

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-048114-157

SUPERIOR COURT
(Commercial Division)

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

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

BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING CORPORATION,
8568391 CANADA LIMITED, CLIFFS QUEBEC
IRON MINING ULC, WABUSH IRON CO.
LIMITED, WABUSH RESOURCES INC.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED,
WABUSH MINES, ARNAUD RAILWAY
COMPANY, WABUSH LAKE RAILWAY
COMPANY LIMITED

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL AND NEIL JOHNSON

Petitioners-Mises-en-cause

*Factum of the Petitioners-Mises-en-cause as Representatives of Non-Union and Retired Employees of the
Wabush CCAA Parties in Support of Their Notice of Objection to the Wabush CCAA Parties' Motion for the
Issuance of an Order Dated May 29, 2015*

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

PART I - OVERVIEW

1. Michael Keeper, Damien Lebel, Neil Johnson and Terence Watt, in their personal capacity as retirees of Wabush Mines (the “**Salaried Steering Committee**”), and as the proposed representatives of all non-union employees and retirees across Canada of the Wabush CCAA Parties (that is subject to a separate motion for a representation order before the court), also returnable on June 22, 2015, object to the relief sought by the Wabush CCAA Parties to not pay and/or discontinue payments and benefits owing by Wabush to the Non-Union Employees and Retirees, as set out in the letter from Wabush Mines dated May 29, 2015, addressed to members and beneficiaries of the following Wabush pension and benefit plans:

- (a) Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (CRA registration No. 0343558) (the “**RPP**”);
- (b) Wabush Mines Registered Retirement and Savings Plan (the “**Group RRSP**”);
- (c) Wabush Mines, Cliffs Mining Company, Managing Agent – Supplemental Retirement Arrangement (the “**SERP**”); and
- (d) Post-retirement benefit plans applicable to salaried employees of the Wabush Group (the “**OPEBs**”).

2. At the hearing on June 9, 2015, the court allowed the filing of the Retirees' Notice of Objection.

PART III – THE LAW AND ARGUMENT

3. The relief sought by the company deals with: a) pension plans; b) health and life insurance benefits; and c) supplemental pension arrangements. All of these are “agreements” as they are part of the entitlements earned by employees for work they performed for the company pursuant to their employment agreements. The Supreme Court of Canada has recently confirmed that pension benefits are “deferred compensation”.¹ Earned health and life insurance benefits are similarly “deferred compensation”.

4. The CCAA was amended as of September 18, 2009 to add Section 32 under the broad heading “Agreements”. Section 32 sets out a detailed code that a debtor under CCAA protection is required to follow when it seeks to disclaim or resile from agreements.

5. The purpose of section 32 is to prevent a debtor under CCAA protection from unilaterally breaching or resiling from agreements with parties who rely on the fulfillment of those agreements where: a) there is no connection to the contract termination or resiliation “enhanc[ing] the prospects of a viable compromise or arrangement being made in respect of the company, and b) where the contract termination or resiliation “would likely cause significant financial hardship to a party to the agreement”. Section 32 states:

¹ *IBM Canada Limited v. Waterman*, [2013] S.C.J. No. 70 at para. 4

Agreements

32. (1) Disclaimer or resiliation of agreements - Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.

(2) Court may prohibit disclaimer or resiliation - Within 15 days after the day on which the company gives notice under subsection (1), a party to the agreement may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement is not to be disclaimed or resiliated.

(3) Court-ordered disclaimer or resiliation - If the monitor does not approve the proposed disclaimer or resiliation, the company may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement be disclaimed or resiliated.

(4) Factors to be considered - In deciding whether to make the order, the court is to consider, among other things,

(a) whether the monitor approved the proposed disclaimer or resiliation;

(b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; *and*

(c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.

6. The factors in Section 32(4) are conjunctive. *All* of the factors are to be considered by the court in considering whether to approve the termination or resiliation of an agreement by a debtor.

7. The company's explanation for "suspending" payment of certain pension payments and OPEBs are set out in paras. 80 to 97 of the Motion of the Wabush CCAA Parties dated May 29, 2015 and affirmed by the affidavit of Clifford T. Smith, sworn May 29, 2015. Although the

company uses the word “suspensions” in its affidavit, that word is a misnomer and is misleading in these circumstances. The relief sought by the company to not pay the above amounts is at law either a disclaimer or a resiling of those obligations, not a “suspension”. As a disclaimer or resiliation, section 32 of the CCAA applies to this analysis. Excerpts from the company’s affidavit are reproduced below:

6. SUSPENSION OF CERTAIN PENSION PAYMENTS AND OPEBs

6.1 Pension Plans

...

6.1.2 Defined Benefit Plans

80. As described in the motion for the Wabush Initial Order, the pension plan for salaried employees at the Wabush Mine and the Pointe-Noire Port hired before January 1, 2013 is a defined benefit plan and is called the Contributory Pension Plan for Salaried Employees of Wabush Mines JV, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company (the "**Salaried DB Plan**").

81. The pension plan for unionized hourly employees at the Wabush Mine and Pointe-Noire Port is also a defined benefit plan and is called the Pension Plan for Bargaining Unit Employees of Wabush Mines JV, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company (the "Hourly DB Plan" and together with the Salaried DB Plan, the "**DB Plans**").

82. Wabush Mines JV is the administrator of the DB Plans.

83. Based on estimates received from the Wabush CCAA Parties' pension consultant, the Wabush CCAA Parties believe the estimated wind-up deficiencies for the DB Plans as at January 1, 2015 to be a total of approximately \$41.5 million, consisting of approximately \$18.2 million for the Salaried DB Plan and approximately \$23.3 million for the Hourly DB Plan.

84. The Interim Lender is only prepared to make advances under the Interim Facility pursuant to the Interim Financing Term Sheet if there is an order of the Court granting priority to the Interim Lender Charge over all Encumbrances other than Permitted Priority Liens (as defined in the Interim Financing Term Sheet), including over deemed trusts that may

exist in respect of pension obligations under the *Pension Benefits Act*, 1997 (Newfoundland and Labrador) or any other applicable legislation.

85. All monthly normal cost and amortization payments in respect of the DB Plans for January through April, 2015 have been paid in full.

86. The monthly normal cost payments for the DB Plans for 2015 based on a valuation as at January 1, 2014 (the "**2014 Valuation**") are approximately \$50,494.83 (Hourly DB Plan) and \$41,931.25 (Salaried DB Plan) for a total monthly normal cost payment of \$92,46.08 (the "**Normal Cost Payments**"). The Normal Cost Payments are included in the May 18 Forecast.

87. The Wabush CCAA Parties are also paying monthly amortization payments based on the 2014 Valuation of \$393,337.00 (Hourly DB Plan) and \$273,218.58 (Salaried DB Plan) for a total monthly amortization payment of \$666,555.58 (the "**Monthly Amortization Payments**").

88. In addition to the Monthly Amortization Payments, the Wabush CCAA Parties are also required to make a lump sum "catch-up" amortization payment (the "**Yearly Catch Up Amortization Payment**") for the DB Plans estimated to be approximately \$5.5 Million due in July 2015.

89. The Wabush CCAA Parties do not have any funding available to continue to pay the Monthly Amortization Payments or to pay the Yearly Catch-Up Amortization Payment due in July 2015 as the Interim Financing Term Sheet prohibits such payments post-filing.

6.13 Other Post-Retirement Benefits

90. The Wabush CCAA Parties currently provide OPEBs, including life insurance and health care, to former hourly and salaried employees hired before January 1, 2013, which vary based on whether retirees were formerly members of a bargaining unit or were non-unionized salaried employees.

91. Approximately 933 retired employees and 16 active employees are currently fully eligible for retirement benefits.

92. As of December 31, 2014, accumulated benefits obligations for post-retirement benefits ("**ABO**") totaled approximately \$52.1 million.

93. The premiums required to fund the foregoing OPEBs are approximately \$182,000 a month.

94. In addition to the foregoing, there is a supplemental retirement arrangement plan (the "**SRA**") for certain current and former salaried employees of Wabush Mines JV. The obligations under the SRA

are approximately \$1.01 million.

95. The Wabush CCAA Parties do not have any funding available to continue to pay any of the foregoing OPEBs, including the SRA obligations, as the Interim Financing Term Sheet prohibits such payments.

96. As a result, no payments on account of the OPEBs are included in the May 18 Forecast.

97. In light of the foregoing, the Wabush CCAA Parties hereby seek an order from the Court suspending the payment of the OPEBs *nunc pro tunc* to the Wabush Filing Date.

8. As set out below, the company does not meet the factors in section 32 of the CCAA.

The court should not grant approval of the disclaimers and/or resiliations.

Notice has not been given in the “prescribed manner”

9. Section 32(1) of the CCAA states:

32. (1) Disclaimer or resiliation of agreements - Subject to subsections (2) and (3), a debtor company may — ***on notice given in the prescribed form and manner to the other parties to the agreement*** and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act. ***The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.***

10. Section 32(1) requires a company who seeks to disclaim or resile from an agreement to give notice in the “prescribed form and manner” to the other parties to the agreement. The form of the notice is Form 4 entitled “Notice by Debtor Company to Disclaim or Resiliate and Agreement” to the CCAA and is attached hereto in Schedule ‘A’. This Form was not provided by the company to the retirees. The company did not comply with the clear process set out in Section 32 and for this reason alone, the disclaimers and resiliations should not be approved by the Court.

The factors in section 32(4)(b) and (c) have not been satisfied in the company's own evidence.

11. Based on the above excerpts, the payment disclaimers or resiliations that the Wabush CCAA Parties are seeking to have approved by this Court can be summarized in the following three pension and benefit categories:

- (a) **Registered Pension Plans:** The Wabush registered pension plans are underfunded. If the plans are wound up in an underfunded state it will result in significant pension benefit reductions to the monthly pension benefits payable to plan members. The plans are registered in Newfoundland and Labrador, which does not have any fund to supplement deficits in an underfunded, wound-up pension plan (in contrast to Ontario, which has the Pension Benefits Guarantee Fund that pays an amount to partially offset pension benefit losses). The Wabush CCAA Parties are required to pay monthly amortization payments based on the 2014 Valuation of \$393,337.00 (Hourly DB Plan) and \$273,218.58 (Salaried DB Plan) for a total monthly amortization payment of \$666,555.58 (the "**Monthly Amortization Payments**"). In addition to the Monthly Amortization Payments, the Wabush CCAA Parties are also required to pay a lump sum "catch-up" amortization payment (the "**Yearly Catch Up Amortization Payment**") for the DB Plans estimated to be approximately \$5.5 million due in July 2015.

Section 32(4)(b): The disclaimer of the pension contributions will not enhance of prospects of a viable compromise or arrangement in this case

12. There is no evidence that the non-payment of these amounts will "enhance the prospects of a viable compromise or arrangement being made". In seeking to suspend the Monthly Amortization Payments and the Yearly Catch Up Amortization Payment, the company merely

points to the Interim Lender who it says prohibits the company from making such payments: “the Interim Financing Term Sheet prohibits such payments post-filing.” The statement by the company that the interim lender does not permit such payments is irrelevant to section 32. The conditions of a private loan negotiated by a company that may or may not prohibit payment of otherwise required amounts has no bearing on section 32. Moreover, such a condition of the interim financing loan, even if it exists, does not bind this court. As Justice Pepall (as she then was; now of the Ontario Court of Appeal) stated in *Re Canwest Publishing Inc.*:

25 The second basis for objection is that the LP Entities are not permitted to pay any of the legal, financial or other advisors to any other person except as expressly contemplated by the Initial Order or with consent in writing from the LP Administrative Agent acting in consultation with the Steering Committee. ***Funding by the LP Entities would be in contravention of the Support Agreement entered into by the LP Entities and the LP Senior Secured Lenders. It was for this reason that the Monitor stated in its Report that it supported the LP Entities' refusal to fund.***

26 I accept the evidence before me on the inability of the Salaried Employees and Retirees to afford legal counsel at this time. There are in these circumstances three possible sources of funding: the LP Entities; the Monitor pursuant to paragraph 31(i) of the Initial Order although quere whether this is in keeping with the intention underlying that provision; or the LP Senior Secured Lenders. ***It seems to me that having exercised the degree of control that they have, it is certainly arguable that relying on inherent jurisdiction, the court has the power to compel the Senior Secured Lenders to fund or alternatively compel the LP Administrative Agent to consent to funding. By executing agreements such as the Support Agreement, parties cannot oust the jurisdiction of the court.***² (Emphasis added)

13. There is no evidence whatsoever that the disclaimer or resiliation will enhance “prospects of a viable compromise or arrangement in this case.” Accordingly, this factor has not been met. The court should not approve the request by the company to approve non-payment of these amounts.

² [2010] O.J. No. 943.

Section 32(4)(c): The disclaimer of the required pension contributions will cause significant financial hardship to the pension plan members

14. On the other hand, the evidence is uncontroverted that the suspension of the above payments will cause significant financial hardship to the Non-Union Employees and Retirees. In the affidavit of Michael Keeper sworn June 15, 2015, he states at paragraph 28:

28. In particular,

- a) **Salaried Plan.** The suspension of the Pension Plan payments will very likely cause significant financial hardship to the Retirees. The Pension Plans are already underfunded by the company. By ceasing or suspending payments, the deficits will grow thereby further putting the security of pensions for all the plan members at risk or even reduction. The Wabush CCAA Parties are required to pay monthly amortization payments based on the 2014 Valuation of \$393,337.00 (Hourly DB Plan) and \$273,218.58 (Salaried DB Plan) for a total monthly amortization payment of \$666,555.58 (the "**Monthly Amortization Payments**"). In addition to the Monthly Amortization Payments, the Wabush CCAA Parties are also required to pay a lump sum "catch-up" amortization payment (the "**Yearly Catch Up Amortization Payment**") for the DB Plans estimated to be approximately \$5.5 Million due in July 2015. I and other Retirees are elderly and on fixed incomes. If the plans are wound up in an underfunded state it will result in significant pension benefit reductions to the monthly pension benefits payable to plan members. The Pension Plans are registered in Newfoundland and Labrador, which does not have any fund to supplement deficits in an underfunded, wound-up pension plan (in contrast to Ontario, which has the Pension Benefits Guarantee Fund that pays an amount to partially offset pension benefit losses);

15. The nonpayment of the above-noted amounts will certainly worsen the underfunding of the plans. The company is currently seeking to sell itself while under CCAA protection and it is highly unlikely a third party purchaser will take over the pension plans in their current underfunded states. Thus, even if a sale can be successfully concluded, it is likely that the pension plans will be wound up and that pension losses will result. The non-payment of the

above-noted contributions will certainly worsen the underfunding in the plans, which in turn will result in greater losses to the pension plan members.

b) **Health and life insurance benefits:** The Wabush CCAA Parties currently provide life insurance and health care benefits, to former hourly and salaried employees hired before January 1, 2013, which vary based on whether retirees were formerly members of a bargaining unit or were non-unionized salaried employees. Approximately 933 retired employees and 16 active employees are currently fully eligible for retirement benefits. The premiums required to fund the foregoing OPEBs are approximately \$182,000 a month.

Section 32(4)(b): The disclaimer of health and life insurance benefits will not enhance of prospects of a viable compromise or arrangement in this case

16. The Wabush CCAA Parties simply say they do not have any funding available to continue to pay any of the foregoing OPEBs, including the SRA obligations, as the Interim Financing Term Sheet prohibits such payments. Again, There is no evidence by the company whatsoever of the factor in section 32(4)(b). There is no evidence that termination health and life insurance benefits of a relatively modest \$182,000/month will enhance the prospects of a viable compromise or arrangement in this case. This factor has not been met. The court should not approve the request by the company to approve non-payment of these amounts.

Section 32(4)(c): The disclaimer of health and life insurance benefits will cause significant financial hardship to the Non-Union Employees and Retirees

17. On the other hand, the evidence is uncontroverted that the suspension of the above payments will cause significant financial hardship to the Non-Union Employees and Retirees.

The affidavit of Michael Keeper sworn on June 15, 2015 states at paragraph 28:

28. In particular,

...

b) **Health Benefits (including Life Insurance).** The Wabush CCAA Parties provide life insurance and health care benefits, to former hourly and salaried employees hired before January 1, 2013, which vary based on whether retirees were formerly members of a bargaining unit or were non-unionized salaried employees. Approximately 933 retired employees and 16 active employees are currently fully eligible for retirement benefits. The premiums required to fund the foregoing Benefits are approximately \$182,000 a month. The suspension of the above premiums will cause the group insurance plan to be terminated by the group insurer, thus effectively terminating our health benefit and life insurance coverage which will certainly cause significant financial hardship to me and other Salaried Members. We are elderly and not eligible for replacement post-retirement benefits.; and

c) **Supplemental pension benefit payments (“SERP” or “SRA”):** There is also a supplemental retirement arrangement plan for certain current and former salaried employees of Wabush Mines JV. The company states that “the obligations under the SRA are approximately \$1.01 million.” but there is no explanation of the amount of the monthly payment required the company for these pension benefits.

Section 32(4)(b): The disclaimer of the SRA payments will not enhance of prospects of a viable compromise or arrangement in this case

18. The company simply states again that the “Wabush CCAA Parties do not have any funding available to continue to pay ... the SRA obligations, as the Interim Financing Term Sheet prohibits such payments.” There is no monthly payment amount disclosed. There is no evidence that suspending the SRA payments will enhance of prospects of a viable compromise or

arrangement in this case. For similar reasons as set out above, the company's sole reliance on interim financing terms does not satisfy the section 32 factors.

Section 32(4)(c): The disclaimer of the SRA payments will likely cause significant financial hardship to the SRA recipients

19. On the other hand, the evidence is clear that the termination of the monthly SRA payments will cause immediate and significant hardship to the affected retirees. The affidavit of Michael Keeper sworn on June 15, 2015 states at paragraph 28:

28. In particular,

...

c) **Supplemental Retirement Arrangement (SRA)**. There is also a supplemental retirement arrangement plan for certain current and former salaried employees of Wabush Mines JV (including Proposed Representatives Messrs. Lebel and Johnson). The company states that "the obligations under the SRA are approximately \$1.01 million." but there is no explanation of the amount of the monthly payment required the company for these pension benefits. The termination of the monthly SRA payments will cause immediate and significant hardship to the affected retirees, not least of which because they are elderly and have organized their financial affairs in expectation of funding their old age.

Funds are available to pay the pension and health benefit payments and contributions

20. Based on the information in the Monitor's reports it appears that:

- (a) Wabush has secured a \$12.6 million (\$10 million US) Interim Facility (the "**Facility**").
- (b) The Facility is secured by charge of \$15 million over the company's assets;
- (c) By August 14, 2015 the Company is projecting to have used:

- i) Approximately \$3.6 million for operating costs; and
- ii) Approximately \$2.7 million for professional fees.

21. This would leave the company with approximately \$6.3 million of available Facility.

22. Based on the above, it would appear that Wabush has the financial ability to fund all or most of its pension and benefit obligations, at least in the short term.

Wabush's current circumstances warrant the continuation of pension and health benefit coverage at this time

23. In this case, Wabush is undergoing a SISP process to sell itself as a going concern to a prospective purchaser. It is in the context of Wabush's current circumstances and the SISP process that the company's request to suspend payments should be considered. In addition to failing to meet the section 32 factors as discussed above, there is no practical need for the company to impose significant hardship on its employees and retirees in this process. Realistically, the only party who benefits from such payment suspension is the interim lender and/or the secured creditor who benefit from increasing the amount of funds remaining in the company's accounts for re-payment of their loans. Enhancing loan repayment certainly for lenders is not a factor under Section 32.

24. In the CCAA proceedings of *Target Canada Co.*,³ Regional Senior Justice Morawetz made clear that the context of the company is also an important factor when considering section 32. In *Target*, a motion was brought by a group of pharmacists who operated pharmacies inside Target store locations at 93 locations across Canada to challenge the disclaimer of their

³ *Target Canada Co. (Re)*, at paras. 10-13

pharmacy contracts. Target announced from the inception of its CCAA proceeding that it was not restructuring and was closing all of its stores. Morawetz, R.S.J. made clear that it was in this context that the contract disclaimers needed to be considered, pointing out that it was simply not possible for the pharmacies to continue in closed Target stores:

[10] The Pharmacists are challenging the disclaimer and seek an order under s. 32(2) of the CCAA that the Franchise Agreements not be disclaimed.

...

[11] *The reality that the Target stores will be closing provides, in my view, the starting point to analyze the issue being brought forward by the Pharmacists.*

[12] *Following the closing of a particular Target Store, it is unrealistic for the Pharmacist to carry on the operation of the pharmacy. As noted by counsel to the Applicants, as soon as operations cease at a particular location, the store will “go dark” and there will no longer be employee or security support that would permit the Franchisees to continue to operate. Further, counsel to the Applicants submits it would not be either commercially reasonable or practical for the Franchisees to continue to operate in a closed store, nor would it be reasonable or in the interests of stakeholders to require these locations to remain open in order to serve the interests of the Franchisees.*

[13] It is in *this context* that the issue of the disclaimer has to be considered. [emphasis added]

25. Wabush is an entirely different situation from Target stores. There is a distinct possibility that Wabush is not a chain of retail stores that are “going dark”. It is too early to be able to determine how the Wabush CCAA will turn out. Wabush may well continue doing business in some form following the conclusion of the SISP process, with some or all employees continuing to be employed. In the meantime, employees and retiree should not be made to suffer pension and benefit losses that will directly and immediately cause them hardship.

FOR THESE REASONS THE PETITIONER ASKS THAT THIS HONOURABLE COURT:

- [A] DISMISS** the motion of the Petitioners;
- [B] DECLARE** that service and notice of this motion was good and sufficient;
- [G] THE WHOLE** without costs, unless contested.

Montreal and Toronto, this 15th day of June, 2015



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

SCHEDULE "A"

**FORM 4
NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIEATE AN
AGREEMENT**

To _____, (*monitor and parties to the agreement*)
Take notice that

1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of _____ (*name of debtor company*) were commenced on the ____ day of _____, 20____.

2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement (*provide sufficient details of the agreement to enable it to be identified*):

3. In accordance with subsection 32(2) of the Act, any party to the agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the monitor, apply to court for an order that the agreement is not to be disclaimed or resiliated.

4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the agreement is disclaimed or resiliated on the _____ day of _____, 20____, being 30 days after the day on which this notice has been given.

Dated at _____, _____, on _____, 20_____.

_____ Debtor Company

The monitor approves the proposed disclaimer or resiliation.

Dated at _____, _____, on _____, 20_____.

Monitor's representative
responsible for the proceedings

N° / No.: 500-11-048114-157

SUPERIOR COURT
(COMMERCIAL DIVISION)

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

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

BLOOM LAKE GENERAL PARTNER LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA LIMITED, CLIFFS QUEBEC IRON MINING
ULC, WABUSH IRON CO. LIMITED, WABUSH RESOURCES INC.,

Petitioners

- and -

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP, BLOOM
LAKE RAILWAY COMPANY LIMITED, WABUSH MINES, ARNAUD
RAILWAY COMPANY, WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

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- and -

MICHAEL KEEPER, TERENCE WATT, DAMIEN LABEL & NEIL JOHNSON

Petitioners-Mises-en-cause

*Factum of the Petitioners-Mises-en-cause as Representatives of Non-
Union and Retired Employees of the Wabush CCAA Parties*
in Support of Their Notice of Objection to the Wabush CCAA Parties'
Motion for the Issuance of an Order Dated May 29, 2015

M^{es} NICHOLAS SCHEIB, ANDREW HATNAY AND ARI KAPLAN
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ORIGINAL