

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-048114-157

SUPERIOR COURT
(Commercial Division)

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 QUEBEC
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

OBJECTING PARTIES-Mises-en-cause

-and-

UNITED STEELWORKERS, LOCAL 6254,
UNITED STEELWORKERS, LOCAL 6285

Mises-en-cause

-and-

MORNEAU SHEPELL
Mise-en-cause

**NOTICE OF OBJECTION BY THE REPRESENTATIVES OF THE SALARIED
EMPLOYEES AND RETIREES TO THE MOTION BY THE MONITOR FOR
DIRECTIONS WITH RESPECT TO PENSION CLAIMS**
(Sections 11 and 23(k) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

TO THE HONOURABLE MR. JUSTICE STEPHEN W. HAMILTON, J.S.C., OR TO ONE OF THE HONOURABLE JUDGES SITTING IN THE COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE OBJECTING PARTIES-MISES-EN-CAUSE RESPECTFULLY SUBMIT THE FOLLOWING:

The court-appointed Representatives to the non-union employees and retirees (the "**Salaried Members**") of the Wabush CCAA Parties object to the Motion by the Monitor for Directions with respect to Pension Claims dated September 20, 2016 ("**Motion for Directions**") on the following basis:

Background

1. The Wabush CCAA Entities are under CCAA protection but are not restructuring. The Wabush CCAA Entities have shut down operations, terminated the vast majority of the employees, and are selling their assets in a sales process in the CCAA proceedings. The shutdown of Wabush Mines is part of the disengagement by Cliffs Natural Resources based in Cleveland, Ohio, the parent company of Wabush Mines (and Bloom Lake), from its mining operations in Eastern Canada.
2. The Wabush Salaried Plan (and Union plans) are registered in Newfoundland and regulated under the Newfoundland *Pension Benefits Act*, S.N.L. 1996 c. P-4.01 ("**Newfoundland PBA**"). The Plans are significantly underfunded. They are in the process of being wound up by Morneau Shepell who was appointed as the replacement pension plan administrator by the Newfoundland Superintendent of Pensions.
3. As a result of the underfunding of the pension plans, the monthly pension benefits of the Salaried Members have been significantly reduced by 25%. Coupled with the loss of their earned health and life insurance benefits that occurred in June, 2015 at the

commencement of the Wabush CCAA proceedings, the Salaried Members are suffering significant financial losses and hardship in the course of this CCAA proceeding. The Salaried Members are a very significant creditor group.

The Newfoundland PBA deemed trust priority for pension plan beneficiaries

4. On August 14, 2015, Representative Counsel wrote to the company and other parties asserting that the deemed trust priority provisions in the Newfoundland PBA (the "**Newfoundland PBA Deemed Trust**") apply as a priority claim in favour of the beneficiaries of the Wabush Salaried Plan. A copy of the letter is communicated herewith as **Exhibit OP-1**.
5. On November 16, 2015, at the hearing of the motion by the Monitor for approval of the Claims Procedure Order, Representative Counsel advised the Monitor and this Honourable 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.
6. Despite the previously communicated position of Representative Counsel, the Motion for Directions seeks to have such questions put before by this Court. Further, Representative Counsel does not agree with the relevance and/or the formulation of certain of the Monitor's proposed questions in its Motion for Directions.
7. In the event of dispute on the issue of transferring the Newfoundland PBA Deemed Trust question to the Newfoundland Court, that issue should be addressed first and scheduled for a hearing. There are a number of reasons that support such a transfer, including, but not limited to, the following:
 - a) The Wabush pension plans are registered in Newfoundland and Labrador and have been funded, administered and regulated in accordance with the Newfoundland PBA since their inception. The pension plans have been,

and continue to be, regulated by the Newfoundland Superintendent of Pensions pursuant to the provisions of Newfoundland PBA;

- b) The Québec Superior Court is a court of civil jurisdiction. The Newfoundland court is a court of common law jurisdiction. The Newfoundland PBA is a statute of a common law jurisdiction. It is respectfully submitted that it is more appropriate for a common law court to interpret a common law statute than a civil court interpreting a common law statute;
- c) It is more efficient and cost-effective for the Newfoundland Court to interpret the Newfoundland PBA Deemed Trust rather than the Québec CCAA court. Respectfully, this court does not have expertise in interpreting the Newfoundland PBA Deemed Trust. The adjudication of the Newfoundland PBA Deemed Trust will therefore require expert evidence to be adduced before the Québec court. That process involves the identification, retainer, and payment of suitable expert(s) by the adversarial parties who will be required to prepare expert affidavits on the interpretation of the Newfoundland PBA. The process to retain such expert(s) is time-consuming and costly and will contribute to delay and costs to the estate. Such delay and costs can be avoided by transferring the issue to a Newfoundland court which, as a court of competent jurisdiction to interpret Newfoundland statute law, does not require expert evidence;
- d) There is precedent authority directly on point supporting the transfer of a pension issue to the jurisdiction where the pension plan is registered and has been administered, where that jurisdiction is different from the jurisdiction of the court where the company filed for CCAA protection. For example, in the CCAA proceeding of *Timminco*, the company obtained CCAA protection in the Ontario Superior Court of Justice (Commercial List). An issue arose in the course of that proceeding on the

interpretation of the deemed trust priority provisions in the Québec *Supplemental Pension Plan Act*, chapter R-15.1 ("SPPA") which regulated one of the Timminco pension plans. The CCAA judge supervising Timminco ordered adjudication of those issues to be transferred to the Québec Superior Court. The monitor of Timminco (FTI Consulting), and counsel to the company (Blakes LLP) did not oppose the transfer in that case. A decision was ultimately released by Mr. Justice Mongeon of the Quebec court interpreting the provisions of the deemed trust provisions of the Quebec SPPA to the Québec Timminco Plan. A copy of the order of Mr. Justice Morawetz dated October 18, 2012 ordering the transfer is communicated herewith as **Exhibit OP-2**;

- e) Section 17 of the CCAA contemplates the possibility of a transfer of an issue that arises in a CCAA proceeding to another Canadian court from the CCAA court to "act in aid of and be auxiliary to each other". Accordingly, the transfer of the Newfoundland PBA Deemed Trust to the Newfoundland court is readily permissible by the CCAA;
 - f) The Monitor states in its Motion for Directions that it believes another issue on which it needs direction is whether the proceeds derived from the sale of assets located in Quebec could be used toward the payment of a valid Newfoundland PBA Deemed Trust claim, should the court hold that the Newfoundland PBA Deemed Trust priority is valid. As a Québec *property* issue, that is not a factor to consider in transferring the Newfoundland PBA Deemed Trust *priority* issue to the Newfoundland court. The issue of whether Quebec property laws apply in the manner suggested by the Monitor may only arise, if at all, if the Newfoundland PBA Deemed Trust priority applies in favour of the pension plan beneficiaries. The Québec property issue may not arise at all.
8. The process to determine disputed claims in the Claims Process was extensively negotiated by Representative Counsel and USW and other affected parties and

culminated in the Claims Procedure Order of November 5, 2015. The Motion for Directions proposes an alternate process – a motion for directions – without prior consultation or agreement of Representative Counsel (nor other parties). Moreover, the Motion for Directions is in substance largely an advocacy piece and not a neutral document. Representative Counsel requests the opportunity to consult with the Monitor as to the appropriateness of a motion for directions instead of the Claims Process and on the questions to be proposed to the applicable court prior to the Motion for Directions proceeding further.

9. Representative Counsel agrees with the Objection of Morneau Shepell, concurrently filed herein.

Disagreement as to substance of questions and arguments in the Motion for Directions and reservation of rights

10. The Representatives disagree with the position adopted by the Monitor.
11. At the appropriate time, Representative Counsel will submit substantive arguments to such effect that all of the deficits in the Salaried Pension Plan should benefit from the priority deemed trust provisions set out in the Newfoundland PBA, in priority to all other claims against the Wabush CCAA Parties (other than the CCAA-ordered charges).
12. Representative Counsel reserve their rights to raise all other grounds for opposition of the matters raised in the Motion for Directions.
13. This Notice of Objection is well founded in fact and in law.

FOR THESE REASONS THE OBJECTING PARTIES-MISES-EN-CAUSE ASKS THAT THIS HONOURABLE COURT:

- [A] **GRANT** the present Notice of Objection;
- [B] **DISMISS** the Motion for Directions in respect of the Pension Claims;

- [C] **REQUIRE:** (1) the Monitor to consult with the affected parties and make best efforts to reach agreement on a procedure for the adjudication of the Newfoundland PBA Deemed Trust claims, including: the issues to be adjudicated, the appropriate forum for adjudication, the evidence on which the issues are to be adjudicated or the manner in which such evidence is to be tendered, and an appropriate timeline for adjudication; and (2) a motion be brought to amend the Amended Claims Procedure Order;

IN THE ALTERNATIVE:

- [D] **RESERVE** the rights of the Representatives to file a further Notice of Objection as to the specific issues raised in the Motion for Directions in respect of the Pension Claims no later than ten (10) business days after final adjudication of their present Notice of Objection;

IN THE FURTHER ALTERNATIVE

- [E] **DECLARE** the deemed trusts provided in section 52 of the Newfoundland PBA is applicable to the entirety of the deficits in the Wabush Salaried Plan in favour of the pension plan beneficiaries.

THE WHOLE WITHOUT COSTS, EXCEPT IN THE CASE OF CONTESTATION.

Toronto, October 7, 2016



KOSKIE MINSKY LLP

*Court-appointed Representative Counsel for the
OBJECTING PARTIES-Mises-en-cause Michael Keeper,
Terence Watt, Damien Lebel and Neil Johnson*



NICHOLAS SCHEIB

*Court-appointed Representative Counsel for the
OBJECTING PARTIES-Mises-en-cause Michael Keeper,
Terence Watt, Damien Lebel and Neil Johnson*

NOTICE OF PRESENTATION

IN SUPPORT OF NOTICE OF OBJECTION BY THE REPRESENTATIVES OF THE SALARIED EMPLOYEES AND RETIREES TO THE MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO PENSION CLAIMS

TO: **Me Bernard Boucher** (bernard.boucher@blakes.com)
Me Sébastien Guy (sebastien.guy@blakes.com)
BLAKE, CASSELS & GRAYDON LLP
600 de Maisonneuve West, Suite 2200
Montreal, Quebec H3A 3J2
Counsel for the Petitioners and the Mises-en-cause (i.e., Wabush CCAA Parties)

AND TO: **Me Sylvain Rigaud** (sylvain.rigaud@nortonrosefulbright.com)
NORTON ROSE FULBRIGHT CANADA LLP
1 Place Ville Marie, Suite #2500
Montreal, Quebec H3B 1R1
Counsel for the Monitor

AND TO: SERVICE LIST

TAKE NOTICE that the present *Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims* will be presented for adjudication before The Honourable Mr. Justice Stephen W. Hamilton, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montreal, at the Montreal Courthouse located at 1 Notre-Dame Street East, Montreal, Québec, on **October 12, 2016** at a room and at a time to be determined (or such other date to be determined by the Court for hearing of the *Motion by the Monitor for Directions with Respect to Pension Claims*).

GOVERN YOURSELF ACCORDINGLY.

MONTREAL and TORONTO, October 7, 2016



KOSKIE MINSKY LLP & NICHOLAS SCHEIB

Attorneys for the OBJECTING PARTIES-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

No.: 500-11-048114-157

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 QUEBEC 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
OBJECTING PARTIES-Mises-en-cause

-and-

UNITED STEELWORKERS, LOCAL 6254,
UNITED STEELWORKERS, LOCAL 6285
Mises-en-cause

-and-

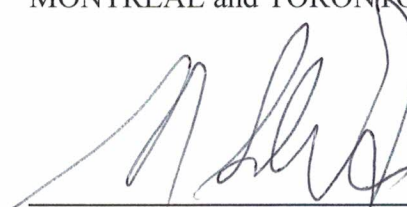
MORNEAU SHEPELL
Misc-en-cause

LIST OF EXHIBITS

(In support of the *Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims*)

| | |
|---------------------|--|
| Exhibit OP-1 | Letter dated August 24, 2015 from Representative Counsel to counsel for the Wabush CCAA Parties |
| Exhibit OP-2 | Copy of the Order (Approval of Priority Claim Adjudication Protocol) of Mr Justice Morawetz, J.S.C., of the Ontario Superior Court of Justice (Commercial List) dated October 18, 2015 in The Matter of the Plan of Compromise or Arrangement of Timminco Limited <i>et al</i> |

MONTREAL and TORONTO, October 7, 2016



KOSKIE MINSKY LLP & NICHOLAS SCHEIB
Attorneys for the OBJECTING PARTIES-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson

Exhibit OP-1

August 14, 2015

Via E-Mail

Blake, Cassels & Graydon LLP
600 de Maisonneuve Blvd. W, Suite 2200
Montreal, QC H3A 3J2

**Attention: Bernard Boucher (Montreal)
Milly Chow (Toronto)
Steven Weisz (Toronto)**

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Dear Counsel:

**Re: Wabush Mines (CCAA), Québec Court File No. 500-11-048114-157
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining
Company, Managing Agent Arnaud Railway Company and Wabush Lake Railway
Company, Limited Newfoundland Registration Number 021314-000 (the “Salaried
Plan”)
Our File No. 15/1359**

We are the court-appointed Representative Counsel to all non-union employees and retirees of Wabush Mines in its CCAA proceedings. These individuals are also members of the Salaried Plan.

As you are aware, the company reported that as at January 1, 2015, the Salaried Plan is underfunded on a wind up basis by approximately \$18.2 million.

Further, the company has reported that it owes amounts to the Salaried Plan referred to as “Monthly Amortization Payments” in the amount of \$273,218.58 per month, and a “Yearly Catch-Up Amortization Payment” of approximately \$5.5 million (for both the Salaried and Union Plans) which was due for payment in July, 2015.

In the decision of Mr. Justice Hamilton dated June 26, 2015, the court approved the company’s request to not make the Monthly Amortization Payments nor the Yearly Catch-Up Amortization Payment going forward.

Accordingly, the amount of the Monthly Amortization Payments and the proportionate share of the Yearly Catch-Up Amortization Payment attributable to the Salaried Plan are therefore owing to the Salaried Plan and have not been paid by the company.

Statutory deemed trust priorities for members of the Salaried Plan

The Salaried Plan is registered in Newfoundland and thus subject to the Newfoundland *Pension Benefits Act*, 1997, SNL 1996 c.P-4.01 s.1 (“**PBA**”). It is also our understanding that certain members of the Salaried Plan may be subject to federal jurisdiction making the federal *Pension Benefits Standards Act*, 1985 (R.S.C., 1985, c.32 (2nd Supp.)) (“**PBSA**”) also applicable.

Both the PBA and the PBSA contain statutory protections for members of underfunded pension plans.

The PBA states:

Amounts to be held in trust

32. (1) An employer ... shall ensure, with respect to a pension plan, that

...

(b) an amount equal to the aggregate of

(i) the normal actuarial cost, and

(ii) any special payments prescribed by the regulations, that have accrued to date; and

(c) all

...

(ii) other amounts due under the plan from the employer that have not been remitted to the pension fund

are kept separate and apart from the employer's own money, *and shall be considered to hold the amounts referred to in paragraphs (a) to (c) in trust for members, former members, and other persons with an entitlement under the plan.*

(2) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that under subsection (1) is considered to be held in trust shall be considered to be separate from *and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own money or from the assets of the estate.*

(3) *Where a pension plan is terminated in whole or in part, an employer who is required to pay contributions to the pension fund shall hold in trust for the member or former member or other person with an entitlement under the plan an amount of money equal to employer contributions due under the plan to the date of termination.*

(4) *An administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amount required to be held in trust under subsections (1) and (3).* [emphasis added]

The PBSA states:

8. (1) An employer shall ensure, with respect to its pension plan, that the following amounts are kept separate and apart from the employer's own moneys, *and the employer is deemed to hold the amounts referred to in paragraphs (a) to (c) in trust for members of the pension plan, former members, and any other persons entitled to pension benefits under the plan:*

...

(b) an amount equal to the aggregate of the following payments that have accrued to date:

(i) the prescribed payments, and

(ii) the payments that are required to be made under a workout agreement; and

(c) all of the following amounts that have not been remitted to the pension fund:

...

(ii) other amounts due to the pension fund from the employer, including any amounts that are required to be paid under subsection 9.14(2) or 29(6).

...

29(6) *If the whole of a pension plan is terminated, the employer shall, without delay, pay into the pension fund all amounts that would otherwise have been required to be paid to meet the prescribed tests and standards for solvency referred to in subsection 9(1) and, without limiting the generality of the foregoing, the employer shall pay into the pension fund*

(a) *an amount equal to the normal cost* that has accrued to the date of the termination;

(b) *the amounts of any prescribed special payments* that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(c) the amounts of payments that are required to be made under a workout agreement that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(d) all of the following amounts that have not been remitted to the pension fund at the date of the termination:

(i) the amounts deducted by the employer from members' remuneration, and

(ii) *other amounts due to the pension fund from the employer*; [emphasis added]

As the Monthly Amortization Payments and the proportionate share of the Yearly Catch-Up Amortization Payments have not been paid by Wabush, those amounts are now subject to the deemed trust priorities pursuant to both section 32 of the PBA and section 8 of the PBSA in favour of the Salaried Plan members.


Furthermore, in the event the Salaried Plan is wound up, which we expect to be highly likely in the company's current circumstances, the amount the company owes to the Salaried Plan in respect of the wind up liability is also subject to the PBA deemed trust priority in favour of the plan members.

We are writing to confirm that the above-noted priorities will be asserted on behalf of the Salaried Plan members in respect of the amounts owing by the company to the Salaried Plan and are to be paid from the company's assets ahead of the claims of other creditors (after payment of the court-ordered CCAA charges). As a trust claim, the amounts owing to the Salaried Plan that are subject to the PBA and PBSA deemed trusts have priority over any secured claim that may be claimed by another creditor. Please bear that in mind should any bidder in the current sales process applicable to Wabush seek to assert a "credit bid" predicated on its assertion that it is a first priority secured creditor of Wabush.

Should you have any questions with respect to the above, please do not hesitate to contact the undersigned. Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay

AJH:vdl

cc. Nigel Meakin, Steven Bissell, *FTI Consulting* (Monitor)
Sylvain Rigaud, Chrystal Ashby, *Norton Rose Fulbright LLP* (Counsel for the Monitor)
Matthew Gottlieb, *Lax O'Sullivan LLP* (Independent Counsel for the Board of Directors of the Petitioners)
Louis Dumont, *Dentons LLP*, Counsel to Cliffs Mining Company (the DIP Lender)
Grant Moffat, *Thornton Grout Finnigan LLP*, Counsel for Cliffs Mining Company (the DIP Lender)
Pierre Lecavalier, *Department of Justice, Attorney General of Canada* (Counsel to OSFI)
Doug Mitchell, Leslie-Anne Wood, *Irving Mitchell Kalichman* (Counsel to Superintendent of Pensions, Newfoundland and Labrador)
Jean-Francois Beaudry, *Philon Leblanc Beaudry*, (Counsel to Syndicat des Metallos, Section Locale 6285)
Gerry Apostolatos, Langlois Kronstrom Desjardins, (Creditors Quebec North Shore and Labrador Railway Company Inc., Air Inuit Ltd., Metso Shared Services Ltd., Iron Ore Company of Canada, and WSP Canada)

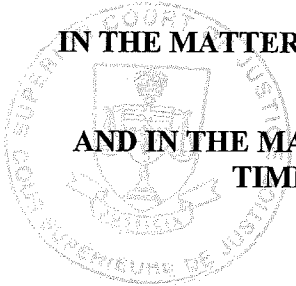
Inc.)
Nicholas Scheib, *Scheib Legal*
Ari Kaplan, *Koskie Minsky LLP*
Service List

Exhibit OP-2

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

THE HONOURABLE)
)
JUSTICE MORAWETZ)

THURSDAY
~~WEDNESDAY~~, THE 10th DAY OF
OCTOBER 2012



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

ORDER
(Approval of Priority Claim Adjudication Protocol)

This Motion, made by Investissement Québec for an order approving the Priority Claim Adjudication Protocol and referring the adjudication of the BSI Pension Reimbursement Claims to the Superior Court of Québec (Commercial Division) was heard this day at 330 University Avenue, Toronto, ON.

On the consent of counsel for Timminco Limited and Bécancour Silicon Inc., FTI Consulting Canada Inc., in its capacity as court-appointed Monitor of the Timminco entities, Investissement Québec, Mercer Canada, the administrator of the Haley Pension Plan, The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW") and BSI Union and Non-Union employee Pension Committees:

1. **THIS COURT ORDERS** that the Priority Claim Adjudication Protocol, attached hereto as Schedule "A", be and the same is hereby authorized and approved.
2. **THIS COURT ORDERS** that the adjudication of whether the BSI Pension Reimbursement Claims are Priority Claims, all as defined in the attached Priority Claim Adjudication Protocol, be and the same is hereby referred exclusively to the Superior Court of Québec (Commercial Division) to be determined in accordance with the Priority Claim Adjudication Protocol.
3. **THIS COURT HEREBY REQUESTS** the aid and recognition of the Superior Court of Québec (Commercial Division) to give effect to this order and to adjudicate whether the BSI Pension Reimbursement Claims constitute Priority Claims in accordance with the terms of the Priority Claims Adjudication Protocol.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

[Handwritten Signature]

OCT 19 2012

SCHEDULE "A"

Court File No. CV-12-9539-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.**

Applicants

PRIORITY CLAIM ADJUDICATION PROTOCOL

A. OVERVIEW

1. In accordance with the Reimbursement Agreement (the "**Reimbursement Agreement**") among Investissement Québec ("**IQ**"), FTI Consulting Canada Inc., as court-appointed Monitor, and Bécancour Silicon Inc., dated August 28, 2012 and the August 28, 2012 Interim Distribution Order (the "**Interim Distribution Order**")¹, two (2) sets of claims have been designated as Reimbursement Claims, namely:

- (i) a claim on behalf of Mercer Canada ("**Mercer**"), as administrator of the Haley Pension Plan, and on behalf of the beneficiaries of that plan (the "**Mercer Reimbursement Claim**"), which claim is supported by The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("**USW**"); and
- (ii) a claim by Le Comité de retraite du Régime de rentes pour les employés non-syndiqués de Silicium Bécancour Inc. and a claim by Le Comité de retraite du Régime de rentes pour les employés syndiqués de Silicium Bécancour Inc. (collectively the "**BSI Pension Committees**") (the "**BSI Pension Reimbursement Claims**").

2. IQ disputes that the above Reimbursement Claims have priority over the IQ Security and the parties do not anticipate the dispute will be resolved through the consented resolution process

¹ Unless otherwise indicated, any capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Reimbursement Agreement and the Interim Distribution Order.

provided for in the Interim Distribution Order. Accordingly, an adjudication is required to determine whether such Reimbursement Claims constitute Priority Claims.

The following is the protocol for the adjudication of whether the Reimbursement Claims constitute Priority Claims.

B. THE MERCER REIMBURSEMENT CLAIM

1. The Mercer Reimbursement Claim shall be adjudicated by way of a motion before this Court wherein Mercer and USW will be the moving parties and IQ will be the respondent. If at any time Mercer shall cease the prosecution of the Mercer Reimbursement Claim, the USW shall be entitled to prosecute the Mercer Reimbursement Claim in the place and stead of Mercer.

As issues to be adjudicated regarding the Mercer Reimbursement Claim (such as, by way of example, substantive consolidation) may impact on other stakeholders of BSI or Timminco, the motion material hereafter described shall be served on the service list herein. Any creditor of the Timminco Entities or the Monitor, or the Timminco Entities themselves (“**Interested Stakeholders**”) shall have the right to file material and participate in the motion proceedings in accordance with the following timetable:

- (i) Mercer and USW, if so advised, will deliver moving party motion material by October 29, 2012;
- (ii) IQ and Interested Stakeholders, if any, shall deliver responding material by November 30, 2012;
- (iii) Mercer and USW will deliver reply material, if so advised, by December 17, 2012;
- (iv) cross-examinations on filed affidavits, if required, will be conducted during the week of January 13, 2012. During this period, the examination of Peter Kalins, (a former officer and director of Timminco and BSI) as a witness to the motion, shall be conducted if consented to by Peter Kalins or if an appropriate court order has been obtained;
- (v) Mercer and USW, if so advised, will deliver moving party’s facts by January 25, 2013;
- (vi) IQ and any Interested Stakeholders will deliver responding facts by February 13, 2013;
- (vii) Mercer and USW will deliver reply facts by February 20, 2013, if so advised; and
- (viii) the hearing of the motion will take place during the week of February 25, 2013.

2. In determining whether the Mercer Reimbursement Claim constitutes a Priority Claim, the determination of the quantum of such Priority Claim shall be postponed until after the determination of the nature of the claim and will be determined in accordance with the Claims Procedure Order or further order of the Court.

C. THE BSI PENSION REIMBURSEMENT CLAIMS

1. The adjudication of whether the BSI Reimbursement Claims constitute Priority Claims shall be referred exclusively to the Superior Court of Québec (Commercial Division) wherein the BSI Pension Committees will be the moving parties and IQ will be the respondent in accordance with the following timetable:

- (i) the BSI Pension Committees shall deliver their motion to institute proceedings within 60 days after the Order is made referring this matter to the Superior Court of Québec (Commercial Division);
- (ii) IQ and any Interested Stakeholders shall deliver their Statement of Defence within 30 days after receipt of the motion to institute proceedings;
- (iii) the BSI Pension Committees shall have up to 30 days after receipt of the IQ defence to deliver their response, if any;
- (iv) examinations, if necessary, are to be conducted by January 11, 2013;
- (v) written arguments and joint books of procedure and exhibits shall be delivered at least 2 weeks before the hearing of the motion; and
- (vi) the hearing of the motion is to be scheduled between February 18, 2013 and March 15, 2013 based upon a 1-2 day hearing.

For greater certainty, any appeal from an order of the Superior Court of Québec (Commercial Division) herein shall be to the Court of Appeal of Québec.

2. In determining whether the BSI Reimbursement Claims constitute Priority Claims, the determination of the quantum of such Priority Claims shall be postponed until after the determination of the nature of the claim and will be determined in accordance with the Claims Procedure Order or further order of the Court.

D. MONITOR'S REPORT

1. The Monitor, if it deems it necessary and appropriate to do so, may file a report with the court in connection with adjudication of either Reimbursement Claim.

In the matter of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36, As Amended

And in the Matter of a Plan of Compromise or Arrangement
of Timminco Limited and Bécancour Silicon Inc.

Applicants

Court File No. CV-12-9539-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

Proceedings commenced at
TORONTO

ORDER

(Approval of Priority Claim Adjudication Protocol)

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CITATION: Timminco Limited (Re), 2012 ONSC 5959
COURT FILE NO.: CV-12-9539-00CL
DATE: 20121018

**SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)**

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

**RE: IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC., Applicants**

BEFORE: MORAWETZ J.

**COUNSEL: S. J. Weisz, for FTI Consulting Canada Inc., in its capacity as court-
appointed Monitor of the Timminco Entities**

HEARD: OCTOBER 18, 2012

ENDORSEMENT

[1] On consent of Timminco Limited and Bécancour Silicon Inc., FIT Consulting Canada Inc., in its capacity as court-appointed Monitor of the Timminco Entities, Investissement Québec, Mercer Canada, the Administrator of the Haley Pension Plan, The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“USW”) and BSI Union and Non-Union Employee Pension Committees, the Priority Claim Adjudication Protocol is approved. The adjudication of whether the BSI Pension Reimbursement Claims are Priority Claims is referred to the Superior Court of Québec (Commercial Division) to be determined in accordance with the terms of the Priority Claims Adjudication Protocol.

[2] This determination has been made pursuant to s. 17 of the CCAA, and I express my thanks, in advance, to the Superior Court of Québec.

[3] To the extent leave is required to proceed, such leave is granted.


MORAWETZ J.

Date: October 18, 2012

N° / No.: 500-11-048114-157

SUPERIOR COURT
(COMMERCIAL DIVISION)

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 LABEL & NEIL JOHNSON

OBJECTING PARTIES-Mises-en-cause

- and -
UNITED STEELWORKERS, LOCAL 6254, UNITED STEELWORKERS, LOCAL 6285

Mises-en-cause

- and -
MORNEAU SHEPELL

Mise-en-cause

*“Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for
Directions with Respect to Pension Claims”, Notice of Presentation, List of Exhibits and Exhibits OP-1 and OP-2*

M^{es} NICHOLAS SCHEIB, ANDREW HATNAY AND BARBARA WALANCIK

Co-Attorneys for the Objecting Parties-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson

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