



NEWS RELEASE | 1 July 2020

## **PRAIRIE SECURES A\$18M LITIGATION FUNDING TO PURSUE DAMAGES CLAIM AGAINST THE POLISH GOVERNMENT**

***Arbitration claim to be submitted in coming weeks***

### **HIGHLIGHTS**

- ***Litigation Funding Agreement (LFA) signed with LCM to pursue international arbitration claims against the Republic of Poland for breaches of its obligations under the Australia – Poland Bilateral Investment Treaty and the Energy Charter Treaty (Claim)***
- ***The LFA facility is available for immediate draw down and provides funding to cover legal, tribunal and external expert costs and defined operating expenses associated with the Claim***
- ***A\$18m is provided as a limited recourse facility, being repayable in the event that a damages award is recovered from the Republic of Poland***
- ***Legal counsel for the Claim is LALIVE, a Swiss based specialist international disputes firm with substantial expertise in investor state arbitration concerning natural resources***
- ***The Claim will allege that the Republic of Poland has breached its obligations under both domestic law and relevant international treaties***
- ***Prairie's claim for damages may include, but is not limited to, lost profits for both the Jan Karski and Debiensko Mines as well as the value of Prairie's historic expenditure in developing both the Jan Karski and Debiensko mines plus interest and costs***

Prairie Mining Limited (**Prairie** or **Company**) is pleased to announce that it has now executed a LFA for A\$18m (US\$12.3m) with LCM Funding UK Limited (a subsidiary of Litigation Capital Management Limited (**LCM**) – a firm listed on the London Stock Exchange). The facility is available for immediate draw down for Prairie to pursue damages claims in relation to the investment dispute between Prairie and the Polish Government that has arisen out of certain measures taken by Poland in breach of the Energy Charter Treaty and the Australia – Poland Bilateral Investment Treaty (**BIT**).

Prairie's CEO Mr Ben Stoikovich commented: ***"Whilst the Company's primary objective has always been the development of its world class Jan Karski and Debiensko coking coal projects to operational status, the actions of the Polish Government have made it impossible for the Company to continue with project development and have resulted in the expropriation of both the Jan Karski and Debiensko mines."***

***Prairie served a Notice of Dispute on the Government of Poland on 6 February 2019 requesting that the Government engage formally with Prairie in order to find an amicable resolution regarding the development, construction and operation of the Projects. To the disappointment of the Company and its shareholders, the Polish Government never meaningfully engaged with the Company in respect of the Notice. Prairie will therefore take the necessary actions to enforce the Company's rights and to recover full value for shareholders, and notes that other foreign natural resources companies have pursued international arbitration claims against the Republic of Poland as a result of discriminatory treatment faced by them in Poland.***

***The substantial litigation funding secured from LCM is testament to the strength of Prairie's claims. The A\$18m facility is non-dilutive to Prairie shareholders, will cover the full legal budget as well as partially cover a portion of Prairie's operating expenses, while being repayable in the event that a damages award is paid out.***

***Prairie and its legal counsel LALIVE, are preparing for arbitration claims to be submitted in the coming weeks. We note that other natural resources companies have successfully enforced their rights through international arbitration and received substantial sums for damages. In 2012, US company Occidental Petroleum Corporation was paid ~US\$1bn by the government of Ecuador following a World Bank Centre for Settlement of Investment Disputes ("ICSID") Tribunal award against Ecuador for terminating Occidental's 30-year participation contract for an oil block.***

***In 2016, another World Bank ICSID tribunal awarded gold junior Crystallex International Corporation damages of US\$1.4bn (including interest) due to Venezuela's unfair and inequitable treatment, and unlawful expropriation of Crystallex's investment in the Las Cristinas gold mining project. Crystallex's claim was financed by a third party litigation funder. In 2019, the World Bank ICSID tribunal also made a US\$5.8bn award to Barrick / Antofagasta regarding Pakistan's unlawful denial of a mining lease for the Reko Diq copper project, which proceeded under the Australia-Pakistan Bilateral Investment Treaty."***

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*This announcement has been authorised for release by the Company's Board of Directors.*

## BACKGROUND TO THE CLAIM

In February 2019, Prairie formally notified the Polish Government that there exists an investment dispute between Prairie and the Polish Government. Prairie's notification called for prompt negotiations with the Government to amicably resolve the dispute and indicated Prairie's right to submit the dispute to international arbitration in the event of the dispute not being resolved amicably. The dispute arises out of certain measures taken by Poland in breach of the Energy Charter Treaty and Australia-Poland Bilateral Investment Treaty. The Company remains open to resolving the dispute with the Polish Government amicably. However, as of the date of this announcement, no amicable resolution of the dispute has occurred, since the Polish Government has declined to participate in discussions related to the dispute.

Prairie remains focused on trying to bring a swift settlement to the current dispute with the Polish Government and remains open to resolving the dispute amicably per the Notice of Dispute served on Poland in February 2019. However, in the absence of any meaningful engagement in relation to this matter from the Government, the Company has advanced preparations to commence its Claims to Arbitration over the coming weeks.

The quantum of any Claim for compensation may include, but will not be limited to:

- the value of Prairie's historic expenditure in developing both the Jan Karski and Debiensko mines;
- Lost profits and damages that the Company has suffered as a result of Poland's acts and omissions which have resulted in the expropriation of both the Jan Karski of Debiensko mines, which is linked to the considerable Net Present Value of both mines at the time of Poland's international treaty breaches; and
- Accrued interest related to any damages award and all costs associated with pursuing the Claims to Arbitration.

The Company is not able to make any further comment in relation to the potential quantum of any claim for compensation at this point.

Please refer to ASX announcements dated 26 April 2018, 28 May 2018, 18 January 2019, 13 February 2019, 4 April 2019 and 31 December 2019 for further details regarding the Company's dispute with the Republic of Poland.

Prairie's investment dispute with the Republic of Poland is not unique, with international media widely reporting that the political environment and investment climate in Poland has deteriorated since the change in Government in 2015. As a result, there are a significant number of International Arbitration claims being brought against Poland in the natural resources and energy sectors with damages claims ranging from US\$120m to over US\$1.3bn and includes Bluegas NRG Holding (Gas), Lumina Copper (Copper) and Invenergy (wind farms).

## BACKGROUND TO THE JAN KARSKI MINE

The Jan Karski Mine (**Jan Karski**) is a large scale semi-soft coking coal project located in the Lublin Coal Basin in south east Poland. The Lublin Coal Basin is an established coal producing province which is well serviced by modern and highly efficient infrastructure, offering the potential for low capital intensity mine development. Jan Karski is situated adjacent to the Bogdanka coal mine which has been in commercial production since 1982 and is the lowest cost hard coal producer in Europe.

Key benefits for the local community and the Lublin and Chelm regions associated with the development, construction and operation of Jan Karski have been recognised as the following:

- creation of 2,000 direct employment positions and 10,000 indirect jobs for the region once operational;
- increasing skills of the workforce through the implementation of International Standard training programmes;
- stimulating the development of education, health services and communications within the region; and
- building a mine that creates new employment for generations to come and career paths for families to remain in the region.

In March 2016, Prairie released the results of a JORC compliant Pre-Feasibility Study (**PFS**) for the Jan Karski prepared by independent international mining consultancies Golder Associates and Royal HaskoningDHV. The PFS demonstrated the technical viability and robust economics of Jan Karski to be developed as a large scale long life strategic coal supplier. Further details about the PFS are contained in the Company's announcement dated 8 March 2016.

## **BACKGROUND TO THE DEBIENSKO MINE**

The Debiensko Mine (**Debiensko**), is a premium hard coking coal project located in the Upper Silesian Coal Basin in the south west of the Republic of Poland. It is approximately 40 km from the city of Katowice and 40 km from the Czech Republic.

Debiensko is bordered by the Knurów-Szczygłowice Mine in the north west and the Budryk Mine in the north east, both owned and operated by Jastrzębska Spółka Węglowa SA (**JSW**), Europe's leading producer of hard coking coal.

The Debiensko mine was historically operated by various Polish mining companies until 2000 when mining operations were terminated due to a major government led restructuring of the coal sector caused by a downturn in global coal prices. In early 2006 New World Resources Plc (**NWR**) acquired Debiensko and commenced planning for Debiensko to comply with Polish mining standards, with the aim of accessing and mining hard coking coal seams. In 2008, the Polish Ministry of Environment (**MoE**) granted a 50-year mine license for Debiensko.

In October 2016, Prairie acquired Debiensko with a view that a revised development approach would potentially allow for the early mining of profitable premium hard coking coal seams, whilst minimising upfront capital costs.

In March 2017, Prairie released the results of a JORC compliant Scoping Study prepared by independent international mining consultancy Royal HaskoningDHV. The Scoping Study demonstrated the technical viability and robust economics for the fully permitted Debiensko mine to be a large scale, lowest cost and long life premium hard coking coal supplier. Further details of the Scoping Study are contained in the Company's announcement dated 16 March 2017.

## **ABOUT LCM**

LCM specialises in investments relating to the global disputes market and has an unparalleled record in providing disputes finance that is driven by its disciplined project selection criteria and robust risk management. As one of the world's first litigation funders, LCM has assisted hundreds of companies to achieve significant recoveries from claims that, without LCM, would not have been pursued due to the associated costs and risks.

In March 2020, LCM closed a third party fund for US\$150m which will target global dispute finance investments.

## **ABOUT LALIVE**

LALIVE is an international law firm with offices in Geneva, Zurich and London, that specialises in international arbitration. The firm has extensive experience in international investment arbitration concerning mining and other natural resources and is representing investors and States as counsel worldwide.

## **LITIGATION FUNDING AGREEMENT TERMS**

The LFA (which is denominated in US\$) provides for monies to be progressively drawn down from the financing facility to meet expenses associated with the Claim. A detailed budget has been approved as part of the LFA, which confirms all expected legal and ancillary costs associated with the arbitration process, as well as a portion of the Company's claim related operating expenses.

LCM will provide up to US\$12.3m (A\$18m) in limited recourse financing which is repayable to LCM in the event of a successful Claim or settlement of the Dispute that results in the recovery of any monies. If there is no settlement or award, then LCM is not entitled to any repayment of the financing facility. In return for providing the financing facility, LCM shall be entitled to receive repayment of any funds drawn plus an amount equal to between two and five times the total of any funds drawn from the funding facility during the first five years, depending on the time frame over which funds have remained drawn, and then a 30% interest rate after the fifth year until receipt of damages payments.

The LFA also includes other standard terms and conditions for litigation funding agreements.

Parties to the LFA are Prairie's 100% owned subsidiaries, PDZ Holdings Pty Ltd, PDZ (UK) Ltd and PD CO Holdings (UK) Ltd and LCM's subsidiary, LCM Funding UK Limited.