

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: 500-11-048114-157

SUPERIOR COURT

(Commercial Division)

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

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

BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING CORPORATION,
8568391 CANADA LIMITED, CLIFFS 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-

MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON

PETITIONERS-Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

AFFIDAVIT OF MICHAEL KEEPER
(Sworn April 12, 2018)

I, **MICHAEL E. KEEPER**, of 1049 Fitzsimmons Drive, City of Brockville, in the Province of Ontario, **SOLEMNLY DECLARE AND MAKE OATH AND SAY:**

Introduction

1. I am the former Area Manager, Materials of the Wabush Mines Materials Department located in Pointe Noire, QC. I worked with Wabush Mines for more than 36 years before retiring on May 1, 2001.
2. Wabush Mines are subsidiaries of a major U.S. company called Cliffs Natural Resources ("CNR") (recently renamed "Cleveland Cliffs") based in Cleveland, Ohio. CNR is a major, solvent, multi-national mining and resource company.

My Background

3. I started working with Wabush Mines at their headquarters in Montreal on June 1, 1964. At first I was working in the Accounting Department for construction management. In September, 1964, when Wabush Mines closed its Montreal office and moved its offices to Pointe Noire, QC, I became a buyer in the Purchasing Department. In 1973, I was promoted to Purchasing Agent and, subsequently, Assistant, Supervisor Material Management, all in the Purchasing Department. In 1979, Wabush Mines transferred its Purchasing Department to a new office in Westmount. I moved back to Montreal with the company and became Supervisor Material Management, responsible for Purchasing and Warehousing. In 1986, Wabush Mines transferred its Materials Department back to Pointe Noire and I moved again with the company. I remained employed at the Pointe

Noire location for the next 15 years. In the early 1990s, my job title was changed to Area Manager, Materials. As indicated above, I remained employed at Wabush Mines for 36 years and 11 months, retiring in 2001 from the position of Area Manager, Materials.

4. I have spent the majority of my working life in Quebec.
5. I am now 73 years old and, like all other retirees of Wabush Mines, am highly dependent on the post-employment benefits and pension benefits that I earned as an employee of Wabush Mines for my and my spouse's everyday livelihood.
6. As part of my compensation as a long service employee with Wabush Mines, I earned various post-retirement benefits, including a monthly pension benefit to be paid to me on my retirement from the Contributory Defined Benefit Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (Nfld & Lab. Reg. No. 0021314, CRA Reg. No. 0343558) (the "**Salaried Pension Plan**").
7. I also earned an entitlement to post-retirement health benefits and life insurance benefits. Certain other senior managers also earned an additional supplemental pension benefit (collectively, "other post-employment benefits" or "OPEBs").
8. In 2017, CNR began to announce that it intended to exit its Eastern Canada mining operations. On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company, and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**") were rendered insolvent, and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C 1985, c. C-36 ("**CCAA**") (the "**Wabush CCAA Proceedings**") by order of

Mr. Justice Hamilton of the Superior Court of Québec ("**CCAA Judge**"). FTI Canada Consulting Inc. was appointed as Monitor.

9. Immediately after obtaining CCAA protection, in June, 2015, Wabush Mines terminated the retirees' OPEBs without notice. All Wabush Mines retirees have lost all of their OPEBs.
10. On January 26, 2016, the Salaried retirees received a letter from Wabush Mines notifying them that the Newfoundland Superintendent of Pensions directed Wabush Mines to reduce the amount of monthly pension benefits of the Salaried Members by 25%, taking effect March 1, 2016 due to the underfunding in the Salaried Pension Plan.
11. The loss of OPEBs and the 25% loss to our monthly pension benefits have severely impacted the Wabush Mines retirees. Retirees are deeply upset with how they have been treated by the CCAA Parties.
12. On June 22, 2015, I was appointed along with Neil Johnson, Damien Lebel, and Michael Keeper (the "**Representatives**") as representatives of all Non-Union Active Employees and Retirees (the "**Salaried Members**") of Wabush Mines in the Wabush CCAA Proceedings. The firm of Koskie Minsky LLP (Toronto) and Scheib Legal (Montreal) were appointed as Representative Counsel with respect to all matters pertaining to any recovery, compromise of rights or entitlements of the Salaried Members. On December 21, 2017, the firm of Fishman Flanz Meland Paquin LLP were appointed to replace Scheib Legal as Representative Counsel in Quebec.

13. There are approximately 690 non-union employees and retirees of the company who are subject to our representation.
14. As a Representative, I regularly interact with Representative Counsel and am very familiar and actively involved with the Wabush CCAA Proceedings. I have knowledge of the matters to which I hereinafter depose except where stated to be based on information or belief and regarding such matters I believe the same to be true. Further, I have discussed the contents of this affidavit with the other Representatives, and they also believe them to be true. All capitalized terms used herein are the same as used and defined by the Petitioners in their prior materials except where noted. When reference is made herein to the "company" it applies to my former employer, Wabush Mines.
15. Individual Salaried Members have relied on the Representatives' advice, and the advice of Representative Counsel, throughout these proceedings. Through regular communications, including mass mailings, on-site presentations in Sept-Îles and Wabush, and direct communications, we have provided explanations and information to the Salaried Members. The explanations and advice have never been challenged by the Salaried Members. We will continue to provide information to the Salaried Members regarding, amongst other matters, the terms of the Proposed Plan (defined below) as well as the options of the Salaried Members to achieve recoveries for their significant losses in the Wabush CCAA Proceedings.
16. The Representatives and Representative Counsel have been intimately involved in representing all the 690 Salaried Members throughout this proceeding. To my

knowledge, there are no opt-outs of the Representation Order, and the Salaried Members I speak with have no issue with their representation.

17. Although the Monitor and CCAA Parties accept the role of Representative Counsel in all of the issues that arise and require positions from Representative Counsel without questioning whether each and every Salaried Member has signed off on a particular decision, I am advised by Representative Counsel and believe that the Monitor now takes the position that each of 690 Salaried Members should be required to individually cast their vote as creditors at the Meetings to be convened at the Montreal Offices of Norton Rose Fulbright LLP on the Proposed Plan, and if they cannot attend in Montreal, should fill out and sign proxy forms appointing a Proxy holder.
18. In addition to the practical problems of not being able to reach all of the Salaried Members to collect proxies, and the increased costs that I believe will result by the Monitor's and CCAA Parties' individual-vote approach, I and the Representatives I spoke with about this believe that the main motive behind the Monitor's and CCAA Parties' insistence is to try to reduce or eliminate any resistance to the Proposed Plan by reducing the voting strength that Salaried Members (and the USW) might have through unity in our commonality of interests by a vote through their Representative Counsel.
19. I swear this affidavit in support of the Representatives' contestation, in part, of the CCAA Parties' Motion for the Issuance of a Plan Filing and Meetings Order (the "**Plan Meetings Motion**") and, more particularly, in support of the request of the Representatives that the draft Order filed as Exhibit R-1 in their motion be revised in order to provide that Representative Counsel shall be deemed to be a Proxy holder in

respect of each Eligible Voting Claim of the Salaried Members, without the requirement for any Salaried Member to submit a Proxy, except for any individual Salaried Member who notifies the Monitor before a Meeting that he revokes the deemed Proxy (the “**Deemed Proxy Provision**”) with the following language:

DECLARES that in respect of the Eligible Voting Claims of the Salaried Members and the Union Members:

- (a) the Salaried Members Representative Counsel shall be deemed to be a Proxy holder in respect of each Eligible Voting Claim related to or arising from the employment of the Salaried Members and shall be entitled to vote them at a Meeting on their behalf, without the requirement for any Salaried Member to submit a Proxy to the Monitor, save in respect of any Salaried Member who, prior to a Meeting, notifies the Monitor by an instrument in writing that he revokes this deemed Proxy; and
- (b) the Union Counsel shall be deemed to be a Proxy holder in respect of each Eligible Voting Claim related to or arising from the employment of the Union Members and shall be entitled to vote them at a Meeting on their behalf, without the requirement for any Union Member to submit a Proxy to the Monitor, save in respect of any Union Member who, prior to a Meeting, notifies the Monitor by an instrument in writing that he revokes this deemed Proxy.

For greater certainty, however, only the Pension Plan Administrator or its designated Proxy may vote the Pension Claims.

The proposed Plan of Compromise by the CCAA Parties

20. On March 19, 2018, the Wabush CCAA Parties, along with Bloom Lake General Partner Limited, Bloom Lake Railway Company Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Québec Iron Mining Ulc, and The Bloom Lake Iron Ore Mine

Limited Partnership (collectively the "CCAA Parties"), served the Plan Meetings Motion. The Plan Meetings Motion seeks the court's approval of a process to convene meetings of creditors to vote on a proposed Joint Plan of Compromise and Arrangement (the "Proposed Plan") that I am advised was negotiated primarily by CNR, the Monitor and one unsecured creditor (QNS&L).

21. The Proposed Plan is a complicated financial arrangement that contains various convoluted movements of funds, legal releases of parties who are not CCAA Parties, the consolidation of certain estates of the CCAA Parties, and contemplates a variety of different distribution scenarios for creditors, that are all currently uncertain. The one unsecured creditor who participated in the negotiation of the Proposed Plan, QNS&L, appears to be the party most highly advantaged in the Proposed Plan.
22. I am advised by Representative Counsel and believe that they were not involved in the negotiations leading to the Proposed Plan and were not even informed such negotiations were taking place. The first time the Proposed Plan was brought to their attention was when the CCAA Parties served their Plan Meetings Motion on March 19, 2018. This motion was short-served by the CCAA Parties on March 19, 2018 and initially returnable seven days later on March 26, 2018. After multiple creditor objections, the hearing of the Plan Meetings Motion was adjourned to April 16, 2018.
23. Our Representative Counsel continues to review the Proposed Plan and is in discussions with other relevant stakeholders in order to provide us with legal and financial advice about the Proposed Plan.

24. Individual voting by the 690 Salaried Members, as advocated by the Monitor and CCAA Parties, is completely inappropriate for our large, vulnerable creditor group who are not sophisticated commercial creditors. The Salaried Members are spread across Canada, many in the remote regions. This will make it impossible to reach many of them with the Proposed Plan, all the related documents, and the associated ballot in time to allow them to cast their vote. Many Salaried Members are old and infirmed, living in nursing home facilities, do not have internet access or fax machines, and many cannot understand complex legal documents, such as the Proposed Plan, the court orders, and the Monitor's Reports. For many, they will not understand the nature or consequences of the Proposed Plan and how it affects them, and it is not practical for Representative Counsel nor the Representatives to contact every one of them to provide advice and answer their questions in time to ensure that they are able to make an informed decision as to their rights and how the Proposed Plan impacts them.
25. Furthermore, if the Deemed Proxy Provision is not authorized, the Representatives and Representative Counsel will have to try to explain to hundreds of Salaried Members how to fill out their Proxy forms, which will create significant and costly logistical problems that will also increase the likelihood of errors being made in the way forms are filled out or some forms simply not being received in time for the Meetings. Overall, individualized voting, as proposed by the Monitor and CCAA Parties in their draft Order, Exhibit R-1, will lead to the practical result of disenfranchisement of a large number of Salaried Members, representing a material portion of our vulnerable creditor group that has already suffered a great deal as a result of these CCAA proceedings.

26. In the Court Order Appointing Representatives and Representative Counsel (the "**Representation Order**"), we were appointed "for the purpose of representing the Salaried Members in these CCAA proceedings and in particular with respect to proving, settling or compromising the rights and claims of the Salaried Members in these CCAA proceedings, who shall be bound by the actions of the Representatives and Representative Counsel..." The Representation Order was explicit in giving us the right to settle or compromise rights on behalf of the Salaried Members, which is the very nature of a plan of compromise and arrangement in CCAA Proceedings. Further, the Representation Order allowed any Salaried Member the right to opt-out of representation by Representative Counsel; as previously noted, to my knowledge, no one has, to date, chosen to exercise such opt-out right.
27. I have had interactions with a great many Salaried Members during this difficult CCAA process and they have consistently expressed confidence that the Representatives and Representative Counsel are acting in their best interests and gain comfort from the fact that they do not have to exercise rights individually and on their own behalf, since the process is complicated and bewildering to most of them.
28. I also understand from Representative Counsel and believe that there is precedent in other CCAA proceedings involving large groups of employees and retirees to give representative counsel a deemed proxy at creditors' meetings to vote on behalf of the entire retiree group on a proposed plan of compromise.
29. In suggesting the more efficient and cost-effective Deemed Proxy Provision, the Representatives propose that Representative Counsel shall be deemed to have received a

Proxy to vote the Eligible Voting Claims on behalf of all Salaried Members, unless an individual Salaried Member expressly opts-out of the Deemed Proxy Provision. This would allow individual Salaried Members to vote on their own behalf or appoint a different Proxy if they wish, thereby fully addressing any purported concern of the Monitor that individual creditors are being deprived of the right to vote in their own interest, while at the same time ensuring the participation of the entire Salaried Member creditor group in the compromise of their claims under the CCAA.

30. Given the commonality of interests of the Salaried Members, and based on the Representative Counsel's intimate knowledge of the overall situation of the Salaried Members and their reliance to date on the recommendations of the Representatives and Representative Counsel, the proposed Deemed Proxy Provision would ensure that the greatest number of Salaried Members' claims will be voted at a Meeting to consider the Proposed Plan and that no Salaried Members' votes will go uncounted. I therefore request that the Deemed Proxy Provision be added to the Plan Meetings Order.

AND I HAVE SIGNED:



MICHAEL KEEPER

Brackville
SOLEMNLY AFFIRMED before me in ~~Toronto~~,
the Province of Ontario, this 12th day of April 2018.



ANGUS F. BICKERTON
BARRISTER & SOLICITOR