PIÈCE O-1

SCHEDULE H

PROOF OF CLAIM
FOR CLAIMS AND RESTRUCTURING CLAIMS AGAINST THE BLOOM LAKE CCAA PARTIES AND/OR THE WABUSH CCAA PARTIES

The "**Bloom Lake CCAA Parties**" are:

Bloom Lake General Partner Limited
Quinto Mining Corporation
856839 Canada Limited
Cliffs Quebec Iron Mining ULC
Bloom Lake Railway Company Limited
The Bloom Lake Iron Ore Mine Limited Partnership

The "**Wabush CCAA Parties**" are:

Wabush Iron Co. Limited
Wabush Resources Inc.
Wabush Mines
Arnaud Railway Company
Wabush Lake Railway Company Limited

(The Bloom Lake CCAA Parties and Wabush CCAA Parties collectively form the "**CCAA Parties**")

Please read the enclosed Instruction Letter carefully prior to completing the attached Proof of Claim. Capitalized terms not defined within this Proof of Claim form or the appended Instruction Letter shall have the meaning ascribed thereto in the Claims Procedure Order dated November 5, 2015 and amended on November 16, 2015 and as may be further amended, restated or supplemented from time to time. A copy of the Claims Procedure Order can be found on the Monitor's website at: http://cfcanada.fticonsulting.com/bloomlake/

Particulars of Creditor:

Please provide the following information:

Legal Name of Creditor:	Worldlink Resources Limited
Doing Business As:	
Legal Counsel or Representative (if applicable):	BCF L.L.P
Address:	
Number and Street (line 1)	A-1601 Vantone Centre, No. 6 A
Number and Street (line 2)	Chaowai Dajie
City	Beijing
Province / State	
Postal / Zip Code	10020
Country	China
Telephone Number (including area code):	(514) 397-8935
E-mail address:	bertrand.giroux@bcf.ca
Attention (Contact Person)	Bertrand Giroux

Proof of Claim (other than Restructuring Claims):

I, Jimmy Wen *(name of individual Creditor or Representative of corporate Creditor)*, of Beijing, China *(City, Province or State)* do hereby certify:

that I [____] am a Creditor; OR

[__I__] am the duly authorized director *(position or title)* of Worldlink Resources Limited *(name of Creditor)*; and

that I have knowledge of all the circumstances connected with the Claim referred to below:

CCAA Party Name	Currency (CAD, USD, etc.) [1]	Amount of Unsecured Claim [2]	Amount of Secured Claim [3]	Particulars of Security (Secured Claims ONLY), e.g. General Security Agreement, hypotech, etc. [4]
Bloom Lake CCAA Parties				
Cliffs Quebec Iron Mining ULC	US	$ See Schedule A	$ N/A	
The Bloom Lake Iron Ore Mine Limited Partnership	US	$ See Schedule A	$ N/A	
Bloom Lake General Partner Limited	US	$ See Schedule A	$ N/A	
Quinto Mining Corporation		$	$	
8568391 Canada Limited		$	$	
Bloom Lake Railway Company Limited		$	$	
Wabush CCAA Parties				
Wabush Mines		$	$	
Wabush Iron Co. Limited		$	$	
Wabush Resources Inc.		$	$	
Arnaud Railway Company		$	$	
Wabush Lake Railway Company Limited		$	$	

Notes:
[1] Claims in a currency other than Canadian Dollars will be converted to Canadian Dollars at the noon spot rate of the Bank of Canada as at the Determination Date (January 27, 2015 for Bloom Lake CCAA Parties and May 20, 2015 for Wabush CCAA Parties)
[2] An 'Unsecured' Claim is one for which no assets of any of the CCAA Parties are pledged as security.
[3] A 'Secured' Claim is one which for which assets of the any one of the CCAA Parties are charged or held as security pursuant to statutory right or agreement
[4] Provide full particulars of the security, including the date on which the security was given and attach a copy of the security documents - See Particulars of Claim(s) below

Particulars and Basis of Claim(s)

In the space below, please provide the particulars and basis for the amount of the Claim(s) indicated in the tables above. Additional pages may be attached if more space is required.

See attached Arbitral Award

List of documentation evidencing Claim(s) indicated in the tables above (please attach all documentation to this Proof of Claim form):

Attachment 1 (description): Arbitral Award Case no. 18209/VRO/AGF/ZF

Attachment 2 (description). _____

Attachment 3 (description): _____

Attachment 4 (description): _____

Attachment 5 (description): _____

[If documentation exceeds 5 attachments, please attach separate list.]

DATED this 16 day of December, 2015.

Witness:

Per:

Print name of Creditor:

Worldlink Resources Limited

If Creditor is other than an individual, print name and title of authorized signatory

Name: Jimmy Wen

Title: President

SCHEDULE A

AMOUNTS DUE PURSUANT TO THE FINAL ARBITRAL AWARD DATED NOVEMBER 6, 2014					
Nature		Currencies			
		USD	CNY	AUD	CAD
Capital		71 074 689,16	-	-	-
Arbitration costs		465 000,00	-	-	-
Legal costs		2 546 793,72	676 924,20	248 448,30	10 263,51
Pre-award interests (on capital)		20 837 541,06	-	-	-
Post-award interests	Capital	1 437 072,14	-	-	-
	Arbitration costs	9 402,12	-	-	-
	Legal costs	51 494,36	13 686,62	5 023,32	207,46
	TOTAL	**96 421 992,56**	**690 610,82**	**253 471,62**	**10 470,97**

TIME OF ACCRUAL OF THE DAILY INTERESTS	
Date of the Final Arbitral Award	November 6, 2014
Date of the Initial Order	January 27, 2015
Days lapsed for the calculation of the post-award interests	82

DAILY POST-AWARD INTERESTS				
Nature	Currencies			
	USD	CNY	AUD	CAD
Capital	17 525,27	-	-	-
Arbitration costs	114,66	-	-	-
Legal costs	627,98	166,91	61,26	2,53
TOTAL	**18 267,91**	**166,91**	**61,26**	**2,53**

R-1

ICC INTERNATIONAL COURT OF ARBITRATION

CASE No. 18209/VRO/AGF/ZF (c. 18251/VRO/AGF)

1. BLOOM LAKE GENERAL PARTNER LIMITED

(Canada)

2. BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP

(Canada)

3. CONSOLIDATED THOMPSON IRON MINES LIMITED
(NOW KNOWN AS "CLIFFS QUEBEC IRON MINING LIMITED")

(Canada)

vs/

WORLDLINK RESOURCES LIMITED

(China P.R.)

This document is an original of the Final Award rendered in conformity with the Rules of Arbitration of the ICC International Court of Arbitration.

INTERNATIONAL CHAMBER OF COMMERCE

INTERNATIONAL COURT OF ARBITRATION

Final Arbitral Award

In the Matter of an Arbitration

Between :

1. Bloom Lake General Partner Limited (Canada)

   (hereinafter, « BL »)

2. Bloom Lake Iron Ore Mine Limited Partnership (Canada)

   (hereinafter, « BLP »)

3. Consolidated Thompson Iron Mines Limited (now known as "Cliffs Quebec Iron Mining Limited") (Canada)

   (Consolidated Thompson Mines Limited , hereinafter referred to as either "CLM" or "CT")

   (BL, BLP and CT, hereinafter collectively referred to as « Claimants »

AND

Worldlink Resources Limited (China P.R.)

(hereinafter, Respondent or Worldlink or WL)

All the Claimants and the Respondent hereinafter collectively referred to as « Parties ».

ICC Arbitration No. 18209/VRO/AGF/ZF (c. 18251/VRO/AGF)

I. Introductory

- On 3 October 2011, the Secretariat (the « Court Secretariat ») of the International Court of Arbitration of the ICC (the « ICC Court ») acknowledged receipt of an arbitration request dated 29 September 2011 filed by BL against Worldlink on the basis of a certain « Exclusive Distributor Agreement for China » by and between the Worldlink Resources Limited and Consolidated Thompson Iron Mines Limited, executed in December 2007 (the "Agreement"), and also concerning an "Addendum to Agreement between Consolidated Thompson Iron Mines Limited and Worldlink Resources Limited for the supply of iron ore concentrate from the Bloom Lake facility", dated 19 July 2009 and signed by these two companies (the "Addendum"), and a "First Supplemental Agreement to the Iron Ore Offtake Agreement", dated

30 September 2010 (the "Supplemental Agreement") between The Bloom Lake Iron Ore Mine Limited Partnership by its General Partner Bloom Lake General Partner Limited and Worldlkink Resources Limited) .

- This arbitration request originated ICC arbitration case 18209/VRO.

- On 20 October 2011 the Court Secretariat acknowledged receipt of an arbitration request filed by Worldlink against BL, BLP and CT on the basis of the Agreement.

- This arbitration request originated ICC arbitration case 18251/VRO.

- Worldlink filed an answer dated 28 October 2011 to the arbitration request in case 18209/VRO.

-By letter of 19 December 2011, the Court Secretariat acknowledged receipt of an Amended Request of Arbitration in case 18209/VRO incorporating BLP and CT as additional claimants.

- By letter of 16 February 2012, thè Court Secretariat communicated the decision of the ICC Court in its session of 9 February 2012, to include, pursuant to Article 4(6) of the 1998 ICC Rules of Arbitration (the « ICC Rules »), the claims in case 18251/VRO in case 18209/VRO and to assign to the consolidated case the reference 18209/VRO (c. 18251/VRO).

- By letter of 4 April 2012, the Court Secretariat acknowledged receipt of the Claimants' answer to the counterclaims included in Worldlink's answer of 28 October 2011originally filed in case 18209/VRO.

- This arbitration takes place pursuant to Section 16 of the Agreement that recites as follows: *« Arbitration. All disputes in connection with this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The board shall be composed of three arbitrators, one of whom shall be chosen by WL, one by CLM, and the third by the two so chosen. If both, or either WL or CLM fail to choose an arbitrator within 14 (fourteen) days after receiving notice of commencement of arbitration proceedings or if the two arbitrators so chosen cannot agree upon a third arbitrator with in (sic) 14 (fourteen) days after they have been chosen, the Court of Arbitration of International Chamber of Commerce shall, upon request of the parties, or either party, appoint the arbitrators required to complete the board. The place of arbitration shall be New York, U.S.A. ».*

-The Claimants are: 1. Bloom Lake General Partner Limited, a company incorporated under the laws of Quebec, Canada, with its registered office at 4000-1999 ST Bay, Toronto, Ontario, M5L1A9, Canada, c/o Chris Hewat; 2. Bloom Lake Iron Ore Mine Limited Partnership, a partnership established under the laws of Quebec, Canada, with its registered office at 4000-1999 ST Bay, Toronto, Ontario, M5L1A9, Canada, c/o Chris Hewat; 3. Consolidated Thompson Iron Mines Limited (now known as « Cliffs Quebec Iron Mining Limited »), a company incorporated under the laws of Quebec, Canada, with its registered office at 508-1155 Rue University, Montreal, Quebec, H3B3A7 Canada.

- The Respondent is Worldlink Resources Limited, a company incorporated under the laws of the Independent State of Samoa and with its registered office at Offshore Chambers, P.O. Box 217,

Apia, Samoa, but with its main place of business in Beijing, China and address at A-1801 Vantone Centre, No. 6 A, Chaowai Dajie, Beijing 100020 China, facsimile : + 86 10 59070195.

- The following are counsel for the Claimants: Susanne Dickerson, Esq., Cliffs Natural Resources Inc, 1100 Superior Avenue, Suite 1500, Cleveland, OH 44114, U.S.A. Facsimile: + 1 216 694 5385; Paul Schabas, Esq., Bradley E. Berg, Esq. and Rahat Godil, Esq., Blake, Cassels & Graydon LLP, 199 Bay Street, Suite 4000 Commerce Court West, Toronto, ON M5L 1A9 Canada. Telephone: + 416 863 2000. Facsimile: + 416 863 2653. E-mail : paul.schabas@blakes.com; brad.berg@blakes.com; rahat.godil@blakes.com; Laurence Shore, Esq. Herbert Smith Freehills New York LLP,450 Lexington Avenue, New York, NY 10007 U.S.A.Telephone: + 1 917 542 7807. E-mail: Laurence.shore@hsf.com

-The following are counsel for the Respondent: Audley Sheppard, Esq., Simon Greenberg, Esq., Patrick Zheng, Esq. and William Langran, Esq., Clifford Chance LLP, 10 Upper Bank Street Canary Wharf, Greater London E14 5JJ, United Kingdom. E-mail: audley.sheppard@cliffordchance.com; simon.greenberg@cliffordchance.com; patrick.zheng@cliffordchance.com; william.langran@cliffordchance.com

- The Claimants jointly nominated Mr. Paul M. Singer as a result of the Parties' agreement to deviate from the procedure set forth in the arbitration clause, otherwise requiring a designation by CLM (the seller) of an arbitrator within fourteen days. By letter of 5 June 2012, the Court Secretariat informed that at its session of 24 May 2012 the ICC Court confirmed Paul M. Singer, Esq., as co-arbitrator upon the Claimants' nomination, and Dr. Michael J. Moser as co-arbitrator upon the Respondent's nomination.

- By letter of 6 December 2012 the Court Secretariat informed that on 5 December 2012, pursuant to Article 9(2) of the ICC Rules, the ICC Court's Secretary General confirmed Dr. Horacio A. Grigera Naón as Chairman of the Arbitral Tribunal upon joint nomination of the Parties.

- The following are the names and addresses of the members of the Arbitral Tribunal: Paul M. Singer, Esq., Reed Smith LLP, 22 Fifth Avenue, Pittsburgh PA 15222 USA. Telephone : + 1 412 288 3114. Facsimile: + 1 412 288 3114. E-mail: psinger@reedsmith.com. Dr. Michael J. Moser, Level 8, Two Exchange Square, 8 Connaught Place, Central Hong Kong S.A.R. Telephone : + 852 2168 0807. Facsimile: + 852 2168 0809. E-mail : mmoser@20essexst.com arbitrator@michaelmoser.com. Dr. Horacio Alberto Grigera Naón, 5224 Elliott Road, Bethesda, Maryland 20816, USA. Telephones : + 301-229 1985, + 202-436-4877. Facsimile: + 301-320 3136. E-mail: hgnlaw@gmail.com; hgrigeranaon@yahoo.com.

- Pursuant to the Arbitral Tribunal's Procedural Order No. 1 and ensuing directions, the Claimants and the Respondent submitted, as the case may be, a Statement of Claim dated 6 May 2013, a Statement of Defence and Counterclaim dated 12 July 2013, a Statement of Defence to Respondent's Counterclaim and Reply in Support of Claimants' Claim dated 11 October 2013, and a Statement of Reply in Support of Respondent's Counterclaim dated 6 December 2013.

-As scheduled, a hearing on the merits was held in New York, New York, U.S.A., on 12-16 May 2014.

- The following fact witnesses testified at the Hearing: (a) proposed by the Claimants: François Laurin, Jimmy Xu, Terrence Me; (b) proposed by the Respondent: Paul Tai Yeung Yeou, Marc Duchesne, Hubert Vallée, Richard Quesnel, Sheldon Zhao. The Respondent's expert, Mr. John Barkas, also testified at the Hearing.

-On 27 June 2014, the Parties submitted simultaneous post-hearing briefs.

- In accordance with the Arbitral Tribunal's directions, on 18 July 2014 the Parties submitted their respective legal representation costs in this arbitration.

- The ICC Court extended in different opportunities the time limit for rendering a Final Arbitral Award in this arbitration, including the presently applicable extension until 28 November 2014, pursuant to the ICC Court's decision dated 23 October 2014 (Court Secretariat's letter of 31 October 2014).

- On 21 September 2014, the Arbitral Tribunal declared these proceedings closed pursuant to article 22 of the ICC Rules.

- When making its findings or determinations or reaching its conclusions, the Arbitral Tribunal refers to specific evidence or pleadings. However, the Arbitral Tribunal has studied and considered the entire record of this arbitration, including argument and evidence not expressly referred to in this Final Arbitral Award.

I. General Contractual Backgroud

1. In or around December 2007, CT and WL entered into the Agreement whereby WL agreed to purchase, and CT agreed to sell, 7 million metric tons (WMT) of iron ore concentrate produced at the Bloom Lake Mine in Quebec (the "Material") every year for 7 years, starting from the commencement of commercial production at the Bloom Lake Mine.

2. The Agreement specified a pricing mechanism for the sale of Material from CT to WL based on VALE's annual published benchmark price. The Agreement also provided that shipments of Material in each year shall be "approximately evenly spread over the 12-months period" and WL shall submit to CT for its approval a forward shipping schedule for each year at least 30 days before the start of the year. WL received a commission of 1.75% on the Material that it purchased from CT and resold in China.

3. The payment provisions of the Agreement obligated WL to establish an irrevocable letter of credit in favor of CT, on a shipment by shipment basis, at least 14 days prior to the arrival of WL's shipping vessel at the loading port. CT was to receive payment for 95% of the cargo value of the shipment (i.e. provisional payment) once WL's shipping vessel was loaded and certain documents, including a provisional invoice, had been issued. The balance of the payment (i.e. the remaining 5% of the cargo value of the shipment) was to be made to CT upon issuance of final invoice after completion of discharge of the Material in China.

4. The Agreement was assigned to BL on or around 19 July 2009, but continued to be administered by CT. Around the same time, the parties also executed the Addendum to the Agreement whereby the parties agreed that BLP may elect to include in the quantity of Material to be sold to WL a certain quantity of Material for another BLP customer, namely Wuhan Iron and Steel (Group) Corporation ("Wisco"). Pursuant to the Addendum, WL would receive the 1.75% commission agreed to in the Agreement on any quantity of Material sold to Wisco that was taken from the allotted quantity of Material to be sold to WL.

5. In parallel with the Addendum, Wisco acquired a 19.9 % participation in CT and a 25% participation in BL and in BLP. Thus – indirectly – Wisco obtained a participation in the Bloom Lake mine.

6. The parties also executed the Supplemental Agreement as a result of the discontinuance of the annual benchmark pricing system, due to which the VALE pricing mechanism set out in the Agreement became unworkable. The Supplemental Agreement replaced the VALE pricing mechanism in the Agreement with a new mechanism called the BLP Price Methodology, which was based on the Platts Steel Market Daily index pricing system (a published market-based index of various iron ore prices). All other provisions of the Agreement remained in full force and effect.

7. According to the Agreement (Section 5), a decrease in the contractually stipulated iron (Fe) content of the Material (66%) led to the application of a penalty equal to twice the unit price per delivered metric ton of total cargo for each 1% Fe below 66%. Section 4 of the Agreement provides for an adjustment of the price of the Material on the basis of a freight allowance differential obtained by comparing the freight for the shipment of iron concentrate from Eastern Canada to China, with the freight for the shipment of iron ore concentrate from Brazil to China.

8. The Agreement, the Addendum and the Supplemental Agreement are hereinafter collectively referred to as the "Consolidated Agreement".

9. On or around 30 May 2011, Cliffs Natural Resources, Inc. ("Cliffs") took over the administration of the contractual relationship with Worldlink, through Cliffs' Beijing office[1], although this actually materialized around 15 June 2011[2]. As from 21 June 2011, it was Cliffs Beijing office that started to operate the administration of the Consolidated Agreement, starting with July 2011 shipments[3].

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[1] Bundle 5, Tab 171.

[2] Hearing transcript (Day 2), at 390.

[3] E-mail of Cliffs to WL of 21 June 2011, Exhibit 50 to Mr. Terrence Mee's 2nd WS.

10. Pursuant to Section 2 of the Agreement, commercial production commenced on 15 July 2010. Therefore, the first contract year (the "First Calendar Year") spanned between 15 July 2010 and 14 July 2011.

II. The Parties' Respective Positions

A. The Claimants' Position

11. The Claimants characterize the Consolidated Agreement as a sale of goods transaction as a result of which WL assumed obligations to offtake iron ore supplied by the Claimants. The Claimants deny the Respondent's allegation that the Parties' relationship under the Consolidated Agreement constituted, or was a part of, a partnership, a quasi-partnership or a fiduciary relationship, and assert that the Claimants had no obligation to act in WL's best interest or ensure that WL could profit from the resale of Material it purchased from the Claimants.

12. The commencement of commercial production at the Bloom Lake Mine on 15 July 2010 triggered the Parties' obligation to purchase and sell Material. Shortly before then, the Parties agreed that for the First Calendar Year, WL would purchase, and CT would sell, less than the contractual quantity of Material agreed to in the Agreement, namely 2.7 million WMT of Material (not including the quantity of Material to be sold to Wisco on which WL would also earn the 1.75% commission).

13. The Parties also agreed to a shipping schedule pursuant to which shipments would not be evenly spread and, instead CT would propose a laycan (i.e. a window of specific dates during which Material would be loaded on WL's shipping vessel) for each shipment to WL in advance of the shipment. These departures from the Agreement were intended to govern the Parties' relationship for the First Calendar Year only (the "First Year Arrangement") and the Parties intended to comply fully with all of the terms of the Consolidated Agreement beginning in June 2011, at which time WL was obligated to submit a shipping schedule for the purchase of 7 million WMT of Material during the Second Calendar Year, i.e. between 15 July 2011 and 14 July 2012.

14. The Parties were ultimately prevented from fully performing the First Year Arrangement, i.e. purchasing and selling 2.7 million WMT of Material during the First Calendar Year for a host of reasons, including instability of production due to startup of operations at the mine. However, all Parties accepted the irregularities in early shipments as they were a temporary arrangement for the first year of production only and the Claimants are not making any claims in this proceeding relating to deviations from, or breaches of, the First Year Arrangement. During the First Calendar Year, notwithstanding instability of production and other issues, CT sold and WL purchased a number of shipments of Material between August 2010 and June 2011. Thereafter, the Claimants were ready, willing and able to fully comply with the Consolidated Agreement, and WL was obligated to do the same. WL, however, failed to comply with its obligations under the Consolidated Agreement.

15. Beginning in June 2011, when WL was required to start taking actions to comply with the Consolidated Agreement, WL committed multiple breaches of its obligations under the Agreement. Specifically, WL:

(i) failed to provide a shipping schedule for the Second Calendar Year in June 2011;

(ii) failed to purchase adequate quantity of Material in July 2011 to comply with its purchase obligations for the Second Calendar Year. WL only purchased one shipment of Material in July 2011, the laycan for which was 13 – 22 July 2011, but only after CT agreed (on a temporary basis for that shipment only) to a price lower than the price that WL was obligated to pay pursuant to the Consolidated Agreement;

(iii) failed to confirm laycans and refused to take delivery of Material on the dates proposed by CT for July, August and September 2011. CT proposed the following laycans and/or delivery dates for sale of Material to WL, which were not accepted by WL: 1 July , 6/7 July , 10/11 July, 19/28 July, 8/17 August , 22/31August 22 and 16/25 September ;

(iv) failed to establish letters of credit on a timely basis;

(v) refused to pay the price that it was obligated to pay under the Consolidated Agreement for CT's proposed shipments;

(vi) demanded that CT negotiate a new pricing mechanism with WL and refused to purchase any Material until CT agreed to negotiate a new pricing mechanism and to a provisional price for the sale of Material (which would be lower than the price from the Consolidated Agreement) during the pendency of those negotiations;

(vii) repudiated its present and future contractual obligations by refusing to perform its obligations until CT agreed to a modified pricing mechanism that would result in a price lower than the price in the Consolidated Agreement; and

(viii) refused to pay the final 5% of the payment owed on four shipments of Material delivered in 2011.

16. Although the Claimants contend that their breach claims are governed by the United Nations Convention on Contracts for the International Sale of Goods ("CISG"), the Claimants allege that WL's breaches of the Consolidated Agreement constituted fundamental and material breaches of the Consolidated Agreement under the CISG or substantially impaired the value of the Consolidated Agreement for the Claimants under New York's Uniform Commercial Code ("UCC"). WL's breaches and conduct also gave the Claimants reasonable and sufficient grounds to conclude that WL would continue to commit fundamental and material breaches of the Consolidated Agreement in the future under the CISG and the U.C.C. The Claimants were therefore entitled to declare, on 4 August 2011, the termination, cancellation or, as provided in the CISG, total avoidance of the Consolidated Agreement.

17. The Claimants have suffered damages as a result of WL's breaches under the Consolidated Agreement, for which WL is liable. These damages include, among other things, losses

suffered from lost sales, sales made at lower prices through mitigation efforts and increased production and stockpiling costs.

18. WL's counterclaims, including claims regarding wrongful termination or repudiation of the Consolidation Agreement, under-delivery of Material, breach of warranties, breach of good faith obligations, breach of exclusivity obligations, unjust enrichment, tortious interference with prospective economic relations and breach of fiduciary duty, are all without merit and should be dismissed with costs.

19. *Proper and Valid Termination:* As set out above, the Claimants terminated the Consolidated Agreement as a result of WL's fundamental and material breaches of the Consolidated Agreement. The Claimants were justified in doing so and their conduct does not constitute wrongful termination or repudiation.

20. *No Shortages in Delivery:* WL complains that CT under-delivered in the first year following commercial production and did not deliver 7 million WMT of Material to WL. As set out above, the Parties mutually agreed to depart from full compliance with the terms of the Consolidated Agreement during the First Calendar Year and agreed that WL would purchase only 2,700,000.00 WMT of Material during that Year. The parties also agreed that WL would earn a 1.75% commission on the quantity of Material sold to Wisco. WL has no right to now complain about not receiving 7,000,000.00 WMT of Material during the First Calendar Year. Further, WL accepted the irregularities and deviations that occurred from the First Year Arrangement. Although the parties did not purchase and sell 2,700,000.00 WMT of Material during the First Calendar Year, WL agreed to, acquiesced, demanded and/or accepted those departures from the First Year Arrangement. By doing so, WL waived its right to complain about any shortages in sales during the First Calendar Year. Thereafter, the Consolidated Agreement was properly terminated and the Claimants are no longer obligated to sell Material to WL.

21. *No Breach of Warranty:* The Claimants never warranted that commercial production at the Bloom Lake Mine would commence in the third quarter of 2009. In fact, it would have been commercially unreasonable for the Claimants to give any warranties to WL with respect to the commencement of commercial production in 2007 when the Bloom Lake Mine was just starting to be developed. Similarly, the Claimants did not make any warranties regarding availability of goods. In any event, to the extent that the Claimants gave any warranty and breached it, which is denied, WL's claim for breach of warranties is explicitly barred by Section 14 of the Agreement because WL failed to assert that claim within the time limit prescribed by that Section.

22. *No Discriminatory Pricing or Breach of Good Faith Obligations:* WL accepted the BLP Pricing Methodology and executed the Supplemental Agreement without raising any objections or making alternate proposals and after seeking confirmation from its customers. WL cannot escape the binding effect of the agreed upon pricing because it subsequently may have become unprofitable for it. The Claimants had no obligation to sell Material to WL at a price other than the price in the Consolidated Agreement and their conduct does not constitute breach of any good faith obligations or discriminatory pricing.

23. *No Breach of Exclusivity Obligations:* The Claimants did not breach any of their obligations under the Consolidated Agreement, including any obligations relating to exclusivity. During the course of the parties' relationship, WL was fully aware of, and had no objections to, the Claimants' other customers and contractual relations. To the extent that the Claimants sold Material directly to customers in China after the termination of the Consolidated Agreement, WL has no right to complain of such conduct when it refused to purchase the Material and comply with its own obligations under the Consolidated Agreement.

24. *No Unjust Enrichment:* The Claimants deny that they have been unjustly enriched at the Respondent's expense. Any efforts undertaken by the Respondent in connection with the sale of the Material in China were taken as a component of the parties' contractual relationship and for Worldlink's own benefit.

25. *No Tortious Interference with Prospective Economic Relations:* The Claimants deny that they have interfered with the Respondent's business relationships. The Claimants have no knowledge of the Respondent's prospective economic relations. Further, as a result of WL's breaches and consequent termination of the Consolidated Agreement, the Claimants had to mitigate their losses and were entitled to sell the Material to buyers in China or elsewhere, irrespective of whether they were WL's former or prospective customers. The Claimants have not engaged in any wrongful or improper conduct and did not intend to harm the Respondent.

26. *No Breach of Fiduciary Duty:* The Claimants and the Respondent are independent and sophisticated parties in a purely arms-length commercial relationship defined entirely by the terms of the Consolidated Agreement. They never intended to enter into a fiduciary relationship and were on an equal footing and acted in their own self-interest throughout the course of the parties' relationship. The Agreement, which was entered into after several rounds of negotiations and with each Party having its own legal counsel and other advisors, evidences no characteristics of a fiduciary relationship. Amongst other things, neither Party has an obligation to act for or in the interest of the other Party, neither Party has power or authority over the other party or to affect the interests of the other Party, neither Party has audit rights over or access to the other Party's assets and neither Party is at the mercy of or in some way vulnerable and dependent on the other Party. As such, the Claimants did not owe any fiduciary duty to the Respondent.

27. WL's claims are therefore without merit and should be dismissed in their entirety with costs. Alternatively, and only if the Arbitral Tribunal finds the Claimants liable, the Claimants deny that WL has suffered any damages. To the extent that WL has suffered damages, those damages are unreasonable, excessive and too remote to be recoverable in law and WL failed to take reasonable steps to mitigate those damages.

28. The Claimants seek the following relief:

    i. a declaration that WL materially and fundamentally breached and repudiated the Consolidated Agreement;

ii a declaration that the Claimants were entitled to termination, cancellation and/or total avoidance of the Consolidation Agreement as a result of WL's breaches and conduct and that the Claimants validly and properly terminated the Consolidated Agreement on 4 August 2011;

iii. an award of damages for the full amount of the losses suffered by the Claimants as a result of WL's breaches and repudiation;

iv. an award of damages for the outstanding 5% of the payment owed by WL to CT on four of the shipments that WL took delivery of in 2011, which amount is in excess of US$ 5 million;

v. dismissal of all of WL's claims and/or counterclaims in their entirety;

vi. an award for all of the Claimants' legal and other costs of the arbitration, including attorney's fees and the fees of the arbitrators; and

vii. interest on all of the above monetary claims.

B. <u>The Respondent's Position</u>

29. Worldlink contends that the Consolidated Agreement was a distributor agreement whereby Worldlink became the exclusive distributor in China of Material from CT's Bloom Lake Mine. The Consolidated Agreement was the central component of a quasi-partnership between Worldlink and CT. CT would sell to Worldlink 7,000,000.00 WMT of Bloom Lake Material each year for seven years. Worldlink would sell this on to end users in China. The Parties sought a pricing system that would ensure that Worldlink could sell the Material at competitive prices acceptable to Chinese purchasers.

30. The Addendum accommodated organizational changes to the exploitation of the Bloom Lake Mine, including: (1) investment from a third party, Wisco, a Worldlink customer, and (2) the formation of BL and BLP. Worldlink and CT agreed that BLP could allocate to Wisco between 3,000,000.00 and 3,800,000.00 WMT of the 7,000.000.00 WMT of Bloom Lake Material due to be supplied to Worldlink annually under the Consolidated Agreement. Worldlink remained entitled to its 1.75% commission for the portion supplied to Wisco.

31. Worldlink played no part in negotiating the BLP Price Methodology, which was the product of pricing negotiations/agreements between the Claimants and Wisco. The new temporary pricing system was to produce competitive prices acceptable to Chinese end-users, Wisco being one of them. Similarly, the Parties agreed or it was an implied term of the Supplemental Agreement that Bloom Lake Material sold under the Consolidated Agreement would always be sold at the same price charged to Wisco.

32. Contrary to the Consolidated Agreement, CT failed to supply any Material in 2009. In March 2010, CT sent Worldlink a proposed shipping schedule with shipping to commence in May 2010. But again CT failed to ship to Worldlink as planned. Meanwhile, contrary to the exclusive nature of the Consolidated Agreement, CT delivered to other iron ore traders operating in China. Subsequently, CT sent Worldlink another shipping schedule. CT again failed to comply with the shipping schedule. In total, CT delivered only 1,025,341.00

WMT (six shipments) of a scheduled 2,720,000.00 WMT (17 shipments) of Bloom Lake Material. It failed to deliver agreed shipments in October 2010, December 2010, January 2011, February 2011, and March 2011. From April 2011 to June 2011 CT delivered only approximately half of the agreed tonnage.

33. Because of CT's defaults and delivery shortages, Worldlink could not perform sales contracts with customers and suffered losses.

34. Through the course of their performance, the Parties modified the terms of the Consolidated Agreement. Because of supply-side instability and delay, Worldlink was not required to furnish a shipping schedule. Instead, the Parties adopted a practice whereby: (1) CT, as the supplier, was responsible for providing the shipping schedule, and (2) laydays were to be mutually agreed, with CT being required to give sufficient notice (approximately 45 days) of its proposed laydays. This practice became a term of the Consolidated Agreement and is consistent with industry practice and custom for shipping of iron ore concentrate.

35. On 12 May 2011, Cliffs Natural Resources Inc. acquired CT. CT became "Cliffs Quebec Iron Mining Limited" ("Cliffs") and Cliffs personnel soon took over performance of the Consolidated Agreement. Soon afterwards, Cliffs informed Worldlink that it was taking over responsibility for shipment scheduling. Cliffs then sent Worldlink proposed laydays for various shipments, but failed to give Worldlink the required 45-day's notice.

36. Also around this time pricing problems emerged, threatening to undermine the Consolidated Agreement. Chinese end users were refusing to buy at BLP prices and requested a new pricing methodology for Bloom Lake Material. Strict application of the BLP Price Methodology was failing to produce prices at which Chinese end users were willing to buy. Worldlink asked Cliffs to agree on a new pricing method acceptable to Chinese end users, to the benefit of all parties.

37. On 20 July 2011, Cliffs wrote to Worldlink demanding that Worldlink furnish a shipping schedule within two days, contrary to the Parties' practice. Worldlink responded the next day referring to the Parties' 45-day notice practice and requested a meeting with Cliffs. On 4 August 2011, Cliffs wrote to Worldlink purporting to terminate the Consolidated Agreement with immediate effect, alleging that Worldlink had committed a material breach.

38. Cliffs's allegations that Worldlink committed a material breach are not credible and provide no legal justification for terminating the Consolidated Agreement. They were rather a pretext to terminate the Consolidated Agreement. Shortly afterwards, Cliffs offered Worldlink a new distribution agreement with dramatically inferior terms. Further, Cliffs' insistence on strict application of the BLP Price Methodology for sales of Bloom Lake Concentrate to Worldlink is discriminatory and not in good faith. For direct sales to Wisco, Cliffs dispensed with strict application of the BLP Price Methodology.

39. Because of Cliffs' various breaches and wrongs, Worldlink has suffered injury and damages including without limitation: loss of commission on sales of Bloom Lake Material agreed under the Consolidated Agreement – that is, 1.75% of the sales price for 7,000,000.00

WMT of Bloom Lake Material each year for seven years (49,000,000.00 WMT), excluding commission already earned on consummated sales.

40. To the extent necessary or appropriate, the Respondent's counterclaims should be construed in the alternative.

41. *Breach of Contract (Wrongful Repudiation).* The Claimants wrongfully repudiated the Consolidated Agreement by unequivocally refusing to perform under the remaining term of the Consolidated Agreement.

42. *Breach of Warranties (Late Commencement of Commercial Production and Insufficient Availability of Goods).* As part of the parties' agreements, the Claimants made written and oral warranties, and breached those warranties.

43. *Breach of Contract (Delivery Shortages).* The Claimants breached their obligation to supply 7,000,000.00 WMT of Bloom Lake Material each year under the Consolidated Agreement.

44. *Breach of Contract (Breach of Good Faith Obligations/Discriminatory Pricing).* The Claimants were required to fix the price for Bloom Lake Material under the Consolidated Agreement in good faith. They breached this obligation by insisting on strict application of the BLP Price Methodology, engaging in discriminatory pricing practices and agreeing with Wisco to a new pricing arrangement while refusing the same arrangement with the Respondent.

45. *Breach of Contract (Exclusivity Obligations).* The Claimants breached the Consolidated Agreement by dealing directly with end users contrary to the Respondent's exclusive rights to distribute in China.

46. *Unjust Enrichment.* The Respondent's efforts to market and promote Bloom Lake Material in China conferred upon the Claimants significant benefits. The Claimants have been unjustly enriched at the Respondent's expense.

47. *Tortious Interference with Prospective Economic Relations.* Since purporting to terminate and/or wrongfully terminating the Consolidated Agreement, the Claimants have approached and begun offering or selling Bloom Lake Material to the Respondent's customers or prospective customers in China. The Claimants have intentionally and improperly interfered with the Respondent's business relationships.

48. *Breach of Fiduciary Duty.* By virtue of the Parties' quasi-partnership, their relationship was fiduciary in nature. The Claimants breached their fiduciary duties to the Respondent by, *inter alia*: failing to support and undermining the Respondent's efforts to market Bloom Lake Material in China; entering into agreements or arrangements concerning distribution of Bloom Lake Material in China that sought to exclude the Respondent; undermining the Respondent's relationships with its customers; improperly and discriminatorily pricing Bloom Lake Material; and wrongfully repudiating the Consolidated Agreement.

49. The Respondent requests the following relief against the Claimants, jointly and severally:

i. an award of compensatory damages in an amount to be specified;

ii. an award disgorging the additional profits that the Claimants will or are likely to earn as a result of their wrongful termination of the Consolidated Agreement, and entering into agreements directly with the Respondent's clients/end users in China;

iii. an award of all costs and expenses incurred by the Respondent in connection with this arbitration, including: (i) the Respondent's legal fees and expenses and its internal costs, including compensation for the time spent by management and legal staff; and (ii) the fees and expenses of the Arbitral Tribunal and the ICC administrative expenses;

iv. interest on all of the above monetary claims, including on the costs claims; and

v. an award of such other relief as the Arbitral Tribunal considers just and appropriate.

IV. The Arbitral Tribunal's Findings and Determinations

a) Did the Claimants' Validly Terminate the Consolidated Agreement?

A. General Background

50. The disputes between the Parties substantially turn around the Claimants' termination of the Consolidated Agreement. In essence, the Claimants plead that the termination was valid since: (a) the Respondent was in material or fundamental breach of its obligation to offtake Material in compliance with the Consolidated Agreement's terms and conditions; and (b) the Respondent was strictly bound by the pricing provisions for the Material set forth in the Consolidated Agreement; therefore, the Respondent could not validly discontinue performance of its contractual obligations to take Material and at the same time pursue negotiations aimed at obtaining a readjustment of the price applicable according to the Consolidated Agreement's provisions. The Claimants also contend that the Respondent's conduct constituted a repudiation of the Consolidated Agreement.

51. The Claimants rely on specific provisions in the Agreement in support of their position that WL had a firm commitment to take the iron ore irrespective of the price at which it would re-sell iron ore purchased under the Agreement to its Chinese customers or its actual ability to place iron ore from the Bloom Lake mine in the Chinese market. These are risks assumed by WL under the Agreement; an alteration of such risk allocation would infringe clear Agreement provisions to the contrary. Further, the Consolidated Agreement (and particularly the Annex to the Supplemental Agreement) provides for the pricing of Material through variables identified on a fixed basis, without the Consolidated Agreement allowing for a different adjustment of the price of the Material, should such variables prove inappropriate to continue to properly reflect fluctuations of the iron ore price in the market, including the spot market.

52. The Respondent denies having committed any breaches, fundamental or not, of its contractual obligations to take Material or of having repudiated the Consolidated Agreement and, further, argues that the Consolidated Agreement is flexible enough to allow and require the adjustment of the contract in response to changing market conditions; since the contract price no longer responded to such conditions, the Respondent was contractually entitled to a price adjustment under the Consolidated Agreement. Consequently, the Respondent affirms that the Claimants repudiated the Consolidated Agreement without valid legal or factual grounds to do so.

53. On 4 August 2011, CT sent to the Respondent a letter signed by Terrence R. Mee, Cliffs Senior Vice-President, Global Iron Ore and Metallic Sales, terminating the Consolidated Agreement the ("Termination Letter")[4], which recites as follows:

"This letter serves as a follow up to my letter dated July 19, 2011. In that letter I indicated that Worldlink needed to provide a shipping schedule by the end of business July 22 in order to comply with the terms of the Agreement. To date Worldlink has not provided a shipping schedule nor has it nominated any further vessels for the shipment of the iron ore concentrate from the Bloom Lake Iron Mine in 2011.

As you acknowledge in your email of July 21, 2011, production at the Bloom Lake Mine was not stable during the first year of production and Worldlink accepted irregular shipments. However, at the meeting in Beijing on June 29, 2011, it was made clear to you, and as you have acknowledged in your email of the same day, production at the Bloom Lake Mine is now "normal" and Bloom Lake is in a position to provide regular shipments to Worldlink in accordance with the Agreement, which requires that shipments are to be evenly spread over the course of the year. Nevertheless, you failed to take delivery of a nominated shipment in July, have refused to take delivery of a shipment in August and have failed to respond to our proposal for shipments in September.

Worldlink's failure to meet its obligations under the Agreement is a material breach. As a result of the material breach, the Agreement is hereby deemed terminated effective immediately. The Bloom Lake Partnership will attempt to mitigate damages by seeking other purchasers for the tons that Worldlink should have taken delivery of in 2011 and during the remaining term of the Agreement. We will also pursue all remedies available under law against Worldlink".

54. Prior to the Termination Letter, the Claimants sent to the Respondent two communications – respectively dated 8 July (sent on 11 July 2011[5]) and 19 July 2011 (sent on 20 July 2011[6]) - concerning alleged contractual breaches by the Respondent of its obligation to take Material.

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[4] Bundle 5, Tab 253.

[5] Bundle 5, Tab 212; Mr. Mee's testimony at the Hearing (Day 3), at 726-727.

[6] The letter was actually sent on 20 July 2011 (Transcript day 2, Mr. Xu's testimony at 469).

55. The 8 July 2011 Cliffs communication to WL concerned a shipment for which laydays had been assigned for 13-22 July 2011(the last scheduled shipment for the First Calendar Year). In this letter, Cliffs states that within the 14 day contractual period – expiring on the date of the letter – Worldlink had not nominated a vessel, nor established the letter of credit corresponding to the cargo. In such letter Cliffs required confirmation that Worldlink would comply with the said laydays and nominations. If no confirmation was forthcoming, Cliffs would conclude that Worldlink would not comply with future laydays, nor with its obligations under the Consolidated Agreement[7].

56. On 19 July 2011, the Claimants wrote to Worldlink indicating that Worldlink had failed to provide shipping schedules beyond 13-22 July 2011, and warning Worldlink that unless Worldlink supplied a 2011 shipping schedule for the Second Calendar Year by the end of business on 22 July 2011, the Claimants would have to mitigate their damages by finding other buyers for the remaining of the 2011 shipments *"...along with all the remaining tonnage obligations between Worldlink and Bloomlake for the remainder of the term of the Agreement"*[8].

57. In its reply of 21 July 2011, WL affirmed that (1) shipping schedules had to be provided by CT, since the mine production had not stabilized; and (2) shipments required a 45-day laycan advance notice; for this reason WL could not take the cargo for the 19-28 July 2011 shipment proposed on 28 June 2011 by CT. Further, WL requested a postponement of the August 2011 shipment to September 2011 to accommodate internal arrangements of an end customer[9]. Finally, the reply indicated that WL was looking forward to a meeting with Cliffs at Cliffs's Cleveland offices to discuss pricing matters. The objective of this meeting was also to discuss the commercial relationship between the Parties[10].

58. The Respondent refers to a Cliffs wire dated 11 January 2011 reflecting a "fair disclosure" conference call by Cliffs to discuss Cliffs definitive agreement to acquire CT, in support of its contention that Cliffs was not interested in maintaining the Consolidated Agreement with WL, since Cliffs did not need traders to do business in Asia[11]. In e-mails from Mr. Fujikawa, Cliffs's marketing managing director to Mr. Terrence Mee – also referred to by the Respondent – sent on 18 and 19 July 2011, Mr. Fujikawa points out that *"So long as majority of Bloom Lake concentrate tonnage remain under Worldlink/WISCO's contracts, they would continue to control Bloom Lake project to their advantage"*, and that *"I hear Worldlink is a young hawkish Chinese trader and perhaps, it is not a good party for us to have a long term business relationship"*[12]. In other e-mails, Mr. Terrence Mee states that

[7] Bundle 5, Tab 211.

[8] Bundle 5, Tab 226.

[9] Bundle 5, Tab 238.

[10] Transcript, Day 3, Mr. Mee's testimony, at 761.

[11] Bundle 5, Tab 126.

[12] Bundle 5, Tab 223.

Wisco and Worldlink are not providing sufficient vessel nominations to support the current operations of the Bloom Lake mine, and that they do not need traders to sell the iron concentrate in China because of Cliff's office in Beijing[11]. On the basis of these communications, the Respondent affirms that these were the real reasons – not reflected in the Termination Letter - prompting Cliffs/CT to put an end to their relationship with Worldlink and terminate the Consolidated Agreement.

B. The Claimants' Detailed Position

59. In support of their position that the Consolidated Agreement was properly terminated through the Termination Letter, the Claimants refer to contractual breaches that would have been committed by the Respondent before and after the taking over of CT by Cliffs as follows:

(a) on 1 June 2011, WL canceled a shipment with a laycan scheduled for 7-16 June 2011 (despite having received a 48-day advance notice);

(b) WL failed to accept a shipment with laycan dates scheduled for 21-30 June 2011, despite having received a 49-day advance notice, which was finally taken by Wisco;

(c) WL received 44 days in advance a notice for a shipment with a 13-22 July 2011 laycan, which, allegedly, was only performed by WL after the Claimants agreed to lower the price for the Material resulting from the BLP Price Methodology;

(d) WL did not reply to shipment proposals with laycan dates respectively of 1 July 2011, 6-7 July 2011, 10-11 July 2011, anytime in July/August 2011, despite having received advance notices, respectively of 24 days, 29 days, 33 days and 8-69 days;

(e) WL rejected a shipment with a proposed laycan for 19-28 July 2011, not because it just received a 22-day advance notice, but because of the high price for the Material resulting from the BLP Price Methodology; and

(f) despite having received, respectively, 45-day and 49-day advance notices, WL rejected the 22-31 August 2011 and 16-25 September 2011 laycans because of the high BLP Price.

60. The Claimants argue that after the two deliveries in May 2011, WL did not take any shipments from the Claimants because WL, dissatisfied with the pricing of the Material purchased from the Claimants, refused to take further shipments as a negotiation tool or strategy to obtain a change in the price currently applicable under the Consolidated Agreement.

61. The Claimants mainly rely on the following evidence in support of their contention that, as from June 2011, WL's conduct reveals its unwillingness to honor its obligations under the Consolidated Agreement for pricing considerations:

[11] Bundle 5, Tabs 222, 246.

(a) in connection with the 7-16 June 2011 laycan, because it was cancelled by WL without proposing an alternate laycan (the Claimants rely on internal e-mails dated 21 June 2011 between, inter alia, Serge Girardin and Gino Levesque of CT[14], which in their relevant parts recite as follows):

First e-mail:

"We are approaching stockpiling capacity at the port (550kt today) Worldlink vessel (below) cancelled.

Worldlink June 7-16 laydays – no vessel nomination – verbally advised around June 1 that it was cancelled".

Second e-mail:

"Just received a call from Sheldon (Worldlink)

I should be getting a vessel nomination for the July 13-22 laydays from Sheldon in the next few days; ETA is July 16.

He is working on getting additional shipment(s) but the issue is still price which he considers $20 to high compared to ??

I suspect he is opening the door to redefining the pricing mechanism. I explained to him that this will need to be addressed at a higher level.

I do not expect he will supply additional vessels we want"

(b) in connection with the 21-30 June 2011 laycan (finally taken by Wisco, although accepted by WL), but finally cancelled by WL, which never took the corresponding cargo[15]; and

(c) in connection with the 13-22 July 2011 laycan, which although accepted by WL, it was only after the Claimants agreed to a lower price for this shipment, as shown by the following e-mails exchanged between WL and the Claimants:

(i) E-mail from WL of 1 July 2011, last paragraph (see para. 62 (a) (i) below);

(ii) E-mail form the Claimants to WL of 3 July 2011, which in its relevant parts recites as follows:

"Good morning. As advised via phone, price formula is mutually agreed se we hope we have to go with the agreed price before we can agree any other choice. We can discuss with you regarding the relationship and pricing system with you during the meeting to be held in Cleveland in late July or August.

[14] Bundle 5, Tab 183.

[15] Terrence R. Mee witness statement (" WS") of 2 May 2013, at para. 12.

For the cargo with laycan Jul 13-22, you are expected to open L/C based on US$171.73/DTM. Thanks for your understanding and cooperation. Your support would be highly appreciated"

(iii) E-mail from the Claimants to WL of 5 July 2011, in which by adjusting (lowering) the Fe content in the iron ore, accepted to reduce the price for this shipment (13-22 July 2011 laycan), which in its relevant part recites as follows[16]:

"After discussion with our Cleveland office, we agree to temporarily adjust the Fe % from 66% to 65.79% (which is from your spreadsheet) as the basis for calculating the price of the Bloom Lake cargoes. We have so to show a good faith gesture to assist you in contract performance.

As you know, Cliffs have only owned the Bloom Lake operation for about seven weeks and we are implementing Cliffs best practices regarding operations. One of the items we will address is constantly producing a product of 66 Fe, but in the mean time we will use 65.79 % Fe as the basis for calculating the price (we are not changing the contract Fe%)".

62. The Claimants substantially rely on the following in connection with laycans specifically alluded to in the Termination Letter:

(a) in connection with the 19-28 July 2011 laycan:

(i) an e-mail dated 1 July 2011 from WL to the Claimants, which in its relevant parts recites as follows[17]:

" Regarding our July shipment which might be shipped by MV. Pacific Century, we nominated this cargo in early June to Laigang Yongfeng Steel who is also your existing customer, however we were informed lately that they wanted to postpone this shipment due to high price. As what I addressed during the meeting on 29th, the existing price model of Bloom Lake does not represent the fair market value compared with other major iron ore resources around the world. Nowadays, the iron market is really weak because of very soft demand and downward steel market. As a matter of fact, today, there is one shipment of 65% Russian Pellets was sold at USD184/DMT CFR China, whihle (Sic) the deltvery price of our concentrate will be no less than USD 195.00/DMT. That is why we are asking for provisional settlement before we build up a new "fair to everybody" price model. By this way, each party could keep the contract going forward, your cargo could be quickly released to the market. Otherwise, either enduser or us will suffer a great loss (more than USD10/MT, at least 2million for this shipment).

Regarding the second cargo nomination with laycan July 19-28, we are regreted (Sic) that we are not in the position to consider it unless the new price model and provisional settlement are considered. As you must be awared (Sic) that time is very crucial now, it is required at least 20 days ahead of laycan to fix the vessel, so your prompt reaction would be highly appreciated"; and

[16] Bundle 5, Tab 206.

[17] Bundle 5, Tab 203.

(ii) an e-mail of 21 July 2011 from the Claimants to WL showing that they maintained an adjustment (granted before in connection with the 13-22 July 2011 laycan) of the Fe % from 66% to 65.79% for calculating (lowering) the shipment price, which recites as follows (attached spreadsheet omitted)[18]:

"We are wondering whether you can confirm acceptance to take the Bloom Lake cargo in August soon. Attached is the pricing sheet for August. We are kindly expected to nominate vessel and open L/C based on $168.69/dmt. Thanks for your cooperation"

(b) in connection with the 22-31 August 2011 laycan, on an email dated 8 July 2011 from WL to the Claimants[19], which in its relevant parts recites as follows:

"As we addressed in our previous correspondence, because of some issues of current pricing model, the Chinese end users are asking for a new pricing model of Bloom Lake concentrate, we are regreted (Sic) that we cannot confirm acceptance of the cargo you nominated until we work out a new pricing method which is agreed by each party".

(c) In connection with the 16-25 September 2011 laycan (proposed to WL with a 49-day advance notice), the Claimans rely on an internal e-mail dated 2 August 2011[20] exchanged between, *inter alia*, the Claimants' Jacky Zhou and Terrence Mc, which in its relevant parts recites as follows:

"Worldlink is waiting for the end users acceptance confirmation. Sheldon indicated to me that they cannot confirm until the consumers have accepted it. We would have to imagine that they are waiting for the pricing discussion outcome in Cleveland becomes available then confirm the cargo.

Ningbo will take part of the cargo nominated to Worldlink. Based on the meeting with Ningbo last week, Ningbo expressed their hope to change the current pricing so that the freight rate will be more close to the actual freight cost and the pricing is more reflect (Sic) the actual product quality.

We will continue to push Worldlink but we are not so confident that they can confirm acceptance before the Cleveland meeting".

C. The Respondent's Detailed Position

63. In presenting its position, the Respondent distinguishes between shipments and laydays scheduled for the First Calendar Year in accordance with the Agreement, and those corresponding to the Second Calendar Year (15 July 2011- 14 July 2012). The Respondent also distinguishes shipments and laycans concerted before and after the

[18] Bundle 5, Tab 236.

[19] Bundle 5, Tab 213.

[20] Bundle 5, Tab 251.

taking over of CT by Cliffs, i.e., after Cliffs, essentially through its Beijing office, started to play an active role in the administration of its contractual relationship with Worldlink (15 June 2011). This happened when the performance of the Consolidated Agreement was taking place towards the end of the First Calendar Year. Finally, the Respondent suggests that the only circumstances for termination the Claimants may rely upon are those set forth within the four corners of the Termination Letter. The implication is that the Claimants may exclusively rely on such circumstances to allege and prove that the Respondent committed a fundamental or material breach justifying contractual termination, or a repudiation of the Consolidated Agreement by the Respondent.

64. The Respondent lays great emphasis on the existence of a practice whereby a 45-day advance notice was to be given by CT when proposing a laycan to WL. The Respondent argues that CT and Worldlink agreed that CT would receive a 45-day advance notice prior to any scheduled laycan. The Respondent refers in particular to internal Cliffs' emails of 29 June 2011 showing that CT was to provide the shipping schedule and, also, laycans with a 45-day advance notice[31]. Another internal Cliffs/CT exchange of emails of 29-30 June 2011 refers to a 50-day advance notice as the practice to schedule laycans[32]. A previous internal e-mail of 28 June 2011 reflects CT's understanding that a 45-day advance notice to nominate cargoes did apply[33]. In fact, in his testimony at the Hearing, Mr. Serge Laurin, CT's former Chief Financial Officer, also corroborated the 45-day advance notice practice between the Parties to designate each specific laycan, and he testified that he did not know whether this practice would end in June 2011 (i.e., when Cliffs took over CT)[34]. The existence of such a practice prior to Cliffs' take-over was acknowledged by Cliffs' representative in the Beijing office[35]. The evidence further shows that Cliffs' Beijing office understood that CT should give Worldlink a 45-day advance notice for each laycan[36]. It was Cliffs' understanding that for the August 2011 shipments (the first ones after Cliffs took over) Cliffs had to notify Worldlink 45 days in advance of the cargo tonnage and laycan dates[37].

65. In further support that the 45-day advance notice was a practice observed by the Parties, and that the Claimants cannot validly rely (as they do in the Termination Letter) on Worldlink not taking cargoes of iron ore in situations in which it has not received such advance notice, the Respondent shows that out of eight shipments between August 2010 and 1-15 July 2011, only two were premised on laycans for which the advance notice

[31] Bundle 5, Tab 193.

[32] Bundle 5, Tab 198.

[33] Bundle 5, Tab 192

[34] Day 1, at 310-313.

[35] Day 2, Mr. Xu's testimony, at 411-412.

[36] 28 June 2011e-mail; Bundle 5, Tab192.

[37] 2 June 2011 e-mail from Cliffs; Bundle 5, Tab 174.

fell short of the 45-day minimum (one notice was given 41 days in advance, and the other one was given 44 days in advance).

66. The Respondent contends that although the Consolidated Agreement required the Respondent to schedule shipments and laycans, in fact CT assumed these obligations. The Respondent challenges the assertion in the Termination Letter that the production of the mine was stable and normal. Because of the lack of stability in the production of iron ore from the Bloom Lake mine, the practice had been for the Claimants to nominate a cargo with a 45-advance notice to Worldlink, and that so far, Worldlink had not received confirmation that the production of the mine had become stable. Also for this reason, and the fact that sales to Worldlink had to be coordinated with other sales of iron ore from the Bloom Lake mine to Wisco and SK Network, the Respondent alleges that it was CT – and not Worldlink – which provided the shipping schedules, since it was the only one in the position of coordinating iron concentrate shipments to the different purchasers (this was confirmed by the testimony at the Hearing of François Laurin of CT[28]). Therefore, the Respondent argues that termination of the Consolidated Agreement (as set forth in the Termination Letter) cannot be validly based on Worldlink failing to provide a shipping schedule for the Second Calendar Year despite the assertion by the Claimants, in their communication of 19 July 2011 mentioned above, that Worldlink was failing to honor such obligation.

67. During the Hearing, this matter was explored through the cross-examination of Mr. Jimmy Xu, the chief representative of the Beijing office of Cliffs, and Mr. Terrence R. Mee, based in Cliffs' Cleveland office.

68. For the period July 2011 to December 2011 (the first half of the Second Calendar Year), a shipping schedule – in the sense contemplated in the Consolidated Agreement – was not expected, utilized or requested, because it was a six-month period, and the contractual shipping schedule is annual. In this sense, the conduct of the Parties deviated from the strict contractual terms. For this period, laycans, tonnages and cargo availability were established on a shipment-by-shipment (or cargo by cargo) basis [29]. This supports the conclusion that for this period the Respondent did not have to provide shipping schedules and, accordingly, that it was not in contractual breach for not providing the same.

69. Prior to the time that CT was taken over by Cliffs, CT (7 June 2011 e-mail from Serge Girardin[30]) proposed to Worldlink and Wisco three additional shipments of iron ore for July 2011 (i.e., the end of the First Calendar Year under the Consolidated Agreement). The three proposed laycans started, respectively, on 1 July 2011, 6-7 July 2011 and 10-11 July 2011. These are additional shipments not originally contemplated in the forward schedule set up in advance for that Calendar Year in accordance with the Consolidated Agreement. Wisco

[28] Day 1 transcript, at 305-308.

[29] Mr. Xu's testimony, Day 2, at 406-409; Mr. Mee's testimony, Day 2, at 722-723.

[30] Bundle 5, Tab 176.

took one of these shipments. WL did not take any of the shipments. There is no evidence that CT or Cliffs complained about any of these two shipments not having been taken by Worldlink[31]. In any case, such shipments being over and above shipments scheduled pursuant to the Consolidated Agreement during the Second Calendar Year, WL did not have a contractual obligation to take such shipments.

70. On the other hand, the Respondent contends that, assuming that the Termination Letter refers to the three additional shipments mentioned above and the corresponding laycan proposed dates, the respective advance notice periods were 23, 28 and 33 days[32], i.e., not in agreement with the practice developed in the performance of the Consolidated Agreement, which would require a 45-day advance notice for proposed laycans; therefore, WL was not in breach, in accordance to the existing practice, by not taking those cargoes. The Respondent points out that such shipments were also proposed to Wisco (one cargo to WL, two to Wisco), which, like WL, did not accept them although, in the case of Wisco, apparently because of alleged lack of available capacity[33].

71. The last laycan scheduled prior to the taking over of Cliffs was the 13-22 July 2011 laycan, which correspondend to a cargo for which WL had nominated (prior to the take-over by Cliffs) the Pacific Century, and which was the subject of the letters of 8 and 20 July 2011 mentioned above. Although the vessel had been nominated and, for this shipment, the price of the Material was lowered by CT on the basis of the Material's actual Fe content, Claimants alleged that WL would not use the laycan because WL had not confirmed the letter of credit required under the Agreement to pay for the cargo, which justified the Claimants' complaints in the aforementioned letters[34]. In any case, assuming that the Termination Letter refers to the 13-22 July 2011 laycan, it was performed and the respective cargo taken by WL, as testified by Mr. Xu, and as showing in an e-mail of Serge Girardin of CT, on 30 June 2011[35]. Consequently, the Respondent denies having breached the Consolidated Agrement in connection with this laycan.

72. After the take-over of CT by Cliffs, three laycans were proposed by Cliffs' Beijing office. These were: (a) a 19-28 July 2011 laycan; (b) a 22-31 August 2011 laycan; (c) a 16-25 September 2011 laycan[36]. These laycans, corresponding to the Second Calendar Year, are the three laycans unequivocally relied upon in the Termination Letter to terminate the Consolidated Agreement on the basis of an alleged contractual breach by the Respondent to

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[31] Transcript Day 3, Mr. Mee's testimony, at 701-702.

[32] Transcript Day 2, at 392.

[33] Transcript Day 2, at 393-394; Bundle 5, Tab 209.

[34] Transcript Day 3, Mr. Mee's testimony, at 727-730.

[35] Transcript Day 2, at 457-466; Bundle 5, Tab 198.

[36] Transcript Day 2, at 414-415 (Mr. Xu's testimony).

take Bloomlake Material[37]. The 19-28 July laycan was the first proposed by Cliffs, and it was proposed to both Worldlink and Wisco, whereas the 22-31 August and the 16-25 September laycans were proposed to Worldlink only[38]. In the Hearing, Mr. Mee testified that a reference to "shipments" (in plural) in the Termination Letter, was a mistake. He agreed that the Termination Letter referred only to one shipment in July, one shipment in August, and one shipment in September 2011[39].

(i) The 19-28 July 2011 Laycan

73. In the 21 July 2011 e-mail from the Respondent referred to in the Termination Letter, responding to the Claimants' communication of 20 July 2011, the Respondent points out that it only received notice of the 19-28 July laycan, the first one proposed by Cliffs's Beijing office[40], on or around 27 June 2011 (with about a 21-day advance notice[41]), which would be too short a notice to proceed, since according to the advance notice practice described above, the Respondent would need at least a 45-day advance notice to arrange for a vessel; for that reason, WL was not able to take that cargo. The same laycan was proposed to Wisco on 30 May 2011 (i.e., with an advance notice of around 50 days)[42], and was performed by Wisco (the cargo loaded on the Nord Steel designated by Wisco[43]). The reason this laycan was also proposed to WL was that CT had doubts about Wisco taking Material during this laycan[44]. Be that as it may, since Wisco took the cargo, the Claimants suffered no damages resulting from this alleged breach. Therefore, the Respondent not only denies having breached the Consolidated Agreement in respect of this laycan, but even if the contrary were accepted, the Claimants cannot prevail on a claim which even if proved could not lead to awarding damages to the Claimants.

(ii) The 22-31 August 2011 Laycan

74. The second laycan (22-31 August 2011) was proposed by Cliffs on 8 July 2011 (45 days in advance). Worldlink proposed to postpone this laycan until September 2011 to

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[37] Transcript, Day 2, at 449 (Mr. Xu's testimony); Day 3 at 705-706 (Mr. Mee's testimony).

[38] Transcript, Day 2 at 427 (Mr. Xu's testimony).

[39] Transcript, 14 May 2014 (Day 3) at 687-690.

[40] Transcript, Day 2 at 427 (Mr. Xu's testimony).

[41] Transcript, Day 2 at 431 (Mr. Xu's testimony); Day 3 at 708 (Mr. Mee's testimony).

[42] Transcript, Day 2 at 431-434; 441-443 (Mr. Xu's testimony); Day 3 at 710-711 (Mr. Mee's testimony).

[43] Transcript, Day 2, at 446-448 (Mr. Xu's testimony); Day 3 at 711-715.

[44] Trancript, Day 2, at 448 (Mr. Xu's testimony).

accommodate a request from the end customer, Ningbo[45]. CT/Cliffs never respondend to this request[46]. The Respondent denies that it would not have complied with this laycan absent an adjustment of the price for this cargo, and affirms that the mere fact that it legitimately raised concerns about the pricing of the iron ore under the Consolidated Agreement is not tantamount to a repudiation or anticipatory breach of the Consolidated Agreement and, much less, to a contractual fundamental or material breach.

75. Further, the Respondent refers to an internal exchange of e-mails between Jacky Zhou and Terrence R. Mee of Cliffs on 25 July 2011, which in their relevant parts recite as follows:

First E-mail (from Zhou to Mee)[47]

"*2. Worldlink:*
As Sheldon advised, the nominated August cargo has to be delayed to September. Sheldon indicated to us the August cargo with laycan 22-31 was nominated to Ningbo. Due to Ningbo's production plan change, this shipment has to be deferred to September. We plan to nominate to Worldlink the third September cargo (laycan Sep 16-25) after you have replied Sheldon".

Second E-Mail (from Mee to Zhou)[48]

(2) If Worldlink's decision is to not nominate performing vessels in August and meet their contractual obligations, then we would view the WorldLink contract as void. Additionally we would need to identify new customers to mitigate our damages.

(3) We can provide September laydays to Worldlink, but I do not believe we are obligated due to item (2) above".

Thus, the Respondent denies that pricing concerns voiced by it were the reason prompting the Claimants to terminate the Consolidated Agreement in connection with this laycan. Rather, even a short postponement of the August 2011 shipment, irrespective of the causes underlying such postponement, would imply that Cliffs/CT would consider themselves no longer bound by their provisions.

(iii) The 16-25 September 2011 Laycan

76. The third laycan (16-25 September), proposed by Cliffs on 29 July 2011[49] with a 45-day advance notice, was apparently intended to accommodate the needs of Ningbo i.e., WL's

[45] Transcript, Day 2, at 451 (Mr. Xu's testimony), at 612 (Mr. Mee's testimony).

[46] Transcript, Day 3 (Mr. Mee's testimony), at 758-759.

[47] Bundle 5, Tab 247.

[48] *Ibidem.*

customer which indicated to be unable to receive the cargo originally to be shipped during the 22- 31 August 2011 laycan. According to Cliffs' Beijing office: "*Worldlink is waiting for the end user's acceptance confirmation. Sheldon indicated to me that they cannot confirm until the customers have accepted it. We would have to imagine that they are waiting for the pricing discussion outcome in Cleveland becomes available then confirm the cargo*". The e-mail further says that Ningbo –as indicated, Worldlink's customer in question - had expressed concerns about the price, and that Cliffs was not confident that confirmation of the taking of the cargo by Worldlink would be received before the Cleveland meeting to discuss pricing issues with the Respondent and Wisco, scheduled to take place mid-August 2011[30]. On 29 July 2011 Cliffs seems to have accepted this, since it then proposed a new laycan for 16-25 September 2011 for this shipment[31].

77. The Respondent points out that in the meantime: (i) it had received – on 20 July 2011 – the Claimants' letter of 19 July 2011 referred to at para. 56 above, requesting the Respondent to send within 48 hours a shipping schedule, (ii) promptly asked for a clarification - in its letter of 21 July 2011 (referred to at para. 57 above) - of the contents and meaning of the letter of 19 July 2011 from the Claimants, without the evidence showing that the Claimants ever responded to the Respondent's 21 July 2011 letter[32]. The evidence further shows that although Mr. Mee had given a green light for the nomination of laydays for September 2011, a few hours later he retracted from this instruction until they responded to WL's email sent by Sheldon Zhao (seemingly, the Respondent's letter of 21 July 2011)[33]. Such Respondent's letter was only addressed in the Termination Letter of 4 August 2011.

78. Therefore, the Respondent argues that a few days after, without receiving the clarification requested in its letter of 21 July 2011 or having reasonable time to react to the 16-25 September laycan proposal (including identifying a customer for the cargo), the Termination Letter of 4 August 2011 was issued. In parallel, the Respondent points out that throughout July 2011 Wisco was refusing to take cargoes because of the high price of the iron ore from the Bloom Lake Mine. Under these circumstances, the Respondent denies having breached the Consolidated Agreement.

D. <u>The Arbitral Tribunal's Analysis</u>

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[30] Bundle 5, Tab. 249.

[31] Bundle 5, Tab 251.

[32] Bundle 5, Tab 249.

[33] Transcript Day 3, at 757-759.

[34] Bundle 5, Tab 246 (e-mails form Mr. Mee to Ms. Zhou of 22 July 2011 (first one, at 7:16 a.m.; second one, at 13:17 pm)).

(i) On the Characterization of the Consolidated Agreement, the Applicable Legal Regime to the Consolidated Agreement and the Rights and Obligations of the Parties Thereunder.

79. As indicated above, while the Claimants argue that the Consolidated Agreement is a sales contract governed by the CISG, the Respondent contends that it is a distributor contract governed by the UCC. Further, the Respondent characterizes the relationship among the Parties as a quasi-partnership, a characterization that is firmly rejected by the Claimants. Essentially, the Claimants argue that it is generally accepted that distribution agreements are not covered by the CISG and, further, that the Respondent lays undue emphasis on the reference to "exclusive distributor agreement" at Section 1 of the Agreement, without taking into account the actual substance of the Agreement and the respective rights and obligations thereunder, which do not include the creation of an agency relationship between the parties to the Agreement, nor the obligation to distribute Material and organize such distribution or to attain a minimum of Material target sales in China, all features characterizing the existence of a distribution agreement but which are not present in the instant case. On the contrary, the Agreement satisfies the essential requirements for the existence of a sales agreement under the CISG, namely, the identification of specific goods to the contract with indication of the applicable sold quantities and corresponding price. In turn, the Respondent relies on the characterization of the Agreement as an "exclusive distribution agreement" in its Section 1, the incorporation of a sales commission payment to the Respondent based on the sales of Material to end-customers, which is characteristic of agreements for the distribution of goods, and the fact that the BLP Price Methodology introduced through the Addendum provides a flexible pricing formula subject to change depending on varying market conditions, and not a fixed price for goods sold, all elements indicating that the Consolidated Agreement is a distribution agreement governed by the U.C.C. and not an international sales agreement governed by the CISG.

80. The Arbitral Tribunal notes that the Claimants have persuasively shown that the conditions for the application of the CISG are met and that the Consolidated Agreement should indeed be considered a contract for the sale of goods, i.e., the sale of Material, covered by the CISG provisions.

81. Section 15 of the Agreement, providing for the application of New York law as the proper law, does not exclude the application of the CISG. Both China and Canada are parties to the CISG, and the Arbitral Tribunal is satisfied that according to CISG Articles 1 and 10 invoked by the Claimants, the requirement that the Parties' respective place of business be located in different contracting States has been met in the instant case (it being undisputed that the Parties have their respective place of business in different CISG countries, Canada and China (CISG articles 1 and 10 (a)).

82. The Arbitral Tribunal also finds that the Consolidated Agreement is a sales contract covered by the CISG. To this effect, the Arbitral Tribunal has focused on the provisions in the Consolidated Agreement and the substance of the rights and obligations of the Parties arising out of this Agreement rather than on its characterization as a "Distributor Agreement" (in the Agreement) or as an "Offtake Agreement" (in the Supplemental Agreement).

83. While Section 1 of the Consolidated Agreement clearly provides for the firm obligation of WL to purchase, during the term of the Agreement (7 years after the commencement of commercial production of the Bloom Lake mine), 7,000,000.00 WMT of Material per Contract Calendar Year, and Section 2 provides that the Material shall be sold in China exclusively through WL, the Respondent has not discharged its burden of proving that other accompanying features that must exist for the Consolidated Agreement to be considered a distributor agreement (summarized in paragraph 79 above as raised by the Respondent) are present, namely, the distribution of the purchased Material in China, the organization of such distribution, a resale target, or even the obligation to re-sell, or the existence of a sales agency relationship between seller and buyer. Specifically in connection with the existence of an agency relationship between seller and buyer under the Consolidated Agreement, the Respondent has argued, without specifically referring to any applicable law, that such relationship is a principal-agent relationship. Be that as it may, the Respondent has failed to prove the existence under the Consolidated Agreement or otherwise of the elements generally accepted as required to characterize such relationship as an agency relationship, namely, that the purchaser agreed to represent or act for the principal (seller), subject to the seller's right to control the purchaser's conduct concerning the matters entrusted to the purchaser, or that the purchaser's conduct (the Respondent's) would allow to conclude that it held itself out as agent acting on behalf of the seller as principal.

84. Further, the Claimants have persuasively argued that the Agreement sufficiently identifies the necessary elements constituting the existence of a sale of goods under the CISG or otherwise, namely the goods sold (the Material) in its Sections 1, 3 and 5, and the applicable price (Preamble, Article 2 and Schedule A to the Supplemental Agreement). Under the circumstances, the admittedly unusual feature that pursuant to Section 4 (b) of the Agreement the purchaser is earning a 1.75% commission fee on all Material sales in China – the economic effect of which is to reduce the purchase price paid by WL for the Material – cannot by itself, absent other converging elements like those described above, lead to the conclusion that the Consolidated Agreement is a distribution contract.

85. As part of its contention that the Consolidated Agreement has no rigid pricing provisions impeding a flexible adaptation of the pricing methodology to changing market conditions, the Respondent has challenged its acceptance of the Schedule A to the Supplemental Agreement setting forth the elements on the basis of which the selling price of the Material is to be calculated from time to time, i.e., the BLP Price Methodology, by alleging that it does not bear its signature.

86. However, the Claimants have persuasively demonstrated that: (a) WL was aware of Schedule A and its contents, as well as illustrations on how the BLP Methodology operates; and (b) that in fact, through their conduct, the Parties have acknowledged that the BLP Price Methodology, as showing in Schedule A, was contractually applicable for establishing the purchase price for the Material[51].

[51] E.g., various e-mails of CT to WL, or copied to WL, the first one of 8 September 2010 (and, after the execution of the Supplemental Agreement on 30 September 2010, spanning between

87. A different matter is whether, as pleaded by the Respondent, the Consolidated Agreement provided a flexible, open-ended framework permitting to adjust the pricing formula (including the BLP Price Methodology) according to changing market conditions.

88. In the view of the Arbitral Tribunal, although the BLP Price Methodology is premised on variables showing from time to time on published or publicly accessible information (such as Platts) precisely aimed at capturing pricing market variations, it provides for fixed bases for the calculation of the Material only within the flexible limits permitted by such variables. The Consolidated Agreement pricing provisions, specifically adopted by the Parties (who are sophisticated operators in the iron ore concentrate market) precisely in order to capture such market fluctuations, are then not open-ended, nor do they allow for boundless flexibility to respond to market fluctuations. A modification of the BLP Price Methodology, in the absence of a hardship clause – and the Consolidated Agreement does not have one - is only possible if the Parties would freely agree to modify it, without the Consolidated Agreement imposing an obligation on the Parties to do so, even if changing market conditions would indicate that such variables no longer properly reflect market prices for the Material.

89. Not only does pricing along such lines satisfy CISG requirements as to price for goods sold, but also leads to concluding that the Respondent cannot prevail on its contention that the pricing formula set forth in the Supplemental Agreement was subject to modification each time that a Party thereto could prove that market conditions required a modification of the price for the Material not reflected by the BLP Price Methodology. Thus, the legitimate expectations of the Parties when adopting the BLP Price Methodology could only have been that only with the agreement of both Parties this Methodology could be changed or replaced to adapt the pricing of the Material to a new market scenario, even if such original agreement would have been based on poor judgment or wrong prophecies as to its ability to produce commercially reasonable prices for the Material agreed. No claim that the Parties incurred a mistake as to the facts when agreeing on the BLP Price Methodology has been made in this arbitration.

90. The Respondent cannot prevail either on its contention that the relationship among the Parties was a quasi-partnership, i.e, a joint venture resulting from the investment by WL in the share capital of CT, WL's participation in the decision making of CT because of its stake as an investor in CT, its role in procuring end-buyers, organizing end-buyer purchases of Material and the fact that WL shared in the economic benefits of such purchases through the commission payable to WL under the Consolidated Agreement, with the accompanying legal consequences resulting from such relationship, such as fiduciary duties reciprocally owed by the co-venturers, including a fiduciary duty to adapt the pricing of the Material to changing market conditions. There is no evidence that the Consolidated Agreement gave rise to independent accounting for the alleged joint venture operations, or independent auditing of the joint venture accounts, or sharing in joint venture losses and profits by those presumed to be co-venturers as if they were partners, or separate contributions cash-called

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26 October 2010 and 18 May 2011) and attached Material price calculations, 2nd WS of Mr. Terrence Mee, Tabs. 26-48.

to the hypothetical co-venturers to pay for the joint venture operational and other costs. On the contrary, the rights and obligations of the Parties are those of sellers and purchasers entering at arm's length into a contractual arrangement, the Consolidated Agreement, the clear purpose of which is the sale of a commodity for a price. Pursuant to its provisions, the Parties assumed rights and duties as seller and buyer, in turn specifically allocating risks and burdens between them. Although the evidence shows that in July or as from July 2007 Worldlink invested between 20,000,000.00 and 30,000,000.00 Canadian Dollars in CT[33] (what appears to have been a minority participation in CT's share capital, the evidence further showing that apparently by 2009 it had ceased to exist [34]and, in any case, that it was extinguished as a result of the take-over of CT by Cliffs[35]), the mere fact of holding an equity participation in a company, absent other accompanying factors (like the ones referred to above), does not create a joint venture or quasi-partnership with other holders of shares in the same company. Under New York law, the only law pleaded by the Parties as to the existence or non-existence of a quasi-partnership or joint venture, and also the Consolidated Agreement's proper law[36], the absence of sharing in the venture's profits and losses suffices to show that no partnership, joint venture or quasi-partnership exists between contracting parties. The failure of the Respondent to prove otherwise suffices to dispose of the Respondent's characterization of CT's and WL's business relationship as a joint venture or quasi-partnership.

91. On the other hand, Sections 1 and 2 of the Agreement unequivocally provide for the unconditional obligation of the Respondent to buy fixed quantities of Material each contract Calendar Year at the contract price (determined through the BLP Price Methodology). The taking and purchasing of the Material by WL was not conditioned upon its ability to re-sell the Material in China or elsewhere at any specified price, at a profit or, for that matter, upon its ability to re-sell the Material at all. This is confirmed by Section 19 of the Agreement on Representations and Warranties, which in its relevant parts recites as follows:

(....)

"WL warrants that it will purchase such available quantities of Bloom Lake Concentrate under the terms of this Agreement (....) CLM will reserve all its right to seek compensations from WL if WL does not purchase the quantities determined under the terms of this agreement".

(ii) On Whether the Respondent Committed a Fundamental Breach of the Consolidated Agreement Justifying its Termination by the Claimants.

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[33] Hearing transcript, Day 1, Mr.François Laurin testimony, at 203.

[34] Hearing transcript, Day 1, Mr. François Laurin testimony, at 336.

[35] Hearing transcript, Day 3, Mr. Paul Yeou testimony, at 926.

[36] *Steinbeck v. Gerosa*, 4 N.Y. 2d 302, 317-318 (1958); *Cosy Goose Hellas v. Cosy Goosse USA, Ltd* 581 F.Supp. 2d 606, 622 (S.D.N.Y.2008); *Itel Containers Int'l Corp v. Atlantrafik Express Service*, Ltd, 909 F.2d 698, 701 (2d Cir. 1990).

92. Having thus made specific findings and reached conclusions on the legal and contractual framework governing the Parties' relationship giving rise to the disputes subject to these arbitral proceedings, the Arbitral Tribunal will now turn to the specific issue of whether the Respondent committed a fundamental breach of the Consolidated Agreement which, as pleaded by the Claimants, validly justified the termination of the Consolidated Agreement by the Claimants.

93. In this respect, the Arbitral Tribunal notes the convergence of the notions of fundamental breach under the CISG provisions and of material breach under New York law (i.e., the U.C.C applicable to sales of goods as part of New York law, the proper law designated by Section 15 of the Agreement). Further, the Arbitral Tribunal considers that the express choice of New York law by the Parties as the Consolidated Agreement's proper law cannot be without consequence even if the CISG has been found to be applicable. For this reason, the Arbitral Tribunal shall seek guidance in the law of New York or apply its legal rules whenever judged necessary to interpret CISG provisions or to determine matters the Arbitral Tribunal finds not to have been provided for by the CISG.

94. For example, the Parties have opposing views on whether the CISG allows resort to the principle of good faith when interpreting contracts or their performance. As shown by the Parties' submissions on this matter, the authorities are divided on this issue. Article 7(1) of the CISG only refers expressly to good faith in connection with the interpretation of the CISG provisions[59]. The Arbitral Tribunal considers that the CISG is silent in this respect. In any event, even if it were hypothetically assumed that the questions regarding the interpretation of the Consolidated Agreement raised by the Parties are governed but not settled by the CISG, the Arbitral Tribunal is not persuaded that there is a general principle underlying the CISG according to which issues of contract interpretation should be decided on the basis of the principle of good faith. Therefore, consistently with CISG article 7(2)[60], the Arbitral Tribunal shall rely on the applicable law chosen by the Parties as the proper law of the Consolidated Agreement (namely, New York law) in search for an answer. Clearly, under New York law there is an implicit covenant to be read in all contracts governed by New York law that the principle of good faith shall be applied in the interpretation and construction of contract provisions and when considering the performance or enforcement of contractual obligations[61]. Consequently, the Arbitral Tribunal shall specifically rely on New York UCC § 1-203, which recites as follows:

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[59] CISG Article 7 (1): *« In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade ».*

[60] CISG Article 7 (2): *"Questions concerning matters governed by this convention which are not expressly settled in it are to be settled in conformity with the general principles on which its is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law".*

[61] UCC § 1-201(19); Restatement of the Law Second Contracts 2d, § 205.

"Every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement".

95. The Arbitral Tribunal will examine first whether the circumstances and grounds of contract termination invoked in the Termination Letter constitute a fundamental breach and, thereafter, whether other circumstances or grounds not specified in the Termination Letter may, concurrently or separately, lead to such conclusion. The Termination Letter refers to "material" breach, but the Claimants have made their claims on the basis of fundamental breach under CISG Article 25, which recites as follows:

"A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled under the contract, unless the party in breach did not foresee and a reasonable person in the same circumstances would not have foreseen such a result"

96. The above is then the standard the Arbitral Tribunal will take into account to determine if the Claimants properly terminated the Consolidated Agreement under the CISG.

(a) Grounds/Circumstances referred to in the Termination Letter

(w) Submission of a Forward Shipping Schedule

97. Section 6 of the Agreement provides, in its relevant part, as follows:

"WL shall submit to CLM for its approval a forward shipping schedule with laydays spread over 15 days, covering each year, at least 30 days before the start of each year. CLM shall confirm to WL, within 14 days, whether or not such such schedule is acceptable. Shipments in each year shall be approximately evenly spread over the 12-month period".

98. The Claimants point out that the Consolidated Agreement required the Claimants to provide, and the Respondent to offtake, evenly distributed cargoes and shipments along each contract year, or two shipments a month, and refer to a 9 March 2009 e-mail from WL to the Claimants concerning the first contract year – going from July 2010 to July 2011 - in which WL requests compliance with this requirement. This is not a disputed issue among the Parties.

99. What is disputed is whether because of practices observed by the Parties, CT became responsible for supplying the forward annual schedule provided in Section 6 of the Agreement, with CT providing notice of proposed laycans in respect of laydays mutually agreed by the Parties.

100. The evidence has shown (see paras. 66-68 above) that prior to the taking over of CT by Cliffs, the practice had been that the seller (CT), and not the purchaser, was providing such shipping schedule. This is further consistent with the fact that the schedule had to follow the production rhythm and level of the Bloom Lake mine, something that was exclusively monitored and controlled by CT. On the other hand, the undisputed evidence has shown that during the first half of the Second Calendar Year (starting on 15 July 2011), the practice was not to have an annual shipping schedule, but to operate on a discrete shipment/laycan

by shipment/laycan basis premised on specific proposals made by CT to WL for each shipment/laycan. This is supported by an e-mail of Cliffs to WL of 29 June 2011 indicating that Cliffs would be providing the "next whole year's delivery plan" by mid-November, which could only refer to Material deliveries during the second half of the Second Calendar Year, starting in January 2012[62]. There is then no basis for the Claimants' allegation in the Termination Letter that the Respondent had failed to comply with its contractual obligations as defined by the Parties' conduct before and after the taking over by Cliffs, in connection with the preparation of forward shipping schedules.

(x) The 19-28 July 2011 Laycan

101. Whether or not WL committed a breach of the Consolidated Agreement in connection with this laycan requires looking at two questions that have been hotly debated by the Parties.

102. The first one is whether WL received adequate advance notice of the laycan. The evidence has shown (see paras. 64-65 above), that, irrespective of the actual time needed by WL to identify a prospective buyer for the Material and name a ship to take a cargo of Material within a specific laycan, the practice before the taking over of CT by Cliffs was that CT would give WL a 45-day advance notice of each specific laycan. The evidence equally shows that Cliffs became aware of this practice after it took over CT. There is no communication of Cliffs/CT after the takeover specifically challenging or rejecting such practice. Since CT only gave WL a 21-day advance notice in respect of this laycan, CT did not comply with such practice.

103. The second one is the Respondent's remonstrance regarding the inadequacy of the BLP Price Methodology in view of the market conditions in China for the sale of iron ore concentrate. Prior to considering the relevance of this question in regard to the compliance with the 19-28 July 2011 laycan, it is necessary to look at it from the perspective of the more general context within which it has been presented to the Arbitral Tribunal.

104. Various exchanges between the Parties (and internal exchanges among personnel of the Claimants) clearly show the difficulty, because of changing market conditions, for placing the Material in the Chinese market at the prices applying pursuant to the BLP Price Methodology. In such correspondence, WL requested an adjustment of the BLP Price Methodology for the iron ore to be able to compete in the Chinese market. In their opening statement at the Hearing, the Claimants asserted that "*Worldlink clearly and repeatedly conveyed to Bloom Lake it would not comply with its contractual purchase obligations at the established contract price, which jeopardized the operations of the Bloom Lake mine, and led to Bloom Lake's justified termination of the contract on the 4th of August 2011*"[63].

[61] Bundle 5, Tab 193.Mr. Jimmy Xu's testimony, transcript of the Hearing, Day 2, at 406-408.Mr. Terrence Me testimony, Hearing transcript, Day 3, at 686.

[63] Transcript 12 May 2014 (Day 1) at 15-16.

105. WL's position that the Consolidated Agreement's price was not adequate under the then current market conditions became apparent in June-July 2011 and, according to the Claimants, for this reason WL ceased to honor its contractual obligations to make available ships for taking iron ore cargoes from the Claimants' mine. The Claimants mention: (a) internal CT e-mails of 15 June 2011[64] and 29 June 2011[65], in which reference is made to issues raised by WL regarding the inadequacy of the pricing of the Material on the basis of the BLP Price Methodology; (b) an email from WL to CT of 29 June 2011, in which WL requests the building up of a new pricing model for the Material[66] ; and (c) an internal e-mail of CT [67], referring to the cancellation by WL of a shipment scheduled for 1 June 2011 and also to WL's price concerns.

106. The Arbitral Tribunal notes that it is undisputed that market conditions had changed and that the BLP Price Methodology did not yield prices for the Material able to successfully compete with spot prices for iron ore concentrate sales in or to China. From a strictly economic or commercial perspective, the Consolidated Agreement had become impracticable. Under such circumstances, the mere fact that WL was repeatedly raising such issue with CT or requested the change or adaptation of the BLP Price Methodology does not constitute a contractual breach, fundamental or not, nor a repudiation or avoidance of the Consolidated Agreement. The Arbitral Tribunal further observes that in differente pleadings in this arbitration references have been made to contract termination, contract repudiation or contract avoidance. Giving the context such pleadings have been made, the Arbitral Tribunal considers that all these terms, be it repudiation or contract termination under New York law or the U.C.C.[68], or contract avoidance under the CISG (CISG articles 64(1)[69] and 72(1)[70], are meant to refer to actions or conduct of a party clearly demonstrating such party's

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[64] Exhibit 10 of Mr. Xu's WS.

[65] Exhibit 13 of Mr. Xu's WS.

[66] Exhibit 15 of Mr. Xu's WS.

[67] Bundle 5, Tab 183.

[68] U.C.C. § 2-610, Comment 1 characterizes repudiation as "*...an overt communication of intention or an action which renders performance impossible or demonstrates a clear determination not to continue with performance*".

[69] In its relevant part, CISG article 64(1) recites as follows:

"The seller may declare the contract avoided

(a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract" .

[70] CISG article 72(1) recites as follows:

"If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided".

determination to reject the Consolidated Agreement or not to perform or continue performing its obligations thereunder, thus constituting a fundamental or material breach of the Consolidated Agreement.

107. To establish if such is the case, it then becomes necessary to consider those instances in which WL specifically indicated that it would not perform the Consolidated Agreement so long as negotiations to change or adjust the BLP Pricing Methodology to adapt the pricing of the Material in accordance with the new market conditions had not taken place. This happened on two occasions.

108. One of them concerns precisely the 19-28 July 2011 laycan. A reference has been already made to WL's e-mail to CT of 1 July 2011(full text at para. 62 (a)(i) above) stating that: (a) the first July 2011 shipment was cancelled because the end customer considered the price too high; and (b) the same would happen in connection with the 19-28 2011 laycan cargo if no adjustment of the price could be achieved[11]. The relevant part of this e-mail's text regarding this laycan is as follows:

> *"Regarding the second cargo nomination with laycan July 19-28, we are regreted (Sic) that we are not in the position to consider it unless the new price model and provisional settlement are considered. As you must be awared (Sic) that time is very crucial now, it is required at least 20 days ahead of laycan to fix the vessel, so your prompt reaction would be highly appreciated".*

109. The Claimants point out that in their e-mail of 21 July 2011 (referred to in para. 57 above), WL changed its story to blame its not taking the second July 2011 shipment on the fact that it did not receive a 45-day shipment advance notice according to the practice observed so far by the Parties.

110. The text of the 1 July 2011 e-mail shows that the reason prompting WL to indicate that it would not take Material during this laycan was not compliance or not with the advance notice practice, but because of WL's Material pricing concerns. In this e-mail, WL is saying that settling soon the pricing issue for this cargo was necessary to be able, once settled, to have sufficient time to nominate a ship that would take Material during this laycan. This is inconsistent with WL's unconditional obligation under the Consolidated Agreement to offtake Bloom Lake mine Material.

111. However, the Parties had agreed to meet in Cleveland in August 2011 to discuss, precisely, pricing issues under the Consolidated Agreement and under Wisco's iron ore concentrate sales agreement. As already found, CT was aware of the desire of WL to renegotiate the Material price[12], and WL was relying on the Cleveland August 2011 meeting to carry out these negotiations[13]. In fact, CT accepted that the pricing issues that had been

[11] Bundle 5, Tab 203.

[12] Bundle 5, Tab 199 (internal Cliffs/CT e-mail of 30 June 2011).

[13] Bundle 5, Tab 212 (internal Cliffs/CT e-mail of 8 July 2011).

raised by both Wisco and WL, were real and valid ones, that Wisco and WL would be unable to perform under their respective contracts if not corrected[74], and that this question was to be discussed in Cleveland. The Claimants' unilateral action to terminate the Consolidated Agreement on 4 August 2011, a few days before the Cleveland meeting, defeated the Respondent's legitimate expectation to negotiate such issues in a meeting also involving Wisco, a major player in the market sharing the problems and concerns WL had in connection with the application of the BLP Price Methodology for pricing iron ore concentrate sales in the Chinese market. In addition, such action was incompatible with the principle of good faith in performing and enforcing contractual obligations under the UCC.

112. Further, WL's conduct cannot be interpreted as a repudiation or fundamental breach of the Consolidated Agreement, not only because WL had clearly expressed its intention to continue performing the agreement under modified pricing conditions it wanted to discuss in Cleveland, but also because in the past, CT had been willing to negotiate down the price of the Material for discrete cargoes without asserting contract termination (by reducing the Fe content requirement, CT granted a price reduction for the shipment under the 13-22 July 2011 laycan, see para 71 above). WL could not then legitimately expect that the Cleveland meeting would take place against the backdrop of a terminated contract.

113. On the other hand, the evidence shows that the cargo to be taken during this laycan was initially destined to[75], and finally taken by Wisco. The record does not identify any damages resulting from the fact that this cargo was not taken by WL. Actually, both Wisco and WL were invited (first Wisco, with a 50-day advance notice, and then WL, with a 21-day advance notice) to utilize this laycan, which demonstrates that CT was not relying, or even primarily relying on WL to take the corresponding cargo. There is then no substantial detriment caused to the Claimants in the sense of CISG Article 25 by Worldlink's failure to accept the July 19-20 laycan and, accordingly, no breach rising to the stature of a fundamental breach of the Consolidated Agreement.

114. In light of these circumstances, the Arbitral Tribunal concludes that WL's conduct by not taking Material during the 19-28 July 2011 laycan, although not in strict compliance with its obligation to offtake Material under the Consolidated Agreement, does not constitute, by itself or in the context of WL's general conduct in the performance of the Consolidated Agreement, a repudiation of the Consolidated Agreement or a fundamental breach of its provisions under the CISG.

(y) <u>The 22-31 August 2011 Laycan</u>

115. This is the second occasion in which WL subordinated the acceptance of a laycan proposed by CT to a renegotiation of the price. In its e-mail in response to CT's proposal of a 22-31 August 2011 laycan[76], WL says the following in an e-mail dated 8 July 2011:

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[74] Internal Cliffs' e-mail of 7 July 2011, Exhibit 38 to Mr. Xu's WS.

[75] Bundle 5, Tab 231, 15 July 2011 e-mail from Cliffs to Wisco.

[76] Exhibit 30 to Mr. Terrence Mee's 2nd WS.

"As we addressed in our previous correspondence, because of some issues of current pricing model, the Chinese end users are asking for a new pricing model of Bloom Lake concentrate, we are regreted (Sic) that we can not confirm acceptance of the cargo you nominated until we work out a new pricing method which is agreed by each party"

116. The evidence (see para 74 above) shows that the Claimants were aware that the Respondent had raised the need to accommodate the request of an end customer, Ningbo, for a postponement to the following month of this laycan. The Claimants' position is that this was also part and parcel of the Respondent's strategy not to take deliveries of Material without renegotiating first the pricing terms under the Consolidated Agreement. Ningbo had also expressed concerns regarding the pricing of the Material. That pricing issues were at the center of WL's reasons not to take this cargo is confirmed by WL's e-mail set forth above. Nevertheless, the Claimants' conduct in this respect is hesitant and contradictory, as revealed by the internal e-mails exchanged on 25 July 2011 (see para 75 above).

117. The fact that the Claimants may have considered themselves no longer bound by the Consolidated Agreement if the August shipment did not take place (as indicated by Mr. Mee in his e-mail, see para. 75 above), is not a valid excuse nor an answer to the request to postpone this laycan, either rejecting or accepting it. Although the evidence shows that for this shipment WL had been granted improved pricing conditions when compared with the pricing terms under the Agreement (a 65.79%, rather than a 66% Fe minimum content basis)", it was clear that there were pending pricing issues not fully addressed by this concession (granted once before in connection with the 13-22 July 2011 laycan), that the Respondent had the legitimate expectation would be considered and discussed in the August 2011 meeting in Cleveland.

118. Further, in the past CT had been willing to negotiate down the price for Material deliveries without a request to that effect having been met with a letter terminating the Consolidated Agreement. The Claimants' own conduct of finally proposing to the Respondent, shortly before the date of the Termination Letter, a September 2011 laycan in connection with cargo destined to the same WL customer, Ningbo, reveals that the fact that WL was proposing to postpone the 22-31 August 2011 laycan was not considered in itself a contractual repudiation or breach, or at least a breach so substantial that could not be cured, shortly afterwards, by a shipment during a laycan rescheduled for September 2011, irrespective of the reasons set forth by WL in its e-mail of 8 July 2011 not to accept this laycan. Therefore, it cannot be concluded that by not taking a cargo during the 22-31 August 2011 laycan the Respondent repudiated the Consolidated Agreement, or that such conduct resulted or contributed to result in a substantial detriment to the Claimants qualifying as a fundamental breach thereof under CISG Article 25.

(z) <u>The 16-25 September 2011 Laycan.</u>

119. The record shows (see para. 56 above) that: (a) on 19 July 2011 the Claimants wrote a letter to WL asserting WL's contractual breaches allegedly committed by the Respondent

[77] Hearing, Day 2 (Mr. Xu's testimony), at 591-599; Day 3 (Mr. Mee's testimony), at 843-844).

and expressing, among other things, that if the Respondent did not provide for a shipping schedule for the shipping year 2011 within 48 hours, the Claimants would cease to honor the exclusivity rights of the Respondent to buy Material for the Chinese market; and (b) that by the time this laycan was proposed to WL on 29 July 2011, the Claimants had not answered the Respondent's letter of 21 July 2011.

120. Within such context, the proposal of the 16-25 September 2011 laycan to WL was misleading, since it seemed to imply acceptance of the request of WL made in its 21 July 2011 letter to the Claimants: to accommodate Ningbo's need to have the August 2011 laycan rescheduled for September 2011. Such impression was further reinforced by (a) the fact that the Claimants were proposing the 16-25 September 2011 laycan with a 49-day advance notice, thus evincing the Claimants' agreement with one of the grounds asserted by the Respondent in its letter of 21 July 2011 in response to the Claimants' 19 July 2011 letter; i.e., the practice requiring at least a 45-day advance notice for proposed laycans; and (b) the very wording of the e-mail of 29 July 2011[79] proposing this laycan (*"While we prepare to discuss the pricing for the Bloom Lake sintering concentrate in August, we are nominating a cargo to you during September 16th to 25"*) which, far from objecting to any possible reservations from WL regarding the pricing of the Material, did not exclude the possibility that the pricing of this cargo would be included in the August (Cleveland) negotiations.

121. However, five days after the date on which the 16-25 September 2011 laycan was proposed to WL, the Claimants issued the Termination Letter invoking the failure to accept this laycan as one of the grounds to terminate the Consolidated Agreement. Such Claimants' precipitous conduct seems unwarranted, both in light of the circumstances described in the preceding paragraph and because the Respondent reasonably needed some time to secure and nominate a ship for taking the cargo.

122. All of these circumstances, coupled with the fact that by the time the Claimants had proposed the 16-25 September 2011 laycan to WL, one of Cliffs's Vice-Presidents, Mr. Mee, had already his mind set on terminating the Consolidated Agreement, which not only would render moot compliance with such laycan by WL, but which also shows that the 16-25 September 2011 laycan proposal was not serious, allows the Arbitral Tribunal to conclude that the general conduct of the Claimants when terminating the Consolidated Agreement was not in accordance with the principle of good faith as enunciated in New York U.C.C. §1-203, requiring observance of this principle in respect of both contractual performance and enforcement. Such being the case, no finding can be made that WL breached or repudiated the Consolidated Agreement by not accepting this laycan, or that such non-acceptance may be taken into account to determine whether WL committed a fundamental contractual breach or not.

(b) <u>Grounds/Circumstances Not Mentioned in the Termination Letter</u>

[79] Bundle 5, Tab 249.

123. As pointed out before, the Respondent suggests that only circumstances or grounds mentioned in the Termination Letter may be taken into account to determine whether the Respondent is in contractual breach. This is a matter not covered by the CISG, which does not address the issue of whether communications signifying contractual termination should express or not all the grounds on which termination is based. The Consolidated Agreement being governed by New York law, this is a matter to be explored from the perspective of the Common Law rules and principles.

124. In the Common Law, the general rule is that the notice to terminate a contract does not even need to specify the ground on which the contract is terminated. If the ground specified in the notice does not in law justify termination, the notice may still be valid so long as a ground justifying termination actually exists[79]. Termination is not, however, justified if, by failing to state the correct general ground of termination or by stating an incorrect ground, the notice induces the defaulting party not to avail himself or herself of an opportunity to cure the defect to which he or she was entitled under any relevant rules of applicable law: this is *"...a specific application of the general rule that requires good faith and fair dealing in the enforcement of contracts...."* [80]. Both the CISG and the UCC have provisions allowing sufficient opportunity to the obligor for curing defects in contractual performance. An insufficient or incomplete expression of the grounds or circumstances for termination in the Termination Letter may have seriously compromised any possibility to cure alleged contractual breaches. These circumstances tilt the balance towards finding that the Termination Letter was deficient as a basis for terminating the Consolidated Agreement because it failed to lay out all the grounds ostensibly relied upon by the Claimants to assert contractual termination thus depriving Worldlink of the opportunity to cure. The previous finding of the Arbitral Tribunal that the Termination Letter was not issued by the Claimants in good faith supports the same conclusion.

125. In any case, the Arbitral Tribunal shall consider the merits of each of the Claimants' allegations regarding other breaches that would have been committed by the Respondent although not specified in the Termination Letter.

(v) <u>The 7-16 and 21-30 June 2011 Laycans</u>

126. Although the 7-16 June 2011 shipment was cancelled by WL, there is no record showing that this cancellation was subject to any complaint from CT and no indication that such cancellation was not justified. Since the 21-30 June 2011 laycan was performed by Wisco (see para. 113 above), there are no elements permitting a determination that CT suffered any damages arising out of the failure by WL to take Material in this laycan. Therefore, no finding of a contractual breach by WL in connection with this or the 7-16 laycan may be made.

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[79] 8 Corbin on Contracts (Conditions), Revised Edition by McCauliff-Perillo (1991), at § 40.11; *Galle v. Hamburg Gesellschaft* 233 F.424 (2d. Cir. 1916); Restatement of the Law Second, Contracts 2 d, § 237, Ills. 8 and 9; § 248, Comment b.

[80] UCC Section 2-605 (i) (a); Restatement of the Law Second, Contracts 2d § 248, Comment b.

(w) The 1 July 2011, 6-7 July 2011 and 10-11 July 2011 Laycans

127. The evidence shows that none of these laycans was part of the annual forward shipment schedule for the First Calendar Year submitted by CT and, thus, that the Respondent did not have a contractual obligation to take Material during these laycans. Wisco declined to accept these laycans. However, there is no evidence that any complaints were formulated by either CT or Cliffs against WL or Wisco for a failure to take Material during these laycans. Therefore, the Arbitral Tribunal does not find that the Respondent has committed any contractual breach by not taking Material during these laycans.

(x) The 13-22 July 2011 laycan

128. The evidence shows that WL did take the cargo allocated to this laycan, and within this laycan period. Section 10 of the Agreement requires, at least 14 days prior to the expected arrival of the vessel at the port of loading, the posting of an irrevocable letter of credit in favor of the seller. Although the evidence shows that the letter of credit for this shipment was opened only one day before such date (the date of start of the laycan)[81], no evidence has been introduced (and no allegation has been made) that WL did not pay for this shipment. Further, no damages resulting from defects in the performance by WL of its contractual obligations relating to this laycan have been specifically alleged or proved. Therefore, no contractual breach by the Respondent may be found in connection with this laycan.

(y) The 8-17 August 2011 Laycan

129. The Claimants refer in their papers to a 8-17 August 2011 laycan that would not have been complied with by the Respondent. However, there is no evidence that this laycan was ever proposed to the Respondent. It was proposed to Wisco and finally taken by Wisco[82]. Therefore, this laycan does not constitute a valid basis for the Claimants' claims in this arbitration.

(z) Final Payment of Outstanding Amounts in Connection with April and July 2011 Shipments

130. According to Section 10 of the Agreement, prior to final certification in the port of destination in China of the quality of the Material shipped, CT was entitled to the payment of 95% of the cargo price. The remaining 5 % of the price for the relevant cargo was payable upon the analysis and ensuing certification of the cargo quality after its arrival in China.

131. The Claimants point out that this 5% portion of the sale price was not paid in connection with cargo shipped under the vessels *Cavaliere Grazia Bottigliere, E.R. Bayonne, Navios Antares* and *Pacific Century*. The Respondent claims that because of the Claimants' wrongful repudiation of the Consolidated Agreement, the Respondent was entitled to

[81] Hearing transcript, Day 2 (Mr. Xu's testimony), at 584-587.

[82] Hearing transcript, Day 2 (Mr. Mee's testimony), at 612.

withhold these payments to set off damages suffered by the Respondent as a result of such wrongful repudiation. Without pronouncing itself at this juncture on the Caimants' claim for damages formulated in this connection, the Arbitral Tribunal notes that the respective amounts were invoiced by CT to WL between 8 September 2011 and 5 December 2011[81] (i.e., after the date of the Termination Letter) and, accordingly, that they do not constitute part of the grounds invoked by the Claimants to terminate the Consolidated Agreement. The alleged failure of the Respondent to make such payments may not then be taken into account to consider whether the Respondent committed a fundamental breach under Article 25 of the CISG.

E. The Arbitral Tribunal's Conclusion

132. In view of the foregoing analysis and findings, the Arbitral Tribunal concludes that the Claimants cannot prevail on their claim that they validly terminated the Consolidated Agreement, including through the issuance on 4 August 2011 of the Termination Letter, or based on any of the grounds pleaded by the Claimants to that effect, be they taken in isolation or holistically considered.

b) The Respondent's Counterclaims.

133. As set forth in page 53 of the Respondent's Reply To Defence To Counterclaim Memorial dated 6 December 2013, the Respondent's five counterclaims are as follows:

(i) First Counterclaim: compensation for the loss of all expected sales commissions over the lifetime of the Consolidated Agreement;

(ii) Second Counterclaim: compensation for general contractual damages for (a) unpaid demurrage costs plus (b) Material delivery failures during the first year plus payments plus (c) unpaid balance of commission payments on performed shipments during in the First Calendar Year;

(iii)Third Counterclaim: compensation for general contractual damages (breach of good faith obligations/discriminatory pricing attributed to the Claimants) for loss of all expected sales commissions over the life of the Consolidated Agreement;

(iv)Fourth Counterclaim: compensation for damages resulting from the Claimants' tortious conduct for improper appropriation of WL commissions retained by the Claimants; and

(v) Fifth Counterclaim: compensation for additional tort damages flowing from injury to WL's longstanding business relationships and loss of business opportunities.

134. In its Post-Hearing Brief, the Respondent sets forth its counterclaims as follows:

[81] Claimants' Post-Hearing Brief, no. 163-165, at 63.

(i) US$ 73,084,625.00 representing the net present value to 31 December 2013 of lost expected commissions as from August 2011 to the expiry of the term of the Consolidated Agreement (the "Contract Termination Counterclaim");

(ii) US$ 4,846,375.00 in lost expected commissions attributable to the Claimants' delivery of Material failure during the First CalendarYear (the "Lost Commissions Counterclaim");

(iii) Outstanding demurrage payments amounting to US$ 553,648.87 (the "Demurrage Counterclaim");

(iv) US$ 235,924.00 for the outstanding balance of commission payments (i.e., 5% of commission payments due for various shipments performed in the first year) (the "Outstanding Commissions Counterclaim"); and

(v) as an alternative counterclaim, compensatory damages from alleged breach of the Claimants' fiduciary duty and the alleged Claimants' tortious conduct interfering with the Respondent's contractual or business relationships (the "Alternative Counterclaim").

135. The Respondent also claims pre- and post- award interest on all principal amounts eventually awarded to the Respondent at a rate of 9% per annum.

A. The Contract Termination Counterclaim

136. Since the Arbitral Tribunal has found that the Claimants have breached the Consolidated Agreement because of the wrongful termination by the Claimants, whether the Respondent may prevail on its Contract Termination Counterclaim as quantified by it is to be determined first.

137. The Respondent properly claims that under New York law, the party injured by a breach of contract is to be placed in the position it would have occupied had the contract been properly performed according to the contract's terms and conditions, and that the breaching party must compensate for all direct and indirect damages that result from the breach[84]. The compensation for the wrongful termination of the Consolidated Agreement would then be equal to the lost commissions calculated on expected purchases of Material for each Contract Calendar Year along the life of the Consolidated Agreement.

138. The Respondent bases its quantification of the direct and indirect damages it seeks through its Contract Termination Counterclaim which, as expressed under the preceding paragraph 137, would make the Respondent whole pursuant to New York law, on the opinion of its expert, Mr. John Barkas, specifically as set forth in paras.109-118 of his

[84] *Dolphin Equity Partners, LP v. Interactive Motorsports and Entertainment Corp.*, 2009 WL 606/617 (S.D.N.Y., Dec.18 2009); *Tractebel Energy Marketing Inv. V. AEP Power Marketing, Inc.*, 487 F.3d 89 (2d Cir).

Second Expert Report of 6 December 2013. The methodology and calculations shown on these paragraphs have not been the subject of a particularized challenge by the Claimants; further, during the Hearing Mr. Barkas was not cross-examined in connection with such parts of his Second Expert Report.

139. Since the Consolidated Agreement provides for a seven Contract Calendar Year term with a commitment to deliver 7,000,000.00 WMT of Material each Contract Calendar Year, Mr. Barkas calculates the entire quantity of Material to be delivered along the life of the Consolidated Agreement in 49,000,000.00 WMT, i.e., since the start of commercial production on 15 July 2010.

140. However, Mr. Barkas points out on the basis of the evidence that during the First Calendar Year (between July 2010 and July 2011), total shipments under the Consolidated Agreement to Wisco and WL (including deliveries prior to the commencement of the First Calendar Year) totaled 5,341,507.00 WMT for which WL received commissions equaling US$ 13,305,844.00 (Second Expert Report, footnote 103). Thus, Mr. Barkas excludes those deliveries of Material and corresponding commissions actually paid to WL for those first year shipments from his calculations of the commissions WL should have earned for purchases of Material delivered during the rest of the life of the Consolidated Agreement had it not been terminated by the Claimants, i.e., between August 2011 and the end of the term of the Consolidated Agreement. To that effect, Mr. Barkas resorts to a discounted cash flow calculation starting with the August – December 2011 period, i.e., after the First Calendar Year, bringing to present value the commissions that would have been paid to the Respondent until the end of the term of the Consolidated Agreement in respect of deliveries of Material excluding First Calendar Year deliveries. Such deliveries total 43,658,493.00 WMT (49,000,000.00 WMT– 5,341,507.00 WMT). His calculation of such total net present value yielded the sum of US$ 77,931,000.00.

141. This amount includes, however, US$ 4,846,375.00 for expected commission payments attributed by the Respondent to the Claimants' Material delivery failures (Second Expert Report, para.117), and that were not made to the Respondent. Such amounts correspond to the Lost Commissions Counterclaim. Therefore, to determine the amount corresponding to the Contract Termination Counterclaim, Mr. Barkas breaks down the US$ 77,931,000.00 amount in US$ 73,084,625.00 for commissions lost for the premature termination of the Consolidated Agreement for the period spanning between August 2011 and the end of the contractual term originally stipulated by the Parties (the Contract Termination Counterclaim) , and of US$ 4,846,375.00 corresponding to the Lost Commissions Counterclaim. This is consistent with the quantification by the Respondent of these counterclaims (e.g., para.310 of the Respondent's Post-Hearing Brief).

142. In his calculation of the Contract Termination Counterclaim, Mr. Barkas used the pricing formula for the Material agreed by Wisco and the Claimants through a Third Amendment to a Bloom Lake Iron Ore Off Take Agreement effective 1 April 2012. Such formula replaced the BLP Price Methodology and, accordingly, reflected the market price for the Material; i.e., a lower price than the one that would be yielded by the BLP Formula under the Consolidated Agreement. Naturally, this means that the expert calculated lower

commissions for WL than the ones that would have resulted if the BLP Methodology had been used.

143. Neither the price calculation methodology referred to in para.142 preceding, including the 9.8% per annum discount rate utilized to bring commissions to present value, nor the calculations shown on Table 7 of Mr. Barkas's Second Expert Report, on the basis of which such present value has been established, have been subject to challenge or criticism by the Claimants, and the Arbitral Tribunal has no reason to consider such methodology or calculations unreasonable or unreliable. Therefore, it is concluded that the Respondent has proved that it has suffered damages in the sum of US$ 73,084,625.00 for lost commissions because of the wrongful termination of the Consolidated Agreement by the Claimants.

B. The Lost Commissions Counterclaim

144. These lost commissions would correspond to shipments scheduled for the First Calendar Year only. The Respondent first argues that although shipments in the shipment schedule proposed by CT for Wisco and WL for that year equaled 6,880,000.00 WMT (i.e., 120,000.00 WMT short of the 7,000,000.00 WMT required to be shipped that Year under the Consolidated Agreement), it never waived its right to receive shipments for the full contractual tonnage, nor agreed to reduce, for that year, the committed tonnage below 7,000,000.00 WMT.

145. The Respondent cannot prevail on this contention, which contradicts the Respondent's position that it did not take additional June shipments during the First Calendar Year because those were beyond the shipment schedule for that Year (Final Arbitral Award, para. 127). Such shipping schedule could only have been the one provided by CT for that Year (6,880,000.00 WMT), has been relied upon by the Respondent, and must therefore be considered as accepted by it. The Respondent is not then entitled to lost commissions corresponding to those 120,000.00 WMT.

146. Commissions for deliveries of Material not made during the First Calendar Year by CT which fell short of the 6,880,000 WMT scheduled to be shipped during that Year are then the only relevant ones for this Lost Commissions Counterclaim. According to the Respondent (Counterclaim and Defence Memorial of 12 July 2013, at paras. 70-71), actual shipments that year for WL and Wisco totaled 4,593,457.00 WMT (990,450 WMT to WL plus 3,603,007.00 WMT to Wisco). Failed deliveries would then equal 2,286,543 WMT (6,880,000.00-4,593,457.00).

147. Mr. Barkas's figures are slightly different: although he reports that total deliveries to Wisco and WL during the first year of "contractual performance" equal 5,073,000.00 WMT (Second Expert Report, at para. 110), at Table 8 of this Report (para.131), he indicates that total sales to WL and WISCO for the First Calendar Year amount to 4,551,080.00 WMT, a figure which indeed is almost identical with the figure calculated by the Respondent and showing at para. 146 above. The figure at the said Table 8 is the one used by Mr. Barkas to calculate the lost commissions subject to the Respondent's Lost Commissions Counterclaims. The Arbitral Tribunal observes that the calculation of the 5,073,000,00

WMT at para. 110 of the Second Expert Report is apparently premised on commission invoices at R-165 which only show commission amounts without evidencing tonnage of Material delivered. However, Exhibits R-205 and C-Exhibit TM 066, on the basis of which the Table 8 of the Second Expert Report has been established, show tonnage of Material delivered during the First Calendar Year. Therefore, for such reason, also because of Mr. Barkas's capacity as expert, and given the fact that his calculations at Table 8 or its support have not been questioned by the Claimants (see below), the Arbitral Tribunal shall accept this latter calculation.

148. In part on the basis of such figure for delivered tonnage during the First Calendar Year, Mr. Barkas observed the following methodology (para. 117 and footnote 108 to his Second Expert Report):

(a) as indicated before, he calculated total sales (deliveries of Material) to Wisco and WL during the First Calendar Year equaling 4,551,080 WMT for which commission were actually paid to the Claimant (Table 8 at para.131 of the Second Expert Report);

(b) he deducted that tonnage from the 7,000,000.00 WMT that, according to the Respondent, would be the tonnage to be delivered by CT to WL and Wisco from the Bloom Lake Mine during the First Calendar Year (7,000,000.00 WMT – 4,551,080.00 WMT = 2,448,920.00 WMT);

(c) to calculate the sale price for each WMT he used the average price for the duration of the Consolidated Agreement starting on August-December 2011 (i.e., after the First Calendar Year) utilized in Table 7 of his Second Expert Report;

(d) he multiplied that unit price by 2,448,920.00 WMT; and

(e) he gets to the sum of US$ 4,846,375.00 for lost deliveries commissions owed to WL by applying the 1.75 % commission percentage under the Consolidated Agreement to the total price obtained under (d) above.

149. Such calculations, the methodology observed to make them, or the documentary basis (invoices) on which they were made have not been attacked on a substantive basis, including during the cross-examination of Mr. Barkas, in the Hearing (when counsel to the Claimants cross-examined Mr. Barkas in connection with paras. 130 and following of the Second Expert Report), the Claimants' counsel did not address the first year figures at Table 8 at para. 131 of the said Report, nor the invoices used by Mr. Barkas to obtain such figures (Hearing transcript, day 5 at 1466-1470), nor have the Claimants supplied an expert report in response to Mr. Barkas.

150. However, because Mr. Barkas's calculations are based on 7,000,000,00 WMT deliveries per Calendar Year (see footnote 108 of his Second Expert Report), the shortfall to which he assigns a compensation for failed deliveries of US$ 4,846,375.00 during the First Calendar Year would correspond to the difference between 7,000,000.00 WMT and 4,551,080.00 WMT, i.e., as showing in paragraph 148 above, 2,448,920.00 WMT, which would imply

calculating lost commissions corresponding to 120,000,00 WMT above the total WMT deliveries the Claimants should be accountable for the First Calendar Year since, as indicated in paragraph 145 above, the shipment schedule for 6,880,000.00 WMT proposed by CT for that Year was accepted by the Respondent as the applicable one. Therefore, Mr. Barkas's calculation must be adjusted accordingly.

151. As far as the evidence regarding the respective conduct of WL and CT/Cliffs in respect of the lost shipments on which this Lost Commissions Counterclaim is based, the Arbitral Tribunal has found as follows.

152. As far as the shortfall corresponding to deliveries of Material to WL during the First Calendar Year showing on the table at para. 72 (left columns) of the Respondent's Counterclaim and Defence Memorial, it should be noticed that it is between July 2010 and February 2011 when the shortfall is greater. The Claimants contend that WL never complained about such shortfalls. However, the evidence shows that on 9 March 2011, by e-mail to CT (Joint Exhibit 139) WL complained about these shortfalls and requested CT to increase deliveries in the second half of that Calendar Year to make up for them. There is no evidence of a reply from the Claimants to this e-mail. In another e-mail of 18 April 2011 (Joint Exhibit 152) WL insists on its expectation that these shortfalls would be made up in the next Calendar Year or by adding an additional Calendar Year to the Consolidated Agreement (thus extending its duration beyond the seventh year). Before the take-over of CT by Cliffs, lawyers to WL had sent a "demand" letter to CT raising the possibility of contractual breaches should WL continue to under-deliver under the Consolidated Agreement (Joint Exhibit 63).

153. On the other hand, WL's apparent inertia in reacting may not be read as a waiver of rights. It is undisputed that WL was showing an accommodating attitude towards CT in view of the mine production problems, translating into irregular Material deliveries, problems because of the freezing of Material during transportation to the port of delivery and shipment, and also loading problems at the port itself, all these circumstances negatively affecting the ability of CT to deliver Material in accordance with the Consolidated Agreement.

154. However, Material was not being delivered by CT as planned, CT was not excused for non-delivery under the terms of the Consolidated Agreement, and the applicable CT shipping schedule was not being respected. The e-mails referred to above clearly show that WL was not waiving its contractual rights in such connection. There is no substantive answer by the Claimants to the Lost Commissions Counterclaim in respect of the period between April and July 2011 in the couple of paragraphs in which the Claimants addressed this Counterclaim in their Reply and Defence Memorial of 11 October 2013 (paras.91-92), or in the succinct attention paid to it in the Claimants' Post-Hearing Brief (paras.205-206). The only exception is the force majeure invoked by CT regarding the December 2010 shipment because of landslides impeding the transportation of Material by railway from the mine to the port, and for which CT should not be held responsible (CT letter of 15 December 2010, JE 117). For this reason, the basis for quantifying this counterclaim should

be reduced by an additional 160,000.00 WMT (the quantity of Material not delivered or taken during December 2010).

155. Also, the Lost Commissions Counterclaim fails in respect of commissions corresponding to Material delivery shortfalls during the First Calendar Year assigned to Wisco. According to the Respondent (table at para. 72 of its Counterclaim and Defence Memorial of 12 July 2013) the shortfall in deliveries to Wisco for the First Calendar Year would equal 556,993.00 WMT (4,160,000.00 – 3,603,007). However, the Respondent has not discharged its burden of proving that such shortfall is attributable to the Claimants' conduct (it is not possible to know, on the basis of the evidence, who is responsible in full or in part – whether Wisco or the Claimants - for taking less Material). Therefore, it is to be concluded that this counterclaim has been overestimated in connection with this 566,993.00 WMT shortfall.

156. On the basis of the above, the amount of 2,448, 920.00 MT taken into account by Mr. Barkas to establish the Claimants' liability for commissions corresponding to Material delivery shortfalls should be reduced by 836,993 WMT (120,000.00 + 160,000.00 + 556,993). The calculation basis of the lost commission to be awarded in respect of the Lost Commissions Counterclaim would be then lowered to 1,611,927.00 WMT (2,448,920-836,993).

157. The quantification of this counterclaim is to be established by applying Mr. Barkas' formula and methodology described in paragraph 148 above and set forth in footnote 108 of the Second Expert Report, as follows:

(7,000,000.00 WMT - 1,611,927.00 WMT) x (US$ 4,973,114 (total revenue along life of the Consolidated Agreement) divided by 43.6585 (Material average price) x 1.75 % (commission) = US$ 3,189,979.00.

Thus, the Respondent is to be awarded this latter sum for its Lost Commissions Counterclaim.

C. <u>The Demurrage Counterclaims</u>

158. The Respondent has failed to argue its Demurrage Counterclaims in a sufficiently particularized way and, further, it has failed to properly substantiate it, for example, by providing evidence, including witness evidence, regarding the concrete causes for the demurrage and proof of the amounts claimed.

159. In the Respondent's Counterclaim and Defence Memorial of 12 July 2013, para. 71, it is alleged that the Demurrage Counterclaims correspond to shipments assigned to different vessels, including the *Cavaliere Grazia Bottigliere, E.R. Bayonne* and *Pacific Century*, without any further reference to supporting documents or identification of ships in respect of which this counterclaim is made.

160. Only Mr. François Laurin's witness statement (who testified at the Claimants' request) specifically refers to demurrage charges regarding shipping on vessels which took Material during the First Calendar Year (mentioned at the table at para. 72 of the Respondent's Counterclaim and Defence Memorial), as follows: *Anangel Sailor* (demurrage, $ 830,434.00, Joint Exhibit 84); *Castillo de Valverde* (demurrage, $ 640,000.00, Joint Exhibit 115); Cavaliere Grazia Bottigliere (demurrage, $ 93,317.17, Joint Exhibit 155); *Navios Antares* (demurrage $ 285,918.33, Joint Exhibit 169); *E.R. Bayonne* (demurrage $ 319,046.67, Joint Exhibit 179).

161. The above amounts must be in Canadian Dollars. No evidence or argument has been provided as to if and how these amounts would match the US$ 553,648.87 Demurrage Counterclaim (for example, by providing Canadian Dollars/US$ applicable exchange rates). Since the Respondent has not discharged its burden to prove this counterclaim, this counterclaim is to be rejected.

D. The Outstanding Commissions Counterclaim

162. The Respondent's counterclaim for the US$ 235,924.00 alleged outstanding balance of commission payments due on performed shipments during the First Calendar Year was asserted in the Respondent's Reply To Defence to Counterclaim Memorial (para. 156 (b) (ii)) and maintained as a principal claim in the Respondent's Post-Hearing Brief (para. 310 (c)). On the basis of commission invoices, Mr. Barkas has calculated these outstanding commissions in US$ 235,924.00 (Second Expert Report, at para. 118).

163. The Claimants did not address the Outstanding Commissions Counterclaim or its quantification in any particularized way in their Reply and Defence To Counterclaim Memorial of 11 October 2013, nor was Mr. Barkas subject to specific cross-examination during the Hearing in connection with this Counterclaim. The Claimants' Post-Hearing Brief does not address the Outstanding Commissions Counterclaim or Mr. Barkas' opinion in this respect in any specific way. The Arbitral Tribunal concludes that the Respondent has provided proper support for this Outstanding Commissions Counterclaim on the basis, as indicated above, of the Second Expert Report, which is therefore to be granted, as requested, for the amount of US$ 235,924.00.

E. The Alternative Counterclaim.

164. The Arbitral Tribunal has already rejected the Respondent's allegations regarding the existence of a fiduciary relationship between the Claimants and the Respondent (see para.90 above). Further, the Respondent prevails on most of its principal counterclaims. Therefore, the Respondent's alternative counterclaims for breach of fiduciary duty or wrongful interference with contractual or business relationships are to be rejected.

c. Claimants' Claim for the Balance Due to the Claimants of the Sale Price for Material Delivered to and Taken By the Respondent during the First Calendar Year.

165. The Claimants claim the payment of US$ 5,435,838.84 for the unpaid balance of the price for Material delivered to and taken by the Respondent during the First Calendar Year on board of the *Cavaliere Grazia Bottigliere, E.R. Bayonne, Navios Antares* and *Pacific Century*. According to Section 10 of the Agreement, this sum corresponds to 5% of the price for each such shipment to be paid after arrival at destination of the cargo once certain certifications described in Section 8 of the Agreement have been issued by the Chinese authorities. The Respondent's witness, Mr.Sheldon Zhao, testified that WL failed to pay such amounts[85]. Further, the Respondent has not denied the amounts claimed by the Claimants in this respect, nor that the conditions for their payment to the Claimants under the Agreement have been met. The only apparent reason for the non-payment of these sums was Worldlink's determination to set-off these amounts as a result of its alleged damages in this arbitration.

166. The Arbitral Tribunal finds that these sums have become due and payable to the Claimants. Since the obligations under the Consolidated Agreement are reciprocal and arise out of the same transaction, there is no reason to liquidate separately the respective Claimants' claim for unpaid price for the sale of the Material and the Respondent's counterclaims for damages corresponding to unpaid commissions during the life of the Consolidated Agreement (the Contract Termination Counterclaim), and there is good and fair reason to discharge the largest sum awarded to the Respondent to the extent of the lower sum awarded to the Claimants. Therefore, the Claimants are entitled to set off such sum awarded to it from the sums awarded to the Respondent under the Respondent's Wrongful Termination of Contract Counterclaim.

167. Consequently, the Respondent shall prevail under its Contract Termination Counterclaim for the sum of US$ 67,648,786.16 (US$ 73,084,625.00 – US$ 5,435,838.84).

V. Costs

168. The Respondent has prevailed in practically all its defenses against the Claimants' claims in this arbitration and substantially succeeded in its counterclaims. The Arbitral Tribunal accordingly concludes, pursuant to authority granted to it (Article 31(2) of the ICC Rules), that the Claimants shall bear the arbitration costs and the legal representation costs corresponding to this arbitration.

169. At its session of 9 October 2014, the ICC Court fixed the arbitration costs in the sum of US$ 930,000.00. Consequently, the Claimants shall pay to the Respondent the sum of US$ 465,000.00, equal to the share in the arbitration costs paid by the Respondent to the ICC.

170. Further, in its submission of 18 July 2012, the Respondent sets forth legal representation costs and other costs directly relating to this arbitration in the following amounts: a) US$ 2,546,793.72; b) CNY (renminbi) 676,924.20; c) AUD (Australian Dollars) 248,448.30; and d) CAD (Canadian Dollars) 10,263.51. The Arbitral Tribunals finds that these figures, which have not been contested by the Claimants, are adequately supported by the

[85] Mr. Sheldon Zhao WS of 12 July 2013, at para. 158.

information provided by the Respondent and showing in Tabs 4-8 of the Respondent's submission on costs of 18 July 2014 and, also after taking into account the circumstances referred to in Article 31 of the ICC Rules, that the corresponding amounts are reasonable in view of the professional work required by these proceedings. Therefore, the Claimants shall reimburse the said amounts to the Respondent and bear their own legal representation and other related costs regarding this arbitration.

VI. Interest

171. The Respondent requests, on the basis of New York law (C.P.L.R. § 5004), the law of the seat of this arbitration, the application of a 9% annual, pre-award and post-award simple interest on all principal amounts awarded in this arbitration. The Claimants have also pleaded the application of a pre-judgment interest rate of 9% should they prevail in their claims (Statement of Claim Memorial, at para.87).

172. Given the above circumstances, the Arbitral Tribunal finds appropriate to grant, as the case may be, pre-and post-award interest on all principal amounts awarded to the Respondent at the annual and simple rate of 9 %, as follows:

(a) in respect of the principal amounts of counterclaims awarded to the Respondent, pre-award and post-award interest shall accrue at the annual simple rate of 9 % as from 4 August 2011, i.e., the date of the wrongful termination by the Claimants of the Consolidated Agreement resulting from the Claimants' Termination Letter of the same date; and

(b) in respect of the principal amounts corresponding to arbitration costs and legal representation costs and related costs to be paid by the Claimants to the Respondent, post-award interest shall accrue at the annual simple rate of 9% as from the date of this Final Arbitral Award.

VII. Decision

173. On the basis of the above findings and conclusions, the Arbitral Tribunal DECIDES:

(i) to reject all the Claimants' claims in this arbitration, except for the Claimants' claim for the balance due to the Claimants of the sale price for Material delivered to and taken by the Respondent during the First Calendar Year, amounting to US$ 5,435,838.84, which, as specified below, is hereby awarded to the Claimants in the form of a set-off against amounts hereby awarded to the Respondent;

(ii) to award the Respondent's counterclaim of US$ 73,084,625.00 for the wrongful termination by the Claimants of the Consolidated Agreement, only for the sum of US$ 67,648,786.16 (resulting from setting off US$ 5,435,838.84 against US$ 73,084,625.00);

(iii) to award the Respondent's counterclaim for lost commissions corresponding to the First Calendar year, in the amount of US$ 3,189,979.00;

(iv) to award the Respondent's counterclaim for commissions outstanding corresponding to the First Calendar Year, in the amount of US$ 235,924.00;

(v) to reject the Respondent's demurrage counterclaim;

(vi) to reject the Respondent's alternative counterclaims for breach of fiduciary duties and tortious interference with contract or business relationships attributed to the Claimants;

(vii) the Claimants shall bear this arbitration's costs, fixed by the ICC Court in the sum of US$ 930,000.00 and all the Respondent's legal representation and directly related costs corresponding to this arbitration (article 31 of the ICC Rules). The Claimants shall bear all their legal representation and related arbitration costs;

(viii) accordingly, the Claimants shall pay to the Respondent: (a) US$ 465,000.00 (the share of the arbitration costs fixed by the ICC Court paid by the Respondent to the ICC); (b) the Respondent's legal representation and related costs respectively amounting to the following sums: (x) US$ 2,546,793.72; (w) CNY 676,924.20; (y) AUD 248,448.30; and (z) CAD 10,263.51;

(ix) the Claimants shall pay interest to the Respondent at the annual simple interest rate of 9 % until total payment by the Claimants to the Respondent of such principal amounts, which interest shall accrue as follows:

(a) in connection with the sums awarded to the Respondent under this paragraph 173 (ii), (iii) and (iv), from 4 August 2011, i.e., the date of the Claimants' wrongful termination of the Consolidated Agreement resulting from the Termination Letter of the same date;

(b) in connection with the sums awarded to the Respondent under this paragraph 173 (vii) and (viii), as from the date of this Final Arbitral Award; and

(x) all claims or counterclaims not expressly granted under this paragraph 173 have been rejected.

Place of the Arbitration : New York, New York, United States of America.

This Final Arbitral Award is rendered in ten (10) originals, all equally authentic, on 6 dec [illegible] 2014.

Paul M. Singer, Esq.
Arbitrator

Dr. Michael J. Moser
Arbitrator

Dr. Horacio A. Grigera Naón
President