



May 18, 2018

Andrew J. Hatnay
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Via Regular Mail

Dear Sir/Madam:

**Re: Wabush Mines et al.
Amended and Restated CCAA Plan of Compromise and Settlement**

Koskie Minsky LLP, along with the firm of Fishman Flanz Meland Paquin LLP (“**FFMP**”) are the co-Representative Counsel on behalf of the salaried employees and retirees of Wabush Mines (the “**Salaried Members**”).

We are writing to provide an update on recent important developments in the proceedings of Wabush Mines under the *Companies' Creditors Arrangement Act* (“**CCAA**”).

As you know, on May 20, 2015, the Wabush Mines companies were insolvent and filed for protection from their creditors under the CCAA. Wabush Mines joined the existing Bloom Lake CCAA proceeding that commenced in January, 2015. Since the outset of the CCAA proceedings, Wabush Mines has been liquidating all of its assets while under CCAA protection and is not restructuring.

In May 2017, given the uncertain recoveries for the Salaried Members in the CCAA proceeding, and the protracted proceedings, we filed a class action against Cleveland-Cliffs Inc. (formerly, Cliffs Natural Resources or “**CNR**”), Cliffs Mining Company (“**CMC**”), and their directors in respect of the amounts that are owing to the Salaried Pension Plan and the OPEB (other post-employment benefit) losses (the “**Class Action**”). The plaintiffs in the Class Action were the same Representatives appointed in the CCAA proceeding: Neil Johnson, Michael Keeper, Damien Lebel, and Terence Watt.

The Initial CCAA Plan of Compromise

Generally, a “Plan of Compromise” in a CCAA proceeding is an agreement reached between the company and its creditors for the treatment of creditors' claims for amounts owing to them by the company. For a CCAA Plan of Compromise to become a valid agreement, it must pass a vote by a required majority of creditors at a creditors meeting and if it passes that vote, then approved by the CCAA Court.

On April 13, 2018, the Bloom Lake CCAA Parties and the Wabush Mines CCAA Parties (the "**CCAA Parties**") brought forward a motion to the court to file a Plan of Compromise (the "**Initial CCAA Plan**"). The Initial CCAA Plan was a proposed deal struck between the CCAA Parties and certain other stakeholders to settle certain claims and provide for the distribution of certain estate cash to creditors in various amounts.

Along with the Initial CCAA Plan, the CCAA Parties also brought a motion for court approval to hold a creditors' meeting to vote on the Initial Plan. The requested order sought by the CCAA Parties and supported by the Monitor would have required each Salaried Member to individually vote on the CCAA Plan or submit a proxy form designating the Monitor or another individual to vote on their behalf.

We did not agree with the Initial CCAA Plan, which we believe did not provide sufficient guaranteed benefits for the Salaried Members, and also because we were not involved in any of the negotiations that led to the Initial CCAA Plan. We also objected to the concept that the individual voting of the Salaried Members would be required to vote at a creditors' meeting, rather than voting as a group through their Representative Counsel.

The CCAA Plan of Compromise Voting Issue

The issue of the procedure of voting for the employees and retirees was brought before the CCAA Judge at a contested hearing. Our Montreal co-Representative Counsel, Mark E. Meland of FFMP, argued that Representative Counsel should vote the claims of the employees and retirees to ensure that the votes of all of the Salaried Members would be counted and that our group would have greater ability to negotiate an improved Plan of Compromise.

On April 20, 2018, the CCAA Judge released his decision and granted Representative Counsel and USW a "deemed proxy" to vote the claims of the Salaried Members (and USW members). The CCAA Court also gave the parties one more month to discuss the Initial CCAA Plan and negotiate improvements to it.

Negotiations for an improved Plan of Compromise and the Settlement of the Class Action

During the last four weeks, our firm and FFMP have been engaged in discussions with the Wabush CCAA Parties and the Monitor for improvements to the Initial CCAA Plan as well as concurrent discussions with CNR for a settlement of the Class Action.

We are pleased to report that those negotiations have been successful and have resulted in two settlements. One is for improvements in an Amended Plan of Compromise (the "**Amended CCAA Plan**"). The second settlement is of the Class Action. We will provide further details of the Class Action settlement under separate cover.

As a result of both of these settlements, **a guaranteed total of \$18 million** will be paid to the fund of the Salaried Plan through the mechanisms of the Amended CCAA Plan. This will significantly improve the funded ratio of the Salaried Plan from 75% (at the wind-up date) to approximately 91%, which will translate into increases to your current monthly pensions.

The Amended and Restated Plan of Compromise

On May 18, 2018, the Court accepted the filing of the Amended CCAA Plan by the CCAA Parties reflecting the settlements that have been reached, and for authorization to hold meetings of creditors to vote on the Amended CCAA Plan. The creditors' meetings are currently scheduled for **June 18, 2018** in Montréal.

If the Amended CCAA Plan passes the required vote of creditors at the creditors' meetings, it must then be approved (known as being "sanctioned") by the CCAA Court as being fair and reasonable in order to become effective. The date of the approval hearing for the Amended CCAA Plan (also known as the "sanction" hearing) is currently scheduled for June 29, 2018 before the CCAA Court in Montréal.

We, FFMP and the Court-Appointed Representatives recommend that the Amended CCAA Plan be accepted. As explained below, we will be voting the deemed proxy we were granted by the CCAA court on behalf of all non-USW employees and retirees (discussed above) in favour of the Amended CCAA Plan.

If you wish to vote against the Amended CCAA Plan, you have the right to opt out of the deemed proxy. If you wish to opt out, you are required to send a written notice (email is sufficient) to the Monitor stating you wish to opt out by 5:00 p.m. Eastern Time on June 14, 2018.

Summary of the Amended CCAA Plan and payments for Salaried Members

The terms of the Amended CCAA Plan and the related agreements are complicated and involve the different Wabush and Bloom Lake companies, different classes of creditors and different payment streams. We summarize some of the terms that are relevant to the Salaried Members below.

a) Pension Settlement

Morneau Shepell, as the pension plan administrator (the "**Plan Administrator**") of the Salaried Plan and the Union Plan (collectively, the "**Pension Plans**"), filed claims for the amounts owing for both the Salaried Plan and USW Plan as at December 16, 2015, in the following amounts:

- Salaried Pension Plan wind-up deficit – \$27,341,000
- Union Pension Plan wind-up deficit – \$28,681,492

Under the Amended CCAA Plan, separate cash pools will be created exclusively for the Salaried and Union pension claims to ensure that the Pension Plans receive a guaranteed payment.

After the implementation of the Amended CCAA Plan, \$36 million will be paid directly to the Plan Administrator, reflecting the amounts of \$18 million for each of the Salaried Plan and the Union Plan. This means that approximately two-thirds of the Salaried Plan wind-up deficit will be recovered as a result of the guaranteed distribution of \$18 million provided for under the

Amended CCAA Plan, a result that we consider very favourable to pensioners in the circumstances.

b) OPEB Settlement

As noted above, in June 2015, the Wabush CCAA Parties terminated the payment of OPEBs payable to retirees. We filed claims on behalf of the Salaried Members for your OPEB losses against Wabush Mines in the CCAA proceedings. Under current law, an OPEB claim is an unsecured claim.

Pursuant to the settlement reached in the Amended CCAA Plan, OPEB and other claims for the Salaried Members will be allowed by the Monitor in the total claim amount of \$26,090,100.

Based on estimates provided by the Monitor, we expect that distributions on account of OPEB and other employee claims could be in the order of approximately \$2.3 million (subject to adjustment). This amount is subject to other elements that are still ongoing in the CCAA file, including potential future realizations and the resolution of non-employee claims and that are not in relation to ex-employees and that remain in dispute. The final amount of the distribution associated with OPEB and other employee claims will not be known with certainty for some time, but the Representatives are satisfied that this amount will be significantly larger than without the proposed Amended CCAA Plan. We will provide further information about the timing of distributions in respect of OPEB claims in the future as soon as more information is available.

c) Discontinuance of the Litigation

i. Appeal of the Pension Priority Motion before the Quebec Court of Appeal

At the outset of these CCAA proceedings, we asserted a priority claim in favour of the Salaried Plan members for the amounts owing by Wabush Mines to the Salaried Plan. This priority claim is based on the deemed trust priority provisions in section 32 of the Newfoundland and Labrador *Pension Benefits Act* ("NLPBA") and the 2013 decision of the Supreme Court of Canada in the case of *Indalex*.

In September, 2016, the Monitor filed a motion for directions with questions it sought to have the CCAA Court resolve relating to the NLPBA deemed trust priority claim. In September 2017, the CCAA Court released its decision and held, among other things, that the NLPBA deemed trust priority was not effective in these CCAA proceedings. We and other pension parties obtained leave to appeal the CCAA Court's decision to the Quebec Court of Appeal.

The appeal hearing is scheduled to be heard from June 11-13, 2018 but, as a result of the settlements that have been reached, this appeal will be discontinued under the Amended CCAA Plan.

ii. Monitor's appeal to the Supreme Court of Canada of the Newfoundland Reference Decision

On March 27, 2017, the government of Newfoundland & Labrador directed that a Reference be brought before the Newfoundland Court of Appeal for interpretations of the deemed trust provisions in section 32 of the NLPBA. We appeared before the Court of Appeal in September 2017 on the contested Reference hearing involving the Monitor, CCAA Parties, and other stakeholders.

On January 15, 2018, the Court of Appeal released its Reference decision and made two important interpretations which in our view are favourable to the Salaried Members:

- a) The deemed trusts in section 32 of the NLPBA extend to cover the entire wind-up deficit amount owing by the employer to the pension plan; and
- b) The pension plan administrator's "lien and charge" in section 32(4) of the NLPBA is a valid secured claim in favour of the pension plan administrator over the same amounts that are subject to the deemed trusts, and operates as a back-up remedy to the deemed trust for amounts owing by an employer to a pension plan.

The Monitor and the City of Sept-Iles appealed the Reference decision to the Supreme Court of Canada. The hearing of the appeal is scheduled to be heard on October 18, 2018. As a result of the settlements reached, the Supreme Court of Canada appeal will also be discontinued.

d) Releases to the CCAA Parties and their affiliates, including CNR, CMC, and their directors

Generally, a "release" in a CCAA Plan of Compromise operates to protect a party from exposure to liability. The Amended CCAA Plan provides for an extensive release for the benefit of the CCAA Parties, the parent companies (CNR and CMC) who are the defendants in the Class Action, their directors and officers, and certain other entities (collectively, the "**Released Parties**").

Once the Amended CCAA Plan is approved by the CCAA Court, this means that the Released Parties cannot be sued. The defendants in the Class Action will get those releases in exchange for their contributions to the settlement funds that are being paid to the Amended CCAA Plan.

The text of the Amended CCAA Plan and the related documents and agreements are posted on the Monitor's website, as well as our firm's website for Wabush Mines employees and retirees.

The creditor voting process on the Amended CCAA Plan

i) Voting in respect of the Pension Deficit Claim

As noted above, the current pension plan administrator of the Salaried Plan (and the Union Plan) is Morneau Shepell. Morneau Shepell, as the administrator, is entitled to one vote (as it is one creditor) in the amount of the wind-up deficit in respect of each pension plan. As required under

the settlements reached, Morneau Shepell is required to vote in favour of the Amended CCAA Plan.

ii) Voting in respect of the OPEB Claim

As noted above, Representative Counsel (our firm and FFMP) is deemed to be the proxy for all the Salaried Members, and is authorized to vote these claims on your behalf. **You are not required to attend the creditors' meeting in respect of your OPEB claims, nor do you have to complete any form to vote. We will be voting your claims in favour of the Amended CCAA Plan.**

However, if you have a claim for the loss of OPEBs and you wish to vote *against* the Amended CCAA Plan, you may attend the meeting in person to cast your vote against it. If you wish to vote against the Amended CCAA Plan but will not be attending the meeting in person, you may appoint a proxy other than Representative Counsel by notifying the Monitor in writing (including by email) by no later than 5:00 p.m. Eastern Time on Thursday, June 14, 2018. Please note however that our recommendation is that you vote FOR the Amended CCAA Plan.

Next Steps

Please check our firm's website frequently in order to keep informed about progress and important updates at: <http://kmlaw.ca/wabushrepcounsel>.

If you have any questions, please contact us at our toll-free hotline at 1-800-965-6636 or email us at wabushrepcounsel@kmlaw.ca.

Yours truly,

KOSKIE MINSKY LLP



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Co-Representative Counsel

FISHMAN FLANZ MELAND PAQUIN LLP



Mark E. Meland
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cc. Client Committee