SUPERIOR COURT

(*Commercial Division*)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No: 500-11-048114-157

DATE: March 14, 2018

PRESIDED BY: THE HONOURABLE STEPHEN W. HAMILTON, J.S.C.

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

BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATIOIN
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
0778539 B.C. LTD
Respondent

JH5439

JUDGMENT ON WABUSH IRON CO. LIMITED AND WABUSH RESOURCES INC.'S AMENDED MOTION FOR DIRECTIONS AND THE ISSUANCE OF A SAFEGUARD ORDER (#607)

INTRODUCTION

[1] The parties have a dispute as to whether any Minimum Royalty Payments were payable under the mining lease dated September 2, 1959, for the period after the mine was permanently idled.

CONTEXT

1. The contracts

[2] As part of its plan to develop the natural resources of Labrador, the government of Newfoundland and Labrador created a Crown corporation called the Newfoundland and Labrador Corporation Limited ("Nalco") in 1951 and granted it a number of concessions, including a mineral concession over 21,900 square miles of land in Newfoundland and Labrador.[1] The mineral concession included the area known as the Wabush Deposit, an area rich in iron ore.

[3] There were a series of contracts starting in the 1950's involving the following parties:

- The government of Newfoundland and Labrador;
- Nalco (which transferred its rights to Knoll Lake Minerals Limited on June 17, 1964[2]);
- Canadian Javelin Foundries & Machine Works Limited (later known as Canadian Javelin Limited, Javelin International Ltd., Nalcap Holdings Inc., MFC Industrial Ltd., MFC Bancorp Ltd., and now 0778539 B.C. Ltd.) ("MFC"); and
- Wabush Iron Co. Limited, Wabush Resources Inc. and Wabush Mines, as well as their predecessors in title and their partners.

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1 *The Newfoundland and Labrador Corporation Limited Act, 1951*, S.N.L. 1951, c. 88 as amended.

2 Exhibit R-12.

[4] The relevant contracts can be summarized as follows:

- On March 11, 1954, Nalco granted MFC exploration rights and the right to obtain mineral leases in 2,900 square miles of land in Labrador, including the Wabush Deposit;
- On May 26, 1956, the government of Newfoundland and Labrador leased the Wabush Deposit to Nalco for 99 years;[3]
- On the same date, Nalco sub-leased the Wabush Deposit to MFC, also for 99 years;[4]
- On June 28, 1957, MFC entered into mining leases with Pickands Mather & Co and the Steel Company of Canada ("Stelco") for the westerly portion of the Wabush Deposit, and with Wabush Iron for the easterly portion of that deposit. Pickands Mather, Stelco and Wabush Iron also had options to lease further land;
- On September 2, 1959, Pickands Mather and Stelco assigned their mining lease to Wabush Iron, and Wabush Iron entered into an Amendment and Consolidation of Mining Leases with MFC covering all of the Wabush Deposit (the "1959 Lease");[5]
- On September 4, 1959, the government of Newfoundland and Labrador, Nalco, MFC and Wabush Iron entered into a statutory agreement which formalized the prior contracts;[6]
- On June 28, 1960, the government of Newfoundland and Labrador, Nalco, MFC, Pickands Mather, Stelco and Wabush Iron entered into a Statutory Lease Agreement that amended the various leases between the parties;[7]
- MFC and Wabush Iron further amended the 1959 Lease on July 19, 1960[8] and August 8, 1961;[9]
- On November 27, 1987[10] and on June 8, 1989,[11] Nalcap Holdings and the then owners of the Wabush mine (Wabush Iron, Stelco and Dofasco Inc.) changed certain royalty provisions in the September 2, 1959 mining lease.

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3 Exhibit R-6.
4 Exhibit R-7.
5 Exhibit R-5.
6 Exhibit R-8.
7 Exhibit R-9.
8 Exhibit R-10.
9 Exhibit R-11.

[5] Under the September 2, 1959 lease, Wabush Iron was required to pay the following amounts to MFC:[12]

- An annual rent of $ 360;
- Earned Royalties payable on a quarterly basis for each Gross Ton of Iron Ore Products shipped from the Mine; and
- A quarterly Minimum Royalty calculated as follows:

> Provided, however, that, for each calendar quarter during which this Indenture remains in effect after January 1, 1960, and regardless of whether the Lessee shall conduct on the Demised Premises any mining or other operations, the Lessee shall, on the Quarterly Payment Dates, pay the Lessor a quarterly minimum royalty (hereinafter called 'Minimum') equal to one-quarter of an amount calculated at the rate of thirty cents (30¢), Canadian Funds, per Gross Ton on the following tonnages:

During 1960-1964, inclusive	1,500,000 Gross Tons per year
During 1965-1966, inclusive	6,000,000 Gross Tons per year
During 1967-1968, inclusive	8,000,000 Gross Tons per year
During 1969 and each year thereafter	10,000,000 Gross Tons per year

[6] The schedule of tonnages was amended on August 8, 1961 as follows:[13]

During 1960-1964, inclusive,	1,500,000 Gross Tons per year
During 1965-1966, inclusive,	6,000,000 Gross Tons per year
During 1967	8,000,000 Gross Tons per year
During 1968	8,333,000 Gross Tons per year
During 1969-1972, inclusive,	10,333,000 Gross Tons per year
During 1973 and each year thereafter	10,833,000 Gross Tons per year

[7] This provision was renumbered as Section A.3 and the introductory paragraph was replaced by amendment on November 27, 1987:

> 3. For each calendar quarter during which this Indenture remains in effect, and regardless of whether the Lessee shall conduct on the Demised Premises any mining or other operations, the Lessee shall, on the Quarterly Payment Dates, pay the Lessor a quarterly minimum royalty (hereinafter called 'Minimum') equal to one-quarter of an amount calculated at the rate of thirty cents ($.30), Canadian Funds, per Gross Ton on the following tonnages.[14]

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10 Exhibit R-13.
11 Exhibit R-14.
12 Exhibit R-5, Section A.1.
13 Exhibit R-11, Section 1(a).
14 Exhibit R-13, Section III.

[8] The payment of the Minimum Royalty is subject to a number of conditions. The condition which is relevant to the present dispute is as follows:

> (f) When the Lessee shall have paid to the Lessor Minimum for which it has not taken credit, and such payments equal or exceed that figure determined by multiplying the tonnage of Iron Ore Products which can be produced from the remaining proven ore in the Demised Premises by the rate of thirty (30¢) per Gross Ton thereof, then, and in that event, the Lessee shall be under no further obligation to pay Minimum to the Lessor. The quantity of the remaining proven ore will be established in accordance with operating estimates customary in the iron ore industry. Any dispute which may arise hereunder with respect to the rights and limitations herein set forth, shall be submitted to arbitration as hereinafter provided.[15]

[9] In the event that the lessee is in default to pay any rents or royalties, the 1959 Lease terminates after a 60 day notice:

> 4. That if and whenever any of the rents or royalties hereby reserved or any part thereof shall be in arrears for thirty (30) days or if any covenant or condition herein contained shall not have been duly performed or observed, the Lessor, upon giving sixty (60) days' notice in writing to the Lessee that such rents or royalties have not been paid and demanding payment thereof or that any covenant or condition has not been performed or observed, may, at any time thereafter, if such payment is not made or such covenant or condition is not performed or observed within such period of notice, enter into and upon the Demised Premises or any part thereof and thereupon this demise shall absolutely determine subject to the same obligations on the part of the Lessee as if such determination had been effected by the Lessee pursuant to the provisions of Clause 1 of this Part C and without prejudice to the right of action of the Lessor in respect of any breach of the Lessee's covenants herein contained.[16]

[10] Further, the 1959 Lease provides that the leased area reverts to the lessor if the lessee brings a mine into production and then ceases to operate it for ten consecutive years:

> 9. That where the Lessee has brought a mine into production in the Demised Premises, the Demised Premises shall revert to the Lessor if the mine has ceased to operate for ten (10) consecutive years.[17]

[11] This clause was amended on June 28, 1960 as follows:

> 9. Where the Lessee has brought a mine into production on the Demised Premises, the Demised Premises shall revert to the Lessor if operations at such

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15 Exhibit R-5, Section A.1 (f).
16 Exhibit R-5, Section C.4.
17 Exhibit R-5, Section C.9.

> mine are discontinued and thereafter in and during any period of ten (10) consecutive years no substantial mining operations are carried on anywhere on the Demised Premises.'[18]

[12] The consequences of the termination of the 1959 Lease include the lessor's right to purchase buildings, plant, machinery, articles and things of the lessee on the property :

> 3. That it shall be lawful for the Lessee to remove all buildings, plant, machinery and all articles and things of the Lessee in and upon or under the Demised Premises at any time within six (6) months after the determination of the tenancy; provided that the Lessor shall have the right by notice in writing to the Lessee to purchase all or any part of the said properties, articles and things at the then reasonable market price, to be determined, failing agreement thereon between the parties, by arbitration as hereinafter provided.[19]

2. The facts

[13] The Wabush mine began its operations in 1965.

[14] One portion of the property was leased by Wabush Iron in 1959. The other portion was leased by Pickands Mather and Stelco, who transferred the lease to Wabush Iron. Wabush Iron later transferred the lease to Wabush Mines, which was initially an unincorporated joint venture of Wabush Iron, Pickands Mather (later Dofasco) and Stelco. The partners were bought out in 2010. The current partners of Wabush Mines are Wabush Iron and Wabush Resources.

[15] Mining operations at the Wabush mine were suspended in March 2014 on the basis that they were not economically sustainable. Mining operations were permanently idled in November 2014.

[16] On May 20, 2015, Wabush Iron and Wabush Resources applied for and were granted Court protection under the *Companies' Creditors Arrangement Act*.[20]

[17] On August 24, 2015, Wabush Mines paid by wire transfer an amount of $750,000 as the Minimum Royalty for the period from April 1, 2015 to June 30, 2015.[21] This is the amount that Wabush Mines had been paying since it suspended operations in March 2014.

[18] MFC sent a notice of default on September 3, 2015.[22]

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18 Exhibit R-9, Section 2(d).
19 Exhibit R-5, Section C.3.
20 R.S.C. 1985, c. C-36 as amended.
21 Exhibit R-16.
22 Exhibit R-15.

[19] The subsequent correspondence back and forth between the parties and with the Monitor shows that the dispute at this time related to two issues:

1. MFC argued that Wabush Mines underpaid on August 24, 2015 because it did not take into consideration the amendment on August 8, 1961 which increased the tonnage on which the Minimum Royalty Payments were calculated from 10,000,000 Gross Tons to 10,833,000 Gross Tons,[23] which had the effect of increasing the quarterly Minimum Royalty Payments from $750,000 to $812,250.[24]

2. The Monitor argued that Wabush Mines was only required to pay the *pro rata* portion of the Minimum Royalty Payment for the period straddling the Initial Order on May 20, 2015, and that the portion for the period prior to the Initial Order was a pre-filing debt that would be dealt with in the plan.[25]

[20] Wabush Mines paid the difference of $62,250 to MFC to resolve the first issue.[26] It has since abandoned the second issue.

[21] On November 23, 2015, Wabush Mines served its Motion for Directions and the Issuance of a Safeguard Order (#247) in which it sought:

1. A declaration that (a) the expression “remaining proven ore” in the 1959 Lease means “iron ore that could be extracted in an economically viable or profitable manner” and that (b) in light of the current market condition, there is no “remaining proven iron ore” at the Wabush mine, such that (c) Wabush Mines is not required to pay any Minimum Royalty; and

2. A safeguard order effectively suspending any obligation to pay the Minimum Royalty until 21 days after the Court issues its judgment on the Motion for Directions.

[22] The Motion for Directions was contested by MFC.

[23] The parties came to an agreement with respect to the safeguard order requested by Wabush Mines. Pursuant to that agreement, the Court issued the following safeguard orders on December 4, 2015:

> **ORDERS** that until such time as the Court renders judgment with respect to the Motion, the Wabush CCAA Parties shall give 14 day prior notice to MFC before dismantling or destroying the infrastructure or fixtures at the Wabush mine, in

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[23] Exhibit R-11, par. 1(a), amending Exhibit R-5, Section A.1.

[24] Exhibit R-17. The actual calculation should be ¼ x $0.30 x 10,833,000 = $812,475, but the parties acted on the basis that the proper amount was $812,250.

[25] Exhibit R-18. This argument has been abandoned by Wabush Mines.

[26] Exhibit R-18.

> order to allow MFC to take whatever proceedings it considers appropriate to protect its rights;
>
> **ORDERS** the Wabush CCAA Parties to deposit the sum of $812,250 per quarter with the Monitor in respect of the quarters ending October 25th, 2015 and following, to be held pending final judgment by the Court on the Motion;
>
> **ORDERS** that MFC is required to seek an order to lift the stay of proceedings prior to taking any action to terminate the Sublease or enforce any right thereunder.

[24] Starting with the October 25, 2015 payment, the Monitor set aside $812,500 per quarter and as of December 1, 2017 it held the sum of $6,543,349.42 including interest.[27]

[25] Further, Wabush Mines gave notice to MFC with respect to its attempts to sell the assets on the Wabush mine site. MFC did not exercise its right to purchase any assets.

[26] On September 19, 2016, MFC filed a Motion to Partially Lift the Stay of Proceedings, to Vary a Court Order, to Obtain Payment of Sums of Money Held in Trust by the Monitor, to Terminate a Sub-Lease and for Additional Relief (#380). In its motion, MFC asks the Court to do the following:

1. Declare that the 1959 Lease is terminated;

2. Order the Monitor to pay to MFC the amounts that it holds as Minimum Royalties;

3. Reserve the rights of MFC to acquire assets of Wabush Mines in accordance with its existing contractual rights;

4. Order the Monitor to provide MFC with copies of the proofs of claim filed by Cliffs Natural Resources (the ultimate parent of Wabush Mines) and related parties; and

5. Order the Monitor to suspend consideration of any liquidation proposals until final judgment on the motion.

[27] The issue with respect to the proofs of claim was resolved. Moreover, the Monitor considered liquidation proposals but, as mentioned above, advised MFC of any developments in that regard so that MFC could exercise its rights.

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[27] This represents eight quarterly payments of $812,250 plus interest. The eight quarterly payments are those which may be due from October 25, 2015 (covering the period July 1, 2015 to September 30, 2015) to July 25, 2017 (covering the period from April 1, 2017 to June 30, 2017).

[28] MFC filed its Contestation of Wabush Mines' Motion for Directions on April 5, 2017 (#492). It asks for the dismissal of the Motion for Directions and for the payment to MFC of all amounts paid in trust to the Monitor since December 4, 2015.

[29] On June 2, 2017, the Wabush Iron and Wabush Resources signed an Asset Purchase Agreement for the sale of the Wabush mine to Tacora Resources Inc., a subsidiary of MagGlobal LLC.[28] The Court issued an order approving the sale on June 26, 2017 and the sale closed on July 18, 2017.

[30] On July 25, 2017, the Monitor transferred the quarterly Minimum Royalty payment of $812,250 for the period from April 1, 2017 to June 30, 2017 to its trust account. On the same date, Tacora paid $812,475 directly to MFC under protest.[29]

[31] Tacora assumed the 1959 Lease and resolved whatever issues it had with MFC. In particular, MFC agreed to credit Tacora with the sum of $812,475 if MFC is paid the full amount it is claiming in this litigation.[30]

[32] As a result, the dispute between Wabush Mines and MFC is now limited to the question of who is entitled to the amounts held in trust by the Monitor as Minimum Royalties for the period from July 1, 2015 to June 30, 2017.

[33] Since MFC asks in its Contestation for an order that the Monitor pay to MFC the amounts that it holds as Minimum Royalties, it is no longer necessary to proceed on the MFC Motion to Partially Lift the Stay.

[34] Similarly, Wabush Iron and Wabush Resources filed an Amended Motion for Directions at the hearing to seek a declaration that the amounts held in trust by the Monitor are not due to MFC and should be transferred by the Monitor to its general trust account. Further, they argue that the payment on July 25, 2017 should be reimbursed even if the Court concludes that Wabush Mines is generally obliged to pay the Minimum Royalty Payments, because the sale to Tacora closed on July 18, 2017.

ISSUES IN DISPUTE

[35] The Court has identified the following issues:

1. What is the proper interpretation of the cap on Minimum Royalties under Article A.1(f) of the 1959 Lease?

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28 Exhibit R-28.
29 Tacora appears to have calculated the amount correctly.
30 MFC produced an extract from its contract with Tacora.

2. What was the amount of the cap in the period between July 1, 2015 and June 30, 2017?

3. Is Wabush Mines responsible for all or a portion of the Minimum Royalty Payment paid on July 25, 2017?

ANALYSIS

1. Proper interpretation of the cap on Minimum Royalties under Article A.1(f) of the 1959 Lease

[36] Section 11 of the 1959 Lease Agreement provides as follows:

> 11. This Indenture shall be construed and interpreted in accordance with the laws of the Province of Newfoundland, Canada.

[37] Wabush Mines produced the report of Kevin F. Stamp, Q.C., who is licensed and qualified to practice law in the Province of Newfoundland and Labrador since 1978.[31] His report was not contested by MFC and he did not testify at the trial.

[38] Stamp came to the following conclusion on the applicable principles of contractual interpretation under the law of Newfoundland and Labrador:

> The meaning to be attributed to the term "remaining proven ore", undefined in the 1959 Amendment and Consolidation, may be informed and established by evidence of the history of the transaction, the factual matrix surrounding and the genesis and aim of the agreement. Clearly, the existence and prevalence of mining industry terms of art, trade practices, standards or usages, all of which are outside the mandate of this opinion, may also be aids to interpretation of the term including whether the term incorporates or implies an element of economic viability.[32]

[39] His report focused on the interpretation "remaining proven ore", but the principles he set out are of general application.

a. Language of the 1959 Lease

[40] The first step in the analysis is the language of Article A.1(f) and the way that it operates, in the context of the 1959 Lease as a whole.

[41] Article A.1(f) of the 1959 Lease provides as follows:

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31 Exhibit R-22.
32 *Id.*, p. 3.

> (f) When the Lessee shall have paid to the Lessor Minimum for which it has not taken credit, and such payments equal or exceed that figure determined by multiplying the tonnage of Iron Ore Products which can be produced from the remaining proven ore in the Demised Premises by the rate of thirty (30¢) per Gross Ton thereof, then, and in that event, the Lessee shall be under no further obligation to pay Minimum to the Lessor. The quantity of the remaining proven ore will be established in accordance with operating estimates customary in the iron ore industry. Any dispute which may arise hereunder with respect to the rights and limitations herein set forth, shall be submitted to arbitration as hereinafter provided.
>
> [Emphasis added]

[42] It creates a cap on the Minimum Royalties paid and not credited under the 1959 Lease. The cap is equal to 30¢ per Gross Ton of "Iron Ore Products which can be produced from the remaining proven ore in the Demised Premises".

[43] MFC argues that the cap is reached when the quantity of "remaining proven ore" falls below the quantities set out in Article A.1, as amended in August 1961 (i.e. 10,833,000 today).[33] That is not how the cap operates. Those quantities are used to calculate the Minimum Royalties and are not relevant to the cap.[34]

[44] What does the expression "Iron Ore Products which can be produced from the remaining proven ore" mean?

[45] The expression uses the present tense "can be produced" which suggests a present ability to produce, as opposed to "could be produced" which is conditional or "will be produced" which is future. This suggests that the expression "Iron Ore Products which can be produced from the remaining proven ore" is limited to products that can be produced in present circumstances.

[46] It is not enough to say that there is iron ore in the ground and therefore that Iron Ore Products can be produced. The present ability to produce must necessarily include economic factors. No one will produce Iron Ore Products from the remaining proven ore if they will not make a profit doing so. This supports the proposition that no Iron Ore Products can be produced from the remaining ore if it is not profitable to do so.

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33 Paragraphs 47 to 52 of the MFC Plan of Arguments dated December 4, 2017.

34 As an example, if 60 million Gross Tons of Iron Ore Products can be produced from 200 million Gross Tons of remaining proven ore, then the cap is 30¢ per Gross Ton times 60 million Gross Tons or $18 million. If nothing is being produced, the lessee would be required to pay Minimum Royalties of 30¢ per Gross Ton per year on 10,833,000 Gross Tons, or $3,249,900 per year, for 5.5 years until it had paid a total of $18 million.

[47] There are a number of other provisions in the 1959 Lease which relate to the economics of the deal and thereby provide the context in which the cap in Article A.1(f) must be interpreted:

- It is a long term arrangement. The 1959 Lease expires on May 20, 2055, which is the balance of the 99 year term under the sub-lease in favour of MFC (Preamble);

- The annual rent is only $360 per year, less sums expended on the prospecting, exploration, development or mining of the Demised Premises (Preamble). This amount is paid on a regular basis and is not subject to any cap, although the amounts paid are not significant;

- The Earned Royalty is based on the quantity of Iron Ore Products shipped during the quarter. The rate is 7% of the Seven Islands Price or 75¢ per Gross Ton, whichever is higher (Article A.1).[35] "Iron Ore Products" are defined as follows:

  > "Iron Ore Products" shall mean and include iron ore, crude iron-bearing material and any metal, material or composition produced from iron ore or crude iron-bearing material.

- The Minimum Royalty is based on a defined number of Gross Tons, increasing to 10,000,000 by 1969 (Article A.1).[36] The number of Gross Tons on which the Minimum Royalty is payable is reduced proportionately if U.S. steel production falls below 85% of the rated capacity for that year (Article A.1(d));

- The rate for the Minimum Royalty is 30¢ per Gross Ton per year or ¼ of 30¢ (7½¢) per Gross Ton per quarter (Article A.1);

- The Minimum Royalty payable any quarter is reduced by any Earned Royalty paid for the quarter (Article A.1(a));

- The lessee is given a credit for any Minimum Royalties paid against future Earned Royalties (Article A.1(c)). It is only the paid and uncredited Minimum Royalties which are counted against the cap;

- The lessee can terminate the lease on 60 days' notice and on payment of all amounts due plus an amount increasing to $1,600,000 in 1964, less sums expended on the prospecting, exploration, development or mining of the Demised Premises and amounts paid as royalties or otherwise (Article C.1);

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[35] This amount was amended by the November 1987 agreement (Exhibit R-13).

[36] These amounts were amended in 1961 (Exhibit R-11).

- The landlord can terminate the lease on 60 days' notice for failure to pay the rents or royalties (Article C.4); and

- Where the lessee has brought a mine into operation and the mine has ceased to operate for ten consecutive years, the Demised Premises shall revert to the landlord (Article C.9).

[48] These provisions all work together:

- If the lessee suspends operations while Iron Ore Products can be produced from the remaining proven ore, there are a number of consequences:
    - the lessee has the option of terminating the lease on 30 days' notice;
    - if the lessee does not terminate the lease, it must pay Minimum Royalties (up to the cap) until it resumes operations;
    - the amount of the Minimum Royalty may be adjusted if the lessee has suspended operations because of a decline in demand;
    - if the lessee resumes operations, it gets credit for the Minimum Royalties paid against future Earned Royalties;
    - if operations remain suspended for 10 years, the lease terminates.
- If the lessee ceases operations when no Iron Ore Products can be produced from the remaining proven ore, then the cap is zero. This means that the lessee is not required to pay Minimum Royalties, and may continue to occupy the premises for 10 years without paying any royalties.

[49] It makes sense that the Minimum Royalties are only payable when Iron Ore Products can be produced from the remaining proven ore but they are not being produced or are not being produced in sufficient quantities. When those Iron Ore Products are produced in the future, they will attract Earned Royalties. Article A.1(c) gives the lessee a credit for any Minimum Royalties paid against future Earned Royalties. That credit is meaningless if there are no Earned Royalties in the future.

[50] Moreover, the combined effect of Articles A.1(f) and A.1(c) is to ensure that the lessee only pays the royalty once. The lessee gets credit for the Minimum Royalty paid against future Earned Royalties and does not have to pay any Minimum Royalty beyond the Iron Ore Products that will attract Earned Royalties in the future. The Minimum Royalty is not meant to be paid instead of Earned Royalties but rather in anticipation of Earned Royalties.

[51] MFC objects to the idea that the lessee can occupy the premises for 10 years without paying any royalties. However, this result is not unreasonable in the context where (1) it is a 99 year lease, so 10 years is not that long, (2) the lessee continues to pay the agreed rent, and (3) the mine cannot be operated profitably, so no one else would be prepared to pay royalties. Moreover, if iron ore prices increase and operations become profitable again, the lessee will either resume operations and pay Earned Royalties or remain closed and pay Minimum Royalties. If the lessee resumes operations without having paid any Minimum Royalties, MFC ends up in the same situation as if Minimum Royalties had been paid, because any Minimum Royalties paid would be offset against Earned Royalties that become due.

[52] MFC also argues that the 1959 Lease guaranteed it a revenue stream for the duration of the 1959 Lease, or at least as long as Wabush Mines was in possession of the mine. The Court does not agree. Rent was guaranteed. Earned Royalties are only payable if there is production. Minimum Royalties are payable if there is no production, but only up to the cap. Once the lessee reaches the cap, it continues in possession of the mine without paying any royalties for the remainder of the 10 years.[37]

[53] The Court therefore concludes on a review of the 1959 Lease that the cap at any point in time is based on the quantity of Iron Ore Products that can produced in the circumstances existing at that time. That notion includes both that there must be remaining proven iron ore and that the production of Iron Ore Products from the remaining proven ore must be profitable in the circumstances at that time.

b. Extrinsic Evidence

[54] The only extrinsic evidence presented to the Court which could be relevant to the interpretation of the 1959 Lease was evidence as to the pricing of iron ore.

[55] This evidence is relevant in that the pricing of iron ore prior to 1959 might give some sense for what the parties anticipated might happen after 1959.

[56] The U.S. Geological Survey data shows that the price for iron ore (in constant dollars) was volatile. It fluctuated between 1900 and 1945, with a high of $47.45 in 1900 and a low of $23.03 in 1926. The price increased every year from 1947 to 1958 before leveling off, with the result that the price almost doubled from 1947 to 1959.[38]

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[37] See the example in footnote 34, where the Minimum Royalties reach the cap after 5.5 years. In that scenario, the lessee stays in possession of the mine without paying any royalties for another 4.5 years.

[38] Exhibit R-26. See also Crédit Suisse, “Long Run Commodity Prices: Where Do We Stand?”, 27 July 2011 (Exhibit R-25).

[57] It is likely that the parties assumed that the price of iron ore would continue to rise, although they would have been aware that the price had fluctuated in the past and might fluctuate in the future. The 1959 Lease recognizes that the lessee may suspend production at the mine for a period of up to 10 years. It also includes a mechanism to adjust the Minimum Royalties if demand for steel fell by more than 15%.

[58] This evidence is consistent with the Court's interpretation of the clause.

c. Expert evidence on "remaining proven ore"

[59] In interpreting Article A.1(f), both parties focused on the term "remaining proven ore" and more specifically the word "ore".

[60] The 1959 Lease uses the term "remaining proven ore" only twice, both in Article A.1(f). It does not define the term, and provides only that:

> The quantity of the remaining proven ore will be established in accordance with operating estimates customary in the iron ore industry.

[61] Moreover, there was no applicable statutory or regulatory definition in 1959.

[62] The principal arguments at trial focused on how the term "remaining proven ore", as a term of art in the mining industry, would have been understood in 1959. The reference in Article A.1(f) that "The quantity of the remaining proven ore will be established in accordance with operating estimates customary in the iron ore industry" certainly makes evidence from industry experts relevant in the interpretation of the term "remaining proven ore".

[63] Both parties called industry experts to testify at the trial. They focused on the expression "remaining proven ore" and not on how the expression is used in the 1959 Lease. Wabush Mines argued that "ore" meant "a body of rock containing iron minerals which could be mined and processed at a profit", whereas MFC argued that "ore" does not include any reference to profitability and means only "a natural mineral compound, of the elements of which one at least is a metal". Put simply, the debate is whether the definition of "ore" includes only geological factors, or whether it includes both geological and economic factors.

[64] Christopher J. Lattanzi, P. Eng., was called by Wabush Mines. He produced a report dated October 11, 2016[39] and a second report dated December 20, 2016.[40]

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[39] Exhibit R-23.
[40] Exhibit R-24.

[65] In his first report, Lattanzi reviewed the relevant literature and referred to his personal experience. His analysis focused on the words “ore” and “proven”. The word “remaining” is clear and does not give rise to any controversy. He concluded that the word “ore” meant a body of mineralized rock which could be mined and processed at a profit:

> 15. From a review of the relevant literature, it is evident that, between 1900 and 1959, there was no universally accepted definition of the word "ore" within the mining industry in North America. It is equally clear, however, that the preponderance of opinion favoured a definition that embodied the concept of profit, under which "ore" would be defined as a body of mineralized rock which could be mined and processed at a profit. The strongest proponent of such a definition was J.F. Kemp, who wrote, in 1909: "The test of yielding a metal or metals at a profit seems to me, in the last analysis, to be the only feasible one to employ."[41]

[66] He also concluded that the word “proven” meant that the estimates of tonnage and grade were accurate to within reasonably close limits such that there was little risk that those estimates would not be realized in practice:

> 17. A review of the relevant literature also reveals that there was no universally accepted system of classifying reserves, in terms of the degree of confidence or reliability to be placed in the estimates of tonnage and grade. Following the publication by the U.S. Geological Service of a proposed three-tiered classification system in 1943, however, much of the discussion seems to have centred around nomenclature. There appears to have been general agreement that the terms "measured reserves", "proved reserves" or "proven reserves" meant that the estimates of tonnage and grade were accurate to within reasonably close limits and, hence, that there was little risk that those estimates would not be realized in practice.[42]

[67] Lattanzi came to the following overall conclusion as to the meaning of “remaining proven ore”:

> 18. On the basis of the discussion contained in this report, it is my opinion that, 1959, the majority of practitioners within the mining industry would have construed the term "Proven Iron Ore" to mean:
>
> > "A body of rock containing iron minerals which could be mined and processed at a profit, and for which the tonnage and grade have been estimated to a high level of confidence, such that there is reasonable commercial assurance that those estimates will be realized in practice to a low margin of error."[43]

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41 Exhibit R-23, par. 15.
42 *Id.*, par. 17.
43 *Id.*, par. 18.

[68] MFC called Eugene J. Puritch, P. Eng. He filed a report dated November 3, 2016.[44]

[69] Puritch took a very similar approach to Lattanzi: he reviewed much of the same literature and he applied his personal experience.

[70] He concluded as follows with respect to the word “ore”:

> 13. Based on a review of relevant literature between 1900 and 1959, there was no widely accepted evident definition of the word "ore" within the mining industry in North America. It is also apparent that during this period the word "ore" was a loosely defined term that generally meant a natural mineral compound, of the elements of which one at least is a metal. […]
>
> 14. It is evident that during 1956 to 1959, the generally accepted definitions for the words “proven” and “ore” were not clear and any inference that these terms meant a definition of profitability is unsupported. In that era, there was no direct link between the word “ore” and profitability. One must have been surely aware that all mining operations were in business with the goal of being profitable while they pursued the extraction of ore. It was not until 1984 in National Policy 2-A, Guide for Mining Engineers, Geologists and Prospectors, where the term “ore” was specifically defined as “a natural aggregate of one or more minerals, which at some specified time and place may be mined and sold at a profit, or from which some part may be profitably separated.”[45]

[71] He added the following with respect to the word “proven”;

> 15. The misinterpretation by Mr. Lattanzi of the term “proven” to infer profitability prior to 1960 is unfounded. At no place in his referenced documents during that era does the term proven apply directly to profitability. The definition of the term “proven” instead, is properly interpreted to mean metalliferous continuity established by sampling in mine workings, trenches and bore-holes. […][46]

[72] He therefore came to a different conclusion with respect to the term “remaining proven ore”:

> 17. On the basis of the discussion contained in this report, it is my opinion that, in 1959, the majority of mining professionals would have interpreted the term "proven ore" to mean:

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[44] Exhibit D-1.
[45] *Id.*, par. 13-14.
[46] *Id*., par. 15.

> "A natural mineral compound, of the elements of which one at least is a metal where there is practically no risk of failure of continuity"[47]

[73] Lattanzi filed his second report to respond to Puritch's report. He reviews the Puritch report and concludes:

> 54. […] I conclude, therefore, that the continuous preponderance of professional opinion, from 1920 to 1970, was that "ore" meant material that could be mined and processed at a profit. There is nothing in the Puritch report which, to my mind, gainsays that opinion.[48]

[74] The Court concludes that there is little dispute as to the word "proven". Both experts agree that "proven" refers to a high degree of certainty that the iron ore is present. Further, both experts agree that "proven" does not incorporate any notion of profitability. Puritch is mistaken when he states in paragraph 15 of his report that Lattanzi concludes that "proven" implies profitability. As Lattanzi states in paragraph 44 of his second report:

> 44. Paragraph 15 of the Puritch report states: "The misrepresentation by Mr. Lattanzi of the term "proven" to infer profitability prior to 1960 is unfounded." Nowhere, however, does the Lattanzi report assert that "proven" implies profitability, and the criticism at paragraph 15 of the Puritch report is misplaced. There is no dispute that the word "proven", in the context of "proven ore", denotes the highest level of geological confidence and, hence, the lowest risk, in the estimates made of the tonnage and grade of the mineral deposit in question. It is the word "ore" which, in my opinion, as of 1959, denoted profitability.[49]

[75] The issue, therefore, is whether the word "ore" includes the notion of profitability.

[76] Both experts agree that, between 1900 and 1959, there was no universally accepted definition of the word "ore" within the mining industry in North America. The difference between the two experts is that Lattanzi concludes that the majority of practitioners within the mining industry would have included the notion of profit whereas Puritch concludes that the majority would not have included the notion of profit.

[77] The Court notes as a preliminary matter that it is not necessary to establish a universally accepted definition or even a generally accepted one. The standard for the interpretation of the contract remains the civil standard of balance of probabilities, and any evidence that helps the Court decide which interpretation is more likely is admissible. As such, evidence that a majority of industry participants thought that the expression meant one thing or the other is relevant. Evidence that everyone thought it meant one thing would obviously carry more weight.

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47 *Id*., par. 17.
48 Exhibit R-24, par. 54.
49 *Id.*, par. 44.

[78] Further, National Policy Statement 2-A includes the following definition of "Ore":

> "Ore" means a natural aggregate of one or more minerals which, at a specified time and place, may be mined and sold at a profit, or from which some part may be profitably separated.[50]

[79] However, National Policy Statement 2-A was adopted in 1982, almost 25 years after the 1959 Lease. Moreover, the adoption of a definition by a regulatory body does not necessarily mean that the definition was the majority view prior to its adoption. As such, National Policy Statement 2-A has very limited relevance in interpreting the language in the 1959 Lease.

[80] The Court is satisfied, based on a review of the reports and the testimony of Lattanzi and Puritch and the authorities that they cite, that the majority view in 1959 was that the word "ore" included the notion that it could be mined at a profit. That conclusion is based on the following elements:

- Albert H. Fay, in the 1920 edition of his *Glossary of the Mining and Mineral Industry* first published in 1918, compiles four definitions of the "ore" from different sources. Three of the four definitions include the notion of profit, including J.F. Kemp, who proposed the following definition of "ore" in 1909:

  > A metalliferous mineral or an aggregate of metalliferous minerals, more or less mixed with gangue, which from the stand point of the miner, can be won at a profit, or from the stand point of the metallurgist can be treated as a profit. The test of yielding a metal or metals at a profit seems to me, in the last analysis, to be the only feasible one to employ.

- In his 1956 *Dictionary of Geological Terms*, C.M. Rice defines "ore" by reproducing three of Fay's definitions (including two that include the notion of profit);

- Herbert Cox sent a questionnaire to a group of Canadian mining companies to get information about current usage in Canada of the term "ore" in or shortly before 1968 and published his findings in 1968 in a paper entitled "Definition of Ore and Classification of Ore Reserves". Since there is nothing that suggests a change in the definition between 1959 and 1968, the Court will treat the results of the Cox survey as relevant to the interpreting what the parties meant in 1959. Cox reports that all 29 replies received chose a definition that included the notion of profit. Based on his findings, Cox proposed the following definition that he hoped would be generally acceptable:

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[50] Exhibit D-4.

> Ore is a natural aggregate of one or more minerals, which may be mined and sold at a profit or from which some part may be profitably extracted.

[81] The Court concludes that, on the balance of probabilities, the expert evidence favours the interpretation of the word "ore" that includes the notion of profit.

d. Conclusion

[82] In the final analysis, it does not matter whether the Court adopts the Lattanzi definition or the Puritch definition of "ore":

- On the Lattazi definition, there is no "remaining proven ore" if it cannot be mined profitably; or

- On the Puritch definition, it is "remaining proven ore" whether or not it is profitable to mine it, but, on the Court's interpretation of "can be produced", no Iron Ore Products can be produced from the "remaining proven ore" if it is not profitable to do so.

[83] On either definition, the question of whether it is profitable to mine the iron ore is relevant to the cap.

[84] The result is as follows:

- If the mine is closed because the iron ore deposit is exhausted, there is no Minimum Royalty payable because there is no remaining proven ore.

- If the mine is closed temporarily for economic or other reasons but it can be mined profitably, the Minimum Royalty is payable during the closure because there is remaining proven ore and Iron Ore Products can be produced from the remaining proven ore. The Minimum Royalty paid will be credited against the Earned Royalties payable when operations resume.

- If the mine is closed in circumstances where it cannot be mined profitably, then no Minimum Royalty is payable either because there is no remaining proven ore or because no Iron Ore Products can be produced from the remaining proven ore. If circumstances change and the mine is reopened, then the Earned Royalties will be payable in full, and the landlord will end up in exactly the same position as if the Minimum Royalties had been paid.

- In any of these scenarios, if the mine remains closed for 10 years, the landlord has the right to terminate the lease and take the premises back.

2. Amount of the cap in the period between July 1, 2015 and June 30, 2017

[85] There is no debate as to the quantity of mineral material in the ground.

[86] A revised ore estimate was prepared in July 2010 which gave estimated ore reserves as of July 1, 2010 of 208,464,200 metric tonnes of proven reserves and 22,400,000 metric tonnes of probable reserves, for a total of 230,864,200 metric tonnes.[51]

[87] The estimate was updated based on the annual depletion of the proven reserves. The updated estimates as of December 31, 2014 are 176.7 million metric tonnes of proven (measured), and 22.8 million metric tonnes of probable (indicated), for a total of 199.5 million metric tonnes.[52]

[88] Wabush Mines pleads that it was not economically viable to mine the material, and it cites its own experience and its decision to first suspend and then permanently cease operations of the mine. As a result, either (1) the material is not remaining proven ore, or (2) no Iron Ore Products can be produced from the remaining proven ore.

[89] Wabush Mines produced the Cliffs Eastern Canadian Iron Ore Quarterly Business Reviews for the fourth quarter of 2012 and 2013 and the first quarter of 2014[53] to show the financial information that was relied upon in making the decision to discontinue operations at the Wabush mine:

- Loss on sales of $58.2 million before selling, general and administrative and other expenses of $21.5 million in 2012;[54]
- Loss on sales of $75.6 million before selling, general and administrative and other expenses of $196.7 million in 2013;[55] and
- Loss on sales of $24.8 million before selling, general and administrative and other expenses of $38.3 million in the first quarter of 2014.[56]

[90] Clifford Smith of Wabush Mines testified that the main factor contributing to these losses was the depressed price of iron ore in the global market. The data on the pricing of iron ore shows that iron ore reached its highest level on record in 2012 before falling precipitously.[57] Smith testified that the price dropped from a high of $150 per tonne

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51 Exhibit D-2.
52 Exhibit D-2A.
53 Exhibit R-27.
54 *Id.*, 4Q12, p. 19.
55 *Id.*, 4Q13, p. 18.
56 *Id.*, 1Q14, p. 17.
57 Exhibits R-25 and R-26.

down to $30 per tonne. He also testified that the quality of the ore body was deteriorating after 50 years of mining and that Wabush Mines had a high cost structure. Wabush Mines had been working on cost reduction over the prior three years, but it was not enough. Wabush Mines had also invested in some new mining equipment and had installed a manganese separator on a trial basis on one processing line in 2009 or 2010.

[91] As a result of these losses, the operations were idled in March 2014 and Wabush Mines began its attempts to sell the mine or to attract a new investor. The mine was closed in November 2014 when the initial attempts to sell were unsuccessful. The sales process continued after the mine was closed. It was not successful in finding a buyer until June 2017.

[92] These financial difficulties are reflected in the reclassification of the reserves as mineralized material in February 2014.

[93] Cliffs Natural Resources Inc. is the ultimate parent of Wabush Mines. It is an international mining and natural resources company incorporated in Ohio with its headquarters in Cleveland. It is a public company and its shares are traded on the New York Stock Exchange. As such, it is governed by the rules of the U.S. Securities and Exchange Commission ("SEC").

[94] Industry Guide 7 of the SEC requires issuers to use the following definition of "Reserve":

> That part of a mineral deposit which could be economically and legally extracted or produced at the time of the reserve determination.[58]

[95] In its 2013 Annual Report, which was signed on February 14, 2014, Cliffs used the following definitions:

> Reserves are defined by SEC Industry Standard Guide 7 as that part of a mineral deposit that could be economically and legally extracted and produced at the time of the reserve determination. All reserves are classified as proven or probable and are supported by life-of-mine plans.[59]
>
> …
>
> "Mineralized material" is a concentration or occurrence of natural, solid, inorganic or fossilized organic material in or on the Earth's crust in such form and quantity and of such a grade or quality that it has reasonable prospects for economic extraction. Mineralized material has been delineated by appropriate sampling to

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[58] "SEC Industry Guide 7: Description of Property by Issuers Engaged or to be Engaged in Significant Mining Operations" (Exhibit R-29), par. (a)(1).

[59] Exhibit R-19, p. 36.

> establish continuity and support an estimate of tonnage with an average grade of the selected metals, minerals or quality. We have various properties in either advanced exploration, development or operational stages that contain considerable amounts of mineralized material that could eventually be converted into reserves given favorable operating and market conditions. Future production from mineralized material would require additional economic and engineering studies, permitting and significant capital expenditures before any potential value could be realized. A deposit of mineralized material does not qualify as a reserve until a comprehensive evaluation, based upon unit costs, grade, recoveries and other material factors, concludes both economic and legal feasibility. Further, for new projects a "final" or "bankable" feasibility study is required prior to the reporting of mineral reserves.
>
> Readers are cautioned not to assume that any of these mineralized materials will ever be converted into mineral reserves. Our mineralized material estimates contain only material classified as measured or indicated. Materials classified as inferred have a greater amount of uncertainty as to their future ability to be upgraded and are not included in the estimates reported.[60]

[96] With respect to Wabush, the reserves were reclassified as mineralized material:

> In the second quarter of 2013, we idled the pellet plant at Pointe Noire and decided to produce only an iron ore concentrate from our Wabush facility. Subsequently, on February 11, 2014, we announced that we made the decision to idle all production at our Wabush mine by the end of the first quarter of 2014. As a result, the reserves previously reported for Wabush are now included in our Mineralized Material estimates.[61]

[97] In other words, Cliffs downgraded the Wabush mine from “a mineral deposit that could be economically and legally extracted and produced at the time of the reserve determination” to a mineral deposit that “has reasonable prospects for economic extraction”. While it is true that the decision to close the mine was subjective and unilateral, the decision to reclassify the mineral deposit was made pursuant to Cliffs’ legal obligation in accordance with SEC rules. Moreover, it goes against the interest of Cliffs. The Court accepts that it was done in good faith and not as an attempt to avoid paying the Minimum Royalty.

[98] MFC argues that the reclassification under SEC rules adopted in 1981 “is clearly contrary to what the parties to the Sublease agreed to in 1959” and “cannot amend the terms of the valid and binding Sublease”.[62] These arguments miss the point. MFC is right that the subsequent securities rules in Canada and the United States are of little use in interpreting the 1959 Lease. But the reclassification cannot be contrary to the 1959 Lease and does not amend it. The reclassification is merely a fact in 2014 which

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60 *Id.*, p. 40.
61 *Id.*, p. 38.
62 MFC Plan of Arguments, *supra* note 33, par.59-60.

provides evidence as to the economic viability of the mining operations in February 2014. The economic viability of the mining operations in 2014 is relevant to the application of the 1959 Lease, interpreted independently of the reclassification.

[99] The reclassification was done after the announcement in February 2014 that the operations would be idled in March 2014. At the same time, Wabush Mines began its attempts to sell the mine or to attract a new investor. The mine was closed in November 2014 when the initial attempts to sell were unsuccessful. The prospects for economic extraction were further lowered when the mine was closed.

[100] MFC reclassified the Wabush mine as a discontinued operation in November 2015. The MFC press release recognized that the short term outlook for iron ore prices was not favourable but that the mine remained an interesting long-term opportunity:

> Iron ore prices have declined globally and the short-term outlook is not favorable. But, most importantly, we do not have any debt on this property. While we believe that the mine presents an interesting longt-term opportunity, now is the time for conservatism and prudence while we focus on our efforts. As such, we have initiated a rationalization process and, therefore, have reclassified the mine and our interest in another iron ore property as discontinued operations. We will be responsible stewards of our capital.[63]

[101] All of this evidence confirms that iron ore could not be economically extracted from the Wabush mine in the period between July 1, 2015 and June 30, 2017, which is the focus of this litigation. Lattanzi concluded in his testimony that it was "highly highly unlikely" that Wabush Mines can extract ore at a profit during the relevant period.

[102] MFC pleads that the sale to Tacora in July 2017 disproves all of this. Tacora was willing to pay $70 million[64] for the Wabush mine and it has announced plans to resume production.

[103] MFC produced an analysis of the Wabush mine prepared by Maptek NA for MagGlobal, Tacora's parent, dated March 18, 2017, which estimates the total proven mineral reserves at 333.2 million tonnes and concludes as follows:

> The Scully mine in Newfoundland-Labrador Canada has had significant historical production. The property was closed in 2013 due to supressed iron ore prices and limited low manganese ore remaining within the existing pits. MagGlobal's potential acquisition of the property along with the installation of the manganese reduction circuit will open up significant iron resources that could not be

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63 "MFC Industrial Reports Results for the First Nine Months Of 2015", press release dated November 16, 2015 (Exhibit R-20), p. 3.

64 Tacora paid cash of $2,050,000, assumed Cure Costs valued at $18,745,926.76, and became responsible for the Environmental Liabilities estimated at $49.7 million (Exhibit R-28 and the Monitor's 37th Report).

> considered as ore historically at the operation. Maptek's review of the geology, mineral resource model, as well as new pit designs have proven that significant, economic mineral reserves remain on the property.[65]

[104] Tacora anticipates making a $250 million capital investment, including the installation of the remaining manganese reduction lines. Tacora has also renegotiated the collective agreement to make it more flexible. The other factor that is relevant to the reopening of the mine is that iron ore prices have rebounded from a low of $30 per tonne to $71 per tonne.

[105] The Court is satisfied that the economics changed from the July 2015 to June 2017 period to the present, and that what was not economically viable between July 2015 and June 2017 now is.

[106] Therefore, the Court is satisfied, on the basis of the Lattanzi definition of "ore", there was no "remaining proven ore" between July 1, 2015 and June 30, 2017, or, using the Puritch definition of "ore", no Iron Ore Products can be produced from the "remaining proven ore" between July 1, 2015 and June 30, 2017. Either way, no Minimum Royalties were payable between July 1, 2015 and June 30, 2017.

[107] Further, the Court notes that if Minimum Royalties were payable between July 1, 2015 and June 30, 2017, the result would be that Wabush Mines would pay over $6.5 million in Minimum Royalties for the period between July 1, 2015 and June 30, 2017 on the iron ore reserves and that Tacora would pay Earned Royalties on the same iron ore reserves when they are extracted. Tacora would get no credit for the Minimum Royalties paid by Wabush Mines, with the result that MFC would receive both the Minimum Royalties and the Earned Royalties on the same iron ore. That was never the intention under the 1959 Lease. Moreover, it would be particularly inequitable for MFC to receive this double payment in an insolvency where other creditors of Wabush Mines are receiving substantially less than they are owed.

3. Wabush Mines' responsibility for the Minimum Royalty Payment due July 25, 2017

[108] Given the conclusion to which the Court has come on the main issue in this litigation, the Minimum Royalty payment made on July 25, 2017 will be remitted by the Monitor to Wabush Mines.

[109] Had the Court concluded that Wabush Mines was required to pay the Minimum Royalty, it would have been invited to consider the additional issue of whether Wabush

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[65] Exhibit D-6. This document was not filed as an expert report and its author did not testify. Larry Lehtinen, the CEO of MagGlobal and Tacora, testified. The Court treats this report as a document received by MagGlobal on which MagGlobal based its decision to purchase the Wabush mine, but it does not prove its contents.

Mines was responsible for the Minimum Royalty payment on July 25, 2017, given that the sale to Tacora closed on July 18, 2017.

[110] The Minimum Royalty payment on July 25, 2017 was for the period from April 1, 2017 to June 30, 2017, prior to the sale to Tacora, so it would appear that Wabush Mines would be responsible for that payment.

[111] However, the issue involves the determination of the respective obligations of Wabush Mines and Tacora under the Asset Purchase Agreement. It would not be appropriate for the Court to comment further on that issue without the participation of Tacora in the litigation.

FOR THESE REASONS, THE COURT:

[112] **GRANTS** the Amended Motion for Directions (#607);

[113] **DECLARES** that the terms "remaining proven ore" used in Section C.5 of the Wabush Sublease mean:

> "Iron ore that could be extracted in an economically viable or profitable manner"

[114] **DECLARES** that in light of the market conditions between July 1, 2015 and June 30, 2017, there was no "remaining proven iron ore" at the Wabush mine and no Iron Ore Products can be produced from the “remaining proven ore”;

[115] **DECLARES** that Wabush Mine was entitled not to pay the Minimum Royalty Payment set forth in the 1959 Lease for the period between July 1, 2015 and June 30, 2017;

[116] **DECLARES** that the Deposit Amounts, including any interest since December 1, 2017, are not due to MFC;

[117] **ORDERS** the Monitor to transfer the Deposit Amounts, including any interest since December 1, 2017, to the general trust account opened by the Monitor in connection with the restructuring of the Wabush CCAA Parties;

[118] **THE WHOLE WITH COSTS,** including the fees of the expert Christopher J. Lattanzi, P. Eng.

_____
Stephen W. Hamilton, J.S.C.

Me Bernard Boucher
BLAKE, CASSELS & GRAYDON LLP
For Wabush Iron Co. Limited and Wabush Resources Inc.

Me Gary Rivard
BCF Business Law
For 0778539 B.C. Ltd.

Dates of hearing: December 4 and 5, 2017