

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-048114-157

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

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

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP**

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-
cause

-and-

AGENCE DU REVENU DU QUEBEC

CANADA REVENUE AGENCY

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**AMENDED MOTION BY THE MONITOR FOR DIRECTIONS
WITH RESPECT TO SETOFF AND DAMAGE PAYMENT INPUT TAX CREDITS**
(Sections 11, 21 and 23(k) of the *Companies' Creditors Arrangement Act*)

TO MR. JUSTICE MICHEL A. PINSONNAULT, J.S.C. OR TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE MONITOR SUBMITS:

I. INTRODUCTION

1. On January 27, 2015, the Honourable Justice Martin Castonguay, J.S.C., issued an Order (as subsequently amended, rectified and/or restated, the **Bloom Lake Initial Order**) pursuant to the *Companies' Creditors Arrangement Act* (**CCAA**) in respect of the Petitioners Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, and Cliffs Québec Iron Mining ULC (**CQIM**), as well as Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited (collectively, the **Bloom Lake CCAA Parties**), as appears from the Court record. Copy of the Bloom Lake Initial Order dated January 27, 2015, as amended on February 20, 2015, is communicated herewith as **Exhibit R-1**;
2. Pursuant to the Bloom Lake Initial Order (R-1), *inter alia*, FTI Consulting Canada Inc. was appointed as monitor of the Bloom Lake CCAA Parties (the **Monitor**), and a stay of proceedings was granted in respect of the Bloom Lake CCAA Parties until February 26, 2015 (subsequently extended from time to time, and most recently until May 31, 2021 by Order dated November 27, 2020);
3. On May 20, 2015, the Honourable Justice Stephen W. Hamilton, J.S.C. (as he then was), issued an Order (as subsequently amended, rectified and/or restated, the **Wabush Initial Order**) extending the scope of these CCAA proceedings to the Petitioners Wabush Iron Co. Limited (**Wabush Iron**) and Wabush Resources Inc. (**Wabush Resources**), as well as Mises-en-cause Wabush Mines, an unincorporated contractual joint venture (**Wabush Mines**), Arnaud Railway Company (**Arnaud Railway**), and Wabush Lake Railway Company Limited (**Wabush Railway**) (collectively, the **Wabush CCAA Parties**, and together with the Bloom Lake CCAA Parties, the **CCAA Parties**), as appears from the Court record;
4. Pursuant to the Wabush Initial Order, *inter alia*, the Monitor was appointed as the monitor of the Wabush CCAA Parties, and a stay of proceedings was granted in respect of the Wabush CCAA Parties until June 19, 2015 (subsequently extended from time to time, and most recently until May 31, 2021 by Order dated November 27, 2020);
5. On November 5, 2015, Mr. Justice Hamilton, issued an order (as amended on November 16, 2015, the Claims Procedure Order), which approved and established a procedure for the filing of creditors' claims against the CCAA Parties and their directors and officers (the Claims Procedure), as appears from the Claims Procedure Order, a copy of which is communicated in support herewith as Exhibit R-2;
6. On May 18, 2018, Mr. Justice Hamilton issued an order which accepted the filing of the Amended and Restated Joint Plan of Compromise and Arrangement in respect of the

Participating CCAA Parties (as defined therein), dated May 16, 2018 (as further amended, restated or supplemented from time to time, the “**Plan**”). A copy of the latest version of the Plan amended on December 13, 2019 is communicated in support herewith as **Exhibit R-3**. Capitalized terms not otherwise defined herein have the meaning ascribed thereto in the Plan (R-3);

7. On June 18, 2018, the Plan was approved by the Classes of Affected Unsecured Creditors and on June 29, 2018, Mr. Justice Hamilton issued the Sanction Order dated June 29, 2018 (the “**Plan Sanction Order**”), a copy of which is communicated in support herewith as **Exhibit R-4**;
8. On July 31, 2018, the Monitor issued the Plan Implementation Date Certificate, confirming the implementation of the Plan on that date, the whole as appears from the Court record;
9. Starting in August, 2018, the Monitor commenced the first interim distributions to Affected Third Party Unsecured Creditors from each of the Unsecured Creditor Cash Pools and Pension Cash Pools, while interim distributions on account of the Salaried Late Employee Claims¹ and the USW Late Employee Claims² were made in January 2020, in accordance with the Order for leave to file late claims and authorization to make modifications to the Plan dated December 3, 2019 (together, the “**First Interim Distribution**”);

II. **GROUND AND RELIEF SOUGHT**

10. Both the Bloom Lake Initial Order and the Wabush Initial Order provide that the Monitor assist the CCAA Parties in dealing with their creditors over the course of the Stay Period, and declare that the Monitor may apply to the Court for directions as becomes necessary in discharging its duties, the whole as appears from, *inter alia*, paragraphs 39 and 65 the Bloom Lake Initial Order (R-1);
11. Moreover, paragraphs 61 and 68 of the Claims Procedure Order (R-2) entitle the Monitor to apply to the Court for advice and directions in connection with the discharge or variation of its powers and duties thereunder;
12. Finally, paragraph 55 of the Plan Sanction Order (R-4), which reads as follows:

[55] **DECLARES** that the Participating CCAA Parties and the Monitor may, from time to time, apply to this Court for any advice, directions or determinations concerning the exercise of their respective powers, duties and rights hereunder or in respect of resolving any matter or dispute relating to the Plan, the Amended and Restated Meetings Order or this Order, or to the subject matter thereof or the rights and benefits thereunder, including, without limitation, regarding the distribution mechanics under the Plan;

¹ As defined in the December 3, 2019 Order for leave to file late claims and authorization to make modifications to the Plan.

² As defined in the December 3, 2019 Order for leave to file late claims and authorization to make modifications to the Plan.

entitles the Monitor to apply to the Court for advice and directions in connection with the Plan and a purported right of setoff under the CCAA and the Plan (Section 5.13);

13. The Monitor hereby applies for directions with respect to the proposed offset by the Agence du revenu du Québec (**RQ**), acting on its behalf and on behalf of the Canada Revenue Agency (**CRA**), of CQIM's Damage Payment ITCs (as defined below) against RQ's 296 Claims (as defined below) against CQIM, on the basis that both claims are pre-filing claims that can be offset in accordance with section 21 CCAA, the whole as more fully explained below;
14. Specifically, the Monitor is asking the Court to issue an Order declaring that:
 - a) the 296 Claims (as defined below) constitute pre-filing claims;
 - b) the Damage Payment ITCs (as defined below) constitute post-filing amounts;
 - c) RQ (acting on its behalf and on behalf of CRA) cannot setoff the 296 Claims against the Damage Payment ITCs (each as defined below) owed by RQ (and CRA) to CQIM;
 - d) RQ (acting on its behalf and on behalf of CRA) shall without setoff of any kind pay to the Monitor, on behalf of the CCAA Parties and their creditors, all Damage Payment ITCs validly claimed by any of the CCAA Parties in respect of the First Interim Distribution, including without limitation the Damage Payment ITCs claimed by CQIM in the amount of \$7,459,257.85, together with interest at the legal rate and the additional indemnity from and after the date at which each of the Damage Payment ITCs claimed became payable, until paid in full to the Monitor on behalf of the CCAA Parties;
 - e) RQ (acting on its behalf and on behalf of CRA) shall without setoff of any kind pay to the Monitor, on behalf of the CCAA Parties and their creditors, all Damage Payment ITCs validly claimed by any of the CCAA Parties with respect to all future distributions under the Plan;
 - f) RQ (acting on its behalf and on behalf of CRA) shall without setoff of any kind pay to the Monitor, on behalf of the CCAA Parties and their creditors, additional ITCs in the amount of \$ 234 755.16, the whole as set out more fully paragraphs 25.1 and 25.2 hereunder;

the whole in the form of the draft Order communicated herewith as **Exhibit R-5.1**;

III. PROPOSED OFFSET BETWEEN THE 296 CLAIMS AND THE DAMAGE PAYMENT ITCs

A. Administration of the GST/QST in Quebec

- 15. Acting as agent for the Quebec Minister of Revenue, RQ is responsible for the administration of tax legislation in Quebec, including the *Act respecting the Québec sales tax*³ (**QSTA**);
- 16. Under an agreement between the federal and Quebec governments, RQ also administers on behalf of CRA in Quebec the goods and services tax (**GST**);
- 17. As a result, in this province RQ is responsible for the collection of Quebec sales taxes (**QST**) and GST, as well as the reimbursement of net tax refunds determined based on the amount of tax collected, minus input tax credits (**ITCs**) for the purpose of the GST and input tax refunds (**ITRs**) for the purpose of the QST (collectively, the **ITC Claims**);

B. The 296 Claims

- 18. On or about October 2, 2020, the Monitor issued a notice to RQ allowing its claim for an aggregate amount of \$13,392,752.86 based on Section 25 of the *Act respecting fiscal administration*⁴ (**FAA**) and Section 296(1) of the *Excise Tax Act*⁵ (**ETA**) with respect to unpaid QST in the amount of \$5,653,595.34 and unpaid GST in the amount of \$7,739,157.52 on account of taxable supply of goods and services received by CQIM prior to the Filing Date where such tax amounts remained unpaid by CQIM as at the Filing Date, as it appears from a copy of the Notice of Allowance dated October 2, 2020 communicated herewith as **Exhibit R-6** (the “**296 Claims**”);
- 19. Neither the quantum of the 296 Claims nor its pre-filing nature are disputed by the parties;
- 20. Sections 25 FAA and 296(1) ETA read as follows:

<u>25 FAA</u>	<u>296 ETA</u>
<p><i>The Minister may determine or redetermine the amount of the duties, interest and penalties owed by a person under a fiscal law as well as the amount of the refund to which a person is entitled under a fiscal law and send a notice of assessment to him in this regard.</i></p> <p><i>However, no such assessment may be made</i></p> <p><i>(a) more than four years after the later of</i></p> <p><i>i. the date on which the duties should have been paid, and</i></p> <p><i>ii. the date on which the return was filed; or</i></p> <p><i>(b) more than four years after the application for a refund was filed.</i></p>	<p>(1) <i>The Minister may assess</i></p> <ul style="list-style-type: none"> ○ (a) <i>the net tax of a person under Division V for a reporting period of the person,</i> ○ (b) <u>any tax payable by a person under Division II, IV or IV.1,</u> ○ (c) <i>any penalty or interest payable by a person under this Part,</i> ○ (d) <i>any amount payable by a person under any of paragraphs 228(2.1)(b) and (2.3)(d), section 230.1 and paragraphs 232.01(5)(c) and 232.02(4)(c), and</i>

³ C.Q.L.R., c. T-01.

⁴ C.Q.L.R., c. A-6.002.

⁵ R.S.C. 1985, c. E-15.

<p><i>This section does not apply in respect of a repayment referred to in section 21.0.1.</i></p>	<p>○ (e) any amount which a person is liable to pay or remit under subsection 177(1.1) or Subdivision A or B.1 of Division VII,</p> <p>and may reassess or make an additional assessment of tax, net tax, penalty, interest or an amount referred to in paragraph (d) or (e).</p> <p style="text-align: center;"><i>[our emphasis]</i></p>
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C. The Damage Payment ITCs

21. The gravamen of the dispute between the parties lies in the determination of the nature of the ITC Claims for QST and GST deemed paid in 2018 as part of the First Interim Distributions paid to certain creditors on account of their claims for damages arising from the disclaimer or resiliation of contracts pursuant to the CCAA (the **Damage Payments ITCs**) as pre-or post-filing amounts, which will in turn dictate whether they can validly be offset by RQ's 296 Claims;
22. In furtherance of the Bloom Lake Initial Order (R-1), CQIM decided to disclaim certain of its contracts, the whole in accordance with Section 32 CCAA, and as result each of Canadian Iron Ore Railcar Leasing LP, Quebec North Shore and Labrador Railway Company, Inc., The CSL Group Inc. and Western Labrador Rail Services, has asserted a damage claim against CQIM (the **Restructuring Claims**) in accordance with the Claims Procedure Order (R-2);
23. In its sales tax returns for the period ended November 30, 2018, CQIM claimed the Damage Payment ITCs in connection with the sales taxes deemed paid on the First Interim Distribution on account of the Restructuring Claims;
24. Based on its audit work, RQ assessed the Damage Payment ITCs (as they relate to partial payment of the Restructuring Claims) to be in the amount of \$7,459,257.85;

C1. Other ITCs

25. The Damage Payment ITCs arose as of the date of payment of the First Interim Distribution pursuant to Sections 182(1) ETA and 318 QSTA. which read as follows:

<u>182 ETA</u>	<u>318 QSTA</u>
<p><i>182 (1) For the purposes of this Part, where at any time, as a consequence of the breach, modification or termination after 1990 of an agreement for the making of a taxable supply (other than a zero-rated supply) of</i></p>	<p><i>318. Where at any time, as a consequence of the breach, modification or termination, after 30 June 1992, of an agreement for the making of a taxable supply, other than a zero-rated supply, of property or a service in Québec by a registrant to a person, an amount is paid or forfeited to the</i></p>

<p>property or a service in Canada by a registrant to a person, <u>an amount is paid or forfeited to the registrant otherwise than as consideration for the supply</u>, or a debt or other obligation of the registrant is reduced or extinguished without payment on account of the debt or obligation,</p> <p>(a) the <u>person is deemed to have paid, at that time, an amount of consideration for the supply</u> equal to the amount determined by the formula</p> <p>...</p> <p>(b) the <u>registrant is deemed to have collected, and the person is deemed to have paid, at that time, all tax in respect of the supply that is calculated on that consideration, which is deemed to be equal to (...)</u></p> <p>(our emphasis)</p>	<p><u>registrant otherwise than as consideration for the supply</u>, or a debt or other obligation of the registrant is reduced or extinguished without payment being made in respect of the debt or obligation,</p> <p>(1) <u>the person is deemed to have paid, at that time, an amount of consideration for the supply</u> equal to the amount determined by multiplying the amount paid or forfeited, or by which the debt or obligation was reduced or extinguished, as the case may be, by 100/109.975; and</p> <p>(2) the registrant is deemed to have collected, and <u>the person is deemed to have paid, at that time, all tax in respect of the supply</u> that is calculated on that consideration, which is deemed to be equal to tax under section 16 calculated on that consideration.</p> <p>(our emphasis)</p>
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25.1 In addition to the Damage Payment ITCs, RQ is also indebted to CQIM for an amount of \$ 422 490.35 representing ITCs not in relation to Restructuring Claims, but rather in relation to supplier invoices which were not the subject of the 296 Claims and all of which were issued after the BloomLake Initial Order, including \$ 234 755.16 in relation to the post-filing period, the whole as it appears from RQ's Contestation dated May 14, 2021 (at paragraphs 22-23, 24(c), 89-92 and 94 III);

25.2 The Monitor submits that the ITCs for the post-filing period in the amount of \$ 234 755.16 cannot be offset against its pre-filing claims;

D. The Damage Payment ITCs are post-filing amounts and cannot be offset against pre-filing claims, including the 296 Claims

26. Sections 182(1) ETA and 318 QSTA deem only the payment on account of the Restructuring Claims (which occurred in 2018) to be consideration for a taxable supply. The Restructuring Claims themselves, before payment, are not deemed to be consideration payable for a taxable supply. Sections 182(1) ETA and 318 QSTA also deem such payment to include GST and QST. In the absence of those deeming rules, the payments made on account of the Restructuring Claims would not have been

consideration for a taxable supply and would not have given rise to any obligation of the creditors to remit any GST/QST and no portion of the payments would have been considered to be GST/QST paid by CQIM;

27. Furthermore, the clear wording of Sections 182(1) ETA and 318 QSTA make it clear that these deeming rules only apply at the time of payment, which is in the post-filing period. These sections do not deem GST/QST to have been paid nor payable in the pre-filing period before the actual payment is made or at any time prior to the Bloom Lake Initial Order;
28. The Damage Payment ITCs were requested by CQIM in its sales tax returns for the period ended November 30, 2018 on the basis that GST/QST only arose and became payable upon payment of the First Interim Distribution. Indeed, CQIM's right to the Damage Payment ITCs only arises as a result of Sections 182(1) ETA and 318 QSTA deeming there to be, at the time of payment on account of the Restructuring Claims, GST/QST included in such partial payments. Those payments were all made in the post-filing period;
29. Pursuant to Sections 182(1) ETA and 318 QSTA, the tax obligation giving rise to the Damage Payment ITCs did not exist at the time of the (i) Bloom Lake Initial Order, (ii) disclaimer or rescission of the contracts giving rise to the Restructuring Claims, (iii) filing of the Restructuring Claims by the relevant creditors, nor (iv) at the time the Restructuring Claims became Proven Claims under the Claims Procedure Order. Instead, pursuant to Sections 182(1) ETA and 318 QSTA, that tax obligation only arose when the First Interim Distribution was made in 2018 on account of the Restructuring Claims;
30. In our view, the clear wording of the relevant provisions of the ETA and QSTA are dispositive of the issue. The mere existence of the Restructuring Claims, or indeed any of the relevant pre-filing contracts for the supply of goods or services, does not give rise to GST and QST being paid or becoming payable and therefore cannot form the basis of the Damage Payment ITCs which are dependent upon GST and QST being payable or having been paid. The right to the Damage Payment ITCs arises from and at the time of the payment of distributions on account of the Restructuring Claims, which clearly occurred post-filing;

E. RQ's attempt to characterize the Restructuring Claims as pre-filing claims

31. RQ appears to suggest that the characterization of the Restructuring Claims as pre-or post-filing is relevant to the characterization of the Damage Payment ITCs as pre-or post-filing;
32. While we disagree with RQ's reasoning to the effect that the characterization of the Restructuring Claims as pre-or post-filing is relevant to the characterization of the Damage Payment ITCs as pre or post-filing based as explained above on the clear wording of Sections 182(1) ETA and 318 QSTA, we consider that the Restructuring Claims are clearly post-filing claims, the whole as further explained below;
33. We submit that RQ mistakenly characterizes Restructuring Claims as pre-filing claims by conflating the notions of "claims" that may be dealt with under a plan or arrangement pursuant to Section 19 CCAA and the claims for damages that can be asserted as a result of the disclaimer or rescission of a contract pursuant to Subsection 32(7) CCAA and mistakenly takes the position that the only claims that may be compromised pursuant to a

plan of arrangement under the CCAA are claims that existed prior to the commencement of the CCAA proceedings;

34. The determination of which claims can be compromised by way of a plan under the CCAA derives from Subsection 19(1) CCAA, which reads as follows:

19 (1) Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are

- (a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of
 - (i) the day on which proceedings commenced under this Act, and
 - (ii) if the company filed a notice of intention under section 50.4 of the [Bankruptcy and Insolvency Act](#) or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the [Bankruptcy and Insolvency Act](#), the date of the initial bankruptcy event within the meaning of section 2 of that Act; and
- (b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).

(our emphasis)

35. The fact that the Restructuring Claims can be compromised pursuant to Subsection 19(1) of the CCAA does not result from their qualification as pre-filing claims, which clearly they are not, but rather from the regime set out in Section 32 CCAA governing the termination of contracts;

36. Section 32 CCAA provides that contracts to which a debtor company is party as of the date of the initial order, can be terminated by way of notice that can be contested within 15 days (32(2) CCAA) and only takes effect 30 days later if not duly contested or when such contestation has been resolved (32(5) CCAA). Subsection 32(7) of the CCAA provides that “if an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim”. Consequently, the Restructuring Claims are provable claims because they are deemed to be provable claims by the CCAA and not because they are pre-filing claims;

37. A claim in damages resulting from a breach or non-performance of a contract occurring prior to the applicable initial order would clearly amount to a pre-filing claim. A Restructuring Claim, which can only arise as a result of a disclaimer or resiliation after the issuance of an initial order under the CCAA in relation to a contract entered before that date⁶, cannot be considered a pre-filing claim. Rather it can only be considered a post-filing claim, which is deemed by Subsection 32(7) CCAA to be a provable claim subject to compromise under a CCAA plan;

38. Paragraphs (a) and (b) of the definition of “Claim” of the Claims Procedure Order (R-2) provide as follows:

⁶ Section 32(1) CCAA specifically provides that it can only apply to an “...agreement to which the company is a party on the day on which proceedings commence under this Act.”

4.11 “Claims” means:

- a. Any right or claim of any Person that may be asserted or made in whole or in part against the CCAA Parties (or any of them), whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, in existence on, or which is based on, an event, fact, act or omission which occurred in whole or in part prior to the applicable Determination Date⁷, at law or in equity, by reason of the commission of a tort (intentional or unintentional), any breach of contract, lease or other agreement (oral or written), any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty), any breach of extra-contractual obligation, any right of ownership of or title to property, employment, contract or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise) or for any reason whatsoever against any of the CCAA Parties or any of their property or assets, and whether or not any such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured (by guarantee, surety or otherwise), unsecured, present, future, known or unknown, and whether or not any such right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, together with any other rights or claims not referred to above that are or would be claims provable under the BIA had the CCAA Parties (or any one of them) become bankrupt on the applicable Determination Date, including, for greater certainty, any Tax Claim and any monetary claim in connection with any indebtedness, liability or obligation by reason of a breach of a collective bargaining agreement, including grievances in relation thereto, or by reason of a breach of a legal or statutory duty under any employment legislation or pay equity legislation; or
 - b. any Restructuring Claim;
- (...)

(our emphasis)

- 39. Paragraph (b) would be superfluous if the Restructuring Claims were pre-filing claims as they would already be covered by paragraph (a) of the definition.
- 40. The definition of “Restructuring Claim” under the Claims Procedure Order (R-2) is also restricted to claims that arise after the filing date:

- 4.60 “**Restructuring Claim**” means any right or claim of any Person against the CCAA Parties (or any one of them) in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the CCAA Parties (or any one of them) to such Person, arising out of the restructuring, disclaimer, resiliation, termination or breach or suspension, on or after the Determination Date, of any contract, employment agreement, lease or other agreement or arrangement, whether written or oral, and whether such restructuring, disclaimer, resiliation, termination or breach took place or takes place before or after the date of this Claims Procedure Order, and, for greater certainty, includes any right or claim of an Employee of any of the CCAA Parties arising from a termination of its employment after the Determination Date, *provided, however*, that “Restructuring Claim” shall not include an Excluded Claim;

(our emphasis)

- 41. Echoing Subsection 32(7) of the CCAA, Subparagraph 33(e) of the Bloom Lake Initial Order (R-1) provides that that the Bloom Lake CCAA Parties can terminate contracts “and make provisions for the consequences thereof in the Plan”. The Plan compromises “Affected Claims”, not “pre-filing claims”. The definition of Affected Claims is a “Claim

⁷ With respect to the Bloom Lake CCAA Parties, including CQIM, the Determination Date is January 27, 2015, as provided by Section 4.23 of the Claims Procedure Order (R-2).

other than an Unaffected Claim”. A “Claim” includes both (i) claims “...in existence on, or which is based on, an event, fact, act or omission which occurred in whole or in part prior to the applicable Filing Date...” (i.e. a “pre-filing claim”) and (ii) “Restructuring Claims”. Thus, both the CCAA and the Plan clearly provide for the authority to compromise Restructuring Claims even though they are not pre-filing claims;

IV. CONCLUSIONS, CONSTITUTIONAL AND PROCEDURAL MATTERS

42. Based on discussions to date, the Monitor understands that RQ feels bound by the decision of the Quebec Court of Appeal in the *Kitco*⁸ matter and accepts that it can only offset its pre-filing 296 Claims against the Damage Payments ITCs if the later are considered pre-filing claims, and that it does not rely on statutory provisions found in the FAA, QSTA or other tax legislation that would otherwise appear to allow the offset of pre-filing and post-filing obligations, such that it is not necessary to have such statutory provisions declared inapplicable, invalid or inoperative;
- 42.1 In its Contestation dated May 14, 2021, RQ is arguing on that pre/post setoff is available and is not prohibited by the CCAA based on its reading and interpretation of the *Kitco* decision, such that no declaration that certain statutory tax provisions be declared inapplicable, invalid or inoperative is necessary;
43. The Monitor submits that the notices given of the presentation of the present Amended Motion are proper and sufficient;
44. Based on the foregoing, the Monitor is asking the Court to issue an Order declaring that:
- a) the 296 Claims constitute pre-filing claims;
 - b) the Damage Payment ITCs constitute post-filing claims;
 - c) RQ (acting on its on behalf and on behalf of CRA) cannot offset the 296 Claims against the Damage Payment ITCs;
 - d) RQ (acting on its on behalf and on behalf of CRA) shall without set-off pay to the Monitor, on behalf of the CCAA Parties and their creditors, all Damage Payment ITCs validly claimed by any of the CCAA Parties in respect of the First Interim Distribution, including, without limitation, the Damage Payment ITCs claimed by CQIM in the amount of \$7,459,257.85, together with interest at the legal rate and the additional indemnity, from and after the date at which each of the ITRs claimed was payable, until payment in full to the Monitor;
 - e) upon receipt of the appropriate returns, RQ (acting on its on behalf and on behalf of CRA) shall without setoff pay to the Monitor, on behalf of the CCAA Parties and

⁸ *Arrangement relatif à Métaux Kitco inc.*, 2017 QCCA 268.

their creditors, all Damage Payment ITCs validly claimed by any of the CCAA Parties with respect to all future distributions under the Plan;

- f) RQ (acting on its behalf and on behalf of CRA) shall without setoff of any kind pay to the Monitor, on behalf of the CCAA Parties, and their creditors, \$ 234 755.16 together with interest at the legal rate and the additional indemnity, from and after the dates at which each of the ITCs claimed was payable, until payment in full to the Monitor;

the whole substantially in the form of the draft Order communicated herewith as **Exhibit R-5.1**;

45. The CCAA Parties have been consulted by the Monitor and support the conclusions sought herein;
46. The present Amended Motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Amended Motion;

ISSUE an Order in the form of the draft communicated herewith as Exhibit R-5.1;

WITHOUT COST, save and except in case of contestation.

Montréal, June 18, 2021

Woods s.e.n.c.r.l./LLP

WOODS S.E.N.C.R.L. / LLP

Mtre Sylvain Rigaud and Mtre Alex Dobrota
Attorneys of the Monitor FTI Consulting Canada Inc.

2000 McGill College Avenue, Suite 1700

Montreal, Quebec H3A 3H3

Telephone : (514) 736-4871

Fax : (514) 514-284-2046

srigaud@woods.qc.ca

adobrota@woods.qc.ca

notification@woods.qc.ca

Code BW 0208 / Our File: 5956-4

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the present *Motion by the Monitor for Directions with Respect to Setoff and Damage Payment ITCs* will be presented on a *pro forma* basis before the Honourable Michel A. Pinsonnault, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, at 9:30 on August 19-20, 2021.

The hearing is set to proceed virtually from room 16.04 at the Montreal Courthouse.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, June 18, 2021

Woods s.e.n.c.r.l./LLP

WOODS S.E.N.C.R.L. / LLP

Mtre Sylvain Rigaud and Mtre Alex Dobrota
Attorneys of the Monitor FTI Consulting Canada Inc.

2000 McGill College Avenue, Suite 1700

Montreal, Quebec H3A 3H3

Telephone : (514) 736-4871

Fax : (514) 514-284-2046

srigaud@woods.qc.ca

adobrota@woods.qc.ca

notification@woods.qc.ca

Code BW 0208 / Our File: 5956-4

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

N^o: 500-11-048114-157

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

BLOOM LAKE GENERAL PARTNER LIMITED *et al*

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP *et al***

Mises-en-cause

-and-

**AGENCE DU REVENU DU QUEBEC
CANADA REVENUE AGENCY**

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**LIST OF EXHIBITS IN SUPPORT OF THE AMENDED
MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO SETOFF AND
DAMAGE PAYMENTS ITCS**

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- | | |
|--------------------|---|
| Exhibit R-1 | Bloom Lake Initial Order dated January 27, 2015, as amended on February 20, 2015; |
| Exhibit R-2 | Claims Procedure Order dated November 5, 2015, as amended on November 16, 2015; |
| Exhibit R-3 | Amended and Restated Joint Plan of Compromise and Arrangement (as last amended on December 13, 2019); |
| Exhibit R-4 | Plan Sanction Order dated June 29, 2018; |

Exhibit R-5 Draft Order;

Exhibit R-5.1 Draft Order (Amended Motion).

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