief requested in the Employment Motions and Applications, should be deferred until after the shareholder meeting.

32. The likely outcome of such shareholder meeting will be the election of new directors to replace various existing directors who made (or neglected to make) business decisions leading up to these chapter 11 filings that Mr. Nix believes were not in accordance with their fiduciary duties. These new directors will then need to exercise their sound business judgment in making operational and other decisions for the Debtors that they believe will be in the best interest of the Debtors' estates. Accordingly, the new board of directors should not be bound by prior business decisions made by the existing board of directors on matters that were not urgent in these chapter 11 cases.

33. An adjournment of the hearing on the Employment Motions and Applications until after the shareholders meeting is held will not prejudice the Debtors or the estates and will

allow the new board to make business decisions without being constrained by any orders approving employment agreements entered into by the current board of directors.

RESERVATION OF RIGHTS

34. Mr. Nix reserves the right to amend or supplement this Limited Objection prior to the conclusion of any hearing on the motions and applications described herein, and further reserves the right to assert additional objections at such hearing.

Dated: April 28, 2015
Roanoke, Virginia

Respectfully submitted,

/s/ Robert S. Westermann

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Counsel for Mr. Jon Nix

SCHEDULE 1

1. Xinergy Ltd. (3697)
2. Xinergy Corp. (3865)
3. Xinergy Finance (US), Inc. (5692)
4. Pinnacle Insurance Group LLC (6851)
5. Xinergy of West Virginia, Inc. (2401)
6. Xinergy Straight Creek, Inc. (0071)
7. Xinergy Sales, Inc. (8180)
8. Xinergy Land, Inc. (8121)
9. Middle Fork Mining, Inc. (1593)
10. Big Run Mining, Inc. (1585)
11. Xinergy of Virginia, Inc. (8046)
12. South Fork Coal Company, LLC (3113)
13. Sewell Mountain Coal Co., LLC (9737)
14. Whitewater Contracting, LLC (7740)
15. Whitewater Resources, LLC (9929)
16. Shenandoah Energy, LLC (6770)
17. High MAF, LLC (5418)
18. Wise Loading Services, LLC (7154)
19. Strata Fuels, LLC (1559)
20. True Energy, LLC (2894)
21. Raven Crest Mining, LLC (0122)
22. Brier Creek Coal Company, LLC (9999)
23. Bull Creek Processing Company, LLC (0894)
24. Raven Crest Minerals, LLC (7746)
25. Raven Crest Leasing, LLC (7844)
26. Raven Crest Contracting, LLC (7796)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 28, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which then sent a notification of such filing to all counsel of record registered with the CM/ECF system. Additionally, in accordance with the *Interim Order Establishing Certain Notice, Case Management and Administrative Procedures* [Dkt. No. 62], as modified by the *Interim Order (I) Authorizing Debtors (A) To Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) To Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)* [Dkt. No. 43], the foregoing was sent via electronic mail to the parties listed below:

U.S. Trustee	Margaret.K.Garber@usdoj.gov
Debtors	mcastle@xinergycorp.com
Counsel to the Debtors	tpbrown@hunton.com
Counsel to the DIP Agent and Prepetition Lenders	bhermann@paulweiss.com; arosenberg@paulweiss.com; olashko@paulweiss.com; sharnett@paulweiss.com; peter.barrett@kutakrock.com; jeremy.williams@kutakrock.com
American Legal Claim Services, LLC	jeff.pirrung@americanlegalclaims.com

/s/ Robert S. Westermann

APPENDIX F
The Wildeboer Letter

WILDEBOER
wildlaw.ca
DELLELCE LLP

DIRECT LINE: 416 361-4779
e-mail: spatel@wildlaw.ca

April 16, 2015

VIA COURIER

Xinergy Ltd.
c/o Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

Attention: Each of the Directors of Xinergy Ltd. (the "Corporation")

Dear Sirs/Mesdames:

Re: Requisition of Meeting of Shareholders of the Corporation

We are counsel to Jon Nix (the "**Requisitioner**") in connection with the above noted matter. Further to recent discussions and correspondence among the Requisitioner and Wildeboer Dellelce LLP on the one hand, and the Corporation and its legal counsel on the other hand, please find enclosed a requisition (the "**Requisition**") pursuant to Section 105 of the *Business Corporations Act*, R.S.O. 1999, c. B.16 (the "**OBCA**") requisitioning the directors of the Corporation to call a meeting of the shareholders of the Corporation for the purposes set out in the Requisition (the "**Special Meeting**"). The Requisition is hereby delivered to the Corporation pursuant to Subsection 105(2) of the OBCA.

As you know, the Requisitioner holds not less than 5% of the issued shares of the Corporation that carry the right to vote at the Special Meeting. We confirm on behalf of the Requisitioner that if the Board of Directors of the Corporation determines that it is in the best interests of the Corporation to combine the business set out in the Requisition with the Corporation's annual general meeting to be held no later than June 30, 2015 (the "**Meeting Deadline**") as required by the OBCA, the Requisitioner does not intend to oppose such combination so long as such combined meeting is held prior to the Meeting Deadline.

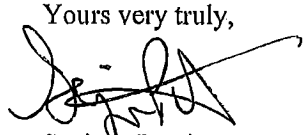
A brief biography of each of the proposed nominees for election as a director of the Corporation as set in the Requisition (other than current directors of the Corporation) has previously been sent to John McIlvery, the Corporation's external legal counsel. The Requisitioner and the newly proposed nominees will work with the Corporation to ensure that the information in respect of the newly proposed nominees that is required to be included in the management information circular to be prepared and mailed in connection with the Special Meeting (or a combined meeting, if applicable) is provided to the Corporation in a timely manner.

Please confirm to the undersigned by no later than **5:00 p.m. (ET) on Monday, April 20, 2015** (the "**Response Deadline**") whether the Corporation intends to combine the business set out in the Requisition with the Corporation's annual general meeting to be held on or before the Meeting Deadline or, if not, the date on which the Corporation intends to hold the Special Meeting. As you know, the Special Meeting must be called within 21 days following the Corporation's receipt of the Requisition. If the Corporation

determines not to combine the business set out in the Requisition with the Corporation's upcoming annual general meeting, or if the Corporation does not intend to hold the Special Meeting in a timeframe that is acceptable to the Requisitioner, or if the Corporation fails to respond to this letter by the Response Deadline, the Requisitioner intends to exercise all his rights under the OBCA to ensure that the Special Meeting is held in a timely manner including, without limitation, making application to the Superior Court of Justice for an order that the Special Meeting be held.

We look forward to the Corporation's timely response.

Yours very truly,



Sanjeev Patel
Enclosure

cc: Jon Nix (via email only)
John McIlvery (via email only)
Rory Cattanach (via email only)
Bernie Mason (via email only)

APPENDIX G
The Shareholder Requisition

REQUISITION OF MEETING OF THE SHAREHOLDERS OF XINERGY LTD.

TO: **XINERGY LTD. (the "Corporation")**

AND TO: **EACH OF THE DIRECTORS OF THE CORPORATION**

The undersigned, being a holder of not less than 5% (five percent) of the issued shares of the Corporation that carry the right to vote at the meeting of shareholders sought to be held pursuant to this requisition, hereby requisitions the directors of the Corporation to call a meeting of shareholders of the Corporation (the "**Special Meeting**") for the following purposes:

(a) to consider and, if deemed advisable, to fix the number of directors to be elected at the Special Meeting at four (4);

(b) to consider and, if deemed advisable, pass an ordinary resolution to remove Todd Q. Swanson as a director of the Corporation;

(c) to consider and, if deemed advisable, pass an ordinary resolution to remove Joseph Groia as a director of the Corporation;

(d) to consider and, if deemed advisable, pass an ordinary resolution to remove Mark Holliday as a director of the Corporation;

(e) to elect Jeffrey A. Wilson as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until his successor is duly elected or appointed;

(f) to elect Debra Powers as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until her successor is duly elected or appointed;

(g) to elect Robert James Metcalfe as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until his successor is duly elected or appointed;

(h) to elect Gregory L. "Bernie" Mason as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until his successor is duly elected or appointed; and

(i) to consider and, if deemed advisable, pass a special resolution empowering the board of directors of the Corporation to determine from time to time the number of directors within the minimum and maximum numbers provided in the articles of the Corporation.

This requisition is made pursuant to Section 105 of the *Business Corporations Act*, R.S.O. 1990, c. B.16.

Dated this 16th day of April, 2015.

Witness Charles W. Kite

Jon Nix

APPENDIX H
Hunton & Williams LLP letter dated May 7, 2015

HUNTON& WILLIAMS

HUNTON & WILLIAMS LLP
RIVERFRONT PLAZA, EAST TOWER
951 EAST BYRD STREET
RICHMOND, VIRGINIA 23219-4074

TEL 804 • 788 • 8200
FAX 804 • 788 • 8218

TYLER P. BROWN
DIRECT DIAL: 804-788-8674
EMAIL: tpbrown@hunton.com

FILE NO: 85083.000003

May 7, 2015

VIA EMAIL AND U.S. MAIL

Sanjeev Patel, Esq.
Wildeboer Dellelce, LLP
Wildeboer Dellecle Place
365 Bay Street
Toronto, ON M5H 2V1

Re: Xinergy Ltd.

Dear Mr. Patel:

This firm represents Xinergy Ltd. ("Xinergy"), along with certain of its affiliates (collectively, the "Debtors"), in the chapter 11 bankruptcy proceedings that were commenced on April 6, 2015 (the "Petition Date"), in the United State Bankruptcy Court for the Western District of Virginia, as Case No. 15-70444 (PMB).

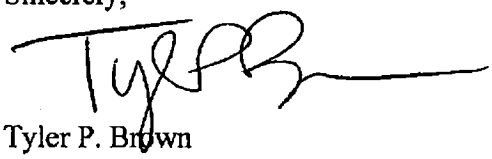
We have been provided a copy of your letter, dated April 16, 2015, on behalf of Mr. Jon Nix, that enclosed a requisition (the "Requisition"), pursuant to section 105 of the Business Corporations Act, R.S.O. 1999, c. B.16 (the "Corporations Act"), requisitioning the directors of Xinergy to call a special meeting of shareholders for the purposes of reconstituting the board of directors (the "Requested Special Meeting"). Specifically, the Requisition seeks to remove and/or replace three of the five current directors. The Requisition alternatively demands that the directors hold a combined meeting with its regular annual meeting by no later than June 30, 2015.

Xinergy has carefully reviewed and considered the Requisition and has determined that scheduling the Requested Special Meeting would not be in the best interests of Xinergy and the other Debtors at this time. Scheduling the Requested Special Meeting would be highly disruptive to operations and the restructuring process, costly to the estates and potential recoveries, risk default and termination of the Debtors' post-petition financing, and seriously jeopardize the Debtors' ability to continue as a going concern and reorganize through the chapter 11 cases.

Xinergy also has determined, for the same reasons, not to hold a combined annual meeting and Requested Special Meeting by June 30, 2015.

The Debtors intend to seek relief in the U.S. Bankruptcy Court regarding the Requested Special Meeting.

Sincerely,



Tyler P. Brown

cc: Thomas R. Califano, Esq.
Cassels Brock & Blackwell LLP

APPENDIX I
Complaint of Debtors and Debtors In Possession for Declaratory and Injunctive Relief

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

In re: **XINERGY LTD., *et al.*,** **Debtors.**[1]	**Chapter 11** **Case No. 15-70444 (PMB)** **(Jointly Administered)**
XINERGY LTD., *et al.*, **Plaintiffs,** **vs.** **JON NIX.** **Defendant.**	Adv. Pro. No. __-_____ (PMB) **Complaint for Injunctive and Declaratory Relief**

COMPLAINT OF DEBTORS AND DEBTORS IN POSSESSION FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER SECTIONS 105 AND 362 OF THE BANKRUPTCY CODE

Xinergy Ltd. and its affiliated debtors (collectively, the "Debtors" or "Plaintiffs"), by and through their undersigned counsel, file this complaint (the "Complaint") seeking an injunction and declaratory relief against Jon Nix (the "Defendant"), and respectfully allege:

[1] The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto.

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

Counsel to the Debtors
and Debtors in Possession

SUMMARY OF THE ACTION

The Debtors seek a declaration that Xinergy Ltd. has no obligation to hold a special shareholder meeting prior to confirmation of a plan or further order of the Court. This Court should declare that the automatic stay applies, or should be extended under section 105 of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the "Bankruptcy Code") to apply, to stay any attempt by the Defendant to call and/or hold a special shareholder meeting of Xinergy Ltd. in order to change the composition of the board of directors of Xinergy Ltd (the "Board of Directors"). The Debtors seek an injunction, pursuant to section 105, prohibiting the Defendant from taking further actions to call or hold a special shareholder meeting.

The Board of Directors is duly constituted and acting in accordance with its fiduciary duties to guide the Debtors in their attempts to maximize value for the benefit of all stakeholders of the Debtors' estate. To fulfill its fiduciary duties, the Board of Directors is pursuing a bankruptcy reorganization strategy for the Debtors that will attempt to preserve the business as a going concern and reach an agreed restructuring plan with the major constituencies involved. The dynamics of the Debtors' business make it absolutely essential that the reorganization process move swiftly to minimize costs and business risk, and thereby provide the best chance to maximize the recoveries for all interested parties. Interference that delays the restructuring efforts will impose an unacceptable risk to the estates' stakeholders through increased restructuring costs, operational disruptions and uncertainty around its post-petition financing, thereby jeopardizing the Debtors' ability to reorganize as a going concern and exit bankruptcy.

The Defendant's self-serving agenda—manifested through a campaign of misinformation, interference and threats designed to reshape the Board of Directors to his personal preferences—presents exactly the type of risk that the Debtors' estates cannot

withstand. The Defendant has launched libelous accusations regarding the Board of Directors's alleged actions or inaction in the months leading up to the Debtors' bankruptcy filings and misrepresented the facts in pleadings filed with this Court and in oral argument at the hearing held on May 5, 2015. Upon information and belief, the Defendant has inappropriately sought and gained access to material non-public information of the Debtors, and misrepresented to the marketplace that he is acting for the Debtors when he has not held office since resigning in 2012 amidst allegations of mismanagement and unethical conduct. The Defendant seeks to inject conflicts of interests into the Debtors' corporate decision making by proposing to replace directors with a representative of a competitor and with a terminated employee of the Debtors. At the same time, upon information and belief, the Defendant is pursuing transactions with one or more of the Debtors' critical customers that may harm the Debtors' business. Each of these actions by the Defendant has disrupted, or is intended to disrupt, the Debtors' restructuring efforts. In sum, it is apparent that the Defendant's actions are misguided, contrary to the interests of the Debtors' estates, and not aimed simply at leveraging equity's bargaining position in these cases.

The Defendant has threatened to seek judicial relief in Canada if he does not get his way and cause further interruption by replacing the Debtors' professionals and management if and when he gains control of the Board of Directors. Those actions seek to derail or delay the Debtors' legal efforts to reorganize in a timely manner through the U.S. bankruptcy system. The Defendant's actions and threats not only will drive up the costs of the restructuring, but have interfered with and will significantly jeopardize the business operations and legitimate efforts of the Debtors to de-lever their balance sheet from the significant debt incurred while the Defendant

managed the company. Absent protection from the Defendant's interference, the Debtors' estates will suffer irreparable injury for which there is no adequate remedy at law.

JURISDICTION AND VENUE

1. On April 6, 2015 (the "Petition Date"), each of the Debtors filed with the Court their respective voluntary petitions for relief under chapter 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 cases (the "Bankruptcy Cases").

2. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No official committee of unsecured creditors has been appointed in the Bankruptcy Cases.

4. The Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b).

5. This matter is a core proceeding pursuant to 28 U.S.C. §157 (b)(2)(A), (G) and (O).

6. The predicates for the relief requested herein are sections 362(a) and 105(a) of the Bankruptcy Code and Rule 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

7. The Debtors consent to entry of final orders and judgments by the Court in this adversary proceeding.

8. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL AND FACTUAL BACKGROUND

A. The Parties

9. Plaintiffs Xinergy Ltd. and its subsidiaries listed on Schedule 1 attached hereto are debtors and debtors in possession in the jointly administered Bankruptcy Cases.

10. A full description of the Debtors' business operations, corporate structures, capital structures, and reasons for commencing these cases, along with a corporate organizational chart, is set forth in full in the Declaration of Michael R. Castle in Support of Chapter 11 Petitions and Related Motions (the "Castle Declaration") [Doc. No. 18], which is attached hereto as Exhibit A.

11. The Defendant, an individual, is a resident of the state of Tennessee.

12. The Defendant founded Xinergy Corp. in March 2008 and served as the Chairman and Chief Executive Officer of Xinergy Ltd. from March 2008 until May 14, 2012.

13. Upon information and belief, the Defendant owns approximately eighteen percent (18%) of Xinergy Ltd.'s outstanding voting common shares.

14. On May 10, 2012, during the Defendant's tenure as Chairman and Chief Executive Officer of Xinergy Ltd., the Board of Directors of Xinergy Ltd. received a letter (the "FrontFour Letter"), attached hereto as Exhibit B, from a significant long-term shareholder, which also then held over $15 million of the Debtors' second-lien debt, alleging that "Xinergy has lost credibility with a significant portion of its investor base. It is our strong belief that [the Defendant] is the root cause of the mistrust ... causing the Company to be viewed negatively and [the Defendant] to be characterized as an overzealous stock promoter.... We are also deeply troubled by the events at the board level that can only be described as a total disregard for corporate governance."

15. On May 14, 2012, four days after receipt of the FrontFour Letter by the Board of Directors, the Defendant resigned his position as Chairman and Chief Executive Officer.

16. Despite his resignation, the Defendant continues to this day to represent to the marketplace that he has authority to act for the Debtors, causing confusion or the potential for confusion concerning the direction of the companies, their intentions in the reorganization process, and with vendors and customers alike. The Defendant has attempted to negotiate with the Debtors' lenders and prospective lenders when he has no such authority to act for the Debtors. In addition, the Defendant somehow continues to acquire information concerning the Debtors' business operations, loan proposals and strategy that is not public information, thus giving him an unfair advantage, but also creating great risk to the Debtors' reorganization efforts.

B. The Board of Directors

17. The Board of Directors is duly constituted, and the Defendant has not alleged any deficiency in the appointment of any of its current members.

18. The Board of Directors has the fiduciary duty to advocate for all of the Debtors' stakeholders, not solely equity holders.

19. In satisfaction of its fiduciary duties, the Board of Directors is currently attempting to pursue a restructuring that de-levers the Debtors' balance sheet and allows the enterprise to continue as a going concern for the benefit of all of the Debtors' stakeholders.

20. In the *Limited Objection* [Doc. No. 124] filed by the Defendant to opposed final approval of the Debtors' DIP Facility, the Defendant libelously accused the Board of Directors of making business decisions that caused the deterioration in the Debtors' financial condition, which false accusations were reported in the press.

21. In open court at the hearing on May 5, 2015, the Defendant again asserted falsely that the Board of Directors failed to take action leading up to the bankruptcy filing to preserve the Debtors' liquidity.

B. The Debtors' Postpetition Financing

22. Knowing that they faced serious prepetition liquidity constraints, the Debtors sought a DIP Facility that would provide adequate liquidity for the Debtors to finance the costs of these Bankruptcy Cases and to provide the Debtors with sufficient operating liquidity to complete a quick restructuring and avoid the substantial costs associated with a prolonged restructuring process that likely would give rise to further liquidity issues.

23. On April 8, 2015, Xinergy Corp., and certain of the Debtors as guarantors, entered into that certain Superpriority Secured Debtor-In-Possession Credit Agreement (the "DIP Credit Agreement," a copy of which is attached hereto as Exhibit C and together with all agreements, documents, guarantees, certificates and instruments delivered or executed from time to time in connection therewith, as may be subsequently amended, restated, amended and restated, supplemented, or otherwise modified from time to time, collectively, the "DIP Documents") with affiliates of Whitebox Advisors LLC and Highbridge Capital Management, LLC, other lenders party thereto from time to time (collectively, the "DIP Lenders") and WBOX 2014-4 Ltd. (the "DIP Agent").

24. On May 5, 2015, this Court entered its *Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364€ and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§*

361, 362, 363 and 364 [Doc. No. 43] (the "Final DIP Order"). A copy of the Final DIP Order is attached hereto as Exhibit D.

25. The Final DIP Order authorized and approved on a final basis, *inter alia*, the Debtors' entry into a postpetition credit facility up to an aggregate principal amount of $40,000,000 (the "DIP Facility") provided by the DIP Lenders, as further described in the DIP Documents, the Debtors' execution and delivery of the DIP Documents, the Debtors' immediate use of the proceeds of the DIP Facility as set forth in the Final DIP Order, and the DIP Agent's termination of the applicable DIP Documents upon the occurrence and continuance of an Event of Default (as defined in the Final DIP Order).

26. The DIP Credit Agreement provides that as a condition to providing the DIP Facility the DIP Lenders require the Debtors to meet certain milestones, *to wit*:

- by no later than seventy-five (75) days following the Petition Date, the Debtors shall file with the Bankruptcy Court in the Cases a proposed Acceptable Reorganization Plan[2] and a motion seeking approval of a disclosure statement for such Acceptable Reorganization Plan and solicitation procedures contemplating completion of a confirmation hearing which disclosure statement and solicitation procedures must otherwise be in form and substance reasonably acceptable to the DIP Agent and Majority Lenders;

- by no later than one hundred and twenty (120) days following the Petition Date, the Bankruptcy Court shall have entered an order approving a disclosure statement for an Acceptable Reorganization Plan and solicitation procedures contemplating completion of a confirmation hearing, which disclosure statement and solicitation procedures must otherwise be in form and substance reasonably acceptable to the DIP Agent and Majority Lenders, and the Bankruptcy Court's approval of such disclosure statement and solicitation procedures shall not have been amended, modified or supplemented (or any portions thereof reversed, stayed or vacated) other than as agreed in writing by Majority Lenders;

- by no later than one hundred and eighty (180) days following the Petition Date, the Bankruptcy Court shall have entered an order confirming an Acceptable Reorganization Plan, which order shall be in form and substance acceptable to DIP Agent and Majority Lenders in their sole discretion and shall not have been

[2] Capitalized terms used but not defined herein have the meaning ascribed to such terms in the DIP Credit Agreement. A complete list of milestones is set forth in Section 6.25 of the DIP Credit Agreement.

amended, modified or supplemented (or any portions thereof reversed, stayed or vacated) other than as agreed in writing by DIP Agent and Majority Lenders; and

- by no later than two hundred and ten (210) days following the Petition Date, the effective date of an Acceptable Reorganization Plan shall have occurred, and the order confirming the Acceptable Reorganization Plan.

Section 9.1(t) of the DIP Credit Agreement provides that if the Debtors fail to meet any of the milestones, it is an Event of Default.

27. Absent unanticipated improvements in the coal market, the Debtors do not believe that the current DIP Facility would provide sufficient liquidity to maintain operations for a lengthy period of time after the expiration of the milestones.

28. Section 9.1(f) of the DIP Credit Agreement provides that a Change in Control is an Event of Default. The DIP Credit Agreement defines a "Change in Control" as, *inter alia*:

> as of any date a majority of the Board of Directors of Parent consists (other than vacant seats) of individuals who were not either (i) directors of Parent as of the Agreement Date, (ii) selected or nominated to become directors by the Board of Directors of Parent of which a majority consisted of individuals described in clause (i), or (iii) selected or nominated to become directors by the Board of Directors of Parent of which a majority consisted of individuals described in clause (i) and individuals described in clause (ii).

29. The Change in Control provision is consistent with the change of control provision included in the Indenture governing the Second Lien Notes, a provision that was negotiated while the Defendant was Chairman and Chief Executive Officer of Xinergy Ltd.

30. Section 9.1(n) of the DIP Credit Agreement provides that it is an Event of Default if either Gregory L. "Bernie" Mason, the Chief Executive Officer of Xinergy Ltd., or Michael R. Castle, the Chief Financial Officer, cease to hold their current positions.

31. None of the foregoing provisions of the DIP Credit Agreement were agreed to by the Debtors for the purpose of denying the Defendant the right to exercise shareholder rights.

C. The Shareholder Requisition Notice

32. On or about April 16, 2015, the Debtors received a letter from counsel to the Defendant that enclosed a requisition (the "Requisition"). A copy of the Requisition is attached hereto as Exhibit E.

33. The Requisition demands that the Board of Directors call a meeting of shareholders for the purpose of reconstituting the Board of Directors.

34. The Requisition specifically seeks to remove and/or replace three of the five current board members.

35. Counsel to the Defendant indicated to special counsel to the Debtors that the Defendant has not decided whether to attempt to replace additional board members.

36. The Requisition proposes to elect two new members, Mr. Jeffrey A. Wilson and Ms. Debra Powers, to the Board of Directors.

37. Upon information and belief, Mr. Wilson currently serves as the top executive of a competitor of the Debtors.

38. As such, in the unlikely event Mr. Wilson would even agree to serve, he would have numerous conflicts of interest in attempting to discharge his duties as a member of the Board of Directors, which would cast a shadow of doubt over corporate decisions made by a reconstituted Board of Directors.

39. Ms. Powers served the Debtors previously as acting interim Chief Financial Officer beginning in January 2009, and then as Vice-President of Finance, and Corporate Treasurer and Controller until her employment was terminated by the Debtors in February 2012.

40. If Ms. Powers is appointed to the Board of Directors, the Debtors' current Controller has indicated to the Debtors' Chief Financial Officer that she would resign, which would cause significant disruption to the Debtors' business.

41. The Debtors believe other personnel also may leave the employ of the Debtors if Ms. Powers is appointed, or if the Defendant otherwise controls the Board of Directors, further damaging the Debtors' business.

42. The Requisition demands that the Board of Directors call the special meeting or hold a combined meeting with its regular annual meeting by June 30, 2015.

43. The Requisition further states that in the event the Board of Directors determines it would not be advisable to hold a special meeting prior to the June 30 deadline, the Defendant intends to exercise all of his rights under applicable Canadian corporate law to ensure that a special meeting is held in a timely manner, including, without limitation, by making an application to the Ontario Superior Court of Justice (the "Superior Court") for an order that the special meeting be held.

44. Upon information and belief, Canadian laws require a minimum notice period for establishing a record date and providing notice of a shareholder meeting.

45. Separately, counsel to the Defendant indicated to counsel to the Debtors on a telephone call on or about April 27, 2015 that, following the shareholder meeting requested in the Requisition, the Defendant intends to replace the professionals retained by the Debtors in the Bankruptcy Cases.

46. On May 7, 2015, the Debtors responded to the Requisition through a letter (the "Response Letter") from their counsel to the Defendant's Canadian counsel, indicating that the Board of Directors had reviewed and considered the Requisition, but declined to call a special shareholder meeting of Xinergy Ltd. because, among other reasons, it would seriously jeopardize the Debtors' prospects for successfully reorganizing through these Bankruptcy Cases to the

detriment of all of the estates' stakeholders. A copy of the Response Letter is attached hereto as Exhibit F.

D. The Canadian Recognition Proceedings

47. Following the Petition Date, the Debtors filed an application with the Superior Court under the Companies' Creditors Arrangement Act (CCAA) (the "CCAA Application") seeking recognition of the Interim DIP Order and certain other orders entered by this Court.

48. The Superior Court held a hearing on the CCAA Application on April 23, 2015.

49. The Superior Court entered an Initial Recognition Order (Foreign Main Proceeding), dated April 23, 2015 (the "Initial Recognition Order"), recognizing these Bankruptcy Cases as a "foreign main proceeding" as defined in section 45 of the CCAA. A copy of the Initial Recognition Order is attached hereto as Exhibit G.

50. The Superior Court entered a Supplemental Order (Foreign Main Proceeding), dated as of April 23, 2015 (the "Supplemental Recognition Order"), recognizing the Interim DIP Order and certain other orders entered in these Bankruptcy Cases. A copy of the Supplemental Recognition Order is attached hereto as Exhibit H.

51. The Superior Court entered its Reasons for Judgment on April 24, 2015 (the "Reasons for Judgment"), providing its reasons for signing the Initial Recognition Order and the Supplemental Recognition Order. A copy of the Reasons for Judgment is attached hereto as Exhibit I.

52. The Defendant appeared by counsel at the CCAA recognition hearing before the Superior Court and advised the Judge that the Defendant may be raising issues with respect to governance and a shareholders meeting under the corporate statute.

53. Neither the Initial Recognition Order, the Supplemental Recognition Order, nor the Reasons for Judgment grant any relief to the Defendant or make any reference to the dispute.

54. The next hearing in the CCAA recognition proceeding is scheduled for May 21, 2015, when the Debtors will seek an order from the Superior Court recognizing the Final DIP Order, among other orders entered by this Court following the hearing on May 5, 2015.

55. The Defendant has reserved time at the upcoming May 21 hearing in the CCAA proceeding, but as of the date of this Complaint, the Debtors have not received service of any motion from the Defendant and no evidence has been put before the Superior Court by the Defendant.

56. Upon information and belief, if the Defendant were successful in obtaining an order from the Superior Court at the May 21 hearing permitting the Defendant to hold a special shareholder meeting, the meeting could not be held until at least late June or early July—likely after the Debtors file a chapter 11 plan—in order to comply with the notice requirements imposed by Canadian law.

E. The Debtors' Equity Interests and Debt

57. Just prior to the commencement of the Bankruptcy Cases, Xinergy Ltd.'s share price was quoted at C$0.02.[3]

58. The Toronto Stock Exchange listed outstanding common shares of 58,304,482. The total market cap of Xinergy Ltd. as of the Petition Date was approximately C$1.17 million (approximately $971,100 in U.S. Dollars at current exchange rates).

59. Currently, there is approximately $195 million outstanding under the Second Lien Notes, which debt was incurred while the Defendant served as Chairman and Chief Executive Officer of Xinergy Ltd.

60. There is approximately $40 million currently outstanding on the DIP Facility.

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[3] A stock quotation can be viewed at http://web.tmxmoney.com/quote.php?locale=en&qm_symbol=XRG.

F. The Debtors' Reorganization Efforts

61. The Debtors' primary objective in the Bankruptcy Cases is to maximize the value of their estates for the benefit of the Debtors' creditors and other stakeholders, including preserving the Debtors' business as a going concern through a short, efficient restructuring process.

62. Due to the fragility of the Debtors' business while in bankruptcy, these cases must proceed on a fast track. The Debtors faced a liquidity crisis prior to the bankruptcy filings due to a rapid deterioration in the price commanded for coal of the types produced by the Debtors. The Debtors were able to secure postpetition financing that will allow them to restructure the companies provided they can proceed in a timely manner. Any delay in the reorganization process will cause the incurrence of significant additional costs, expose the Debtors to greater market risk, and could lead to another liquidity crisis. The Debtors believe they currently are situated to complete a successful restructuring in the time projected, but any delays expose these estates to great risk.

63. The Debtors must file a chapter 11 plan acceptable to the DIP Agent and majority of the DIP Lenders in less than forty-five (45) days in order to comply with the milestones set forth in the DIP Credit Agreement.

64. To comply with the milestones in the DIP Credit Agreement, the plan must be confirmed less than three months later and the plan must become effective by October 2015.

65. Under the direction of the current Board of Directors, the Debtors have made significant progress in these Bankruptcy Cases, including, without limitation, (i) successfully obtaining approval of the DIP Facility on a final basis, (ii) negotiating and obtaining consent from the majority of the Debtors' critical vendors to payment plans and the continued provision

of goods and services to the Debtors on ordinary terms, (iii) successfully negotiating with utility providers over deposits and the continued provision of utility services, and (iv) obtaining approval on a final basis of motions allowing the Debtors to continue critical aspects of their business, including the payment of employee wages and taxes, maintenance of insurance and surety programs, continuation of their cash management system and the employment of professionals.

66. With the assistance of the Debtors' professionals, the Debtors are in the midst of preparing a restructuring proposal to submit to the bondholders and DIP Lenders for their consideration. Negotiation of the restructuring proposal will have occurred long before any special shareholder meeting could be held. The Debtors also anticipate filing the plan before shareholder meeting could be held.

67. Upon information and belief, in an effort to disrupt the Debtors' restructuring efforts, since the Petition Date, the Defendant has inappropriately obtained material, non-public information of the Debtors. The Defendant has had conversations with the Debtors' lenders and prospective lenders and attempted to negotiate terms of loans to the Debtors and terms of a restructuring plan, even though the Defendant has no authority from the Debtors to do so.

68. Upon information and belief, in further effort to disrupt the Debtors' restructuring efforts, since the Petition Date, the Defendant has contacted one or more of the Debtors' most important customers in an attempt to raise financing for a transaction for himself, which risks harm to the Debtors' business interests.

CLAIMS FOR RELIEF

COUNT I
(Declaratory Relief – Bankruptcy Code Section 362)

69. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 68 above as if fully set forth herein.

70. This is a claim for declaratory relief and there exists a substantial controversy between the Debtors and the Defendant of sufficient immediacy and reality to warrant the issuance of declaratory judgment under 28 U.S.C. § 2201.

71. The Debtors seek a declaration that the Requisition and any further attempt by the Defendant to call and/or hold a special shareholder meeting of Xinergy Ltd. is subject to the automatic stay of section 362(a)(1) and/or (a)(3) of the Bankruptcy Code.

72. Section 362(a)(1) of the Bankruptcy Code operates as a stay, "applicable to all entities," of "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(1).

73. Section 362(a)(3) of the Bankruptcy Code prohibits "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3).

74. Pursuant to the automatic stay imposed by the Bankruptcy Code, the Defendant was and is prohibited from taking any actions that improperly interfere with the property of the Debtors' estates.

75. Any motion or other judicial proceeding filed in Canada against the Debtors, including the anticipated motion to be filed by the Defendant in advance of the May 21, 2015 hearing before the Superior Court, is subject to section 362(a)(1) of the Bankruptcy Code.

76. Xinergy Ltd. is the parent company of each of the other Debtors.

77. Xinergy Ltd., through itself or one of its wholly owned subsidiaries, is the 100% owner of each of the other Debtors.

78. Xinergy Ltd. does not have any operating assets.

79. The Defendant is a shareholder of Xinergy Ltd., but does not have any ownership interest in any of the other Debtors.

80. The Requisition and the calling of a special shareholder meeting is an attempt by the Defendant to reconstitute the Board of Directors in order to direct and control the Debtors' operating assets owned by the Debtor subsidiaries of Xinergy Ltd.

81. If successful in reconstituting the Board of Directors, the Defendant intends to cause Xinergy Ltd. to exercise its rights to replace directors, members and/or managers of the Debtor subsidiaries of Xinergy Ltd. and to replace key members of the Debtors' management team and its professional advisors.

82. These actions by the Defendant are attempts to exercise control over property of the Debtors' estates.

83. Accordingly, the Debtors are entitled to a declaration that the automatic stay of section 362(a) of the Bankruptcy applies to any attempt by the Defendant to call a special shareholder meeting of Xinergy Ltd., including through any motion or other judicial proceeding filed in the Superior Court.

COUNT II
(Declaratory Relief – Bankruptcy Code Sections 105(a) and 362(a))

84. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 68 above as if fully set forth herein.

85. This is a claim for declaratory relief and there exists a substantial controversy between the Debtors and the Defendant of sufficient immediacy and reality to warrant the issuance of declaratory judgment under 28 U.S.C. § 2201.

86. Section 105(a) of the Bankruptcy Code authorizes the Court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

87. Section 362(a) operates as a stay that protects the Debtors and property of the estate.

88. Relief under sections 105(a) and 362(a) is particularly appropriate in this case where the Debtors require relief that is necessary in order to preserve the Debtors' reorganization prospects.

89. The actions that the Defendant proposes in the Requisition will cause real and significant harm to the Debtors' estate because they interfere with and pose a substantial risk to the Debtors' ability to pursue a successful restructuring.

90. A calling of a special shareholder meeting of Xinergy Ltd. as set out in the Requisition and the follow-through by the Defendant in his stated intentions may, among other things, (i) disrupt the Debtors' operations so as to cause a deterioration in the financial performance of the Debtors, (ii) require the Debtors to incur unnecessary costs, (iii) trigger a "Change in Control," (iv) cause the resignation or replacement of certain members of the Debtors' senior management, (v) distract the Debtors and their professionals from successfully

pursuing a restructuring plan in a timely manner, (vi) cause the Debtors to miss the milestones contained in the DIP Credit Agreement, (vii) cause uncertainty with the Debtors' vendors and creditors over the direction of the business and reorganization efforts, and (viii) otherwise diminish the value of the Debtors to the detriment of all constituencies of the estates.

91. Each of the circumstances listed in the preceding paragraph also could give rise to or constitute an Event of Default under the DIP Credit Agreement.

92. The occurrence of an Event of Default could cause the termination of the DIP Facility, which would seriously jeopardize the Debtors' ability to continue as a going concern and reorganize through the chapter 11 cases.

93. Appointment of the Defendants' proposed nominees, Mr. Wilson and Ms. Powers, to the Board of Directors would impair the Board of Directors' ability to conduct responsible corporate governance and the ability of the Debtors' management to continue operations uninterrupted due to the introduction of potential conflicts of interest and distrust, and the potential resignation of one or more key members of the Debtors' management, thereby causing substantial harm to the value of the Debtors' estates.

94. The costs of calling and noticing a special shareholder meeting of Xinergy Ltd., including without limitation, associated attorneys' fees and costs of U.S. and Canadian counsel will be significant, thereby depleting the estates' property.

95. The Debtors also lack authority under the DIP Credit Agreement to incur the costs associated with calling a special shareholder meeting.

96. It would be a significant burden on senior management to prepare for and participate in a special shareholder meeting of Xinergy Ltd. while the Debtors are in the midst of

addressing critical issues imperative to a successful restructuring and continued operation of the business as a going concern.

97. Even if the Defendant were able to call a special shareholder meeting of Xinergy Ltd., the advance notice required to call the meeting would mean that a reconstituted board of directors would have insufficient time to propose an amended or new restructuring plan and still satisfy the milestones set forth in the DIP Credit Agreement.

98. Previous actions by the Defendant have indicated that he is motivated to serve his own personal interests without regard to the interests of other stakeholders, which would present serious risks to the success of the Debtors' restructuring efforts if the Debtors are required to comply with the Requisition.

99. Accordingly, the Debtors are entitled to a declaration that the Debtors shall not be required to hold a special meeting of shareholders of Xinergy Ltd. to consider a change to the members of the Board of Directors until a reorganization plan becomes effective or upon further order of this Court.

COUNT III
(Injunctive Relief – Bankruptcy Code Sections 105(a) and 362(a))

100. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 68 above as if fully set forth herein.

101. Section 105(a) of the Bankruptcy Code authorizes the Court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

102. Section 362(a) operates as a stay that protects the Debtors and property of the estate.

103. Relief under sections 105(a) and 362(a) is particularly appropriate in this case where the Debtors require relief that is necessary in order to preserve the Debtors' reorganization prospects.

104. Absent an order enjoining the Requisition, the Debtors will suffer irreparable harm due to any attempt to call a special meeting of shareholders to change the members of the Board of Directors,

105. A calling of a special shareholder meeting of Xinergy Ltd. as set out in the Requisition and the follow-through by the Defendant in his stated intentions may, among other things, (i) disrupt the Debtors' operations so as to cause a deterioration in the financial performance of the Debtors, (ii) require the Debtors to incur unnecessary costs, (iii) trigger a "Change in Control," (iv) cause the resignation or replacement of certain members of the Debtors' senior management, (v) distract the Debtors and their professionals from successfully pursuing a restructuring plan in a timely manner, (vi) cause the Debtors to miss the milestones contained in the DIP Credit Agreement, (vii) cause uncertainty with the Debtors' vendors and creditors over the direction of the business and reorganization efforts, and (viii) otherwise diminish the value of the Debtors to the detriment of all constituencies of the estates.

106. Each of the circumstances listed in the preceding paragraph also could give rise to or constitute an Event of Default under the DIP Credit Agreement.

107. The occurrence of an Event of Default could cause the termination of the DIP Facility, which would seriously jeopardize the Debtors' ability to continue as a going concern and reorganize through the chapter 11 cases.

108. Appointment of the Defendants' proposed nominees, Mr. Wilson and Ms. Powers, to the Board of Directors would impair the Board of Directors' ability to conduct responsible

corporate governance and the ability of the Debtors' management to continue operations uninterrupted due to the introduction of potential conflicts of interest and distrust, and the potential resignation of one or more key members of the Debtors' management, thereby causing substantial harm to the value of the Debtors' estates.

109. The costs of calling and noticing a special shareholder meeting of Xinergy Ltd., including without limitation, associated attorneys' fees and costs of U.S. and Canadian counsel will be significant, thereby depleting the estates' property.

110. It would be a significant burden on senior management to prepare for and participate in a special shareholder meeting while the Debtors are in the midst of addressing critical issues imperative to a successful restructuring and continued operation of the business as a going concern.

111. Even if the Defendant were able to call a special shareholder meeting of Xinergy Ltd., the advance notice required to call the meeting would mean that a reconstituted board of directors would have insufficient time to propose an amended or new restructuring plan and still satisfy the milestones set forth in the DIP Credit Agreement.

112. Previous actions by the Defendant have indicated that he is motivated to serve his own personal interests without regard to the interests of other stakeholders, which would present serious risks to the success of the Debtors' restructuring efforts if the Debtors are required to comply with the Requisition.

113. The likelihood of the irreparable harm to the Debtors' estates outweighs any harm to the Defendant, who will only be enjoined temporarily from exercising these limited shareholder rights and will still be able to participate in the restructuring process, including appearing and being heard at any hearings.

114. Granting the requested injunction is in the public's best interest because it will preserve the resources and interests of the Debtors, give effect to the automatic stay, and facilitate the Debtors' successful reorganization.

115. Allowing the Defendant to call a special shareholder meeting of Xinergy Ltd. to change the members of the Board of Directors, on the other hand, will risk causing significant harm to the value of the Debtors' estate at the expense of all stakeholders in the Bankruptcy Cases.

116. The Debtors lack an adequate remedy at law.

117. Accordingly, good cause exists for entry of injunctive relief under sections 105(a) and 362(a) of the Bankruptcy Code and Bankruptcy Rule 7065 against the Defendant enjoining the Requisition and the calling of a special shareholder meeting until confirmation of the Debtors' restructuring plan or further order of this Court.

WHEREFORE, the Debtors respectfully request relief as follows:

1) For a determination and judgment on Count I of this Complaint declaring that the automatic stay of section 362(a) of the Bankruptcy Code is applicable to stay the Requisition and any attempt to call a special shareholder meeting of Xinergy Ltd. to change the member of the Board of Directors or for any other matters, including through the filing of a motion or other judicial proceeding with the Superior Court;

2) For a determination and judgment on Count II of this Complaint pursuant to sections 105(a) and 362(a) declaring (i) that the Debtors shall not be required to hold a special shareholder meeting of Xinergy Ltd. until a reorganization plan is confirmed or upon further order of the Court, (ii) that if called by the Defendant, the meeting does not have to be held, and (iii) that if held notwithstanding the foregoing, such meeting would have no effect;

3) For a determination and judgment on Count III of this Complaint that the Debtors are entitled to temporary and/or preliminary and permanent injunctive relief under sections 105(a) and 362(a) of the Bankruptcy Code and Bankruptcy Rule 7065 enjoining the Requisition and the Defendant from taking any further action to call or hold a special shareholder meeting

of Xinergy Ltd. until a reorganization plan is confirmed or upon further order of the Court;

4) For costs of suit incurred herein; and

5) That such order and further relief be awarded as this Court deems just and appropriate

DATED: May 8, 2015

Respectfully submitted,

/s/ Tyler P. Brown

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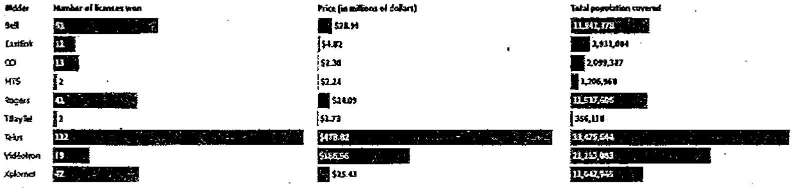
APPENDIX J
Globe & Mail – Notice of special meeting of shareholders

Provisional results for 2500 MHz auction



THE GLOBE AND MAIL // SOURCE: INDUSTRY CANADA

FROM PAGE 1

Wireless: 'It isn't easy to do rural broadband'

» "The more growth we want to do, the more access to capital we evaluate. And there's certainly private and public options today," he said when asked whether the private company would consider an initial public offering. "We haven't declared we'll do anything, because we've had very supportive private investors to this point."

Xplornet's investors – which include the Barrett family from New Brunswick, New York-based Sandler Capital Management and McKenna Gale Capital Inc. in Toronto – have committed or spent more than $1-billion since the company launched in 2004, he said.

Even as Xplornet works to upgrade to higher-speed services, it has faced criticism in recent months from New Brunswick resident Brooke DeCosta Young, who is behind grassroots lobby group Citizens for Rural Wire-Line Broadband Internet. In dozens of e-mails to federal and provincial politicians and policymakers, the group has expressed concerns about Canadians in rural areas not having access to the higher Internet speeds and capacities offered by fibre-optic-cable-based systems.

Not including satellite services, 84 per cent of rural households had access to Internet service with download speeds of between 1.5 Mbps and 5 Mbps in 2013.

Mr. Lenehan said he supports "anybody interested in furthering rural broadband," but added that "it isn't easy to do rural broadband."

"We've been at it a long time, we think we've done some good things, but we also know that broadband continues to evolve and we need to keep pace with it. That's why we're making this investment today," he said.

Through the Industry Canada Twitter account and a press release Tuesday, the government said the auction results would mean better and cheaper service for Canadians "especially those in rural areas."

In another sign that more cellular competition could be on the horizon, Quebecor Inc.'s Vidéotron acquired licences across in Quebec as well as Toronto, Edmonton, Calgary and Vancouver, adding to speculation that it could partner with fellow upstart Wind Mobile to challenge the Big Three. Videotron has been considering an expansion outside of Quebec since it purchased spectrum in Ontario, British Columbia and Alberta in an auction last year, and said Tuesday it is still "analyzing various options."

Wind founder and former CEO Anthony Lacavera said he believes "it continues to be important, from my perspective, that new entrants continue to co-operate." Wind did not win any 2,500-MHz spectrum licences.

Barclays Capital analyst Phillip Huang suggested the outcome could encourage renewed discussions between the companies. "By acquiring more key spectrum across Canada, Videotron is effectively increasing its bargaining chips to negotiate a partnership with Wind in the future," he wrote in a research note.

WHAT'S THE WORD

Wireless • spectrum

Definition › *Spectrum* refers to the mostly invisible waves of the electromagnetic spectrum – a range of frequencies that spans radio and cellphone signals, infrared and ultraviolet light, and X-rays and gamma rays. Spectrum is a public resource and as demand for mobile data soars, wireless operators are willing to spend extensively on usage licences for the valuable airwaves.

Air Canada has boosted its summer flights as a result of U.S. cuts to capacity on routes flying to Canada and elsewhere. [illegible]

FROM PAGE 1

Air Canada: Drop in oil prices has reduced demand in Houston

» Among the airlines that have cut routes to Canada is United, which has discontinued service to several Canadian cities, including Houston and Chicago to Halifax and Newark, N.J., to Edmonton, Chicago to Thunder Bay, Ont., and Regina, as well as Denver to Saskatoon.

Jim Compton, chief revenue officer of United Continental Holdings Inc., parent of United, said on that airline's conference call last month that it's cutting back flights out of Houston in part because the drop in oil prices has reduced demand. Revenue per available seat mile dropped 5 per cent in the first quarter out of Houston, Mr. Compton said, so the airline is reducing flights to Canada and North Dakota, a key centre of Bakken oil field production.

U.S. airlines cut capacity in the first quarter by 11 per cent overall, Air Canada said. United cut by 21 per cent, Alaska Airlines 15 per cent and American Airlines 6 per cent.

Air Canada has boosted its summer flights as a result. It's adding four flights a week between Montreal and Los Angeles and upgrading one of its seven daily Toronto-Los Angeles flights to a larger Boeing 777 plane from a 767.

"We're going to put a 767 on Vancouver-Los Angeles, a lot of great lift out of California, all over Florida, over Texas, out of New York, Chicago, all looking good for us right now," Mr. Smith said.

"Our geography is in a great position to take advantage of this."

That increase may be a mistake, said one airline industry analyst, who wondered how Air Canada, which has higher costs and higher break-even points than U.S. carriers, will be able to make money on such routes when the U.S. airlines did not.

"In the first quarter of 2015, passenger demand on U.S. sun routes and from Western Canada to the Western U.S. was particularly strong," Air Canada said in regulatory filings made Tuesday.

Air Canada's transborder revenue grew 13 per cent in the first quarter, compared with a 7 per cent increase overall.

That contributed to record first-quarter adjusted profit of $122-million or 42 cents a share, compared with a loss of $132-million or 46 cents a year earlier.

The airline narrowed its net loss to $309-million or $1.08, from $341-million or $1.20.

Greg Taylor, portfolio manager at Aurion Capital Management in Toronto, believes the Air Canada narrative has shifted from low fuel costs to a much healthier cost structure.

The airline is also boosting capacity without reducing fares and is not engaged in a price war with domestic rival WestJet Airlines Ltd., Mr. Taylor said.

"Now much of the growth is coming from higher-margin international markets," he said.

> "We're going to put a 767 on Vancouver-Los Angeles, a lot of great lift out of California, all over Florida, over Texas, out of New York, Chicago
>
> Ben Smith
> *President of passenger airlines Air Canada*

With files from reporter Bertrand Marotte in Montreal

Air Canada (AC)
Close: $12.16, up .44

APPENDIX K
Motion of the Debtors and Debtors-In-Possession for a preliminary injunction and memorandum in support dated May 19, 2015

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

In re: **XINERGY LTD., *et al.*,** **Debtors.**[1]	**Chapter 11** **Case No. 15-70444 (PMB)** **(Jointly Administered)**
XINERGY LTD., *et al.*, **Plaintiffs,** **v.** **JON NIX,** **Defendant.**	**Adv. Pro. No. 15-07008 (PMB)**

MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR A PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), by their undersigned counsel, file this motion (the "Motion"), seeking a preliminary injunction (the "Order"), the proposed form of which is attached as Exhibit A, pursuant to Rule 7065 of the

[1] The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto.

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Counsel to the Debtors
and Debtors in Possession

Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), prohibiting the Defendant from taking any further action to call or hold a special shareholder meeting prior to confirmation of a plan or further order of the Court. In support of this Motion, the Debtors submit as follows:

PRELIMINARY STATEMENT

The usual corporate governance rules that continue to apply during a company's chapter 11 bankruptcy must give way to the realities of the extraordinary circumstances the Debtors face. The Defendant has now taken steps in Canada, in blatant disregard of the pending Complaint in this case and in violation of the automatic stay and the stay imposed in the Debtors' Canadian recognition proceedings, to himself call and cause Xinergy Ltd. to hold a special shareholder meeting on June 19, 2015 in an attempt to reconstitute the board of directors of debtor Xinergy Ltd. (the "Board of Directors"). As the board previously warned the Defendant, if that special meeting is allowed to be held during this stage of the chapter 11 process, the Debtors' restructuring will be seriously threatened and the Debtors likely will find themselves facing a liquidity crisis similar to the crisis that forced the Debtors to seek bankruptcy protection in the first instance. The efforts of the Defendant to call a special shareholder meeting of Xinergy Ltd. are misguided and will cause significant delay and disruption in these chapter 11 cases, thereby harming the Debtors' estates, without a corresponding benefit to any of the Debtors' stakeholders. The Debtors' best chance for a successful reorganization is through a short, efficient restructuring process that is aligned with the terms of the post-petition facility, which has previously been approved by this Court, to finance a process that will allow the Debtors to exit from these chapter 11 cases quickly. The actions of the Defendant demonstrate his desire to derail that approach. The notion that a rogue shareholder, propelled by a maximum risk strategy with little downside to him, could torpedo the good faith efforts of the Board of Directors to

pursue a restructuring that benefits all stakeholders does violence to the underpinnings of the Bankruptcy Code.

I. Jurisdiction, Venue and Predicates for Relief

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 28 U.S.C. § 1334(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. §157 (b)(2)(A), (G) and (O).

2. The predicates for the relief requested herein are sections 362(a) and 105(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the "Bankruptcy Code") and Bankruptcy Rule 7065.

II. Background

A. The Chapter 11 Cases

3. On April 6, 2015 (the "Petition Date"), each of the Debtors filed with the Court their respective voluntary petitions for relief under chapter 11 of the Bankruptcy Code, commencing the above-captioned cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On April 8, 2015, the Court entered an order authorizing the joint administration of these chapter 11 cases [Docket No. 57].

4. On May 11, 2015, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors. No trustee or examiner has been appointed.

5. A full description of the Debtors' business operations, corporate structures, capital structures, and reasons for commencing these cases is set forth in full in the Declaration of Michael R. Castle in Support of Chapter 11 Petitions and Related Motions (the "Castle Declaration") [Doc. No. 18]. Additional facts in support of the specific relief sought herein are set forth below.

B. The Debtors Post-Petition Financing

6. On May 5, 2015, this Court entered its *Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* [Doc. No. 43] (the "Final DIP Order").

7. The Final DIP Order authorized and approved on a final basis, *inter alia*, the Debtors' entry into a postpetition credit facility up to an aggregate principal amount of $40,000,000 (the "DIP Facility") provided by the DIP Lenders (as defined in the Final DIP Order), the Debtors' execution and delivery of the DIP Documents (as defined in the Final DIP Order), the Debtors' immediate use of the proceeds of the DIP Facility as set forth in the Final DIP Order, and the termination of the applicable DIP Documents upon the occurrence and continuance of an Event of Default (as defined in the Final DIP Order).

8. As a condition to providing the DIP Facility, the DIP Lenders required that the Debtors meet certain milestones, *to wit*:

- by no later than seventy-five (75) days following the Petition Date, the Debtors shall file with the Bankruptcy Court in the Cases a proposed Acceptable Reorganization Plan[2] and a motion seeking approval of a disclosure statement for such Acceptable Reorganization Plan and solicitation procedures contemplating completion of a confirmation hearing which disclosure statement and solicitation procedures must otherwise be in form and substance reasonably acceptable to the DIP Agent and Majority Lenders;

- by no later than one hundred and twenty (120) days following the Petition Date, the Bankruptcy Court shall have entered an order approving a disclosure statement for an Acceptable Reorganization Plan and solicitation procedures contemplating completion of a confirmation hearing, which disclosure statement

[2] Capitalized terms used but not defined in this paragraph have the meaning ascribed to such terms in that certain Superpriority Secured Debtor-In-Possession Credit Agreement, dated as of April 8, 2015 (the "DIP Credit Agreement"), by and among Xinergy Corp., as borrower, certain guarantors thereto, the DIP Lenders and the DIP Agent. A complete list of milestones is set forth in Section 6.25 of the DIP Credit Agreement.

and solicitation procedures must otherwise be in form and substance reasonably acceptable to the DIP Agent and Majority Lenders, and the Bankruptcy Court's approval of such disclosure statement and solicitation procedures shall not have been amended, modified or supplemented (or any portions thereof reversed, stayed or vacated) other than as agreed in writing by Majority Lenders;

- by no later than one hundred and eighty (180) days following the Petition Date, the Bankruptcy Court shall have entered an order confirming an Acceptable Reorganization Plan, which order shall be in form and substance acceptable to DIP Agent and Majority Lenders in their sole discretion and shall not have been amended, modified or supplemented (or any portions thereof reversed, stayed or vacated) other than as agreed in writing by DIP Agent and Majority Lenders; and

- by no later than two hundred and ten (210) days following the Petition Date, the effective date of an Acceptable Reorganization Plan shall have occurred, and the order confirming the Acceptable Reorganization Plan.

If the Debtors fail to meet any of the milestones, it is an Event of Default. DIP Credit Agreement § 9.1(t).

9. The DIP Credit Agreement also provides that a Change of Control is an Event of Default. DIP Credit Agreement § 9.1(f). A "Change of Control" is defined as, *inter alia*:

> as of any date a majority of the Board of Directors of Parent consists (other than vacant seats) of individuals who were not either (i) directors of Parent as of the Agreement Date, (ii) selected or nominated to become directors by the Board of Directors of Parent of which a majority consisted of individuals described in clause (i), or (iii) selected or nominated to become directors by the Board of Directors of Parent of which a majority consisted of individuals described in clause (i) and individuals described in clause (ii).

DIP Credit Agreement § 1.1.

10. The DIP Credit Agreement further provides that it is an Event of Default if either Gregory L. "Bernie" Mason, the Chief Executive Officer of Xinergy Ltd., or Michael R. Castle, the Chief Financial Officer, cease to hold their current positions. DIP Credit Agreement § 9.1(n).

C. The Shareholder Requisition Notice

11. On or about April 16, 2015, the Debtors received a letter from counsel to the Defendant that enclosed a requisition (the "Requisition"), requisitioning the Board of Directors to call a meeting of shareholders for the purpose of reconstituting the Board of Directors. A copy of the Requisition is attached hereto as Exhibit B. The Requisition specifically seeks to remove and/or replace three of the five current board members, thereby effecting a change in the majority of the current members of the Board of Directors.

12. On May 7, 2015, the Debtors responded to the Requisition through a letter (the "Response Letter") from their counsel to the Defendant's Canadian counsel, indicating that the Board of Directors had reviewed and considered the Requisition, but declined to call a special shareholder meeting of Xinergy Ltd. because, among other reasons, it would be costly, disrupt the restructuring process, risk a default in the post-petition financing facility and seriously jeopardize the Debtors' prospects for successfully reorganizing through these Bankruptcy Cases to the detriment of all of the estates' stakeholders. A copy of the Response letter is attached hereto as Exhibit C.

13. On May 11, 2015, the Debtors received communication from TMX Equity Transfer Services ("Equity"), the Debtors' transfer agent, indicating that Canadian counsel for the Defendant had requested to engage Equity to assist with calling a special meeting and to provide mailing, tabulating and scrutineering services on behalf of the Defendant. The Defendant's request came after Defendant had been told that the Board of Directors had determined it was not in the best interests of the bankruptcy estates to call a special meeting for

the reasons set forth in the Response Letter and after the Defendant knew the Debtors had filed their complaint against him in this adversary proceeding.[3]

14. On May 12, 2015, continuing on his client's quest to take matters into his own hands despite the pending adversary proceeding and the court proceedings governing the Debtors (including a stay of proceedings against Xinergy Ltd. under the CCAA (defined below) recognition proceeding commenced by Xinergy Ltd. in Canada), Canadian counsel for the Defendant sent a demand (the "Shareholder List Demand") to Xinergy Ltd. and Equity "requiring" that Xinergy Ltd. or Equity (its transfer agent) make available a shareholder list within ten (10) days of the date of the notice and continue to update the shareholder list to the extent of any changes to the list. A copy of the Shareholder List Demand is attached hereto as Exhibit D.

15. On May 12, 2015, Canadian counsel for the Defendant sent a request (the "NOBO List Request") to Xinergy Ltd. and Equity requesting that Xinergy Ltd. or Equity (its transfer agent) make available a list of non-objecting beneficial owner list for any proximate intermediary holding securities of Xinergy Ltd. within ten (10) days of the date of the request. A copy of the NOBO List Request is attached hereto as Exhibit E.

16. On May 13, 2015, despite this pending adversary proceeding and having been advised by the Debtors that calling a special shareholder meeting of Xinergy Ltd. would cause harm to the Debtors, Defendant caused a notice (the "Shareholder Meeting Notice") to be published in The Globe and Mail, a nationally distributed Canadian newspaper, giving notice that Defendant intends to call a special shareholder meeting of Xinergy Ltd. to be held on June 19, 2015. The notice indicated that the record date for the meeting is May 20, 2015. A copy of

[3] Canadian counsel for the Debtors received an email communication from Equity on May 14, 2015, advising that this request was withdrawn.

the Shareholder Meeting Notice is attached hereto as Exhibit F. Upon information and belief, the publication of the Shareholder Meeting Notice, and the other steps the Defendant has taken to hold a special shareholder meeting, violated the automatic stay and the stay imposed by orders granted in the proceedings commenced in Canada.

17. The incurrence of expenses by the Defendant in attempting to call a special shareholder meeting of Xinergy Ltd. could give rise to a claim for reimbursement against the Debtors' estates under applicable Canadian law.

D. The Canadian Recognition Proceedings

18. Following the Petition Date, the Debtors filed an application (the "CCAA Application") with the Ontario Superior Court of Justice (the "Superior Court") under the Companies' Creditors Arrangement Act (Canada) ("CCAA") seeking recognition of the Interim DIP Order and certain other orders entered by this Court. The Superior Court held a hearing on the CCAA Application on April 23, 2015.

19. Following the hearing on April 23, 2015, the Superior Court entered (i) an Initial Recognition Order (Foreign Main Proceeding) (the "Recognition Order"), recognizing these Bankruptcy Cases as a "foreign main proceeding" as defined in section 45 of the CCAA, (ii) a Supplemental Order (Foreign Main Proceeding) (the "Supplemental Order"), granting certain additional relief, including recognizing the Interim DIP Order and certain other orders entered in these Bankruptcy Cases, and (iii) its Reasons for Judgment, providing its reasons for signing the Initial Recognition Order and the Supplemental Recognition Order. The Defendant appeared by counsel at the April 23 hearing and consented to entry of each of the foregoing orders. Both the Recognition Order and the Supplemental Order contain provisions restraining actions that affect Xinergy. The Recognition Order specifically provides, "(a) all proceedings taken or that might be taken against the Debtor under the Bankruptcy and Insolvency Act or the Winding-up and

Restructuring Act are stayed; (b) further proceedings in any action, suit or proceeding against the Debtor are restrained; and (c) the commencement of any action, suit or proceeding against the Debtor is prohibited." Recognition Order ¶4. The Supplemental Order contains a broader stay of proceedings, providing "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, 'Persons,' and each a 'Person') against or in respect of the Debtor, or affecting the Business or the Property, are hereby stayed and suspended …." Supplemental Order ¶7.

20. The next hearing in the CCAA recognition proceeding is scheduled for May 21, 2015, when the Debtors will seek an order from the Superior Court recognizing the Final DIP Order, among other orders entered by this Court following the hearing on May 5, 2015.

21. On May 14, 2015, after this action was pending for nearly a week, the Defendant filed a motion in the CCAA proceeding requesting that, among other things, the Superior Court determine that the calling of the special shareholder meeting of Xinergy Ltd. did not violate the stay imposed by the Recognition Order or, in the alternative, that the stay be lifted, notwithstanding that the Defendant has already violated the stay by contacting Equity to assist the calling of a shareholder meeting, making the Shareholder List Demand, making the NOBO List Request, and publicizing the Shareholder Meeting Notice.

E. The Debtors' Reorganization Efforts

22. Under the direction of the current Board of Directors, the Debtors have made significant progress in these Bankruptcy Cases, including, without limitation, (i) successfully obtaining approval of the DIP Facility on a final basis, (ii) negotiating and obtaining consent from the majority of the Debtors' critical vendors to payment plans and the continued provision of goods and services, on post-petition credit, to the Debtors on ordinary terms, (iii) successfully negotiating with utility providers over deposits and the continued provision of utility services,

and (iv) obtaining approval on a final basis of motions allowing the Debtors to continue critical aspects of their business, including the payment of employee wages and taxes, maintenance of insurance and surety programs, continuation of their cash management system and the employment of professionals.

23. With the assistance of the Debtors' professionals, the Debtors are in the midst of preparing a restructuring proposal to submit to the DIP Lenders and the bondholders for their consideration, and by the time this Motion will be heard, expect to be engaged in active negotiations on that proposal and any counter-proposals. The Debtors must file a chapter 11 plan acceptable to the DIP Agent and majority of the DIP Lenders within seventy-five (75) days following the Petition Date in order to comply with the milestones set forth in the DIP Credit Agreement. The plan filing milestone date is June 20, 2015. The plan then must be confirmed less than three months later and must become effective by October 2015.

F. The Adversary Proceeding

24. On May 8, 2015, the Debtors filed the Complaint commencing the above-captioned adversary proceeding. The Complaint seeks a declaration that the automatic stay of § 362(a) applies, or should be extended to apply, to any attempt by the Defendant to call and/or hold a special shareholder meeting of Xinergy Ltd. Alternatively, the Complaint seeks an injunction enjoining the Defendant from taking any further action to call or hold a special shareholder meeting of Xinergy Ltd. prior to confirmation of a plan or further order of the Court.

III. Relief Requested

25. By this Motion, the Debtors seek entry of a preliminary injunction, pursuant to Bankruptcy Rule 7065, enjoining the Defendant from taking any further action to call or hold a special shareholder meeting of Xinergy Ltd.[4]

IV. Basis for Relief Requested

The issuance of a preliminary injunction is a matter of discretion for the Court and is within its equitable powers. *See Hughes Network Sys. v. Interdigital Commc'n Corp.*, 17 F.3d 691, 693 (4th Cir. 1994). The purpose of a preliminary injunction is to maintain the status quo pending a final determination of the merits of an action.

A. Applicable Law

26. Whether a plaintiff seeks a temporary restraining order or a preliminary injunction, the standards for relief are the same. *See, e.g., Commonwealth of Va. v. Kelly*, 29 F.3d 145, 147 (4th Cir. 1994) (applying preliminary injunction standard to a request for temporary restraining order). To be entitled to either relief, a movant must show: (1) the likelihood that it will succeed on the merits; (2) the likelihood of irreparable harm in the absence of preliminary relief; (3) whether the balance of the equities tips in plaintiff's favor; and (4) whether an injunction is in the public interest. While the Court must weigh all of these factors, the first two are the most important. *Ex-Cell Home Fashions, Inc. v. Carnation Home Fashions Inc.*, No. 10-cv-296, 2010 U.S. Dist. LEXIS 84338, at *2 (W.D.N.C. July 15, 2010) (*citing Real Truth About Obama, Inc. v. Fed. Election Comm'n*, 575 F.3d 342, 346 (4th Cir. 2009)).

[4] Because the Defendant has had adequate notice of this adversary proceeding and will have had adequate notice of the hearing on this Motion, the Debtors believe a preliminary injunction can be entered without the need for a temporary restraining order. However, the Debtors request a temporary restraining order if the Court believes that relief would be more appropriate in these circumstances.

B. Likelihood of Success on the Merits

27. In order to prevail on the Complaint, the Debtors must show that if the Defendant is permitted to hold a special shareholder meeting of Xinergy Ltd. for the purposes set forth in the Requisition, the Debtors' "rehabilitation would be seriously threatened, rather than merely delayed."[5] *In re SS Body Armor I, Inc.*, 527 B.R. 597, 604 (Bankr. D. Del. 2015) (quoting *Manville Corp. v. Equity Security Holders Committee (In re Johns-Manville Corp.)*, 801 F.2d 60, 66 (2d Cir. 1986)).[6] As discussed below, the Debtors have a high likelihood of succeeding on the merits because holding the special shareholder meeting of Xinergy Ltd. at this juncture will cause the incurrence of significant additional costs, expose the Debtors to greater market risk, and likely lead to another liquidity crisis, including as a result of the Debtors' failure to meet the milestones set forth in the DIP Credit Agreement or other Event of Default.

28. As a starting point, a bankruptcy filing does not disturb the corporate governance of a debtor. *See Johns-Manville*, 801 F.2d at 64; *In re Potter Instrument Co.*, 593 F.2d 470, 475 (2d Cir. 1979). This general rule gives way when shareholder action risks a disruption that threatens the ability of the debtor to reorganize. "As a court of equity, the bankruptcy court has the power to excuse compliance with corporate governance rules that threaten the entity's reorganization or risk harming creditors and other interested parties." *Topwater Exclusive Fund III, LLC v. SageCrest II, LLC (In re Sagecrest II, LLC)*, No., 2011 U.S. Dist. LEXIS 3517, at

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5 Some courts have referred to this principal as the "clear abuse" exception. *See Minter v. Directors of Concrete Products (Matter of Concrete Products, Inc.)*, 110 B.R. 997, 1000 (Bankr. S.D. Ga. 1989)

6 In *SS Body*, the Bankruptcy Court for the District of Delaware granted a shareholder's motion for relief from the automatic stay in order to compel an annual shareholder meeting, but noted that the debtors sought an injunction through procedurally improper means. *See SS Body*, 527 B.R. at 607. Had the debtors raised their request for an injunction as an adversary proceeding along with a motion for an injunction rather than as an opposition brief to the shareholder's motion, the court might have enjoined the occurrence of the shareholder meeting. *See id.* (explaining that delay and a threat to the debtors' reorganization may be present in this case). The debtors in that case have since filed an adversary proceeding and a motion for preliminary injunction, which currently remain pending before the bankruptcy court. *SS Body Armor I, Inc. v. Jeffrey R. Brooks (In re SS Body Armor I, Inc.)*, No. 15-50261 (Bankr. D. Del. Apr. 6, 2015).

*16 (D. Conn. Jan. 14, 2011); *see also Fogel v. U.S. Energy Systems, Inc.*, No. 3271, 2008 Del. Ch. LEXIS 7, at *7 (Del. Ch. Jan. 15, 2006) ("If the primary purpose of Chapter 11 is the rehabilitation of debtor corporations, there is no reason to disenfranchise equity holders *so long as their exercise of voting rights does not impair such rehabilitation.*") (emphasis added). Moreover, even when an action is not expressly subject to the automatic stay, "a bankruptcy court's injunctive powers under § 105(a) allow it to enjoin suits that 'might impede the reorganization process.'" *Celotex Corp. v. Edwards*, 514 U.S. 300, 310 (1995) (quoting *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 93 (2d Cir. 1988)).

29. It is rare for shareholders to make value-destroying attempts to wrest away control of a company in bankruptcy. Courts in the Fourth Circuit do not appear to have addressed the potential deleterious effect a rogue shareholder's attempt to hold a special meeting and reshuffle the board of directors could have on a debtor's reorganization.[7] The few reported decisions on the issue are concentrated in the Second and Third Circuits. For example, in *In re Potter*, the United States Bankruptcy Court for the Eastern District of New York enjoined a shareholder, who previously served as an officer and chairman of the company's board of directors, from calling a special meeting of shareholders of the debtor to elect new directors. The bankruptcy court determined that such a special meeting would preclude confirmation of the plan and thereby jeopardize the debtor's rehabilitation. *Potter*, 593 F.2d at 474 ("[T]o permit Potter to control the Debtors through the election of a majority of the Board of Directors would sound the death knell to the Debtors."). The U.S. Court of Appeals for the Second Circuit affirmed the

[7] In *In re Heck's Props., Inc.*, 151 B.R. 739 (S.D. W. Va. 1992), the U.S. District Court for the Southern District of West Virginia overturned a bankruptcy court's denial of an equity committee's application for payment of the fees of its professionals for pursuing a state court action to compel a shareholder meeting. The district court held that the bankruptcy court did not make the appropriate finding concerning the threat to the debtor's reorganization under the rule established by the Second Circuit in *In re J.P. Linahan, Inc.*, 111 F.2d 590, 592 (2d Cir. 1940), but it does not appear that any request for such a finding had been presented to the bankruptcy court for decision.

bankruptcy court's ruling on the grounds that allowing the election to proceed probably would jeopardize the debtor's rehabilitation. *Id.* at 475; *see also Manville Corp. v. Equity Security Holders Comm. (In re Johns-Manville Corp.)*, 66 B.R. 517 (Bankr. S.D.N.Y. 1986) (enjoining shareholder election that threatened to interfere with debtor's reorganization).

30. Here, the prospect for the Debtors' "rehabilitation would be seriously threatened, not merely delayed," by the holding of a special shareholder meeting of Xinergy Ltd. and replacement of members of the Board of Directors. *Johns-Manville*, 801 F.2d at 64. First, due to the fragility of the Debtors' business while in bankruptcy, these cases are set on a fast-track toward confirming a chapter 11 plan. Compl. ¶62. Under the terms of the DIP Facility, the Debtors must file a chapter 11 plan within 75 days of the Petition Date. The Debtors currently have approximately 30 days to meet this goal. Thus, even if the Defendant were to hold a special shareholder meeting of Xinergy Ltd. on June 19th as set forth in the Shareholder Meeting Notice, any change to the constitution of the Board of Directors would occur contemporaneous with or after the expiration of the first milestone and the filing of the Debtors' plan. Compl. ¶56. As a result, any effort at that point to propose a new plan and undo months of restructuring efforts and negotiations with the Debtors' key constituents would drive these cases hopelessly off course, leading to potentially devastating consequences for the estates' stakeholders. Withdrawing the plan at that point would be an Event of Default under the DIP Credit Agreement and would derail efforts to exit bankruptcy in a timely manner, each of which would pose a serious threat to the Debtors' continuing liquidity and viability as a going concern.

31. Second, the candidates the Defendant proposes to place on the Board of Directors would cause severe disruption to the Debtors' senior management and its ability to exercise prudent corporate governance. One of the candidates, Jeffrey A. Wilson, currently serves as the

top executive of a competitor of the Debtors. Compl. ¶37. Placing Mr. Wilson on the Board of Directors, if he would even agree to serve, would inject conflicts of interest and distrust into the Board's corporate decisions making. The Defendant's other candidate, Debra Powers, was previously employed by the Debtors most recently as Corporate Treasurer and Controller before her employment was terminated in February 2012, shortly before the Defendant resigned. Compl. ¶39. If Ms. Powers is appointed to the Board of Directors, the Debtors' current Controller, a key member of the Debtors' management, has indicated to the Debtors' Chief Financial Officer that she would resign, which would cause significant disruption to the Debtors' business. Compl. ¶40; May 5 Hrg Tr. at 107-108. The Defendant also has indicated that he would remove an additional member of the Board of Directors, potentially triggering a "Change of Control" and an Event of Default under the DIP Credit Agreement.

32. Third, the extremely compressed timeline described above requires the Debtors' senior management to carefully balance working as diligently as possible toward preparing a chapter 11 plan with the additional responsibility of managing the Debtors' ongoing business operations and the administration of the bankruptcy cases. The disruption that a new Board of Directors would cause in the early stages of these bankruptcy cases would distract the Debtors' senior management from the most important task at hand, namely, managing the Debtors' coal mining operations. A major change to the Board of Directors also would convey uncertainty to the Debtors' vendors and customers—critical parties whose continued 100% participation is essential to a successful restructuring—over the direction of the business and reorganization efforts. The cumulative impact of this internal distraction and external confusion could have serious repercussions for the Debtors' restructuring prospects. A decrease in operating performance, whether caused by internal or external stimuli, even over short period of time,

could threaten the Debtors' liquidity, including by causing the Debtors to breach the financial covenants in the DIP Credit Agreement. DIP Credit Agreement § 8.16.

33. Fourth, a special shareholder meeting of Xinergy Ltd. would increase the costs in this case without justification. The Debtors can ill-afford a prolonged shareholder dispute in these cases. Indeed, the Defendant has threatened that "any delay in reconstituting the board will only increase costs and expenses and prolong the reorganization process." Letter from T. Califano dated 4/24/15 [attached hereto as Exhibit G]. That threat has been borne out through the Defendants' flaunting of the automatic stay and the stay imposed in the CCAA proceeding by taking steps in Canada to call a special shareholder meeting, forcing the Debtors to incur significant costs in enforcing the stay in the CCAA proceeding and defending the Debtors' motion there. The incurrence of these increased costs and expenses is a luxury that the Debtors do not have. The Debtors filed these cases due to an emergency need for liquidity. While the Debtors were successful in raising additional financing, unbudgeted costs and expenses in the early stages of these cases will only further jeopardize the prospects for reorganization. Moreover, the undocumented and unsubstantiated allegations made against the Board of Directors by the Defendants do not justify the incurrence of significant costs to change the Board of Directors, which is faithfully exercising its fiduciary duties to all of the Debtors' stakeholders.

34. Finally, replacing the Board of Directors in late June would be an exercise in futility. The allegation that the Defendant levies against the Debtors' current board—that the board failed to consider viable financing alternatives that would have avoided the need to file bankruptcy—is not only flatly contradicted by the documented efforts of the Debtors and its professionals pre-petition, but fails to justify a replacement of the Board of Directors at this juncture. A new Board of Directors cannot undo the bankruptcy filing nor the Debtors' post-

petition financing facility that was sought and obtained in order to finance a quick exit from bankruptcy. Rather, the only effect of installing a new Board of Directors while the Debtors are in the midst of filing and confirming a reorganization plan would be (i) operational disruptions at a critical time in the Debtors' restructuring, (ii) the incurrence of significant and unnecessary costs, (iii) potential trigger of an Event of Default under the DIP Credit Agreement, (iv) disruptions to key management personnel involved in the Debtors' restructuring, (v) a distraction from the pursuit by the Debtors' senior management and professionals of a successful restructuring, and (vi) uncertainty among the Debtors' vendors and creditors over the direction of the business and reorganization efforts, all of which would diminish the value of the Debtors to the detriment of all constituencies of the estates. In short, allowing the Defendant to hold the special shareholder meeting of Xinergy Ltd. likely would derail these bankruptcy cases.

C. Likelihood of Irreparable Harm

35. The harm that would result to the Debtors' estates from disruption caused by holding a special shareholder meeting of Xinergy Ltd. and reconstituting the Board of Directors in the midst of filing and pursing confirmation of a plan would be irreparable. If these chapter 11 cases are prolonged, with the attendant significant, additional expenses that would accrue, it is likely the Debtors would suffer from another liquidity crisis, this time without a lifeline.

36. Furthermore, it is clear that the Defendant does not merely intend to elect a new Board of Directors at the shareholder meeting to represent the Defendant's voice, but to orchestrate a whole-sale shake-up including replacement of professionals, senior management, and the withdrawal of any plan filed and agreed to by the Debtors and the DIP Lenders. *See, e.g.*, *Johns-Manville*, 66 B.R. at 535 ("It remains the unaltered conclusion of this court ... that the Equity Committee in utter disregard of the devastating consequences of its conduct, pursued

the [action to require the Debtors to hold a shareholder meeting] in order to achieve a substantial change in the plan of reorganization more favorable to Equity than to those constituencies higher up on the ladder of distributive rights."). Similar to the facts presented to the court in *Johns-Manville*, there is sufficient evidence in these chapter 11 cases showing that the Defendant's actions will cause irreparable harm to the Debtors' estates. *Id.* at 541.

37. The defaults that may occur under the DIP Credit Agreement if the Defendant is permitted to perpetrate his scheme also will cause irreparable harm. *See Five Star Dev. Resort Cmty., LLC v. iStar RC Paradise Valley LLC*, 2010 U.S. Dist. LEXIS 25581, at *9 (S.D.N.Y. Mar. 18, 2010) ("The ability of a creditor to foreclose can suffice to establish irreparable harm.") (internal quotations omitted). There is a substantial risk of a default, which would give the DIP Lenders the ability to foreclose on substantially all of the Debtors' assets, as a result of (i) a Change of Control, (ii) failure to meet the milestones, (iii) removal of the Debtors' senior management without an acceptable replacement to the DIP Lenders, or (iv) a breach of the financial covenants in the DIP Credit Agreement. *See* DIP Credit Agreement § 9.1(d), (f), and (n).

38. In the aggregate, all of the facts surrounding the Defendant's intention in holding the special shareholder meeting of Xinergy Ltd. and reconstituting the Board of Directors shows that the Defendant's scheme poses a serious threat to the Debtors' ability to persist as a going concern for the duration of these chapter 11 cases. "This threat to [the Debtors'] ongoing financial viability can, in and of itself, satisfy the irreparable harm requirement." *Five Star*, 2010 U.S. Dist. LEXIS 25581, at *11 (citing *Doren v. Salem Inn, Inc.*, 422 U.S. 922, 932 (1975)); *see also Nemer Jeep-Eagle, Inc. v. Jeep-Eagle Sales Corp.*, 992 F.2d 430, 435 (2d Cir. 1993) ("a threat to the continued existence of a business can constitute irreparable injury") (internal

citations and quotation marks omitted)). In addition, there is no adequate remedy at law to the irreparable harm to be suffered by the Debtors' estates.

D. The Balance of Equities Favors the Debtors

39. The balance of equities favors granting the injunction. Any harm that the Defendant will suffer from an order enjoining him from holding the special shareholder meeting of Xinergy Ltd. and replacing members of the Board of Directors is far outweighed by the potentially catastrophic and irreparable harm to the Debtors' estates. Should these chapter 11 cases be disrupted or delayed, or if an Event of Default occurred under the DIP Credit Agreement, it could mean the end of the Debtors' prospects for achieving a successful restructuring.

40. The market value of the equity of Xinergy Ltd. suggests that the vast majority of shareholder value was lost prior to the Petition Date. Just prior to the commencement of these chapter 11 cases, Xinergy Ltd.'s share price was quoted at just C$0.02 and its total market cap was approximately C$1.17 million (approximately $971,100 in U.S. Dollars at current exchange rates).[8] In contrast, there is approximately $195 million outstanding in Second Lien Notes and approximately $40 million currently outstanding on the DIP Facility. Thus, it is clear that a majority of the value of the Debtors' estates would accrue to the Debtors' creditors under a chapter 11 plan, not its equity holders. Yet, while there is relatively little remaining value for equity holders to lose, the Debtors' creditors would bear the brunt of any loss in value to the Debtors' estates as a consequence of the disruption associated with appointing a new Board of Directors.[9]

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[8] A stock quotation can be viewed at http://web.tmxmoney.com/quote.php?locale=en&qm_symbol=XRG.

[9] The Debtors' solvency is a possible factor to consider in determining whether the Defendant still has the right to appoint new directors. *See Manville Corp. v. Equity Sec. Holders Comm.*, 801 F.2d 60 (2d Cir. 1986) ("We note that if Manville were determined to be insolvent, so that the shareholders lacked equity in

41. Additionally, granting the preliminary injunction would not mean that the Defendant is foreclosed from participating in these chapter 11 cases. To the contrary, the Defendant has demonstrated that he has the means to be well-represented by counsel at hearings both in the bankruptcy court and in the CCAA proceeding. The Bankruptcy Code provides for the participation of not only creditors in these cases, but all parties in interest. The Defendant will have the opportunity to express his views on the Debtors' plan and many other aspects of this restructuring. This fact also weighs in favor of the Debtors in balancing the equities.

E. The Public Interest Favors the Issuance of an Injunction

42. Considerations of public interest also weigh in favor of the Debtors. The U.S. Supreme Court has identified two congressional purposes behind Chapter 11: (1) "preserving going concerns" and (2) "maximizing property available to satisfy creditors." *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453 (1999). As discussed above, the threatened action by the Defendant poses a significant risk, not mere delay, to both the Debtors' ability to operate as a going concern and to confirm a chapter 11 plan, consistent with the milestones, in a quick, efficient bankruptcy process. Interference with a Debtors' ability to reorganize has been held to be sufficient to satisfy this prong. *See In re Brier Creek Corporate Ctr. Assocs.*, 486 B.R. 681, 696 (Bankr. E.D.N.C. 2013). Indeed, Congress specifically authorized bankruptcy courts to issue injunctions under section 105(a) of the Bankruptcy Code to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a); *see also A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1003 (4th Cir. 1986) ("[T]he Bankruptcy Court may use its injunctive authority to protect the integrity of a bankrupt's estate ... and may issue or extend stays to enjoin a variety of proceedings ... which will

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the corporation, denial of the right to call a meeting would likely be proper, because the shareholders would no longer be real parties in interest.").

have an adverse impact on the Debtor's ability to formulate a Chapter 11 plan.") (quoting *Johns-Manville Corp. v. Asbestos Litigation Group (In re Johns-Manville Corp.)*, 40 B.R. 219, 226 (S.D.N.Y. 1984)).

43. In these circumstances, public interest demands that corporate formalities, which the Defendant seeks to exploit for his own benefit, yield in order to maintain the integrity of the Debtors' restructuring. The Board of Directors is focused on maximizing value for all of the Debtors' constituents. Compl. ¶ 65. The Defendant has failed to articulate, or offer any evidence in support of his bald assertions, that the Board of Directors has failed to act in the best interest of the Debtors' stakeholders, other than to accuse the Board of failing to adopt the Defendant's personal views of how the restructuring should proceed. If history provides any indication, the Defendant's viewpoint is not consistent with the collective interests of the Debtors' stakeholders, but represents a "bet the house" approach to maximizing the Defendant's personal gain.

V. Notice

44. Notice of this Motion has been provided to: (a) counsel to the Defendant, (b) counsel to the DIP Agent (c) the Office of the United States Trustee and (d) members of the Official Committee of Unsecured Creditors. The Debtors submit that no other or further notice need be provided.

WHEREFORE, the Debtors respectfully request that the Court (a) enter an order substantially in the form annexed hereto as Exhibit A, granting the relief requested herein, and (b) grant to the Debtors such other and further relief as the Court may deem proper.

Dated: May 19, 2015

Respectfully submitted,

/s/ *Tyler P. Brown*

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SCHEDULE 1

Debtor Entities

1. Xinergy Ltd. (3697)
2. Xinergy Corp. (3865)
3. Xinergy Finance (US), Inc. (5692)
4. Pinnacle Insurance Group LLC (6851)
5. Xinergy of West Virginia, Inc. (2401)
6. Xinergy Straight Creek, Inc. (0071)
7. Xinergy Sales, Inc. (8180)
8. Xinergy Land, Inc. (8121)
9. Middle Fork Mining, Inc. (1593)
10. Big Run Mining, Inc. (1585)
11. Xinergy of Virginia, Inc. (8046)
12. South Fork Coal Company, LLC (3113)
13. Sewell Mountain Coal Co., LLC (9737)
14. Whitewater Contracting, LLC (7740)
15. Whitewater Resources, LLC (9929)
16. Shenandoah Energy, LLC (6770)
17. High MAF, LLC (5418)
18. Wise Loading Services, LLC (7154)
19. Strata Fuels, LLC (1559)
20. True Energy, LLC (2894)
21. Raven Crest Mining, LLC (0122)
22. Brier Creek Coal Company, LLC (9999)
23. Bull Creek Processing Company, LLC (0894)
24. Raven Crest Minerals, LLC (7746)
25. Raven Crest Leasing, LLC (7844)
26. Raven Crest Contracting, LLC (7796)

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

In re: **XINERGY LTD., *et al.*,** **Debtors.**[1]	**Chapter 11** **Case No. 15-70444 (PMB)** **(Jointly Administered)**
XINERGY LTD., *et al.*, **Plaintiffs,** **vs.** **JON NIX.** **Defendant.**	**Adv. Pro. No. 15-07008 (PMB)**

ORDER GRANTING PRELIMINARY INJUNCTION

This matter came before the Court on the motion of the above-captioned Debtors and Debtors-in-Possession (the "Debtors"), seeking a preliminary injunction (the "Motion") enjoining Jon Nix (the "Defendant") from taking any further action to call or hold a special shareholder meeting of Xinergy Ltd. Upon consideration of the Motion and all responses or objections thereto, if any, statements of counsel at the hearing to consider the Motion, the evidence adduced at the hearing, and any other evidence or documents filed in response to, or in support of, the Motion, it is hereby

FOUND AND DETERMINED THAT:

[1] The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto.

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (G) and (O).

C. Notice of the Motion was sufficient under the circumstances.

D. The Debtors have established a likelihood of success on the merits of the Debtors' claims set forth in the Complaint.

E. Absent an order enjoining the Defendant from taking further action to call or hold a special shareholder meeting of Xinergy Ltd., the Debtors will suffer irreparable harm from the serious risk posed to the Debtors' reorganization.

F. The Debtors have no adequate remedy at law.

G. The potential harm to the Debtors' reorganization efforts and its business absent an order granting the relief requested in the Motion outweighs requiring the Defendant to be preliminarily enjoined from any and all further action to call or hold a special shareholder meeting of Xinergy Ltd.

H. The public interest is supported by ordering that the Defendant be enjoined from any and all further action to call or hold a special shareholder meeting of Xinergy Ltd.

Accordingly, the Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein,

It is hereby ORDERED that:

1. The Motion is **GRANTED**.

2. Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

3. Defendant shall be preliminarily restrained, enjoined and prohibited from taking any further action, including in the CCAA proceeding, to call or hold a special shareholder meeting of Xinergy Ltd.

4. This Court requests the aid and assistance of the Canadian Court to recognize the injunction imposed by the preceding paragraph and to recognize and give full force and effect in all provinces and territories of Canada to this Order.

5. Pursuant to Bankruptcy Rule 7065, the Debtors shall not be required to give any security as provided in Rule 65(c) of the Federal Rules of Civil Procedure.

6. This Order shall be effective immediately upon entry by the Court.

7. The Debtors shall serve a copy of this Order on counsel to the Debtor, by facsimile and overnight courier, immediately upon its entry, and file a notice of such service with the Court.

Dated: _____, 2015
Roanoke, Virginia

_____
United States Bankruptcy Judge

WE ASK FOR THIS:

/s/ Tyler P. Brown

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No.77979)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Email: tpbrown@hunton.com
hlong@hunton.com
jpaget@hunton.com
Counsel to the Debtors and Debtors in Possession

SCHEDULE 1

Debtor Entities

1. Xinergy Ltd. (3697)
2. Xinergy Corp. (3865)
3. Xinergy Finance (US), Inc. (5692)
4. Pinnacle Insurance Group LLC (6851)
5. Xinergy of West Virginia, Inc. (2401)
6. Xinergy Straight Creek, Inc. (0071)
7. Xinergy Sales, Inc. (8180)
8. Xinergy Land, Inc. (8121)
9. Middle Fork Mining, Inc. (1593)
10. Big Run Mining, Inc. (1585)
11. Xinergy of Virginia, Inc. (8046)
12. South Fork Coal Company, LLC (3113)
13. Sewell Mountain Coal Co., LLC (9737)
14. Whitewater Contracting, LLC (7740)
15. Whitewater Resources, LLC (9929)
16. Shenandoah Energy, LLC (6770)
17. High MAF, LLC (5418)
18. Wise Loading Services, LLC (7154)
19. Strata Fuels, LLC (1559)
20. True Energy, LLC (2894)
21. Raven Crest Mining, LLC (0122)
22. Brier Creek Coal Company, LLC (9999)
23. Bull Creek Processing Company, LLC (0894)
24. Raven Crest Minerals, LLC (7746)
25. Raven Crest Leasing, LLC (7844)
26. Raven Crest Contracting, LLC (7796)

EXHIBIT B

WILDEBOER
wildlaw.ca
DELLELCE LLP

DIRECT LINE: 416 361-4779
e-mail: spatel@wildlaw.ca

April 16, 2015

VIA COURIER

Xinergy Ltd.
c/o Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

Attention: Each of the Directors of Xinergy Ltd. (the "Corporation")

Dear Sirs/Mesdames:

Re: Requisition of Meeting of Shareholders of the Corporation

We are counsel to Jon Nix (the "**Requisitioner**") in connection with the above noted matter. Further to recent discussions and correspondence among the Requisitioner and Wildeboer Dellelce LLP on the one hand, and the Corporation and its legal counsel on the other hand, please find enclosed a requisition (the "**Requisition**") pursuant to Section 105 of the *Business Corporations Act*, R.S.O. 1999, c. B.16 (the "**OBCA**") requisitioning the directors of the Corporation to call a meeting of the shareholders of the Corporation for the purposes set out in the Requisition (the "**Special Meeting**"). The Requisition is hereby delivered to the Corporation pursuant to Subsection 105(2) of the OBCA.

As you know, the Requisitioner holds not less than 5% of the issued shares of the Corporation that carry the right to vote at the Special Meeting. We confirm on behalf of the Requisitioner that if the Board of Directors of the Corporation determines that it is in the best interests of the Corporation to combine the business set out in the Requisition with the Corporation's annual general meeting to be held no later than June 30, 2015 (the "**Meeting Deadline**") as required by the OBCA, the Requisitioner does not intend to oppose such combination so long as such combined meeting is held prior to the Meeting Deadline.

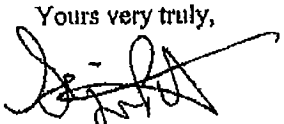
A brief biography of each of the proposed nominees for election as a director of the Corporation as set in the Requisition (other than current directors of the Corporation) has previously been sent to John McIlvery, the Corporation's external legal counsel. The Requisitioner and the newly proposed nominees will work with the Corporation to ensure that the information in respect of the newly proposed nominees that is required to be included in the management information circular to be prepared and mailed in connection with the Special Meeting (or a combined meeting, if applicable) is provided to the Corporation in a timely manner.

Please confirm to the undersigned by no later than **5:00 p.m. (ET) on Monday, April 20, 2015** (the "**Response Deadline**") whether the Corporation intends to combine the business set out in the Requisition with the Corporation's annual general meeting to be held on or before the Meeting Deadline or, if not, the date on which the Corporation intends to hold the Special Meeting. As you know, the Special Meeting must be called within 21 days following the Corporation's receipt of the Requisition. If the Corporation

determines not to combine the business set out in the Requisition with the Corporation's upcoming annual general meeting, or if the Corporation does not intend to hold the Special Meeting in a timeframe that is acceptable to the Requisitioner, or if the Corporation fails to respond to this letter by the Response Deadline, the Requisitioner intends to exercise all his rights under the OBCA to ensure that the Special Meeting is held in a timely manner including, without limitation, making application to the Superior Court of Justice for an order that the Special Meeting be held.

We look forward to the Corporation's timely response.

Yours very truly,



Sanjeev Patel
Enclosure

cc: Jon Nix (via email only)
John McIlvery (via email only)
Rory Cattanach (via email only)
Bernie Mason (via email only)

REQUISITION OF MEETING OF THE SHAREHOLDERS OF XINERGY LTD.

TO: **XINERGY LTD. (the "Corporation")**

AND TO: **EACH OF THE DIRECTORS OF THE CORPORATION**

The undersigned, being a holder of not less than 5% (five percent) of the issued shares of the Corporation that carry the right to vote at the meeting of shareholders sought to be held pursuant to this requisition, hereby requisitions the directors of the Corporation to call a meeting of shareholders of the Corporation (the "**Special Meeting**") for the following purposes:

(a) to consider and, if deemed advisable, to fix the number of directors to be elected at the Special Meeting at four (4);

(b) to consider and, if deemed advisable, pass an ordinary resolution to remove Todd Q. Swanson as a director of the Corporation;

(c) to consider and, if deemed advisable, pass an ordinary resolution to remove Joseph Groia as a director of the Corporation;

(d) to consider and, if deemed advisable, pass an ordinary resolution to remove Mark Holliday as a director of the Corporation;

(e) to elect Jeffrey A. Wilson as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until his successor is duly elected or appointed;

(f) to elect Debra Powers as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until her successor is duly elected or appointed;

(g) to elect Robert James Metcalfe as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until his successor is duly elected or appointed;

(h) to elect Gregory L. "Bernie" Mason as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until his successor is duly elected or appointed; and

(i) to consider and, if deemed advisable, pass a special resolution empowering the board of directors of the Corporation to determine from time to time the number of directors within the minimum and maximum numbers provided in the articles of the Corporation.

This requisition is made pursuant to Section 105 of the *Business Corporations Act*, R.S.O. 1990, c. B.16.

Dated this 16th day of April, 2015.

Witness Charles W. Hite

Jon Nix

EXHIBIT C

HUNTON& WILLIAMS

HUNTON & WILLIAMS LLP
RIVERFRONT PLAZA, EAST TOWER
951 EAST BYRD STREET
RICHMOND, VIRGINIA 23219-4074

TEL 804 • 788 • 8200
FAX 804 • 788 • 8218

TYLER P. BROWN
DIRECT DIAL: 804-788-8674
EMAIL: tpbrown@hunton.com

FILE NO: 85083.000003

May 7, 2015

VIA EMAIL AND U.S. MAIL

Sanjeev Patel, Esq.
Wildeboer Dellelce, LLP
Wildeboer Dellecle Place
365 Bay Street
Toronto, ON M5H 2V1

Re: Xinergy Ltd.

Dear Mr. Patel:

This firm represents Xinergy Ltd. ("Xinergy"), along with certain of its affiliates (collectively, the "Debtors"), in the chapter 11 bankruptcy proceedings that were commenced on April 6, 2015 (the "Petition Date"), in the United State Bankruptcy Court for the Western District of Virginia, as Case No. 15-70444 (PMB).

We have been provided a copy of your letter, dated April 16, 2015, on behalf of Mr. Jon Nix, that enclosed a requisition (the "Requisition"), pursuant to section 105 of the Business Corporations Act, R.S.O. 1999, c. B.16 (the "Corporations Act"), requisitioning the directors of Xinergy to call a special meeting of shareholders for the purposes of reconstituting the board of directors (the "Requested Special Meeting"). Specifically, the Requisition seeks to remove and/or replace three of the five current directors. The Requisition alternatively demands that the directors hold a combined meeting with its regular annual meeting by no later than June 30, 2015.

Xinergy has carefully reviewed and considered the Requisition and has determined that scheduling the Requested Special Meeting would not be in the best interests of Xinergy and the other Debtors at this time. Scheduling the Requested Special Meeting would be highly disruptive to operations and the restructuring process, costly to the estates and potential recoveries, risk default and termination of the Debtors' post-petition financing, and seriously jeopardize the Debtors' ability to continue as a going concern and reorganize through the chapter 11 cases.

HUNTON& WILLIAMS

Xinergy also has determined, for the same reasons, not to hold a combined annual meeting and Requested Special Meeting by June 30, 2015.

The Debtors intend to seek relief in the U.S. Bankruptcy Court regarding the Requested Special Meeting.

Sincerely,

Tyler P. Brown

cc: Thomas R. Califano, Esq.
Cassels Brock & Blackwell LLP

EXHIBIT D

WILDEBOER
wildlaw.ca
DELLELCE LLP

20 YEARS OF EXCELLENCE

DIRECT LINE: 416 361-4779
e-mail: spatel@wildlaw.ca

May 12, 2015

VIA EMAIL AND COURIER

Xinergy Ltd.
c/o Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

Attention: Bernie Mason, Chief Executive Officer of Xinergy Ltd. c/o Alexander Pizale

-and-

TMX Equity Transfer Services
200 University Avenue, Suite 300
Toronto ON M5H 4H1

Attention: Eleni Mastoras, Relationship Manager, Client Management

Dear Sirs/Mesdames:

Re: Request for Securityholder Lists of Xinergy Ltd.

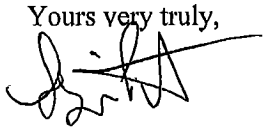
We are legal counsel to Jon Nix. Pursuant to the provisions of section 146 of the *Business Corporations Act* (Ontario) (the "**Act**"), Jon Nix is enclosing a statutory declaration in the form prescribed by the Act and hereby requires Xinergy Ltd. (the "**Corporation**") or its transfer agent (including TMX Equity Transfer Services) to furnish to Mr. Nix as soon as is practicable and in any event within 10 days from the date hereof a list (the "**Basic List**"), made up to a date that is as current as practicable and in any event not more than 10 days before the date on which the Basic List is actually furnished, setting out the names of the shareholders of the Corporation, the number of shares of each class and series owned by each shareholder and the address of each shareholder, all as shown on the records of the Corporation.

Mr. Nix also requires that the Corporation or its transfer agent (including TMX Equity Transfer Services) furnish supplemental lists (each, a "**Supplemental List**") setting out any changes from the Basic List in the names or addresses of the Corporation's shareholders and the number of shares of the Corporation owned by each shareholder for each business day following the date to which the Basic List is made up. The Corporation or its transfer agent (including TMX Equity Transfer Services) shall furnish a Supplemental List (a) on the date the Basic List is furnished, where the information relates to changes that took place prior to that date, and (b) on the business day following the day to which the Supplemental List relates, where the information relates to changes that took place on or after the date on which the Basic List is furnished. The Basic List and Supplemental Lists (if any) shall include the name and address of any known holder of an option or right to acquire shares of the Corporation.

Mr. Nix understands that the Corporation is entitled to be paid a reasonable fee for the Basic List and the Supplemental Lists. If you require such a fee, please contact me by telephone at 416-361-4779 as soon as possible to advise of the amount of the fee and the means of acceptable payment and we will arrange for immediate payment.

Please provide the Basic List and Supplemental Lists (if any) in both electronic and paper format. When the Basic List and the Supplemental Lists (if any) are available, please contact me by telephone at 416-361-4779 so that arrangements can be made to pick up such lists in paper format. Electronic copies can be emailed to me at spatel@wildlaw.ca.

Yours very truly,



Sanjeev Patel
Enclosure

cc: Jon Nix (via email only)
Rory Cattanach, *Wildeboer Dellelce LLP* (via email only)
Tyler P. Brown, *Hunter & Williams LLP* (via email only)
Jane Dietrich, *Cassels Brock & Blackwell LLP* (via email only)

EXHIBIT E

WILDEBOER
wildlaw.ca
DELLELCE LLP

20 YEARS OF EXCELLENCE

DIRECT LINE: 416 361-4779
e-mail: spatel@wildlaw.ca

May 12, 2015

VIA EMAIL AND COURIER

Xinergy Ltd.
c/o Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

Attention: Bernie Mason, Chief Executive Officer of Xinergy Ltd. c/o Alexander Pizale

-and-

TMX Equity Transfer Services
200 University Avenue, Suite 300
Toronto ON M5H 4H1

Attention: Eleni Mastoras, Relationship Manager, Client Management

Dear Sirs/Mesdames:

Re: Request for Lists of Beneficial Holders of Xinergy Ltd.

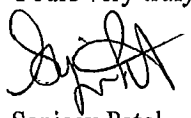
We are legal counsel to Jon Nix. Further to my letter dated the date hereof requesting lists of the registered holders of shares of Xinergy Ltd. (the "**Corporation**"), and pursuant to Section 6.1 of National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer* ("**NI 54-101**"), Mr. Nix hereby requests that the Corporation provide to him the most recently prepared non-objecting beneficial owner ("**NOBO**") list, for any proximate intermediary (as defined in NI 54-101) holding securities of the Corporation, that is in the Corporation's possession.

Mr. Nix understands that the Corporation is entitled to be paid a reasonable fee for the requested lists. If you require such a fee, please contact me by telephone at 416-361-4779 as soon as possible to advise of the amount of the fee and the means of acceptable payment and we will arrange for immediate payment.

Please provide the requested lists in both electronic and paper format. When the requested lists are available, please contact me by telephone at 416-361-4779 so that arrangements can be made to pick up such lists in paper format. Electronic copies can be emailed to me at spatel@wildlaw.ca. As required by Section 6.1(4) of NI 54-101, please provide the requested lists within ten days of receipt of this request and the payment of any applicable fee.

Enclosed herewith is the Undertaking in Form 54-101F9 as required by Section 6.1 of NI 54-101.

Yours very truly,



Sanjeev Patel
Enclosure

cc: Jon Nix (via email only)
Rory Cattanach, *Wildeboer Dellelce LLP* (via email only)
Tyler P. Brown, *Hunter & Williams LLP* (via email only)
Jane Dietrich, *Cassels Brock & Blackwell LLP* (via email only)

EXHIBIT G

DLA Piper LLP (US)
1251 Avenue of the Americas, 27th Floor
New York, New York 10020-1104
www.dlapiper.com

Thomas R. Califano
thomas.califano@dlapiper.com
T 212.335.4990
F 212.884.8690

April 24, 2015

VIA ELECTRONIC MAIL & OVERNIGHT DELIVERY

Tyler P. Brown
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
tpbrown@hunton.com

Re: In re Xinergy Ltd., Case No. 15-70444 (PMB)

Dear Tyler:

We represent Mr. Jon Nix, the holder of not less than five percent (5%) of the issued and outstanding voting shares of Xinergy Ltd. ("Xinergy"). On April 16, 2015, Mr. Nix caused to be delivered to Xinergy a requisition (the "Requisition") pursuant to Section 105 of the Business Corporations Act, R.S.O. 1999, c. B.16, requisitioning that the directors of Xinergy call a special meeting of the shareholders for the purposes of, among other things, removing certain individuals from their positions as directors of Xinergy and electing new directors to serve until successors are duly appointed or elected. A copy of the Requisition is enclosed herewith. The Requisition requested that Xinergy confirm by no later than 5:00 p.m. (ET) on April 20, 2015, whether Xinergy intended to call the special meeting to conduct the business set forth in the Requisition. Xinergy did not respond to the Requisition by this deadline and has failed to give any indication of its intent.

The Requisition is only the most recent attempt by Mr. Nix to compel the current board to abide by its corporate governance obligations. In February 2015, Mr. Nix, with the support of a significant percentage of other holders of outstanding voting shares, requested a meeting for the same purpose. In early March 2015, the current board informed Mr. Nix that it was prepared to make the requested changes to the board's composition provided that Mr. Nix could show he had the support of shareholders holding approximately fifty percent (50%) of the outstanding shares. Subsequently, in spite of the fact that Mr. Nix secured the requisite shareholder support, the board backed out of its agreement and informed Mr. Nix and his counsel that the board members were not prepared to resign. The current board has refused to call a special meeting and failed to respond to the requests of Xinergy's shareholders.

On April 6, 2015, Xinergy and twenty-five (25) of its affiliates (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Virginia (the "Bankruptcy Court"). Xinergy has also filed an application in Ontario court under the Companies' Creditors Arrangement Act seeking recognition of orders of the Bankruptcy Court entered in connection with the Debtors' chapter 11 cases. A hearing was held in Ontario court on April 23, 2015, in connection with Xinergy's application for recognition and, at the hearing, counsel for Mr. Nix advised the Ontario court of, among other things, the dispute over the

DLA PIPER

composition of Xinergy's board of directors, that a Requisition for a special meeting of shareholders was made, and Xinergy's failure to respond to the Requisition.

The ongoing dispute over the composition of Xinergy's board of directors and the failure to comply with the clear direction of the company's shareholders has not been disclosed to the Bankruptcy Court. The current board has not fulfilled its fiduciary duty to the company's stakeholders by, among other things, failing to consider viable financing alternatives that likely would have eliminated the need for any chapter 11 filings, and prematurely commencing the chapter 11 cases.

In addition, please take notice that Mr. Nix and other shareholders of Xinergy intend to pursue the Requisition and take all action necessary to ensure a special meeting of Xinergy's shareholders is promptly called to take the actions set forth in the Requisition, including holding a vote to replace certain of the current members of Xinergy's board of directors. As you are no doubt aware, the chapter 11 filing does not preclude or stay such shareholder action. *See In re Marvel Entertainment Grp., Inc.*, 209 B.R. 832 (D. Del. 1997); *In re Heck's Properties, Inc.*, 151 B.R. 739, 760 (S.D.W. Va. 1992).

Accordingly, as counsel to Xinergy as debtor in possession, you are now aware that the current board should, and will, be reconstituted, and any delay in reconstituting the board will only increase costs and expenses and prolong the reorganization process. Xinergy's efforts to reorganize should be led by directors who are properly authorized and with a mandate from its shareholders. We believe it would be consistent with the debtor in possession's and its advisors' duties to call the shareholder meeting or comply with the board's prepetition agreement to change the board's composition as soon as practicable to expedite the reorganization process. We intend to hold the current board members accountable for any delay in taking such action and for any associated costs and expenses resulting from any such delay. Similarly, efforts to formulate a plan should not be directed by the current board who is acting to frustrate the proper exercise of voting rights by shareholders.

We look forward to your response.

Very truly yours,

DLA Piper LLP (US)

Thomas R. Califano

enclosures

cc: Jon Nix (via email)
Rory Cattanach (via email)
James Grout (via email)
Sanjeev Patel (via email)

WILDEBOER
wildlaw.ca
DELLELCE LLP

DIRECT LINE: 416 361-4779
e-mail: spatel@wildlaw.ca

April 16, 2015

VIA COURIER

Xinergy Ltd.
c/o Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

Attention: Each of the Directors of Xinergy Ltd. (the "Corporation")

Dear Sirs/Mesdames:

Re: Requisition of Meeting of Shareholders of the Corporation

We are counsel to Jon Nix (the "**Requisitioner**") in connection with the above noted matter. Further to recent discussions and correspondence among the Requisitioner and Wildeboer Dellelce LLP on the one hand, and the Corporation and its legal counsel on the other hand, please find enclosed a requisition (the "**Requisition**") pursuant to Section 105 of the *Business Corporations Act*, R.S.O. 1999, c. B.16 (the "**OBCA**") requisitioning the directors of the Corporation to call a meeting of the shareholders of the Corporation for the purposes set out in the Requisition (the "**Special Meeting**"). The Requisition is hereby delivered to the Corporation pursuant to Subsection 105(2) of the OBCA.

As you know, the Requisitioner holds not less than 5% of the issued shares of the Corporation that carry the right to vote at the Special Meeting. We confirm on behalf of the Requisitioner that if the Board of Directors of the Corporation determines that it is in the best interests of the Corporation to combine the business set out in the Requisition with the Corporation's annual general meeting to be held no later than June 30, 2015 (the "**Meeting Deadline**") as required by the OBCA, the Requisitioner does not intend to oppose such combination so long as such combined meeting is held prior to the Meeting Deadline.

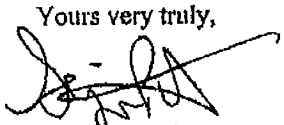
A brief biography of each of the proposed nominees for election as a director of the Corporation as set in the Requisition (other than current directors of the Corporation) has previously been sent to John Mellvery, the Corporation's external legal counsel. The Requisitioner and the newly proposed nominees will work with the Corporation to ensure that the information in respect of the newly proposed nominees that is required to be included in the management information circular to be prepared and mailed in connection with the Special Meeting (or a combined meeting, if applicable) is provided to the Corporation in a timely manner.

Please confirm to the undersigned by no later than **5:00 p.m. (ET) on Monday, April 20, 2015** (the "**Response Deadline**") whether the Corporation intends to combine the business set out in the Requisition with the Corporation's annual general meeting to be held on or before the Meeting Deadline or, if not, the date on which the Corporation intends to hold the Special Meeting. As you know, the Special Meeting must be called within 21 days following the Corporation's receipt of the Requisition. If the Corporation

determines not to combine the business set out in the Requisition with the Corporation's upcoming annual general meeting, or if the Corporation does not intend to hold the Special Meeting in a timeframe that is acceptable to the Requisitioner, or if the Corporation fails to respond to this letter by the Response Deadline, the Requisitioner intends to exercise all his rights under the OBCA to ensure that the Special Meeting is held in a timely manner including, without limitation, making application to the Superior Court of Justice for an order that the Special Meeting be held.

We look forward to the Corporation's timely response.

Yours very truly,



Sanjeev Patel
Enclosure

cc: Jon Nix (via email only)
John McIlvery (via email only)
Rory Cattanach (via email only)
Bernie Mason (via email only)

REQUISITION OF MEETING OF THE SHAREHOLDERS OF XINERGY LTD.

TO: **XINERGY LTD. (the "Corporation")**

AND TO: **EACH OF THE DIRECTORS OF THE CORPORATION**

The undersigned, being a holder of not less than 5% (five percent) of the issued shares of the Corporation that carry the right to vote at the meeting of shareholders sought to be held pursuant to this requisition, hereby requisitions the directors of the Corporation to call a meeting of shareholders of the Corporation (the "**Special Meeting**") for the following purposes:

(a) to consider and, if deemed advisable, to fix the number of directors to be elected at the Special Meeting at four (4);

(b) to consider and, if deemed advisable, pass an ordinary resolution to remove Todd Q. Swanson as a director of the Corporation;

(c) to consider and, if deemed advisable, pass an ordinary resolution to remove Joseph Groia as a director of the Corporation;

(d) to consider and, if deemed advisable, pass an ordinary resolution to remove Mark Holliday as a director of the Corporation;

(e) to elect Jeffrey A. Wilson as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until his successor is duly elected or appointed;

(f) to elect Debra Powers as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until her successor is duly elected or appointed;

(g) to elect Robert James Metcalfe as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until his successor is duly elected or appointed;

(h) to elect Gregory L. "Bernie" Mason as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until his successor is duly elected or appointed; and

(i) to consider and, if deemed advisable, pass a special resolution empowering the board of directors of the Corporation to determine from time to time the number of directors within the minimum and maximum numbers provided in the articles of the Corporation.

This requisition is made pursuant to Section 105 of the *Business Corporations Act*, R.S.O. 1990, c. B.16.

Dated this 16th day of April, 2015.

Witness Charles W. Hite

Jon Nix

Court File No. CV-15-10936-00CL

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

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

FIRST REPORT OF THE INFORMATION OFFICER
May 19, 2015

BENNETT JONES LLP
3400 One First Canadian Place
Toronto, ON M5X 1A4
Fax: (416) 863-1716

S. Richard Orzy (LSUC#23181I)
Tel: (416) 777-5737

Sean H. Zweig (LSUC#57307I)
Tel: (416) 777-6254

Counsel to Deloitte Restructuring Inc., the Information Officer