

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Commercial Division)

No: 500-11-048114-157

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

IN THE MATTER OF THE PLAN OF  
COMPROMISE OR ARRANGEMENT  
OF:

BLOOM LAKE GENERAL PARTNER  
LIMITED, QUINTO MINING CORPORATION,  
8568391 CANADA LIMITED, CLIFFS QUÉBEC  
IRON MINING ULC, WABUSH IRON CO.  
LIMITED, WABUSH RESOURCES INC.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE  
LIMITED PARTNERSHIP, BLOOM LAKE  
RAILWAY COMPANY LIMITED,  
WABUSH MINES, ARNAUD RAILWAY  
COMPANY, WABUSH LAKE RAILWAY  
COMPANY LIMITED

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

MICHAEL KEEPER, TERENCE WATT,  
DAMIEN LEBEL AND NEIL JOHNSON

Petitioners-Mises-en-cause

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AFFIDAVIT OF TERENCE WATT  
(Sworn December 14, 2016)

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I, **TERENCE W. WATT**, of 6 Willow Street Suite 1001, City of Waterloo, in the Province of Ontario, SOLEMNLY DECLARE AND MAKE OATH AND SAY:

**Introduction**

1. I am the former Mine Superintendent and Technical Assistant to the Resident Manager of the Scully Mine located in Newfoundland and Labrador. I worked with Wabush Mines for more than 30 years before retiring on April 30, 1999.
2. At the time of my retirement, I earned various post-retirement benefits from Wabush Mines, including a monthly pension benefit to be paid from the Contributory Defined Benefit Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (Nfld & Lab. Reg. No. 0021314, CRA Reg. No. 0343558) (the "**Salaried Plan**") (and together with the Union plan, the "**Wabush Pension Plans**").
3. On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company, and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**") obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C 1985, c. C-36 ("**CCAA**") (the "**Wabush CCAA Proceedings**") by order of Mr. Justice Hamilton of the Superior Court of Québec ("**CCAA Judge**"). FTI Canada Consulting Inc. was appointed as Monitor.
4. The shutdown of Wabush Mines via a CCAA proceeding is part of the corporate decision by its parent company, Cliffs National Resources Inc. ("**CNR**") to disengage from its operations in Eastern Canada. Attached hereto as **Exhibit "REPS-1"** are copies of

CNR's Press Releases dated February 11, 2014, November 19, 2014, and January 27, 2015, respectively.

5. On June 22, 2015, I was appointed along with Neil Johnson, Damien Lebel, and Michael Keeper (the "**Representatives**") as representatives of all Non-Union Active Employees and Retirees (the "**Salaried Members**") in the Wabush CCAA Proceedings by the CCAA Judge. Koskie Minsky LLP and Scheib Legal were appointed as Representative Counsel with respect to all matters pertaining to any recovery, compromise of rights or entitlements of Non-Union Active Employees and Retirees in the Wabush CCAA Proceedings.
6. As a Representative, I am very familiar and actively involved with the Wabush CCAA Proceedings. I have knowledge of the matters to which I hereinafter depose except where stated to be based on information or belief and regarding such matters I believe same to be true. All capitalized terms used herein are the same as used and defined by the Petitioners in their prior materials except where noted. When reference is made herein to the "company" it applies to my former employer Wabush Mines.
7. I swear this affidavit:
  - (a) in opposition to the Motion by the Monitor for Directions with respect to Pension Claims dated September 20, 2016 ("**Motion for Directions**"); and
  - (b) in support of the transfer of certain issue(s) regarding the interpretation of the deemed trust priority provisions in the Newfoundland *Pension Benefits Act, 1997*,

SNL c. P-4.01 (the "NPBA") (the "Newfoundland PBA Deemed Trust") to the Supreme Court of Newfoundland and Labrador for adjudication.

**Personal and Work Background**

8. I started working with Wabush Mines at the Scully Mine location in Labrador in April, 1969. At first I was working in Plant Engineering, where I was responsible for housing construction for the Wabush townsite. After a series of promotions from Plant Engineer to Mine Engineer to Mine Foreman, in 1980, I became a Mine Superintendent, and worked in that position for 15 years until 1995. As indicated above, I remained employed at Wabush Mines for 30 years, working as a Technical Assistant to the Resident Manager of Scully Mine in my last four years of employment.
9. I have spent the majority of my working life in Newfoundland and Labrador.
10. I retired from Wabush Mines on April 30, 1999. I am now 72 years old and, like all other retirees of Wabush Mines, am highly dependent on my post-employment benefits and pension benefits for my everyday living expenses.

**The Employment Contract, Salary, Pensions and Benefits**

11. In consideration for my 30 years of service with the company, I had a contract of employment in which Wabush Mines paid and I earned wages and a salary, other employment benefits such as health benefits (payable during employment and after my retirement), and a pension.

12. For my employment service with the company, I earned the following compensation:
- (a) **Pension Benefits.** I am a pensioner member of the Salaried Plan. Attached as **Exhibit "REPS-2"** is a copy of the Salaried Plan text. Section 4.02 of the Salaried Plan text directs the Employer (the Wabush CCAA Parties) to file the latest actuarial valuation report with the Newfoundland pension regulatory authority and Revenue Canada. Attached as **Exhibit "REPS-3"** are copies of the Annual Information Return for the 2013 and 2014 plan year, respectively, which are also filed with the Newfoundland pension regulatory authority.
  - (b) **Health Benefits.** I earned an entitlement to post-retirement health benefits including Major Medical Benefits, Life Insurance, Hospital Expense Insurance, and Travel Insurance. The company is obliged to contribute the cost of the premiums necessary to maintain these benefits, "for as long as you live".
13. I have reviewed documentation relating to the Salaried Pension Plan, which indicate that:
- (a) the Plan is registered in the Province of Newfoundland and Labrador;
  - (b) the Plan has been funded and administered in accordance with the NPBA and its Regulations since their inception;
  - (c) the actuarial reports have been and continue to be prepared in accordance with the NPBA;
  - (d) the Plan has been, and continues to be, regulated by the Newfoundland Superintendent of Pensions, pursuant to the provisions of the NPBA; and

- (e) the Plan is to be interpreted pursuant to the laws applicable in the province of Newfoundland (pursuant to section 12.06 of the Salaried Plan text, which is attached hereto as **Exhibit “REPS-2”**).
14. The Salaried Members are both a significant and vulnerable stakeholder group. There are over 600 Salaried Members impacted by these CCAA Proceedings, in addition to the union retirees.
  15. I have received a copy of the most recent Actuarial Valuation Report on the Salaried Pension Plan as at January 1, 2014 (attached hereto as **Exhibit “REPS-4”**), which discloses the membership breakdown of the Salaried Pension Plan totaling 695 Salaried Members as of that date, as follows:
    - (a) 188 active and disabled employees in the Salaried Plan located predominantly in Newfoundland and Labrador, and Québec;
    - (b) 324 retired members and beneficiaries in payment of a monthly pension, located across Canada and elsewhere; and
    - (c) 183 transferred and terminated vested members, located across Canada and elsewhere.
  16. On December 6, 2016, I received updated data from Morneau Shepell, the actuarial consulting firm who was appointed by the Newfoundland Superintendent of Pensions on March 30, 2016 as the replacement pension plan administrator, in respect of the

membership breakdown of the Wabush Mines employees and retirees in each jurisdiction, as follows:

**Salaried Plan**

- Federal – 14
- Newfoundland – 313
- Québec – 329

**Union Plan**

- Federal – 66
- Newfoundland – 1,005
- Québec – 661

**The NPBA Deemed Trust in favour of pension plan beneficiaries**

17. The Wabush pension plans are significantly underfunded. On August 14, 2015, Representative Counsel wrote to the Company and other parties asserting that the deemed trust provisions in the NPBA apply in favour of the Salaried Pension Plan pension plan beneficiaries and as such, that the amounts that are subject to the trust (i.e., unpaid employer contribution) are not available for distribution to other creditors. Attached as **Exhibit "REPS-5"** is a copy of the said correspondence.
18. On December 16, 2015, the Newfoundland Superintendent of Pensions declared that the Salaried Plan be terminated effective on that date. Attached as **Exhibit "REPS-6"** is a copy of the letter dated December 16, 2015 from the Superintendent to Cliffs Natural Resources, in its capacity as the Plan administrator.
19. On January 26, 2016, the retirees received a letter from Wabush Mines notifying them that, due to the underfunding in the pension plans, the Newfoundland Superintendent of Pensions has directed Wabush Mines to reduce the amount of monthly benefits being paid to all retirees. Attached hereto as **Exhibit "REPS-7"** is a copy of said letter received by another Representative, Michael Keeper. The monthly benefits of the Salaried Plan

retirees (including my own) have been reduced by 25% and those of the Union Plan retirees by 21%, to my knowledge and belief.

20. The reduction of retirees' monthly pension benefits, coupled with the loss of their health and life insurance benefits, has caused very significant financial hardship for myself and, as I have been told countless times by different people, for other Salaried and former unionized Wabush Mines retirees as well.
21. I am advised and believe that on November 16, 2015, at the hearing of the motion by the Monitor for approval of the Claims Procedure Order, our Representative Counsel Mr. Andrew J. Hatnay of Koskie Minsky LLP and Mr. Nicholas Scheib of Étude Légale Scheib, indicated in court that it is the Representatives' position that any issue(s) regarding the interpretation of the Newfoundland PBA Deemed Trust should be referred to the Supreme Court of Newfoundland and Labrador for adjudication. There was no decision made on that issue at the time, nor was a decision sought.

### **The Monitor's Motion for Directions**

22. The Monitor filed a motion returnable on September 20, 2016 seeking:

*...directions with respect to the priority of Pension claims filed by the Plan Administrator...and the applicability and scope of deemed trusts under the Pension Benefits Standards Act, R.S.C. 1985, c. 32 (2<sup>nd</sup> Supp.) (PBSA) and the Newfoundland & Labrador Pension Benefits Act, S.N.L. 1996, c. P-401 (PBA)...<sup>1</sup>(emphasis added) (the "**Monitor's Motion for Directions**").*

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<sup>1</sup> Monitor's Notice of Motion dated September 20, 2016 at para. 9.

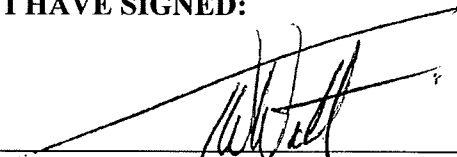


23. The Monitor's Motion for Directions seeks to have certain questions prepared by the Monitor concerning the priority of the various components of the Salaried DB Plan Claim and the Union DB Plan Claim, including questions involving the interpretation of the Newfoundland PBA Deemed Trust, put before the Superior Court of Québec and not the Newfoundland Court.
24. I disagree both with the approach adopted by the Monitor and its formulation of its questions. On October 7, 2016, Representative Counsel filed our Notice of Objection to the Monitor's Motion for Directions on our behalf. The Notice of Objection repeats that it is the Representatives' positions that any issue(s) regarding the interpretation of the NPBA Deemed Trust should be referred to the Supreme Court of Newfoundland and Labrador for adjudication. Attached hereto as **Exhibit "REPS-8"** is a copy of said Objection.
25. Morneau Shepell also filed a Notice of Objection objecting to the Monitor's Motion for Direction, including objections that there should be resolution between the affected parties with respect to the appropriate forum for the adjudication of any NPBA Deemed Trust issues.
26. The NPBA deemed trust is a critical remedy for the members of the Wabush Pension Plans to help relieve us from financial hardship caused by the underfunding of the Plans by Wabush Mines.
27. I and the other Representatives have been contacted by many Salaried Members and USW retirees, who have told us that they want to have the issue(s) regarding the

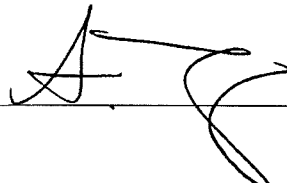
interpretation of the NPBA Deemed Trust be referred to the Supreme Court of Newfoundland and Labrador for adjudication.

28. I understand that the Newfoundland Superintendent of Pensions and Graham Letto, the Member of the House of Assembly to Labrador West, are also in support of a transfer to Supreme Court of Newfoundland and Labrador in respect of any issue(s) regarding the interpretation of the NPBA Deemed Trust.

**AND I HAVE SIGNED:**

  
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**TERENCE WATT**

SOLEMNLY AFFIRMED before me in Toronto,  
the Province of Ontario, this 14<sup>th</sup> day of December  
2016.

  
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**AMY TANG**