CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-09-

N°: 500-11-048114-157

COURT OF APPEAL

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

THE ATTORNEY GENERAL OF CANADA, ACTING ON BEHALF OF THE OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS

APPELLANT – Mis en cause

v.

FTI CONSULTING CANADA INC.

RESPONDENT - Monitor

-and-

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUEBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

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 - Mises en cause

-and-

HER MAJESTY IN RIGHT OF NEWFOUNDLAND & LABRADOR, AS REPRESENTED BY THE SUPERINTENDENT OF PENSIONS

MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL AND NEIL JOHNSON

UNITED STEEL WORKERS, LOCALS 6254 AND 6285

RETRAITE QUÉBEC

MORNEAU SHEPELL LTD., IN ITS CAPACITY AS REPLACEMENT PENSION PLAN ADMINISTRATOR

VILLE DE SEPT-ÎLES

MIS EN CAUSE - Mis en cause

LIST OF SCHEDULES
(Appellant's Application for Leave to Appeal)
Dated September 29, 2017

SCHEDULE 1:	Decision of the Honourable Mr. Justice Stephen Hamilton (the *CCAA* Judge) dated September 11, 2017;
SCHEDULE 2:	Initial Order issued in January 27, 2015 (Bloom Lake Parties) (Mr. Justice Martin Castonguay);
SCHEDULE 3:	Wabush Initial Order dated May 28, 2015 (Mr. Justice Stephen W. Hamilton);
SCHEDULE 4:	Motion for the Issuance of an Initial Order, dated January 26, 2015;
SCHEDULE 5:	OSFI Termination Notice dated December 16, 2015;
SCHEDULE 6:	Superintendent of Pensions of Newfoundland and Labrador Termination Notices dated December 16, 2015.

MONTRÉAL, September 29, 2017

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Ref. : 8072696

N° 500-11-048114-157

COURT OF APPEAL OF QUEBEC
DISTRICT OF MONTRÉAL

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

THE ATTORNEY GENERAL OF CANADA, ACTING ON BEHALF OF THE OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS

APPELLANT- Mis en cause

v.

FTI CONSULTING CANADA INC.

RESPONDENT - Monitor

-and-

BLOOM LAKE GENERAL PARTNER LTD *ET AL.*

MISES EN CAÙSE – Mises en cause

-and-

HER MAJESTY IN RIGHT OF NEWFOUNDLAND & LABRADOR, AS REPRESENTED BY THE SUPERINTENDENT OF PENSIONS *ET AL.*

MIS EN CAUSE - Mis en cause

LIST OF SCHEDULES (1 to 6)
(Appellant's Application for Leave to Appeal)
Dated September 29, 2017

ORIGINAL

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SCHEDULE 1

SUPERIOR COURT

(*Commercial Division*)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No: 500-11-048114-157

DATE: September 11, 2017

PRESIDED BY: THE HONOURABLE STEPHEN W. HAMILTON, J.S.C.

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.
Debtors
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 LEBEL AND NEIL JOHNSON
SYNDICAT DES MÉTALLOS, SECTIONS LOCALES 6254 ET 6285
MORNEAU SHEPELL LTD, IN ITS CAPACITY AS
REPLACEMENT PENSION PLAN ADMINISTRATOR
RETRAITE QUÉBEC
THE ATTORNEY GENERAL OF CANADA, ACTING ON BEHALF OF
THE OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS
HER MAJESTY IN RIGHT OF NEWFOUNLAND AND LABRADOR,
AS REPRESENTED BY THE SUPERINTENDENT OF PENSIONS

VILLE DE SEPT-ÎLES
Mises en cause
And
FTI CONSULTING CANADA INC.
Monitor-Petitioner

JUDGMENT ON THE AMENDED MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO PENSION CLAIMS (#494)

INTRODUCTION

[1] The Debtors have filed proceedings under the *Companies' Creditors Arrangement Act* ("CCAA").[1] They owe substantial liabilities under two pension plans, including special payments, catch-up special payments and wind-up deficiencies. The Monitor filed a motion for directions with respect to the priority of the various components of the pension claims and the applicability and scope of the deemed trusts created under the relevant pension legislation.

CONTEXT

[2] On May 19, 2015, the Petitioners Wabush Iron Co. Limited and Wabush Resources Inc. and the Mises-en-cause Wabush Mines (a joint venture of Wabush Iron and Wabush Resources), Arnaud Railway Company and Wabush Lake Railway Company, Limited (together the "Wabush CCAA Parties") filed a motion for the issuance of an initial order under the CCAA which was granted the following day by the court.

[3] Prior to the filing of the CCAA motion, Wabush Mines operated (1) the iron ore mine and processing facility located near the Town of Wabush and Labrador City, Newfoundland and Labrador and (2) the Pointe-Noire port facilities and pellet production facility in Sept-Îles, Québec. Arnaud Railway and Wabush Lake Railway are both federally regulated railways that transported iron ore concentrate from the Wabush mine to the Pointe-Noire port. The operations had been discontinued and the employees terminated or laid off prior to the filing of the CCAA motion.

[4] The Wabush CCAA Parties had two pension plans for their employees which include defined benefits:

- A pension plan for unionized hourly employees at the Wabush mine and Pointe-Noire port, known as the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway

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[1] R.S.C. 1985, c. C-36.

Company and Wabush Lake Railway Company, Limited (the "Union Plan")[2] and

- A hybrid pension plan for salaried employees at the Wabush mine and the Pointe-Noire port hired before January 1, 2013 known as the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited (the "Salaried Plan").[3]

[5] Wabush Mines was the administrator of both Plans.

[6] The majority of the employees covered by the Plans reported for work at the Wabush mine in Newfoundland and Labrador while many reported for work at the Pointe-Nord facility in Québec. In fact, on the current numbers, a slight majority of the Salaried Plan members reported for work in Québec. Moreover, some of the employees worked for Arnaud Railway and Wabush Lake Railway which are federally regulated railways. The current breakdown is as follows:

	Union Plan	Salaried Plan	TOTAL
Newfoundland & Labrador	1,005	313	1,318
Québec	661	329	990
Federal	66	14	80
TOTAL	1,732	656	2,388

[7] Both Plans provide that they are to be interpreted pursuant to the laws applicable in the province of Newfoundland.[4] Both Plans are registered with the provincial regulator in Newfoundland and Labrador, the Superintendent of Pensions (the "NL Superintendent") pursuant to the Newfoundland and Labrador *Pension Benefits Act, 1997* ("NLPBA").[5] The federal pension regulator, the Office of the Superintendent of Financial Institutions ("OSFI") has also exercised some regulatory oversight, in particular with respect to the Union Plan,[6] pursuant to the federal *Pension Benefits Standards Act* ("PBSA").[7] The Québec regulator, Retraite Québec, has not played an active role in the regulation of the Plans, but it asserts that the Québec *Supplemental*

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2 Exhibit R-23.
3 Exhibit R-24.
4 Exhibits R-23 and R-24, Section 12.06.
5 S.N.L. 1996, c. P-40.1.
6 It seems that OSFI acted on the erroneous view that no members of the Salaried Plan were covered by the PBSA.
7 R.S.C. 1985 (2nd Supp.), c. 32.

Pension Plans Act ("SPPA")[8] is applicable to the employees who reported for work in Québec.

[8] On June 26, 2015, in the context of approving the interim financing of the Debtors, the Court issued the Suspension Order whereby it ordered the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments and the annual lump sum "catch-up" payments coming due under the Plans, and confirmed the priority of the Interim Lender Charge over the deemed trusts with respect to the pension liabilities. The Court also ordered the suspension of payment of other post-retirement benefits, including life insurance, health care and a supplemental retirement arrangement plan.[9]

[9] On December 16, 2015, the NL Superintendent terminated both Plans effective immediately on the bases that (1) the Plans failed to meet the solvency requirements under the regulations, (2) the employer has discontinued all of its business operations and (3) it was highly unlikely that any potential buyer of the assets would agree to assume the assets and liabilities of the Plans.[10] On the same date, OSFI terminated the Union Plan effective immediately for the same reasons.[11]

[10] Both the NL Superintendent and OSFI reminded the Wabush CCAA Parties of the employer's obligation upon termination of a pension plan to pay into the pension fund all amounts that would be required to meet the solvency requirements and the amount necessary to fund the benefits under the plan. They also referred to the rules with respect to deemed trusts.[12]

[11] On January 26, 2016, the salaried retirees received a letter from Wabush Mines notifying them that the NL Superintendent had directed Wabush Mines to reduce the amount of monthly pension benefits of the members by 25%.[13] Retirees under the Union Plan had their benefits reduced by 21% on March 1, 2016.[14]

[12] On March 30, 2016, the NL Superintendent and OSFI appointed Morneau Shepell Ltd as replacement administrator for the Plans.[15]

[13] The Wabush CCAA Parties paid the monthly normal cost payments for both Plans up to the termination of the Plans on December 16, 2015. As a result, the monthly normal cost payments for the Union Plan were fully paid up to December 16,

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8 CQLR, c R-15.1, s. 49.
9 2015 QCCS 3064, motion for leave to appeal dismissed, 2015 QCCA 1351 (the "Suspension Order").
10 Exhibit R-13.
11 Exhibit R-14.
12 Exhibits R-13 and R-14.
13 Exhibit RESP-7.
14 Affidavit of Terence Watt, sworn December 14, 2016, par. 19.
15 Exhibit R-15.

2015.[16] The monthly normal cost payments for the Salaried Plan had been overpaid in the amount of $169,961 as of December 16, 2015.[17]

[14] The Wabush CCAA Parties also generally paid the special payments, until their obligation to make the special payments was suspended in June 2015 by the Court.

[15] With respect to the Union Plan, the status of the special payments is as follows:

a) The special payments required to be paid prior to the date of the Wabush Initial Order were underpaid in the amount of $146,776;

b) One special payment in the amount of $393,337 was paid after the date of the Wabush Initial Order and before the Suspension Order, which payment constituted an overpayment of $16,308; and

c) The special payments after the date of the Suspension Order were not paid and amount to $3,016,232.[18]

[16] With respect to the Salaried Plan, the status of the special payments is as follows:

a) The special payments required to be paid prior to the date of the Wabush Initial Order were paid in full except for $3;

b) One special payment in the amount of $273,218 was paid after the date of the Wabush Initial Order and before the Suspension Order, which payment constituted an underpayment of $1; and

c) The special payments after the date of the Suspension Order were not paid and amount to $2,185,752.[19]

[17] Further, the Wabush CCAA Parties did not make the lump sum "catch-up" special payments that came due after June 2015. The amount payable with respect to the Union Plan is $3,525,125.[20] There are no "catch-up" special payments due with respect to the Salaried Plan.

[18] Finally, the Plans are underfunded.

[19] In December 2016, the actuary filed a report that concludes that the unfunded wind-up liability for the Union Plan as at December 16, 2015 was $27,486,548.[21]

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16 Exhibit R-17. There is a debate as to whether the Wabush CCAA Parties were required to pay the full monthly payment for December 2015 or only a pro-rated portion. The amount at issue for the period from December 17 to 31, 2015 is $21,462 according to one calculation or $22,893 according to another.

17 Exhibit R-16.

18 Exhibit R-17.

19 Exhibit R-16.

20 Exhibit R-17. The Union argues that $1,175,040 relates to the pre-filing period.

21 Exhibit R-26. There is a further wind-up liability of $2,349,912 set out in the report for the benefits covered by Section 17 PBSA which ranks after the wind-up deficit (referred to as "Priority no.2").

[20] Further, the Plan Administrator filed a wind-up actuarial valuation for the Salaried Plan that estimates the wind-up shortfall as at December 16, 2015 to be approximately $27,450,000.[22]

[21] Both wind-up reports remain subject to review and approval by the pension regulators.

[22] Subject to the comments set out above, the Monitor provides the following summary of the amounts owing to the two Plans:

	Union Plan	Salaried Plan
Normal Cost Payments		
Pre-filing	$0	$0
Post-filing	$0	$0
Total	**$0**	**$0**
Special Payments		
Pre-filing	$146,776	$3
Post-filing	$2,999,924	$2,185,753
Total	**$3,146,700**	**$2,185,756**
Catch-up Special Payments		
Pre-filing	$0	$0
Post-filing	$3,525,120	$0
Total	**$3,525,120**	**$0**
Estimated Wind-Up Deficiency	$27,486,548	$27,450,000

[23] Wabush Mines, as plan administrator, filed a proof of claim in respect of the Union Plan that includes a secured claim in the amount of $29 million and a restructuring claim in the amount of $6,059,238,[23] and a proof of claim with respect to the Salaried Plan that includes a secured claim in the amount of $24 million and a restructuring claim in the amount of $1,932,940.[24]

[24] The differences in the numbers are not important at this stage. The numbers will be finalized in due course. It is sufficient to note that there are very large claims and that

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22 Exhibit R-25.
23 Exhibit R-19.
24 Exhibit R-18.

the plan administrator claims the status of a secured creditor with respect to a substantial part of the claims.

[25] It is also important to note that the Wabush CCAA Parties held assets both in Newfoundland and Labrador and in Québec. All or substantially all of the assets have been sold and have generated substantial proceeds currently held by the Monitor.

[26] Of particular relevance given the intervention of the Ville de Sept-Îles, are two transactions approved by the Court on February 1, 2016 that included the sale of immoveable property in the Ville de Sept-Îles with respect to which the Ville de Sept-Îles claims unpaid taxes.[25] In both instances, the approval and vesting order issued by the Court provided for the vesting of the assets on a free and clear basis, with the net proceeds from both transactions standing in the place and stead of the purchased assets. The result is that the Ville de Sept-Îles claims priority with respect to those proceeds.

[27] In order to determine the priorities of the various claims, the Monitor applies to the Court for an order declaring that:

a) normal costs and special payments outstanding as at the date of the Wabush Initial Order are subject to a limited deemed trust;

b) normal costs and special payments payable after the date of the Wabush Initial Order, including additional special payments and catch up payments established on the basis of actuarial reports issued after the Wabush Initial Order, constitute unsecured claims;

c) the wind-up deficiencies constitute unsecured claims; and

d) any deemed trust created pursuant to the NLPBA may only charge property in Newfoundland and Labrador.

[28] The Monitor is supported by the Wabush CCAA Parties and the Ville de Sept-Îles. The Monitor's motion is opposed by the Representative Employees, the Union, the Replacement Plan Administrator, Retraite Québec, OSFI and the NL Superintendent (the "Pension Parties").

[29] A preliminary issue arose as to whether the Court should request the aid of the Supreme Court of Newfoundland and Labrador with respect to the interpretation of the NLPBA, and in particular the scope and priority of the deemed trust and the lien created by the NLPBA and whether the deemed trust and the lien extend to assets located outside of Newfoundland and Labrador. On January 30, 2017, the Court decided that it had jurisdiction to deal with those issues and that it would not refer the issues to the Newfoundland and Labrador Supreme Court.[26] There was no appeal from that decision.

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[25] Exhibits R-10 and R-12.
[26] 2017 QCCS 284.

[30] Subsequent to the judgment, on March 27, 2017, the government of Newfoundland and Labrador referred a number of questions to the Newfoundland and Labrador Court of Appeal ("NLCA").[27]

[31] The hearing before the NLCA is scheduled for September 21 and 22, 2017.

POSITION OF THE PARTIES

1. Monitor

[32] The Monitor's position can be summarized as follows:

- The Court should deal with all of the issues now, without waiting for the judgment of the NLCA;
- The SPPA applies to the Québec members of the Plans, the PBSA applies to the federal members, and the NLPBA applies to the Newfoundland and Labrador members;
- The deemed trusts under the SPPA, PBSA and NLPBA and the lien and charge under the NLPBA are limited to normal, special and catch-up payments and do not extend to the wind-up deficiency;
- The deemed trust and the lien and charge under the NLPBA do not extend to assets outside Newfoundland and Labrador;
- The SPPA does not create a deemed trust;
- The deemed trusts under the PBSA and the NLPBA were not triggered because there was no "liquidation, assignment or bankruptcy" of the employer;
- In any event, the deemed trusts under the SPPA, PBSA or NLPBA and the lien and charge under the NLPBA, if they exist, are not effective in proceedings under the CCAA;

2. Wabush CCAA Parties

[33] The positions taken by the Wabush CCAA Parties were largely consistent with the positions taken by the Monitor.

3. Ville de Sept-Îles

[34] The Ville de Sept-Îles was in general agreement with the position of the Monitor and the Wabush CCAA Parties. In addition, it argued that its prior claim against the proceeds of the sale of immoveable properties in the Ville de Sept-Îles with respect to unpaid property and water taxes on those properties ranks ahead of the deemed trusts for pension claims.

4. Representative Employees

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[27] Order-in-Council 2017-103, dated March 27, 2017.

[35] The Representative Employees argue that the NLPBA deemed trust covers the normal payments, the special payments and the wind-up deficit and that the NLPBA, and its deemed trust provisions, apply to all members of the Salaried Plan (and by extension the Union Plan), including those who reported for work in Québec and those who worked on the railways.[28]

[36] They also argue that there was a liquidation in the course of the present CCAA proceedings and that the NLPBA deemed trusts are fully operative in the context of CCAA proceedings.

5. Union

[37] The Union generally supports the arguments put forward by the Representative Employees and the NL Superintendent, and it supports the regulators for the interpretation of their statutes.

[38] The Union submits that all three statutes create deemed trusts but that only the NLPBA deemed trust covers the wind-up deficit. It argues that the three statutes establish minimum standards and that the Court should apply the most advantageous deemed trust provisions under the three pension statutes, which will benefit all members of the Union Plan (and by extension the Salaried Plan). It also argues that the deemed trust under the NLPBA should extend to all assets of the employer, wherever located.

6. Replacement Pension Administrator

[39] The Replacement Plan Administrator adopts the arguments put forward by the Representative Employees, the Union and the NL Superintendent, and it defers to Retraite Québec and OSFI for the interpretation and application of their statutes.

7. Retraite Québec

[40] Retraite Québec suggests that the Court should answer all of the questions without waiting for the judgment of the NLCA.

[41] It argues that the SPPA applies and regulates the rights of the Québec members of the Pension Plans.

[42] It argues that the protection afforded by the deemed trust under Section 49 SPPA and the unseizability under Section 264 SPPA are limited to unpaid contributions, which include current service contributions, amortization payments and special payments, and do not extend to the solvency deficit on termination of the Plans.

[43] Further, it argues that the deemed trust and unseizability under the SPPA create a priority over all secured and unsecured creditors of the employer, and are valid in the context of CCAA proceedings.

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[28] They advanced in their argumentation outline a constitutional argument to the effect that the NLPBA had paramountcy over the PBSA under Section 94A of the *Constitution Act*, but they abandoned that argument at the hearing.

8. OSFI

[44] OSFI argues that the PBSA applies in respect of the Plans for the employees who worked on the railways. It argues that the PBSA does not cover the wind-up deficit but it does cover the normal cost payments, the special payments and the special catch-up payments. OSFI argues that the PBSA continues to apply in CCAA proceedings where the debtors have liquidated their assets and do not submit a plan to their creditors.

9. NL Superintendent

[45] The NL Superintendent generally supports the submissions of the Representative Employees, the Union and the Replacement Plan Administrator, although he does not plead that the NLPBA applies to all of the Plan members. He defers to Retraite Québec and to OSFI on any interpretive issues regarding the SPPA and the PBSA respectively.

[46] The NL Superintendent pleads that the Wabush CCAA proceedings are in fact liquidation proceedings and that these liquidation proceedings trigger the deemed trust under the NLPBA. He also pleads that the deemed trust under the NLPBA covers at least part of the wind-up deficiency and that it can attach to the proceeds of property formerly located in Québec.

ISSUES

[47] The Court will deal with the following issues:

1. Should it wait for the judgment of the NLCA on the Reference before rendering its judgment?
2. Which pension statutes apply to which members?
3. What is the proper scope of the protection afforded by the pension statutes?
    a. Do the pension statutes create a valid deemed trust or other valid charges?
    b. What is the priority of the deemed trusts and other charges in relation to secured creditors?
    c. Which amounts owing to the pension fund are covered by the deemed trusts or other charges?
    d. Do the deemed trusts or other charges created by the NLPBA extend to assets in Québec?
4. Has there been a "liquidation" that triggers the deemed trusts under the PBSA and the NLPBA?
5. Are the deemed trusts and other charges valid in CCAA proceedings?
6. In light of the answers to the preceding questions, what conclusions are appropriate?

ANALYSIS

1. Timing of this judgment in relation to the NLCA Reference

[48] The first issue for the Court is whether it should delay its judgment until it has the benefit of the judgment of the NLCA on the Reference, or whether it should render its judgment now, without waiting for the NLCA judgment on the Reference. The hearing before the NLCA is scheduled for September 21 and 22, 2017.

[49] In the context of the Monitor's Motion for Directions, a preliminary issue arose as to whether the Court should request the aid of the Supreme Court of Newfoundland and Labrador with respect to the interpretation of the NLPBA, and in particular the scope and priority of the deemed trust and the lien created by the NLPBA and whether the deemed trust and the lien created by the NLPBA extend to assets located outside of Newfoundland and Labrador. On January 30, 2017, the Court decided that it had jurisdiction to deal with those issues and that it would not refer the issues to the Newfoundland and Labrador Supreme Court.[29] There was no appeal from that decision.

[50] Instead, on March 27, 2017, the government of Newfoundland and Labrador referred the following questions to the NLCA:

> 1) The Supreme Court of Canada has confirmed in *Sun Indalex Finance, LLC* v. *United Steelworkers*, 2013 SCC 6, that, subject only to the doctrine of paramountcy, provincial laws apply in proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c.C-36. What is the scope of section 32 of the *Pension Benefits Act, 1997*, SNL1996 cP-4.01 deemed trusts in respect of:
>
> a) unpaid current service costs;
>
> b) unpaid special payments; and
>
> c) unpaid wind-up deficits?
>
> 2) The Salaried Plan is registered in Newfoundland and Labrador and regulated by the *Pension Benefits Act, 1997*.
>
> a) (i) Does the federal *Pension Benefits Standards Act*, R.S.C. 1985, c-32 deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?
>
> (ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and *Pension Benefits Standards Act*? If so, how is the conflict resolved?
>
> b) (i) Does the Quebec *Supplemental Pension Plans Act*, CQLR, c. R-15.1 also apply to those members of the Salaried Plan who reported for work in Quebec?
>
> (ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and the Quebec *Supplemental Pension Plans Act*? If so, how is the conflict resolved?

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[29] *Supra* note 26.

(iii) Do the Quebec *Supplemental Pension Plans Act* deemed trusts also apply to Quebec Salaried Plan members?

3) Is the *Pension Benefits Act, 1997* lien and charge in favour of the pension plan administrator in section 32(4) of the *Pension Benefits Act, 1997* a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass? [30]

[51] These are the questions that the Representative Employees proposed that the Court should resolve in the present judgment.[31]

[52] If the questions submitted to the NLCA dealt only with issues of Newfoundland and Labrador law, the Court would consider waiting for the decision of the NLCA.

[53] The first and third questions deal with the interpretation of the NLPBA, but the preamble to the first question clearly places the questions in the context of CCAA proceedings. The second question relates to the interpretation of federal and Québec law, the potential conflict between federal law and Québec law on the one hand and the NLPBA on the other, and how those conflicts are to be resolved. Moreover, with its references to the Salaried Plan and employees who worked on the railway or who reported for work in Québec, it is clear that the second question relates specifically to this matter. The NLCA has said that the circumstances of the present matter will provide the context within which the questions will be considered.

[54] These questions are within the jurisdiction of the Court and they are relevant to the judgment that this Court is rendering. The questions put to the NLCA therefore create a risk of contradictory judgments. The situation is unfortunate, but it is not one for which the NLCA or the Court is responsible.

[55] The NLCA has been made aware of the Court's concerns in relation to the scope of the questions that it is being asked to answer. While the NLCA is sensitive to the issue of potential overlap, it has decided for now not to restrict the scope of the questions:

> [1] Having heard the submissions of counsel, we are satisfied that the questions set out in the reference put by the Lieutenant-Governor in Council in Order-in-Council 2017-103, should be considered at the hearing in the language stipulated in the Order-in-Council. Whilst we are mindful of the importance of promoting judicial efficiency, we do not consider ourselves to be in a position today to determine the extent to which, if at all, we should decline to answer one or more of the questions posed or to interpret their scope.
>
> [2] That said, we are cognizant of the concerns of some of the participants that the questions may invite the Court to opine in such a way as to impact the decisions of the Quebec CCAA Court that will determine the rights of the parties. Generally speaking, we subscribe to the view that questions posed on a

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30 Order-in-Council 2017-103, dated March 27, 2017.

31 This may explain why the questions refer to the Salaried Plan and not the Union Plan.

> reference should be treated as raising hypothetical questions and not directed at determining parties' rights.
>
> [3] As recognized in case law, a reference is an advisory opinion provided by the Court at the request of the Lieutenant-Governor in Council. The CCAA Court in determining the matter before it may or may not advert to or apply the opinion provided by this Court. That said, the context of a reference is important. Accordingly, hypotheticals are useful to provide a context within which the questions can be considered. The record on the reference, therefore, should be limited to providing that context.
>
> [4] The parties may, of course, make submissions as to whether the Court should decline to answer a question or part thereof, or narrow the scope of a question as part of the submissions made for purposes of the reference hearing.[32]

[56] In the circumstances, the Court is left with three options, none of which is particularly good:

- It can proceed to render judgment on all of the issues, without the benefit of the judgment of the NLCA, and thereby run the risk of being contradicted by the NLCA;
- It can wait for the judgment of the NLCA, which might extend to issues which are more properly within the jurisdiction of the Court and place the Court in the position of having some of its issues prejudged by the court of appeal of another province and potentially having to contradict that judgment; or
- It can render judgment on all issues other than the interpretation of the NLPBA.

[57] The Monitor, the Wabush CCAA Parties and the Ville de Sept-Îles plead that the Court should adopt the first position. The Pension Parties generally suggest that the Court should wait.

[58] In these circumstances, and with some hesitation, the Court has decided to adopt the third approach. It will render its judgment first, without waiting for the NLCA. However, it will not decide on the interpretation of the NLPBA, but rather will make certain assumptions:

- Where the NLPBA is identical to the PBSA, the Court will assume that the NLPBA is interpreted in the same way as the PBSA; and
- Where the NLPBA is different from the PBSA, the Court will adopt the interpretation put forward by the NL Superintendent.

[59] The Court will reserve the rights of the parties to ask the Court to revise the conclusions of the present judgment if: (1) the NLCA decides that the interpretation of

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[32] Ruling on Application for Directions, June 9, 2017.

the NLPBA is different from the interpretation that the Court assumed, and (2) that difference is material to the Court's conclusions.

[60] The Court will not revise its conclusions if the NLCA disagrees with the Court on any issue other than the interpretation of the NLPBA. That will be a matter that the parties can raise on appeal.

2. Application of the three pension statutes

[61] The scope of application of each of the three pension statutes is made clear by each pension statute:

- The SPPA applies to "pension plans provided for ... employees who report for work at an establishment of their employer located in Québec".[33]
- The PBSA applies to "a superannuation or other plan organized and administered to provide pension benefits to employees employed in included employment (and former employees)".[34] The notion of "included employment" includes railways[35] and "any work, undertaking or business ... declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more provinces".[36] The Arnaud Rail and Wabush Lake Rail are both railways and both were declared to be works for the general advantage of Canada.[37]
- The NLPBA applies to "all pension plans for persons employed in the province, except those pension plans to which an Act of the Parliament of Canada applies".[38]

[Emphasis added]

[62] To the extent that this raises a question of the interpretation of the NLPBA, the Court notes that the language is clear and that the NL Superintendent states only that the NLPBA "would apply, at the very least, to the benefit of all of the employees who reported for work in the province (s. 5 PBA)".[39]

[63] As a result, on the face of the legislation, the Plans are governed by the PBSA with respect to the rail employees, by the SPPA with respect to the non-railway employees who reported for work in Québec, and by the NLPBA with respect to the non-railway employees who reported for work in Newfoundland and Labrador.

[64] Professor Goldstein writes in favour of this multiplicity of governing statutes:

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33 SPPA, s. 1(1).
34 PBSA, s. 4(2).
35 PBSA, s. 4(4)(b).
36 PBSA, s. 4(4)(h).
37 *An Act respecting Wabush Lake Railway Company Limited and Arnaud Railway Company*, (1960) 8-9 Eliz. II, ch. 63, s. 3.
38 NLPBA, s. 5.
39 Outline of Argument of the NL Superintendent, May 19, 2017, par. 98.

> Plusieurs lois pourraient donc potentiellement s'appliquer au même régime. En principe, il n'y a pas de conflit dans la mesure où chaque loi ne s'applique effectivement et distributivement qu'au profit de chaque catégorie de salariés selon son lieu de travail ou de paiement. Par exemple, si, sur 100 salariés participants au même régime, 60 sont employés en Ontario, 30 au Québec et 10 en Alberta, on considère que l'autorité ontarienne doit veiller à l'application distributive des lois ontarienne, québécoise et albertaine.[40]

[65] Moreover, this multiplicity of governing statutes does not present any particular practical problem. The wind-up reports prepared in relation to the Plans conclude that the Plans are governed by the PBSA for the railway employees, by the SPPA for the non-railway employees who reported for work in Québec, and by the NLPBA for the non-railway employees who reported for work in NL and they calculate the benefits according to the three statutes.[41]

[66] The Representative Employees, the Replacement Plan Administrator and the Union contest this conclusion. They argue that the NLPBA should apply to all members under both Plans.

[67] The Representative Employees argue that the Memorandum of Reciprocal Agreement signed by the Quebec Pension Board (the predecessor of Retraite Québec) in 1968 and by the NL Superintendent in 1986[42] makes the NLPBA applicable to the Plans.

[68] The Court notes at the outset that the Memorandum was signed by representatives of nine provinces, but was not signed by a representative of the federal government. It therefore does not bind the federal government and cannot affect the application of the PBSA.

[69] Moreover, the scope of the Memorandum is limited. It recognizes that a pension plan may be regulated by several statutes. It provides that amongst the various pension regulatory authorities having jurisdiction in relation to a pension plan, the authority of the province where the plurality of the members are employed is the "major authority" and the others are "minor authorities". It provides that a plan need only be registered in the jurisdiction of the major authority. The Pension Parties pleaded that there had been until recently a plurality of members of both Plans in Newfoundland and Labrador. This would explain why both Plans were registered in Newfoundland and Labrador.

[70] The key provision of the Memorandum is section 2:

> 2. The major authority for each plan shall exercise both its own statutory functions and powers and the statutory functions and powers of each minor authority for such plan.

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40 Gérald GOLDSTEIN, *Les conflits de loi relatifs aux régimes complémentaires de retraite*, Montréal, Éditions Thémis, 2005, p. 4.

41 Exhibit R-25, p. 5-6, 8, 27-47 and Exhibit R-26, p. 5.

42 Exhibit R-22.

[71] In other words, the Memorandum operates merely as a delegation of powers from the minor authorities to the major authority. It does not in any way affect the application of the relevant statutes:

> The major authority is charged with administering the laws of the other province. What this means is that while a multi-jurisdictional pension plan need only be registered in one province, it does not necessarily mean that the laws of the other province do not apply in respect of employees working in that other province. For example, when a multi-jurisdictional pension plan is being wound up, the administrator is required to allocate and account for the assets and benefits by province.[43]
>
> [References omitted]

[72] This is consistent with Section 74 of the previous version of the SPPA[44] which was in force when the Memorandum was signed by Québec, which provides for reciprocal registration and inspection, delegation of functions and powers, and carrying out duties on behalf of the Board, but not the exclusion of Québec law. Agreements entered into under Section 74 of the former SPPA remain effective under the new SPPA.[45]

[73] This is to be contrasted with Section 249 of the current SPPA, which allows Retraite Québec to enter into agreements with other provincial authorities or the federal authority to determine to what extent each pension act applies to a plan. Similar provisions are found in Section 6.1 of the PBSA and Sections 8(2) and 8.2(2) of the NLPBA.

[74] Pursuant to these new powers, the federal authority and various provincial authorities entered into Agreements Respecting Multi-jurisdictional Pension Plans in 2011 and 2016. The 2011 and 2016 Agreements expressly provide that in certain circumstances, one pension act applies to the exclusion of the others. However, while Quebec and the federal government are parties to the 2011 and 2016 Agreements, Newfoundland and Labrador is not a party. As a result, the Agreements have no application to the Plans, and they cannot exclude the SPPA and the PBSA and make the NLPBA applicable to the Québec and federal members of the Plans.

[75] The Representative Employees also argue that the Applicable Law clause found at Section 12.06 in both Plans makes the NLPBA applicable to both Plans:

> **12.06 Applicable Law**

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43 Ari KAPLAN and Mitch FRAZER, *Pension Law* (Second Edition), Toronto, Irwin Law, 2013, p. 106. See also *Régie des rentes du Québec* v. *Commission des régimes de retraite de l'Ontario*, 2000 CanLII 30139 (ON SCDC), par. 61; *Boucher* c. *Stelco inc.*, 2000 CanLII 18866 (QC CS), par. 71, appeals dismissed on other grounds, 2004CanLII 13895 (QC CA) and 2005 SCC 64. Contra, *Dinney* v. *Great-West Life Assurance Co.*, 2002 MBQB 277, par. 14; *Champagne* v. *Atomic Energy of Canada Ltd.*, 2012 CanLII 97650 (CA Lab.Arb.).

44 CQLR, c R-17 (replaced by c R-15.1).

45 SPPA, s. 285.

> The Plan shall be interpreted pursuant to the laws applicable in the province of Newfoundland.

[76] The Court notes that, notwithstanding this provision, there are specific provisions in both Plans applicable to employees who report for work in Québec in order to comply with the SPPA.[46]

[77] In any event, the parties to a pension plan cannot pick and choose which pension laws apply to them and which do not. The legislation clearly provides to whom it applies. It leaves no room for the choice of the parties. Article 3118 C.C.Q. provides that a choice of law clause cannot deprive an employee of the protection afforded by the mandatory rules of the state where the employee habitually carries out his work. As a result, this contractual provision cannot be sufficient to set aside the clear language of the three statutes. Moreover, Section 12.06 provides only for the interpretation of the Plans. It does not provide that the Plans are governed by the NLPBA and does not incorporate by reference the provisions of the NLPBA.

[78] Finally, the Union recognizes that the three statutes apply and that the only effect of the Memorandum is to centralize the regulatory functions in one regulator. However, the Union argues that pension legislation enacts only minimum standards. As the three statutes apply to the Plans and each creates a deemed trust that covers certain contributions, the Court should apply the deemed trust that covers the greatest amount.

[79] This argument is based on the assumption that each contribution payable by the employer (whether normal cost payments, special payments, catch-up special payments or wind-up deficits) is a single amount in respect of the whole Plan. This is wrong. As is readily apparent from the detailed calculations included in the Salaried Plan wind-up valuation, the calculation of the contributions is done on a member-by-member basis.[47] As a result, it is not a single contribution governed by three statutes, but rather the contribution can be divided into three portions each of which is governed by a different statute.

[80] As a result, the Court concludes that the Plans are governed by the PBSA with respect to the railway employees, by the SPPA with respect to the non-railway employees who reported for work in Québec, and by the NLPBA with respect to the non-railway employees who reported for work in NL.

[81] None of the three regulators, Retraite Québec, OSFI and the NL Superintendent, contested this conclusion.

3. Proper scope of the protection afforded by the three pension statutes

a. Do the pension statutes create a valid deemed trust or other valid charges?

i. PBSA

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[46] Section 14 of each Plan.
[47] Exhibit R-25, p. 27-47.

[82] Section 8(1) and (2) PBSA provide in part as follows:

> 8 (1) An employer shall ensure, with respect to its pension plan, that the following amounts are kept separate and apart from the employer's own moneys, and the employer is deemed to hold the amounts referred to in paragraphs (a) to (c) in trust for members of the pension plan, former members, and any other persons entitled to pension benefits under the plan:
>
> [...]
>
> (2) In the event of any liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that by subsection (1) is deemed to be held in trust shall be deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own moneys or from the assets of the estate.

[83] The deemed trust mechanism found in Section 8(1) and (2) PBSA has been used by the federal Parliament and by provincial legislatures to give a special priority to certain claims. It has principally been used in taxation and other statutes, to protect Crown claims. As stated by Justice Gonthier in *Sparrow Electric*:

> Namely, such deemed trusts or liens are devices which legislators often employ in order to recover moneys which ought to have lawfully been paid to them but have been unlawfully misappropriated by a debtor who subsequently encounters financial difficulty and is forced into winding up its business.[48]
>
> [References omitted]

[84] The deemed trust under the PBSA operate in the following way:

- The employer is required to hold the amounts separate and apart and is considered to hold them in trust (Section 8(1) PBSA); and
- In the event of the employer's liquidation, assignment or bankruptcy, an amount equal to those amounts is deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own moneys or from the assets of the estate (Section 8(2) PBSA).

[85] The Supreme Court explained the operation of similar provisions (Section 227(4) and (5) of the *Income Tax Act*, relating to unremitted payroll deductions) as follows in *Sparrow Electric*:

> 31 In the present case, I find the language in s. 227(5) to be clear and unambiguous, especially when viewed as a provision directly following s. 227(4), which renders amounts unremitted as held in trust for Her Majesty. In my view, this section is designed to, upon liquidation, assignment, receivership or bankruptcy, seek out and attach Her Majesty's beneficial interest to property of the debtor which at that time is in existence. The trust is not in truth a real one,

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[48] *Royal Bank of Canada* v. *Sparrow Electric Corp.*, [1997] 1 S.C.R. 411, par. 19.

> as the subject matter of the trust cannot be identified from the date of creation of the trust: D. W. M. Waters, *Law of Trusts in Canada* (2nd ed. 1984), at p. 117. However, s. 227(5) has the effect of revitalizing the trust whose subject matter has lost all identity. This identification of the subject matter of the trust therefore occurs *ex post facto*. In this respect, I agree with the conclusion of Twaddle J.A. in *Roynat*, supra, where he states the effect of s. 227(5) as follows, at p. 647: "Her Majesty has a statutory right of access to whatever assets the employer then has, out of which to realize the original trust debt due to Her".[49]
>
> [Emphasis added]

[86] In other words, it is not enough for Parliament to simply declare that the debtor is deemed to hold the amounts in trust. The deemed trust under Section 8(1) PBSA is only effective if the property is identified and kept separate and apart. If the property is not identified and kept separate and apart, it is necessary to also have Section 8(2) PBSA, which causes the property to be identified on liquidation, assignment or bankruptcy and deems it to be kept separate and apart even if it is not.

[87] Justice Schrager, then of this court, concluded in *Aveos* that, whether at common law or under Article 1260 C.C.Q., the language of Section 8(1) PBSA was not sufficient for a valid deemed trust and that the language of Section 8(2) PBSA was necessary to the validity of the deemed trust:

> [58] Clearly, then, either at common law or in virtue of Article 1260 of the Civil Code of Québec ("C.C.Q."), no real trust exists in the present case since the property subject to the trust is not readily identifiable as funds were not segregated as required by Article 8(1) P.B.S.A., but rather, commingled. This situation is common; thus, the need for the legislator to create the deemed trust in Section 8(2) P.B.S.A. to protect sums due to pension plans.[50]
>
> [Emphasis added]

[88] The Court concludes that the combined effect of Section 8(1) and (2) PBSA is sufficient to create a deemed trust in the event of a liquidation, assignment or bankruptcy of the employer.

ii. SPPA

[89] Section 49 SPPA is very succinct:

> **49.** Until contributions and accrued interest are paid into the pension fund or to the insurer, they are deemed to be held in trust by the employer, whether or not the latter has kept them separate from his property.
>
> [Emphasis added]

[90] Section 49 SPPA simply deems "contributions" to be held in trust, whether or not they have been kept separate from the employer's other property. It includes the

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[49] *Id.*, par. 31.

[50] *Aveos Fleet Performance Inc./Aveos Performance aéronautique inc. (Arrangement relatif à)*, 2013 QCCS 5762, par. 58.

deemed trust language from Section 8(1) PBSA and the "whether or not the latter has kept them separate from his property" language from Section 8(2) PBSA, but it does not include the following key language found in Section 8(2) PBSA:

> In the event of any liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that by subsection (1) is deemed to be held in trust is deemed to be held in trust shall be deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy...

[91] This omission is fatal.

[92] Under *Sparrow Electric*, merely declaring that amounts are deemed to be held in trust is not effective if the property is not identified. It is clear that no property is identified by Section 49 SPPA. It provides only that "contributions" are deemed to be held in trust. A contribution is an obligation and not specific property. *Sparrow Electric* provides that the deemed trust is "revitalized" by providing that, upon a triggering event, an amount equal to the amount that is supposed to be held in trust is carved out of the estate. Without the carve-out on a triggering event, the deemed trust is not effective.

[93] The same principles apply in Québec. In *Sécurité Saglac* and *Nolisair*,[51] the provision at issue was the deemed trust under Section 20 of the *Ministry of Revenue Act*, which read as follows at the relevant time:

> 20. Every person who deducts, withholds or collects any amount under a fiscal law is deemed to hold it in trust for Her Majesty in right of Québec.
>
> Any such amount must be kept by the person who deducted, withheld or collected it, distinctly and separately from his own funds and, in the event of a winding-up, assignment or bankruptcy, an amount equal to the amount thus deducted, withheld or collected must be considered to form a separate fund not forming part of the property subject to the winding-up, assignment or bankruptcy.
>
> [...]
>
> [Emphasis added]

[94] The words ", whether or not the amount has in fact been held separately from the patrimony of that person or from his own funds" were added at the end of the second paragraph in 1993, after the events giving rise to the litigation but before the judgments of the Court of Appeal.

[95] The Court of Appeal decided, with Justice Fish dissenting, that the pre-1993 Section 20 MRA created a valid deemed trust. The Supreme Court reversed the Court of Appeal, essentially for the reasons given by Justice Fish.

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[51] *Quebec (Deputy Minister of Revenue)* v. *Nolisair International Inc. (Trustee of); Sécurité Saglac (1992) inc. (Trustee of)* v. *Quebec (Deputy Minister of Revenue)*, [1999] 1 S.C.R. 759, reversing *Sécurité Saglac (1992) Inc. (Syndic de)*, [1997] R.J.Q. 2448 (C.A.) and *Nolisair International Inc. (Syndic de)*, [1997] R.J.Q. 2433 (C.A.).

[96] Justice Fish held that the omission of the words "whether or not the amount has in fact been held separately from the patrimony of that person or from his own funds" was fatal to the deemed trust. Those words are present in Section 49 SPPA.

[97] However, Justice Chamberland (for the majority in the Court of Appeal overturned by the Supreme Court) analyzed the pre-1993 provision as follows:

> Le premier paragraphe est identique; le législateur y prévoit expressément, en utilisant les mots «est réputée», qu'une personne qui a déduit, retenu ou perçu un montant en vertu d'une loi fiscale détient ce montant en fiducie et que Sa Majesté aux droits du Québec est la bénéficiaire de cette fiducie. Le début du deuxième paragraphe est également identique; le législateur y crée l'obligation pour la personne visée de tenir le montant ainsi déduit, retenu ou perçu «distinctement et séparément de ses propres fonds». Si tel est le cas, il y a fiducie réelle et, advenant faillite, ces montants constituent des «biens détenus par le failli en fiducie pour toute autre personne», au sens de l'alinéa 67(1)(a) de la Loi FI, et ils ne sont pas compris dans les biens du failli.
>
> La seconde partie du deuxième paragraphe a été modifiée par l'ajout des mots «un montant égal au montant ainsi déduit, retenu ou perçu [...]». L'ajout de ces mots ne s'explique, à mon avis, que par la volonté du législateur de créer une fiducie réputée et de la distinguer de la fiducie réelle en éliminant expressément la nécessité de respecter la troisième des conditions essentielles à l'existence d'une fiducie, soit le fait pour le fiduciaire de conserver les biens affectés à la fiducie séparément et distinctement de son patrimoine. En effet, les mots «un montant égal au montant ainsi déduit, retenu ou perçu» sont inutiles dans le contexte où le failli tient un compte distinct et séparé de ses propres fonds pour les montants déduits, retenus ou perçus; les mots n'ont de sens que si le failli ne tient pas un tel compte distinct et séparé. Dans le contexte, ces mots suffisaient pour conclure à la création d'une fiducie réputée; le premier paragraphe de l'article 20 et le début du second visaient la fiducie réelle alors que le premier paragraphe et la fin du second visaient la fiducie réputée.
>
> D'où, à mon avis, la conclusion que le législateur a ainsi créé une fiducie réputée même s'il n'a pas repris tous les mots du législateur fédéral au paragraphe 5 de l'article 227. L'utilisation des mots «un montant égal au montant ainsi déduit, retenu ou perçu» rendait, à mon avis, inutile l'utilisation des mots «que ce montant ait été ou non, en fait, tenu séparé des propres fonds de la personne».[52]
>
> [Emphasis added]

[98] The Supreme Court's reversal of the Court of Appeal does not mean that the language identifying the property covered on a triggering event is unnecessary. It means only that the words "whether or not the amount has in fact been held separately from the patrimony of that person or from his own funds" are necessary.

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[52] *Sécurité Saglac* (C.A.), *supra* note 51, p.2458.

[99] The Court concludes that the language identifying the property covered on a triggering event is necessary, for the reasons given by the Supreme Court in *Sparrow Electric* and by Justice Schrager in *Aveos*.

[100] Section 49 SPPA does not include this language. The consequence is that the deemed trust under Section 49 SPPA is not effective. As stated by Justice Mayrand in *AbitibiBowater*:

> [34] Avec égards, que ce soit en vertu de la LACC ou de l'article 49 de la *Loi sur les régimes complémentaires de retraite* (LRCR), les créances en cause sont des créances ordinaires, que le législateur n'a pas choisi de protéger dans le contexte de la présente restructuration. Le libellé de l'article 49 LRCR n'est pas suffisant en soi pour conclure à l'établissement d'une véritable fiducie devant avoir priorité sur les autres créanciers. D'ailleurs, la Cour d'appel de l'Ontario, dans l'affaire *Ivaco*, alors qu'elle décide de la portée de l'article 57(3) du *Pension Benefit Act* (dont les termes sont au même effet que ceux de l'article 49 LRCR), mentionne ce qui suit à l'égard des fiducies présumées (*Deemed Trust*) :
>
> > *[...] This Legislative designation by itself does not create a true trust. If the province wants to require an employer to keep its unpaid contributions to a pension plan in a separate account, it must legislate that separation. It has not done so*[53]
>
> [Emphasis added; references omitted]

[101] Justice Mongeon came to the same conclusion in *White Birch*:

> [188] Le second aspect est cependant problématique. Les sommes dues sont homogènes avec les autres argents de la compagnie. Il n'y pas de compte séparé ni de moyen de retracer précisément sur quel argent porte la fiducie réputée. L'employeur a toujours le « pouvoir » sur ces sommes. Le transfert vers un autre patrimoine n'est donc pas complet.
>
> [189] En conséquence, la fiducie présumée de la *LRCR* ne peut donc pas produire d'effet dans le présent contexte, les sommes dues demeurant dans le patrimoine de l'employeur. Comme le mentionnait d'ailleurs le professeur Beaulne, «pas de constitution de patrimoine, pas de fiducie [...] ![63]». Évidemment, s'il n'y pas de transfert, il ne pourrait y avoir constitution d'un patrimoine d'affectation en concomitance avec le transfert du bien.
>
> [...]
>
> [193] En conséquence des arguments mentionnés ci-dessus, la fiducie de l'article 49 LRCR ne peut constituer une fiducie réelle au sens du droit québécois.[54]
>
> [Emphasis added]

[102] Justice Mongeon came to the opposite conclusion in *Timminco*. After citing the extract from the Court of Appeal in *Sécurité Sagalac* set out above, he concluded:

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[53] *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 2028, par. 34.

[54] *White Birch Paper Holding Company (Arrangement relatif à)*, 2012 QCCS 1679, par. 188-189, 193,

> [96] Cette longue citation indique la manière retenue alors par la Cour d'appel pour conclure à l'existence d'une fiducie réputée en se basant sur les mots retenus par le législateur. En appliquant ce genre d'analyse à l'article 49 LRCR, on doit d'abord se poser la question à savoir si le texte de cet article est suffisamment clair et complet pour conclure à l'existence d'une fiducie réputée. Un tel exercice convainc le Tribunal que l'on doit répondre affirmativement à cette question surtout lorsque l'on constate que l'article 49 LRCR reprend les mots alors présumés manquants à l'article 20 LMRQ et qui, plus tard, feront en sorte que l'article 20 LMRQ crée effectivement une fiducie réputée.[55]
>
> [Emphasis added]

[103] With respect, the key language according to that judgment in *Sécurité Saglac* is not "whether or not the amount has in fact been held separately from the patrimony of that person or from his own funds". That language was not part of Section 20 LMRQ at the relevant time. Rather, the key language was

> [...] in the event of a winding-up, assignment or bankruptcy, an amount equal to the amount thus deducted, withheld or collected must be considered to form a separate fund not forming part of the property subject to the winding-up, assignment or bankruptcy.

[104] That language is missing from Section 49 SPPA and its absence is fatal to the deemed trust.

[105] Retraite Québec and other Pension Parties argued that Section 264 SPPA completes Section 49 SPPA by rendering these same amounts unassignable and unseizable:

> **264.** Unless otherwise provided by law, the following amounts or contributions are unassignable and unseizable:
>
> (1) all contributions paid or payable into the pension fund or to the insurer, with accrued interest;
>
> (2) all amounts refunded or pension benefits paid under a pension plan or this Act;
>
> (3) all amounts awarded to the spouse of a member following partition or any other transfer of benefits effected pursuant to Chapter VIII, with accrued interest, and the benefits deriving from such amounts.
>
> Except as far as they derive from additional voluntary contributions or represent a portion of the surplus assets allocated after termination of the plan, any of the above-mentioned amounts that have been transferred to a pension plan contemplated by section 98, with accrued interest, any refunds of and benefits resulting from such amounts, and any pension or payment having replaced a pension pursuant to section 92 are also unassignable and unseizable.

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[55] *Timminco ltée (Arrangement relatif à)*, 2014 QCCS 174, par. 96.

[106] Justice Mongeon accepted this argument in *Timminco*:

> [147] Le soussigné est d'avis qu'effectivement, les articles 49 et 264 LRCR doivent être lus et interprétés dans le même contexte.
>
> [148] Si l'article 49 LRCR crée une fiducie réputée opposable à IQ, cela veut dire que les biens visés par la fiducie réputée sont non seulement facilement identifiables et que les montants qu'ils représentent sont disponibles mais qu'effectivement, ils se trouvent clairement « identifiés » par l'effet même de l'article 49. De même, l'article 264 LRCR peut s'appliquer aux montants auxquels l'article 49 LRCR s'applique.
>
> [149] Il ne sera donc pas plus nécessaire dans ce contexte particulier de procéder à une séparation physique des cotisations d'équilibre à être versées du reste des actifs de SBI pour que le produit desdites cotisations jouisse du caractère d'incessibilité et d'insaisissabilité que leur procure l'article 264 LRCR, qu'il n'est nécessaire de le faire pour que la fiducie réputée de l'article 49 LRCR ne produise ses effets.
>
> [150] En ce sens, l'article 264 LRCR vient compléter la logique de l'article 49 LRCR et, autrement, ces deux mêmes articles deviennent complètement dénudés de leur sens de leur portée et de leur effet.[56]
>
> [Emphasis added]

[107] The Court does not agree.

[108] First, Section 264 SPPA is found in the final chapter of the SPPA entitled "Miscellaneous and Transitional Provisions". It would be an odd place to put a provision that deals with the same amounts already covered by Section 49 SPPA.

[109] Further, the enumeration of amounts or contributions in Section 264 SPPA appears to be a list of amounts payable by or to the member of the pension fund and not amounts payable by the employer. It appears that Section 264 protects the members of the plan by providing that they cannot assign these amounts and their creditors cannot seize them. Section 49, on the other hand, is intended to protect pension plans from the creditors of the employer.[57]

[110] Also, if Section 264 SPPA covers the same amounts as Section 49 SPPA, then the overlap between them is problematic. Why is it necessary to have both provisions protecting the same amounts? If the amounts are already covered by a deemed trust, then they are also unassignable and unseizable without the need for Section 264 SPPA. If they are unassignable under Section 264 SPPA, then how can they be transferred to the deemed trust?

[111] Finally and in any event, even if Section 264 SPPA applied to the amounts held by the employer to be paid into the pension plan, it is not clear how that would fix the

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56 *Id.*, par. 147-150.

57 Alain PRÉVOST, « Que reste-t-il de la fiducie réputée en matière de régimes de retraite » (2016), 75 R. du B. 23, p. 44-45.

deemed trust under Section 49 SPPA. Simply declaring amounts to be unassignable and unseizable does not make them any more identifiable. There is still no triggering event. Justice Mongeon suggests that the sums are identifiable under Section 49 SPPA, but the Court has already rejected that argument as a result of *Sparrow Electric*.

[112] The Court therefore concludes that the deemed trust under Section 49 SPPA and the unseizability under Section 264 SPPA are not effective and do not create a property or security interest.

iii. NLPBA

[113] The NLPBA includes in Section 32(1) and (2) language very similar to Section 8(1) and (2) of the PBSA:

> **32.** (1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that
>
> [...]
>
> are kept separate and apart from the employer's own money, and shall be considered to hold the amounts referred to in paragraphs (a) to (c) in trust for members, former members, and other persons with an entitlement under the plan.
>
> (2) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that under subsection (1) is considered to be held in trust shall be considered to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own money or from the assets of the estate.
>
> [Emphasis added]

[114] The Court will assume for the purposes of the present judgment that Section 32(1) and (2) NLPBA create a valid deemed trust under the laws of Newfoundland and Labrador that operates in the same way as its counterpart in Section 8(1) and (2) PBSA.

[115] The NLPBA also includes in Section 32(3) a further trust in the event of termination of the plan.

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

[116] However, this is simply an obligation to hold an amount of money in trust and not a deemed trust. Under *Sparrow Electric*, if the amounts are not actually held in trust, and in the present matter they are not, this provision does not create a trust. In any event, the Court is assuming that Section 32(1) and (2) NLPBA create a valid deemed

trust and, as set out below, the Court gives that deemed trust a broad interpretation. In those circumstances, Section 32(3) NLPBA does not add anything.

[117] Finally, in addition to the deemed trust, Section 32(4) NLPBA creates a lien and charge:

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

[118] The Court will also assume that Section 32(4) NLPBA creates a valid lien and charge under the laws of Newfoundland and Labrador.

b. Priority

[119] In *First Vancouver*, the Supreme Court characterized the deemed trust as a floating charge over all of the assets of the debtor.[58]

[120] With respect to the priority between the deemed trust and the claims of secured creditors, the Supreme Court concluded as follows in *Sparrow Electric*:

> 34 It is to be observed that in addition to attaching Her Majesty's interest to the debtor's property upon the triggering of any of the events mentioned in s. 227(5), the deemed trust operates to the benefit of Her Majesty in a secondary manner. Namely, s. 227(5) permits Her Majesty's interest to attach to collateral which is subject to a fixed charge if the deductions giving rise to Her Majesty's claim arose before that charge attached to that collateral.
>
> ...
>
> Thus, s. 227(5) alternatively permits Her Majesty's interest to attach retroactively to the disputed collateral if the competing security interest has attached after the deductions giving rise to Her Majesty's claim in fact occurred. Conceptually, the s. 227(5) deemed trust allows Her Majesty's claim to go back in time and attach its outstanding s. 227(4) interest to the collateral before that collateral became subject to a fixed charge.[59]

[121] In *Aveos*, Justice Schrager came to a similar conclusion under Québec law:

> [66] In the present case, when the deemed trust for the special payments arose, the property of Aveos was encumbered by fixed charges in favour of the Secured Lenders. Those fixed charges were created in 2010, except for the security in the Northwest Territories which was perfected in 2011. The deemed trust arose either upon the liquidation of Aveos (which would not have been before the C.C.A.A. filing on March 19, 2012) or at the earliest when a special payment became due following the actuarial valuation report filed in June 2011. Even if the obligation to make the special payments was somehow retroactive to December 31, 2010 (which was not argued by the Superintendent), the fixed charges in favour of the Secured Lenders were already perfected at such date.

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58 *First Vancouver Finance* v. *M.N.R.*, 2002 SCC 49, par. 40.
59 *Sparrow Electric*, *supra* note 48, par. 34.

> Moreover, Aveos made the special payments up to and including January 2012 so it is difficult to deem the trust prior to any payments being in default.
>
> [67] Consequently, this Court agrees with the Secured Lenders first position that their security was created before any deemed trust for the $2.8 million could have existed. Since the assets were already charged, any deemed trust under Section (8)(2) P.B.S.A. is at best subordinate to the security of the Secured Lenders.[60]
>
> [Emphasis added]

[122] As a result, when one of the triggering events in Section 8(2) PBSA occurs, the deemed trust attaches to the debtor's current property, with effect retroactive to the date that the contributions became due. However, it attaches subject to other security which attached to the assets before the contributions were due.[61]

[123] Finally, the Supreme Court in *Sparrow Electric* emphasized that it was open to Parliament to give absolute priority to the deemed trust through appropriate language:

> 112 Finally, I wish to emphasize that it is open to Parliament to step in and assign absolute priority to the deemed trust. A clear illustration of how this might be done is afforded by s. 224(1.2) ITA, which vests certain moneys in the Crown "notwithstanding any security interest in those moneys" and provides that they "shall be paid to the Receiver General in priority to any such security interest". All that is needed to effect the desired result is clear language of that kind. In the absence of such clear language, judicial innovation is undesirable, both because the issue is policy charged and because a legislative mandate is apt to be clearer than a rule whose precise bounds will become fixed only as a result of expensive and lengthy litigation.

[124] The so-called *Sparrow Electric* language was not added to Section 8 PBSA, with the result that it does not have priority over pre-existing secured creditors with a fixed charge.[62]

[125] The Court assumes that these priority rules also apply to the deemed trust under Section 32(2) NLPBA.

[126] As for the lien and charge under Section 32(4) NLPBA, the Court assumes that it is a valid fixed charge under the law of Newfoundland and Labrador. Its priority relative to other secured claims is not clear because it is not registered and because nothing in the NLPBA or the Newfoundland and Labrador *Personal Property Security Act*[63] provides for its priority.

[127] The Ville de Sept-Îles argues that its claim for property and water taxes predates the liquidation of the Wabush CCAA Parties and any default in payment of the contributions, and therefore takes priority even if the deemed trust is valid.

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60 *Aveos*, *supra* note 50, par. 66-67.
61 *First Vancouver*, *supra* note 58, par. 46.
62 See also *Aveos*, *supra* note 50, par. 64-66.
63 S.N.L. 1998, c. P-7.1.

[128] However, for the reasons set out below, it is not necessary for the Court to decide those priority issues.

c. Liabilities covered

i. SPPA[64]

[129] The liabilities covered by Section 49 SPPA are limited:

> **49.** Until contributions and accrued interest are paid into the pension fund or to the insurer, they are deemed to be held in trust by the employer, whether or not the latter has kept them separate from his property.
>
> [Emphasis added]

[130] It covers only "contributions" and "accrued interest". In the ordinary course, "contributions" would include regular and special contributions, but not the wind-up deficit. The wind-up deficit is dealt with in Sections 228-229 SPPA, where it is a debt of the employer. There is no deemed trust language in Sections 228-229 SPPA.

[131] The Court therefore concludes that the Québec deemed trust, if it is effective, covers only the regular payments, special payments and catch-up special payments, to the extent that they relate to non-railway employees who reported for work in Québec.

ii. PBSA

[132] There is not much dispute as to the scope of the protection afforded by the PBSA.

[133] Subsection 8(1) PBSA provides that the employer is deemed to hold the following amounts in trust:

> **(a)** the moneys in the pension fund,
>
> **(b)** an amount equal to the aggregate of the following payments that have accrued to date:
>
> > **(i)** the prescribed payments, and
> >
> > **(ii)** the payments that are required to be made under a workout agreement; and
>
> **(c)** all of the following amounts that have not been remitted to the pension fund:
>
> > **(i)** amounts deducted by the employer from members' remuneration, and
> >
> > **(ii)** other amounts due to the pension fund from the employer, including any amounts that are required to be paid under subsection 9.14(2) or 29(6).

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[64] The Court has already concluded that Section 49 SPPA does not create a valid deemed trust and therefore this analysis is not necessary. It is included for the benefit of the parties in the event of an appeal.

[134] Section 9.14(2) PBSA deals with the situation where the employer has given a letter of credit to guarantee certain pension related obligations and is not relevant here.

[135] Subsection 29(6) PBSA deals with the obligations of the employer on termination of a pension plan:

> **29** (6) If the whole of a pension plan is terminated, the employer shall, without delay, pay into the pension fund all amounts that would otherwise have been required to be paid to meet the prescribed tests and standards for solvency referred to in subsection 9(1) and, without limiting the generality of the foregoing, the employer shall pay into the pension fund
>
> **(a)** an amount equal to the normal cost that has accrued to the date of the termination;
>
> **(b)** the amounts of any prescribed special payments that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;
>
> **(c)** the amounts of payments that are required to be made under a workout agreement that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;
>
> **(d)** all of the following amounts that have not been remitted to the pension fund at the date of the termination:
>
> **(i)** the amounts deducted by the employer from members' remuneration, and
>
> **(ii)** other amounts due to the pension fund from the employer; and
>
> **(e)** the amounts of all of the payments that are required to be made under subsection 9.14(2).

[136] The language of Section 29(6.4) and (6.5) PBSA expressly provides that the deemed trust does not extend to the solvency deficit on termination of the plan:

> (6.4) On the winding-up of the pension plan or the liquidation, assignment or bankruptcy of the employer, the amount required to permit the plan to satisfy any obligations with respect to pension benefits as they are determined on the date of termination is payable immediately.
>
> (6.5) Subsection 8(1) does not apply in respect of the amount that the employer is required to pay into the pension fund under subsection (6.4). However, it applies in respect of any payments that have accrued before the date of the winding-up, liquidation, assignment or bankruptcy and that have not been remitted to the fund in accordance with the regulations made for the purposes of subsection (6.1).
>
> [Emphasis added]

[137] The combined effect of these provisions is that the deemed trust under the PBSA covers the following amounts:

- The moneys in the pension fund;
- The normal cost that has accrued to the date of termination;
- The prescribed special payments that are due on termination or before the end of the plan year;
- The payments under a workout agreement that are due on termination or before the end of the plan year; and
- The unremitted deductions at source.

[138] There is no issue in the present matter with respect to the pension fund itself. It is clear that it is held separate and apart from the assets of the Wabush CCAA Parties.

[139] Further, there do not appear to be any accrued normal costs or unremitted deductions.

[140] There are special payments and catch-up special payments owing, some pre-filing but mostly post-filing because the Court suspended the Wabush CCAA Parties' obligation to make the special payments on June 26, 2015. To the extent that the special payments and catch-up special payments relate to federal employees or retirees, they are in principle protected by the federal deemed trust.

iii. NLPBA

[141] Essentially, Section 32(1) and (2) NLPBA are very similar to Section 8(1) and (2) PBSA. However, there is no equivalent in the PBSA to Section 32(4) NLPBA, and Section 61 NLPBA does not include the equivalent to Section 29(6.5) PBSA.

[142] The NL Superintendent pleads that the deemed trust and the lien and charge under the NLPBA cover the wind-up deficit.

[143] For the reasons described above, the Court will assume for the purposes of the present decision that the deemed trust and the lien and charge under the NLPBA cover the wind-up deficit.

d. Property covered

[144] The issue is whether the deemed trust and the lien and charge under the NLPBA extend to assets beyond the province. More specifically, there are significant proceeds held by the Monitor resulting from the sale of assets in Québec which the Pension Parties argue should be subject to the deemed trust and lien and charge under the NLPBA.

[145] The Court will assume that the NLPBA, as a matter of Newfoundland and Labrador law, extends to assets outside the province. The issue is whether Québec law recognizes the deemed trust and the lien and charge created by Newfoundland and Labrador law as applying to assets in Québec.

[146] The Pension Parties argue that the deemed trust created under the NLPBA is a trust established by law, and that as a result it is a valid trust in Québec under Article 1262 C.C.Q. This is not a proper analysis under principles of private international law. It assumes that "created by law" in Article 1262 C.C.Q. includes foreign laws. Followed to its logical conclusion, it would mean that any trust created by law anywhere in the world can validly charge assets in Québec and that the Québec courts must recognize any such trust. The Court does not agree. Rather, the Court reads Article 1262 C.C.Q. as being limited to trusts created under Québec law.[65] A trust created under a foreign law will only be recognized in Québec under the relevant rules of private international law.

[147] There are several ways to characterize the issue under the rules of private international law in Québec.

[148] If it is viewed as a property issue, the rules of private international law in Québec provide that matters of real rights and their publication are governed by the law of the place where the property concerned is situated (Article 3097 C.C.Q.). This suggests that, if the province of Newfoundland and Labrador seeks to create a deemed trust over property in Québec, Québec will not recognize that the deemed trust extends to property in Québec.

[149] Similarly, the rules on movable securities provide that the validity of a movable security is governed by the law of the state in which the property charged with it is situated at the time of creation of the security (Article 3102 C.C.Q.).

[150] Finally, if it is viewed as a matter of employment law, Article 3118 C.C.Q. provides that the law of the state where the worker habitually carries out his work applies to the contract of employment.

[151] The Pension Parties invoke Article 3079 C.C.Q.:

> **3079.** Where legitimate and manifestly preponderant interests so require, effect may be given to a mandatory provision of the law of another State with which the situation is closely connected.
>
> In deciding whether to do so, consideration is given to the purpose of the provision and the consequences of its application.

[152] They argue that the NLPBA is such a mandatory law, and that the Québec courts should therefore give effect to it.

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[65] Similarly, Article 1262 C.C.Q. provides that a trust may be established by judgment, but in *Gareau (Faillite de)*, REJB 1997-03315 (C.S.), par. 33-35, Justice Dalphond held that a constructive trust created under an Ontario judgment did not create a valid interest against an immoveable in Québec.

[153] However, the NLPBA only applies to the workers who report to work in the province of Newfoundland and Labrador, while the SPPA applies to workers who report for work in the province of Québec. If the NLPBA extended to property in Québec, this would be to the prejudice of the Québec workers who would see a deemed trust for the benefit of their co-workers applied to the assets to which the Québec workers report for work. The Court cannot conclude in these circumstances that the interests of the foreign workers are "manifestly preponderant" over the interests of the Québec workers.

[154] As a result, the Court concludes that the deemed trust under the NLPBA does not apply to assets within the province of Québec.

4. Has there been a "liquidation" to trigger the deemed trusts under the PBSA and the NLPBA ?

[155] The deemed trust under Section 8(2) of the PBSA becomes effective only "[i]n the event of any liquidation, assignment or bankruptcy" of the employer. The exact same language is found in Section 32(2) NLPBA and the Court assumes that the words are to be interpreted in the same way.

[156] The key issue here is whether the CCAA proceedings themselves, or some event within the CCAA proceedings, constitute a "liquidation, assignment or bankruptcy" of the employer.

[157] The term "bankruptcy" is the clearest. It must mean a formal bankruptcy under the *Bankruptcy and Insolvency Act*,[66] following an assignment in bankruptcy by the debtor or a bankruptcy order issued by the court following a petition in bankruptcy by a creditor. There are also deemed assignments in bankruptcy on the failure to file a proposal within the delays or the refusal of a proposal. It is clear in the present matter that there has not been a bankruptcy in any of these senses.

[158] The term "assignment" likely refers to an assignment in bankruptcy, even though that creates an overlap between "bankruptcy" and "assignment". The alternative is to read "assignment" more broadly to refer to any assignment of property by the employer. However, Sections 8(2) PBSA and 32(2) NLPBA go on to refer to "the estate in liquidation, assignment or bankruptcy", which suggests that all of the employer's property has been assigned to a third party and is being administered by the third party. This brings us back to the notion of an assignment in bankruptcy as opposed to contractual assignments of property by the employer. Further, how could the deemed trust attach each time the employer assigns any property? Or if the deemed trust attaches only once, which assignment of property causes it to attach?

[159] That leaves the third term, "liquidation". The Monitor, the Wabush CCAA Parties and the Ville de Sept-Îles argue that the term "liquidation" should be limited to formal liquidation proceedings under a statute such Part XVIII of the *Canada Business Corporations Act*.[67] The Pension Parties invite the Court not to give the term

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[66] R.S.C. 1985, c. B-3.
[67] R.S.C. 1985, c. C-44.

"liquidation" the narrow technical sense of a formal liquidation. Rather, they suggest that in the present matter, the Wabush CCAA Parties used the CCAA process in order to liquidate their assets and that this should be sufficient to trigger the deemed trust provisions. They argue that this liberal interpretation is in accordance with the presumed intention of the legislator to protect pension plans and in accordance with a functional analysis since there has clearly been a liquidation in the present matter.

[160] It is clear in the present matter that the Wabush CCAA parties have liquidated their assets. With the sale of the Wabush mine in June, the Wabush CCAA parties have now sold all or substantially all of their assets. However, they did not institute formal liquidation proceedings. They proceeded instead under the CCAA with what has come to be known as a "liquidating CCAA":

> *Liquidating CCAA*: As discussed above, this is a relatively new type of proceeding in which the debtor's assets are sold either piecemeal or on a going concern basis under the CCAA court's supervision. The sales may occur pursuant to a plan that has been approved by the creditors, or they may occur in the absence of a plan. Notably, many recent CCAA proceedings have been liquidating CCAAs from the outset. That is, the debtor never intended to present a reorganization plan to its creditors, and merely applied for CCAA protection so that it could begin a marketing process to sell substantially all of its assets. In such cases, the debtor might present a post-sale plan to its creditors that is essentially a plan of distribution of the sale proceeds, or the debtor may simply enter bankruptcy proceedings. For reasons that will be discussed further below, liquidating CCAAs are controversial and may not be consistent with the corporate rescue purpose of the CCAA.[68]

[161] The Court agrees that it is not relevant that the liquidation was done outside the BIA and the CBCA.

[162] First, the Court notes that the liquidation regime under Part XVIII of the CBCA is only available to corporations that are solvent (Section 208 CBCA). As a result, liquidation under the CBCA was never an option for the Wabush CCAA Parties. Moreover, the deemed trusts under the PBSA and the NLPBA are of limited value in the case when the employer is solvent.

[163] Further, although the debtor in a CCAA proceeding remains in possession of his assets, there is a court-appointed monitor and the process is under the supervision of the court. This is sufficient to meet the requirement of "the estate in liquidation, assignment or bankruptcy".

[164] Finally, the conclusion that the deemed trust is triggered by a liquidation under the BIA but not a liquidation under the CCAA seems to run counter to the idea that creditors should have analogous entitlements under the CCAA and the BIA.[69] It would

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[68] Alfonso NOCILLA, « Is 'Corporate Rescue' Working in Canada? » (2012), 53 Can. Bus. L.J. 382, p. 385. See also *Re Puratone et al*, 2013 MBQB 171, par. 20.

[69] *Sun Indalex Finance, LLC* v. *United Steelworkers*, 2013 SCC 6, par. 51.

also allow the employer to avoid the deemed trust by choosing to proceed under the CCAA rather than the BIA. The Supreme Court addressed a similar concern in different circumstances in *Indalex* in the following way:

> [47] The Court of Appeal declined to decide whether a deemed trust arose in relation to the Executive Plan, stating that it was unnecessary to decide this issue. However, the court expressed concern that a reasoning that deprived the Executive Plan's members of the benefit of a deemed trust would mean that a company under *CCAA* protection could avoid the priority of the *PBA* deemed trust simply by not winding up an underfunded pension plan. The fear was that Indalex could have relied on its own inaction to avoid the consequences that flow from a wind up. I am not convinced that the Court of Appeal's concern has any impact on the question whether a deemed trust exists, and I doubt that an employer could avoid the consequences of such a security interest simply by refusing to wind up a pension plan. The Superintendent may take a number of steps, including ordering the wind up of a pension plan under s. 69(1) of the *PBA* in a variety of circumstances (see s. 69(1)(d) *PBA*). The Superintendent did not choose to order that the plan be wound up in this case.[70]
>
> [Emphasis added]

[165] Similarly, the employer should not be allowed to avoid the priority of the deemed trust by choosing to liquidate under the CCAA rather than the BIA.

[166] The Court therefore concludes that there has been a liquidation in the present matter triggering the application of the deemed trusts under the PBSA and the NLPBA.[71]

[167] The next question is when did it occur? Because the deemed trust attaches to the employer's assets at the time of the triggering event, it is important to know exactly when it occurred. It cannot be a vague date or a range of dates.

[168] In moving away from requiring a filing under the BIA or the CBCA to taking a more practical view, the Court recognizes that the date of the liquidation may prove to be a difficult determination and may inject some uncertainty into the process. However, the Court considers that some uncertainly is a small price to pay for greater protection of the rights of the pensioners.

[169] In the present matter, the date that the liquidation began is fairly clear.

[170] The Wabush CCAA Parties initiated proceedings under the CCAA on May 19, 2015. Prior to the filing of the CCAA motion, operations at the Wabush Mine had been permanently shut down. The employees had been terminated or laid off. The Wabush CCAA Parties had tried unsuccessfully to find buyers and/or investors for the Wabush mine operations and/or assets.

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70 *Id.*, par. 47.

71 See also *Dauphin Plains Credit Union Ltd.* v. *Xyloid Industries Ltd.*, [1980] 1 S.C.R. 1182.

[171] Moreover, when the Wabush CCAA proceedings were initiated, the Bloom Lake parties were already subject to CCAA proceedings and they had obtained an order approving a sale and investor solicitation process ("SISP") for their assets. The SISP already covered the Wabush mine assets and included the possibility of soliciting "liquidation proposals".

[172] With the benefit of hindsight, the Court notes that the Wabush CCAA Parties did not receive any proposals for investments but only offers to purchase assets. Ultimately, the Wabush CCAA Parties sold off all or essentially all of their assets in piecemeal fashion. That was always the likely outcome of the CCAA process.

[173] In these circumstances, the Court concludes that this was a liquidating CCAA from the outset. The Court therefore concludes that the liquidation started on May 19, 2015 and that the deemed trusts under Section 8(2) PBSA and Section 32(2) NLPBA came into effect on that date.

[174] The Court notes that there is nothing in any way pejorative about qualifying the CCAA as a liquidating CCAA. That is a legitimate and increasingly frequent use of CCAA proceedings. However, a liquidating CCAA should be more analogous to a BIA proceeding. One of the consequences is that the deemed trusts should be triggered.

[175] Because the Court has concluded that the triggering event occurred when the CCAA motion was filed, the Court need not decide whether the triggering event must occur prior to the initial CCAA order, or whether it can occur after the initial CCAA order but prior to the sale of the assets.[72]

5. Are the deemed trusts and other charges valid in the CCAA context?

[176] Given that the PBSA and the NLPBA operate in much the same manner, the analysis of whether they are applicable in the CCAA context is quite similar. However, there is one very important distinction: the PBSA is federal legislation and the NLPBA is provincial legislation. Because both the PBSA and the CCAA are federal legislation, the issue of how they operate together is a matter of determining Parliament's intent. With respect to a provincial deemed trust, the Supreme Court in *Indalex* stated that:

> The provincial deemed trust under the PBA continues to apply in CCAA proceedings, subject to the doctrine of federal paramountcy.[73]

a. the NLPBA and the doctrine of federal paramountcy

[177] The Court will consider first the operation of the NLPBA and the doctrine of federal paramountcy.

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[72] In *Indalex*, *supra* note 69, Justice Deschamps seems to suggest that the triggering event must occur before the sale (par. 46) while Justices Cromwell (par. 92 and 118) and LeBel (par. 265) state that the triggering event must occur prior to the CCAA filing. See also *Grant Forest Products Inc. (Re)*, 2013 ONSC 5933, par. 25 and 71, appeal dismissed 2015 ONCA 570, par. 130.

[73] *Indalex*, *supra* note 69, par. 52.

[178] The Supreme Court recently summarized the doctrine of federal paramountcy in *Lemare Lake*:[74]

- A provincial law will be deemed to be inoperative to the extent that it conflicts with or is inconsistent with a federal law;
- The first step in the analysis is to determine whether the federal and provincial laws are validly enacted;
- The second step requires consideration of whether any overlap between the two laws constitutes a conflict sufficient to render the provincial law inoperative;
- Two kinds of conflict are at play: (1) an *operational conflict*, where compliance with both the federal and provincial law is impossible; and (2) *frustration of purpose*, where the provincial law thwarts the purpose of the federal law;
- Operational conflict arises where one enactment says "yes" and the other says "no", such that compliance with one is defiance of the other;
- To prove that provincial legislation frustrates the purpose of a federal enactment, the party relying on the doctrine must first establish the purpose of the relevant federal statute, and then prove that the provincial legislation is incompatible with this purpose;
- Paramountcy must be narrowly construed: when a federal statute can be properly interpreted so as not to interfere with a provincial statute, such an interpretation is to be applied in preference to another applicable construction which would bring about a conflict between the two statutes.

[179] In *Indalex*, the Supreme Court held that the charge in favour of the interim lender superseded the provincial deemed trust because of the doctrine of federal paramountcy. The Supreme Court used the language of operational conflict:

> [60] In this case, compliance with the provincial law necessarily entails defiance of the order made under federal law. On the one hand, s. 30(7) of the *PPSA* required a part of the proceeds from the sale related to assets described in the provincial statute to be paid to the plan's administrator before other secured creditors were paid. On the other hand, the Amended Initial Order provided that the DIP charge ranked in priority to "all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise" (para. 45). Granting priority to the DIP lenders subordinates the claims of other stakeholders, including the Plan Members. This court-ordered priority based on the *CCAA* has the same effect as a statutory priority. The federal and provincial laws are inconsistent, as they give rise to different, and conflicting, orders of

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[74] *Saskatchewan (Attorney General)* v. *Lemare Lake Logging Ltd.*, 2015 SCC 419, par. 15-27.

> priority. As a result of the application of the doctrine of federal paramountcy, the DIP charge supersedes the deemed trust.[75]

[180] The Court followed *Indalex* when it granted priority to the Interim Lender Charge over the deemed trust under the NLPBA in June 2015.[76]

[181] The issue now is a broader one, whether the deemed trusts under the NLPBA have any effect in the context of CCAA proceedings.

[182] No one argues that the CCAA and the NLPBA are not validly enacted.

[183] Nothing in the CCAA expressly invalidates deemed trusts under pension legislation. Section 37(1) CCAA, which was added to the CCAA in 2007, invalidates in the CCAA context most deemed trusts in favour of the Crown. However, it does not invalidate deemed trusts in favour of other persons, such as the deemed trust under the NLPBA. The Court emphasized in its June 2015 decision that certain statements in *Century Services*[77] and *Aveos*[78] about deemed trusts should be limited to deemed trusts in favour of the Crown and should not be applied to all deemed trusts.[79]

[184] The CCAA provides specific protection for certain pension-related liabilities. Section 6(6) and (7) CCAA require that the employer provide for certain pension payments before the court can sanction the compromise or arrangement:

> **6** (6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if
>
> > (a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:
> >
> > > (i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,
> > >
> > > (ii) if the prescribed pension plan is regulated by an Act of Parliament,
> > >
> > > > (A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that was required to be paid by the employer to the fund, and
> > > >
> > > > (B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of

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75 *Indalex*, *supra* note 69, par. 60.
76 Suspension Order, *supra* note 9.
77 *Century Services Inc.* v. *Canada (Attorney General)*, 2010 SCC 60, par. 45 and 95.
78 *Aveos*, *supra* note 50, par. 74-75.
79 Suspension Order, *supra* note 9, par. 72.

subsection 2(1) of the Pension Benefits Standards Act, 1985,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the Pooled Registered Pension Plans Act, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the Pooled Registered Pension Plans Act; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

(7) Despite subsection (6), the court may sanction a compromise or arrangement that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

[185] Section 36(7) CCAA provides a similar limitation on the court's power to authorize a sale of assets:

> **36** (7) The court may grant the authorization [to sell or otherwise dispose of assets outside the ordinary course of business] only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.

[186] These provisions are limited in scope. They protect the employee contributions deducted at source by the employer and not yet remitted to the pension fund as well as the normal cost payments due by the employer. They do not protect the special payments due or the wind-up deficiency.

[187] There is no operational conflict between these provisions and the deemed trust under the NLPBA in the sense that the deemed trust under the NLPBA protects additional amounts that are not protected by the CCAA.

[188] The question is whether the NLPBA frustrates Parliament's purpose by protecting additional amounts. Did Parliament intend that only the employee contributions and the normal cost payments be protected or did Parliament provide a minimum level of protection, leaving it to the provincial legislatures to extend the protection to additional amounts if they thought it appropriate to do so?

[189] This is not a matter of, as the NL Superintendent puts it in his outline of argument, "relying on the largely discredited and marginalized doctrine of 'negative implication' or 'covering the field'."[80] The Court will not assume that Parliament intended to occupy the field. There is a substantial body of written evidence as to Parliament's intent in adopting Sections 6(6) and 36(7) CCAA. There are the submissions made to Parliament in relation to the protection of pension plans in insolvency, the deliberations of the committees and of Parliament, and the final decision reached by Parliament. Justice Deschamps cited the report of the Standing Senate Committee on Banking, Trade and Commerce in her judgment in *Indalex*:

> [81] There are good reasons for giving special protection to members of pension plans in insolvency proceedings. Parliament considered doing so before enacting the most recent amendments to the *CCAA*, but chose not to (*An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act , the Wage Earner Protection Program Act and chapter 47 of the Statutes of Canada, 2005*, S.C. 2007, c. 36, in force September 18, 2009, SI/2009-68; see also Bill C-501, *An Act to amend the Bankruptcy and Insolvency Act and other Acts (pension protection)*, 3rd Sess., 40th Parl., March 24, 2010 (subsequently amended by the Standing Committee on Industry, Science and Technology, March 1, 2011)). A report of the Standing Senate Committee on Banking, Trade and Commerce gave the following reasons for this choice:
>
> > Although the Committee recognizes the vulnerability of current pensioners, we do not believe that changes to the BIA regarding pension claims should be made at this time. Current pensioners can also access retirement benefits from the Canada/Quebec Pension Plan, and the Old Age Security and Guaranteed Income Supplement programs, and may have private savings and Registered Retirement Savings Plans that can provide income for them in retirement. The desire expressed by some of our witnesses for greater protection for pensioners and for employees currently participating in an occupational pension plan must be balanced against the interests of others. As we noted earlier, insolvency – at its essence – is characterized by insufficient assets to satisfy everyone, and choices must be made.
> >
> > The Committee believes that granting the pension protection sought by some of the witnesses would be sufficiently unfair to other stakeholders that we cannot recommend the changes requested. For example, we feel that super priority status could unnecessarily reduce the moneys available for distribution to

[80] *Supra* note 39, par. 68.

> creditors. In turn, credit availability and the cost of credit could be negatively affected, and all those seeking credit in Canada would be disadvantaged.
>
> (*Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* (2003), at p. 98; see also p. 88.)
>
> [82] In an insolvency process, a CCAA court must consider the employer's fiduciary obligations to plan members as their plan administrator. It must grant a remedy where appropriate. However, courts should not use equity to do what they wish Parliament had done through legislation.[81]
>
> [Emphasis added]

[190] The Monitor cites a number of other reports, summaries and bills in his outline of arguments.

[191] The Pension Parties argue that extrinsic evidence is inadmissible to establish Parliament's purpose in a paramountcy analysis. They argue that Parliament's intention must be stated in the statute which is said to be paramount. However, in *Lemare Lake*, Justice Gascon, speaking for the majority, considered extrinsic evidence of Parliament's intention but found it to be insufficient:

> [45] This is, in our respectful view, insufficient evidence for casting s. 243's purpose so widely. As the Court explained in *COPA*, at para. 68, "clear proof of purpose" is required to successfully invoke federal paramountcy on the basis of frustration of federal purpose. The totality of the evidence presented by *amicus* does not meet this high burden. While cases and secondary sources can obviously be helpful in identifying a provision's purpose, the sources cited by *amicus* merely establish promptness and timeliness as general considerations in bankruptcy and receivership processes. The absence of sufficient evidence supporting *amicus*'s claim about the broad purpose of s. 243 is fatal to his claim. What the evidence shows instead is a simple and narrow purpose: the establishment of a regime allowing for the appointment of a national receiver, thereby eliminating the need to apply for the appointment of a receiver in multiple jurisdictions.[82]
>
> [Emphasis added]

[192] In the present matter, the evidence is clear and the conclusion is inescapable. Parliament was not setting minimum requirements or a floor that must be respected, while leaving it to the provinces to decide whether in their jurisdictions to protect additional amounts owing to pension funds. It is clear that Parliament had weighed the competing interests and decided that this was the protection that all pension plan members across Canada would receive. It left no room for the provinces.

[193] It is also important to consider the BIA.

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81 *Indalex*, *supra* note 69, par. 81-82.
82 *Lemare Lake*, *supra* note 74, par. 45.

[194] The BIA provides a scheme for distribution of the bankrupt's assets: it excludes property that the debtor holds in trust for any other person (Section 67(1)(a)), it recognizes the rights of secured creditors (Sections 127-134), it provides for the priority of certain claims (Section 136), it postpones the claims of non-arm's length parties (Section 137) and it pays all other claims rateably (Section 141).

[195] There is a substantial body of Supreme Court jurisprudence standing for the proposition that provinces cannot change this scheme of distribution. The principles were summarized by Justice Gonthier in *Husky Oil*:

> (1) provinces cannot create priorities between creditors or change the scheme of distribution on bankruptcy under s. 136(1) of the Bankruptcy Act;
>
> (2) while provincial legislation may validly affect priorities in a non-bankruptcy situation, once bankruptcy has occurred section 136(1) of the Bankruptcy Act determines the status and priority of the claims specifically dealt with in that section;
>
> (3) if the provinces could create their own priorities or affect priorities under the Bankruptcy Act this would invite a different scheme of distribution on bankruptcy from province to province, an unacceptable situation; and
>
> (4) the definition of terms such as "secured creditor", if defined under the Bankruptcy Act, must be interpreted in bankruptcy cases as defined by the federal Parliament, not the provincial legislatures. Provinces cannot affect how such terms are defined for purposes of the Bankruptcy Act.
>
> [...]
>
> (5) in determining the relationship between provincial legislation and the Bankruptcy Act, the form of the provincial interest created must not be allowed to triumph over its substance. The provinces are not entitled to do indirectly what they are prohibited from doing directly;
>
> (6) there need not be any provincial intention to intrude into the exclusive federal sphere of bankruptcy and to conflict with the order of priorities of the Bankruptcy Act in order to render the provincial law inapplicable. It is sufficient that the effect of provincial legislation is to do so.[83]

[196] These principles have been applied by the Supreme Court to invalidate a number of attempts by the provinces to give the Crown priority for certain claims.[84] The argument was that the predecessors of the current Section 136(1)(j) BIA gave the federal and provincial Crown a limited priority, and that any attempt by the province to improve that ranking was inoperative. The argument extended not only to deemed trusts

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83 *Husky Oil Operations Ltd.* v. *Minister of National Revenue*, [1995] 3 SCR 453, par. 32 and 39.

84 See *Deputy Minister of Revenue* v. *Rainville*, [1980] 1 S.C.R. 35; *Deloitte Haskins and Sells Ltd.* v. *Workers' Compensation Board*, [1985] 1 S.C.R. 785; *Federal Business Development Bank* v. *Quebec (Commission de la santé et de la sécurité du travail)*, [1988] 1 S.C.R. 1061; *British Columbia* v. *Samson Bélair Ltd.*, [1989] 2 S.C.R. 24.

but also to other priorities established by the provinces in favour of the Crown which were not published and were not available generally to other creditors.

[197] The Monitor argues that this same argument applies in the present matter to invalidate the deemed trust and the lien and charge under the NLPBA as provincial attempts to change the scheme of distribution in the CCAA.

[198] For the argument to apply in the present matter, there must be two extensions:

(1) the argument must be extended from Crown claims to pension claims, and

(2) the argument must be extended from the BIA to the CCAA.

[199] As for extending the argument from Crown claims to pension claims, there are two important differences between a Crown claim and a pension claim: (1) the priority of Crown claims is expressly provided by Section 136(1)(j) BIA, whereas there is a pension charge created by Sections 81.5 and 81.6 BIA, and (2) the BIA was amended in 1992 to expressly provide that deemed trusts (Section 67(2)) and security (Section 86(1)) in favour of the Crown (whether federal or provincial) are generally not effective in bankruptcy, subject to a number of exceptions which are not relevant in this matter.

[200] Neither difference is fatal to the extension of the argument. Pension claims are not mentioned in Section 136 BIA because they are not preferred claims: some pension claims are secured claims under Sections 81.5 and 81.6 BIA and in principle the rest are ordinary unsecured claims in a bankruptcy. It is not necessary that they be mentioned specifically in Section 136 BIA.

[201] The provisions dealing expressly with Crown claims clearly have no application to pension claims. However, those provisions were not necessary to conclude that a provincial priority conflicts with the BIA scheme of distribution. Even though pension claims are treated differently from Crown claims, they are part of the scheme of distribution under the BIA and any attempt by the province to change that scheme of distribution is inoperative.

[202] The argument that the BIA scheme of distribution applies in CCAA proceedings is more difficult.

[203] There is no statutory scheme of distribution under the CCAA because the CCAA is not intended to be the vehicle for a liquidation of assets and distribution of the proceeds. The CCAA is intended as a vehicle for the restructuring of the debtor. In principle, a plan will be submitted to the creditors and they will have the right to vote on it. For that reason, there is no need to provide a scheme of distribution.

[204] However, as we have already discussed, the present matter involves a liquidating CCAA.

[205] In that context, it is clear that the scheme of distribution under the BIA is very relevant. If the creditors are offered a plan in the context of a liquidating CCAA, it will be limited to distributing the proceeds of the sale of the debtor's assets. The creditors will inevitably compare what they are getting under the plan to what they would get under

the BIA. If any creditor is offered less under the plan, he will likely vote against the plan or oppose its approval by the court, with a view to petitioning the debtor into bankruptcy. Justice Deschamps referred to this in *Indalex* as the creditors "bargain[ing] in the shadow of their bankruptcy entitlements"[85]. As Justice Deschamps wrote in *Century Services*:

> [47] Moreover, a strange asymmetry would arise if the interpretation giving the *ETA* priority over the *CCAA* urged by the Crown is adopted here: the Crown would retain priority over GST claims during *CCAA* proceedings but not in bankruptcy. As courts have reflected, this can only encourage statute shopping by secured creditors in cases such as this one where the debtor's assets cannot satisfy both the secured creditors' and the Crown's claims (*Gauntlet*, at para. 21). If creditors' claims were better protected by liquidation under the *BIA* , creditors' incentives would lie overwhelmingly with avoiding proceedings under the *CCAA* and not risking a failed reorganization. Giving a key player in any insolvency such skewed incentives against reorganizing under the *CCAA* can only undermine that statute's remedial objectives and risk inviting the very social ills that it was enacted to avert.[86]

[206] In the same way, if the Court concludes that the NLPBA deemed trusts are valid in a liquidating CCAA but not in a BIA proceeding, then the creditors affected by the deemed trust will simply put the Wabush CCAA Parties into bankruptcy.

[207] Alternatively, it is frequently the outcome of a liquidating CCAA that no plan is submitted and the debtor slips into a bankruptcy under the BIA for the purpose of distributing its assets.

[208] The bottom line is that a liquidating CCAA requires a scheme of distribution and the only one which makes sense is the scheme of distribution under the BIA. As a result, and unless there is a contradiction between the CCAA and the BIA, the BIA scheme of distribution should apply in a liquidating CCAA.

[209] Under Section 81.6 BIA, the same amounts which are protected by Sections 6(6) and 36(7) CCAA are secured by security on all of the bankrupt's assets. There is no asymmetry. There is no security for the unpaid special payments and wind-up deficit and those are treated as unsecured claims.[87]

[210] In light of all of these circumstances, the Court concludes that it would frustrate the purpose of Parliament if the deemed trust under the NLPBA operated in the context of a CCAA proceeding. The doctrine of federal paramountcy therefore renders the deemed trust under the NLPBA inoperable.

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85 *Indalex*, *supra* note 69, par. 51.

86 *Century Services*, *supra* note 77, par. 47.

87 Moreover, there is the argument that the pension administrator cannot be a « secured creditor » as a result of the lien and charge created by Section 32(4) NLPBA because the amounts owing by the employer are not due to the pension administrator. As a result, it cannot be a « secured creditor » as that term is defined in the BIA: *Harbert Distressed Investment Fund, L.P.* v. *General Chemical Canada Ltd.*, 2007 ONCA 600, par. 32, leave to appeal to Supreme Court refused, 2008 CanLII 6391.

b. the PBSA and Parliament's intent

[211] The same conflict exists between the CCAA and the PBSA: the PBSA creates a deemed trust for the special payments due to the pension fund whereas the special payments are not protected under the CCAA.

[212] Because the CCAA and the PBSA are both federal statutes enacted by the same legislator, it is not an issue of paramountcy but rather a question of the determination of the legislator's intention.

[213] As the Court wrote in its June 2015 judgment:

> [74] It is difficult to reconcile Sections 6(6) and 36(7) CCAA with a broad interpretation of Section 8(2) PBSA. Why would the legislator give specific protection to the normal payments by amending the CCAA in 2009 if the deemed trust protecting not only the normal payments but also the special payments was effective in the CCAA context? Why would the legislator not protect the special payments under Sections 6(6) and 36(7) CCAA if they were already protected under a deemed trust? What happens to the deemed trust for the special payments if there is an arrangement or an asset sale? Because both statutes were adopted by the same legislator, we must try to determine the legislator's intent.[88]

[214] In *Century Services*, the Supreme Court was faced with a similar conflict between the deemed trust for GST under the *Excise Tax Act* and the CCAA. The language of the *Excise Tax Act*[89] provided that the deemed trust was effective notwithstanding any law of Canada other than the BIA. Justice Deschamps adopted "a purposive and contextual analysis to determine Parliament's true intent" (par. 44) and examined the "internal logic of the *CCAA*" (par. 46), before concluding that the deemed trust for GST was not effective in a CCAA proceeding.

[215] The Court adopts the following reasoning to resolve the conflict:

> Given that the pension provisions of the *BIA* and *CCAA* came into force much later than s. 8 of the *PBSA*, normal interpretation would require that the later legislation be deemed to be remedial in nature. Likewise, since those provisions of the *BIA* and *CCAA* are the more specific provisions, normal interpretation would take them to have precedence over the general. Finally, the limited scope of the protection given to pension claims in the *BIA* and the *CCAA* would, by application of the doctrine of implied exclusion, suggest that Parliament did not intend there to be any additional protection. In enacting *BIA* subs. 60(1.5) and 65.13(8) and ss. 81.5 and 81.6 and *CCAA* subs. 6(6) and 37(6), while not amending subs. 8(2) of the *PBSA* (by adding explicit priority language or by removing the insolvency trigger), Parliament demonstrated the intent that

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88 Suspension Order, *supra* note 9, par. 74.
89 R.S.C. 1985, c. E-15.

> pension claims would have protection in insolvency and restructurings only to the limited extent set out in the *BIA* and the *CCAA*.[90]
>
> [Emphasis added]

[216] The Court therefore concludes that the PBSA deemed trust is not effective in the context of the present CCAA proceedings.

6. Conclusions

[217] As a result of the foregoing, the Court comes to the following conclusions:

1. The trusts created under the SPPA, PBSA and NLPBA are not enforceable in CCAA proceedings;
2. However, the employee contributions and the normal cost payments are protected to the extent provided for by Sections 6(6) and 37(6) of the CCAA.

[218] To provide greater clarity, the Court responds as follows to the questions raised by the Monitor in paragraph 76 of his Motion for Directions:

a) "Liquidation" under Sections 8(2) PBSA and 32(2) NLPBA includes a liquidating plan under the CCAA;

b) A "liquidation" within the meaning of Sections 8(2) PBSA and 32(2) NLPBA commenced when the Wabush CCAA Parties made a motion seeking CCAA protection on May 20, 2015;

c) Not answered.

d) The wind-up deficit is not covered by the PBSA deemed trust. The Court has assumed that it is covered by the deemed trust under the NLPBA, but has not come to any conclusion on the question;

e) Not answered.

f) Nothing in the NLPBA limits the assets covered by the deemed trust to assets located in the province of Newfoundland and Labrador;

g) The Court would not recognize or enforce the deemed trust under the NLPBA against assets located in the province of Québec.

[219] Finally, with respect to the orders sought by the Representative Employees in their Argumentation Outline, the Court adds that the Plans are governed by the PBSA for the railway employees, by the SPPA for the non-railway employees who reported for work in Québec, and by the NLPBA for the non-railway employees who reported for work in NL.

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[90] Sam Babe, "What About Federal Pension Claims? The Status of *Pension Benefits Standards Act, 1985* and *Pooled Registered Pension Plans Act* Deemed Trust Claims in Insolvency" (2013), 28 N.C.D.Rev. 25, p. 30. See also *Aveos*, *supra* note 50, par. 76-77, 84.

[220] At the outset, the Court said it would reserve the rights of the parties to ask the Court to revise the conclusions of the present judgment if: (1) the NLCA decides that the interpretation of the NLPBA is different from the interpretation that the Court assumed, and (2) that difference is material to the Court's conclusions.

[221] However, based on its analysis and conclusions in the present judgment, the Court can now remove that reserve, because the interpretation of the NLPBA was not material to the Court's conclusions.

[222] If the NLCA disagrees with the Court on any issue other than the interpretation of the NLPBA, that will be a matter that the parties can raise on appeal.

FOR THESE REASONS, THE COURT:

[223] **GRANTS** the Motion by the Monitor for Directions with respect to Pension Claims;

[224] **DECLARES** that the trusts created under the SPPA, PBSA and NLPBA are not enforceable in CCAA proceedings;

[225] **DECLARES** that the employee contributions and the normal cost payments are protected to the extent provided for by Sections 6(6) and 37(6) of the CCAA;

[226] **THE WHOLE WITHOUT COSTS.**

Stephen W. Hamilton, J.S.C.

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Mtre Emily Hazlett
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STEIN MONAST
For Ville de Sept-Îles

Dates of hearing: June 28 and 29, 2017

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SCHEDULE 2

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

File: No: 500-11-048114-157

SUPERIOR COURT
Commercial Division

Montreal, January 27, 2015

Present: The Honourable
Mr. Justice Martin Castonguay, J.S.C.

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

BLOOM LAKE GENERAL PARTNER LIMITED, QUINTO MINING CORPORATION, 8568391 CANADA LIMITED AND CLIFFS QUÉBEC IRON MINING ULC.

Petitioners

- and -

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP

BLOOM LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

Monitor

INITIAL ORDER

ON READING Petitioners' petition for an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the "**CCAA**") and the exhibits, the affidavit of Clifford Smith sworn on January 26, 2015 filed in support thereof (the "**Petition**"), the consent of FTI Consulting Canada Inc. to act as monitor (the "**Monitor**"), relying upon the

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submissions of counsel for the Petitioners and the Mises-en-cause, the proposed Monitor and being advised that all of the parties listed in the Initial Service List attached hereto were given prior notice of the presentation of the Petition;

GIVEN the provisions of the CCAA;

WHEREFORE, THE COURT:

1. **GRANTS** the Petition.

2. **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:

    - Service
    - Application of the CCAA
    - Effective Time
    - Plan of Arrangement
    - Procedural Consolidation
    - Stay of Proceedings against CCAA Parties and the Property
    - Stay of Proceedings against the Directors and Officers
    - Possession of Property and Operations
    - No Exercise of Rights or Remedies;
    - No Interference with Rights
    - Continuation of Services
    - Non-Derogation of Rights
    - Directors' and Officers' Indemnification and Charge
    - Restructuring
    - Powers of the Monitor
    - Priorities and General Provisions Relating to CCAA Charges
    - General

Service

3. **DECLARES** that sufficient prior notice of the presentation of this Petition has been given by the Petitioners to all of the parties listed in the Initial Service List attached hereto.

Application of the CCAA

4. **DECLARES** that the Petitioners are debtor companies to which the CCAA applies and although not Petitioners, the Mises-en-cause shall enjoy the protections and authorizations provided by this Order.

Effective time

5. **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montreal time, province of Quebec, on the date of this Order (the "**Effective Time**").

Plan of Arrangement

6. **DECLARES** that the Petitioners and the Mises-en-cause (collectively hereinafter referred to as the "**CCAA Parties**") shall have the authority to file with this Court and to submit to their creditors one or more plans of compromise or arrangement (collectively, the "**Plan**") in accordance with the CCAA.

Procedural Consolidation

7. **ORDERS** that the consolidation of these CCAA proceedings in respect of the CCAA Parties shall be for administrative purposes only and shall not effect a consolidation of the assets and property of each of the CCAA Parties and the including, without limitation, for the purposes of any Plan or Plans that may be hereafter proposed.

Stay of Proceedings against the CCAA Parties and the Property

8. **ORDERS** that, until and including February 26, 2015, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the CCAA Parties, or affecting the business operations and activities of the CCAA Parties (the "**Business**") or the Property (as defined herein below), including as provided in paragraph 11 hereinbelow except with leave of this Court. Any and all Proceedings currently under way against or in respect of the CCAA Parties or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

8.1 The rights of Her Majesty in right of Canada and Her Majesty in right of a Province are suspended in accordance with the terms and conditions of subsection 11.09 CCAA.

Stay of Proceedings against the Directors and Officers

9. **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the CCAA Parties nor against any person deemed to be a director or an officer of any of the CCAA Parties under subsection 11.03(3) CCAA (each, a "**Director**", and collectively the "**Directors**") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the CCAA Parties where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

Possession of Property and Operations

10. **ORDERS** that the CCAA Parties shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"), the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph 33 hereof.

11. **ORDERS** that the CCAA Parties shall be entitled to continue to utilize the central cash management system currently in place as described in the Petition or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the CCAA Parties of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as defined herein below) other than the CCAA Parties, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

12. **ORDERS** that each of the CCAA Parties are authorized to complete outstanding transactions and engage in new transactions with other CCAA Parties, and to continue, on and after the date of this Order, to buy and sell goods and services, including, without limitation head office and shared services, and allocate, collect and pay costs, expenses and other amounts from and to the other CCAA Parties, or any of them (collectively, together with the Cash Management System and all transactions, inter-company funding and other processes and services among any of the CCAA Parties, the "**Intercompany Transactions**") in the ordinary course of business. All ordinary course Intercompany Transactions among the CCAA Parties shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto, or to such governing principles, policies or procedures as the Monitor may require, or subject to further Order of this Court.

13. **ORDERS** that the CCAA Parties shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

a. all outstanding and future wages, salaries, bonuses, employee and current service pension contributions, expenses, benefits, vacation pay and termination and severance obligations payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

b. the fees and disbursements of any agents retained or employed by the CCAA Parties in respect of these proceedings, at their standard rates and charges.

14. **ORDERS** that, except as otherwise provided to the contrary herein, the CCAA Parties shall be entitled but not required to pay all reasonable expenses incurred by the CCAA Parties in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including Directors and Officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the CCAA Parties following the date of this Order.

15. **ORDERS** that the CCAA Parties shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension Plan, and (iv) income taxes; and

(b) all goods and services, harmonized sales or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the CCAA Parties and the in connection with the sale of goods and services by the CCAA Parties, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order.

16. [...]

No Exercise of Rights or Remedies

17. **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which any of the CCAA Parties is a party as a result of the insolvency of the CCAA Parties and/or these CCAA proceedings, any events of default or non-performance by the CCAA Parties or any admissions or evidence in these CCAA proceedings, of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the CCAA Parties, or affecting the Business, the Property or any part thereof are hereby stayed and suspended except with leave of this Court.

18. **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the CCAA Parties, or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the CCAA Parties, or any of them become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") is appointed in respect of the CCAA Parties, the

period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the CCAA Parties in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

No Interference with Rights

19. **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the CCAA Parties, including, without limitation, the amended and restated partnership agreement entered into among Bloom Lake General Partner Limited, as general partner (the "**General Partner**"), Cliffs Québec Iron Mining Limited, by its successor in interest, Consolidated Thompson Iron Mines Limited and Wugang Canada Resources Investment Limited (the "**LP Agreement**"), except with the written consent of the CCAA Parties, as applicable, and the Monitor, or with leave of this Court. Without limitation to the foregoing, the operation of any provision in the LP Agreement, or any other agreement, that purports to effect or cause a resignation of the General Partner, as general partner or accelerate, terminate, discontinue, alter, interfere with, repudiate, cancel, suspend or modify such agreement or arrangement as a result of the occurrence of any default or non-performance by or the insolvency of the CCAA Parties, or any one of them, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings is hereby stayed and restrained and under no circumstances shall the General Partner cease to be, or be replaced as, general partner of Bloom Lake Iron Ore Mine Limited Partnership absent consent of all the limited partners or further Order of this Court.

Continuation of Services

20. **ORDERS** that during the Stay Period and subject to paragraph 22 hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the CCAA Parties or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data

services, centralized banking services, payroll services, insurance, transportation, utility, fuel or other goods or services made available to the CCAA Parties, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the CCAA Parties, and that the CCAA Parties shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the CCAA Parties, without having to provide any security deposit or any other security, in accordance with normal payment practices of the CCAA Parties or such other practices as may be agreed upon by the supplier or service provider and the CCAA Parties, as applicable, with the consent of the Monitor, or as may be ordered by this Court.

21. **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the CCAA Parties on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the CCAA Parties.

22. **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by any CCAA Parties with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing or accruing to such Person or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by any of the CCAA Parties and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into a CCAA Party's account or the account of any of the CCAA Parties until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

Non-Derogation of Rights

23. **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the CCAA Parties shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

Directors' and Officers' Indemnification and Charge

30. **ORDERS** that the CCAA Parties shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the CCAA Parties after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.

31. **ORDERS** that the Directors of the CCAA Parties shall be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of $3.5 million (the "**Directors' Charge**"), as security for the indemnity provided in paragraph 30 of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs 46 and 47 of this Order.

32. **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay

amounts for which the Directors are entitled to be indemnified in accordance with paragraph 30 of this Order.

Restructuring

33. **DECLARES** that, to facilitate the orderly restructuring of its business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the CCAA Parties shall have the right, subject to approval of the Monitor or further order of the Court, to:

(a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate and make provision for the consequences thereof in the Plan;

(b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);

(c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed $100,000 or $1,000,000 in the aggregate except that this amount shall not include amounts with respect to the sale or other disposition of employee homes by the CCAA Parties and any employee homes may be sold or otherwise disposed of by the CCAA Parties upon approval of the Monitor;

(d) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the CCAA Parties, as applicable, and such employee, or failing such agreement, make provision to

deal with, any consequences thereof in the Plan, as the CCAA Parties the may determine;

(e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of their agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the CCAA Parties, as applicable, and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and

(f) subject to section 11.3 CCAA, assign any rights and obligations of CCAA Parties.

34. **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of any of the CCAA Parties pursuant to section 33 of the CCAA and subsection 33(e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving such CCAA Party and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the CCAA Party, provided nothing herein shall relieve such landlord of their obligation to mitigate any damages claimed in connection therewith.

35. **ORDERS** that the CCAA Parties, as applicable, shall provide to any relevant landlord notice of the intention of any of the CCAA Parties to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If a CCAA Party has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between such CCAA Party and the landlord.

36. **DECLARES** that, in order to facilitate the Restructuring, the CCAA Parties may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.

37. **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, the CCAA Parties are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for the sale of Property, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the CCAA Parties binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the CCAA Parties or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the CCAA Parties.

38. **ORDERS** that pursuant to clause 3(c)(i) of the *Electronic Commerce Protection Regulations,* made under *An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reilance on Electronic Means of Carrying Out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act,* S.C. 2010, c. 23, the CCAA Parties and the Monitor are authorized and permitted to send, or cause or permit to be sent, commercial electronic messages to an electronic address of prospective purchasers or bidders and to their

advisors but only to the extent desirable or required to provide information with respect to any sales process in these CCAA proceedings.

Powers of the Monitor

39. **ORDERS** that FTI Consulting Canada Inc. is hereby appointed to monitor the business and financial affairs of the CCAA Parties as an officer of this Court (the "**Monitor**") and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

(a) shall, as soon as practicable, (i) publish once a week for two (2) consecutive weeks, or as otherwise directed by the Court, in La Presse and the Globe & Mail National Edition and (ii) within five (5) business days after the date of this Order (A) post on the Monitor's website (the "**Website**") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the CCAA Parties of more than $1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;

(b) shall monitor the receipts and disbursements of the CCAA Parties;

(c) shall assist the CCAA Parties, to the extent required by the CCAA Parties, in dealing with their creditors and other interested Persons during the Stay Period;

(d) shall assist the CCAA Parties, to the extent required by the CCAA Parties, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;

(e) shall advise and assist the CCAA Parties, to the extent required by the CCAA Parties, to review the CCAA Parties' businesses and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;

(f) shall assist the CCAA Parties, to the extent required by the CCAA Parties, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;

(g) shall report to the Court on the state of the business and financial affairs of the CCAA Parties or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order and may file consolidated Reports for the CCAA Parties;

(h) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;

(i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;

(j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;

(k) may act as a "foreign representative" of any of the CCAA Parties or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;

(l) may give any consent or approval as may be contemplated by the Order or the CCAA;

(m) may hold and administer funds in connection with arrangements made among the CCAA Parties, any counter-parties and the Monitor, or by Order of this Court;

(n) may, to the extent to which the Monitor considers it necessary or desirable to do so, develop, in consultation with the CCAA Parties, such principles, policies and procedures as are satisfactory to the Monitor to govern anyor all category of Intercompany Transactions (the "**Intercompany Transaction Policies**");

(o) may review and monitor all Intercompany Transactions, including compliance with any Intercompany Transaction Policies that are applicable in the circumstances, in such manner as the Monitor, in consultation with the CCAA Parties, considers appropriate; and

(p) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the CCAA Parties, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the CCAA Parties nor shall the Monitor be deemed to have done so.

40. **ORDERS** that the CCAA Parties and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith

provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the CCAA Parties in connection with the Monitor's duties and responsibilities hereunder.

41. **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the CCAA Parties with information in response to requests made by them in writing addressed to the Monitor and copied to the counsel for the CCAA Parties. In the case of information that the Monitor has been advised by the CCAA Parties is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the CCAA Parties unless otherwise directed by this Court.

42. **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the CCAA Parties or continues the employment of employees of the CCAA Parties, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.

43. **DECLARES** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 39(i) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.

44. **ORDERS** that CCAA Parties shall pay weekly the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, counsel for the CCAA Parties, independent counsel to the Directors, and other advisers directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.

45. **DECLARES** that the Monitor, the Monitor's legal counsel, legal counsel for the CCAA Parties, independent counsel to the Directors, and the Monitor and the CCAA Parties' respective advisers, as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of $2,500,000 (the "**Administration Charge**"), having the priority established by paragraphs 46 and 47 hereof.

Priorities and General Provisions Relating to CCAA Charges

46. **DECLARES** that the priorities of the Administration Charge and the Directors' Charge (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:

(a) first, the Administration Charge; and

(b) second, the Directors' Charge;

47. **DECLARES** that each of the CCAA Charges shall rank behind any and all other existing hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances, in favour of any Persons that have not been served with notice of this Motion. The CCAA Parties and the beneficiaries of the CCAA Charges shall be entitled to seek priority ahead of the Encumbrances on notice to those parties likely to be affected by such priority (it being the intention of the CCAA Parties to seek priority for the Adminstration Charge and the Directors` Charge ahead of all Encumbrances at the Comeback Hearing (as defined below)).

48. **ORDERS** that, except as otherwise expressly provided for herein, the CCAA Parties shall not grant any Encumbrances in or against any Property that rank in priority to, or

pari passu with, any of the CCAA Charges unless the CCAA Parties, as applicable, obtain the prior written consent of the Monitor and the prior approval of the Court.

49. **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the CCAA Parties, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

50. **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) filed pursuant to the BIA or any bankruptcy order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any of the CCAA Parties; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the CCAA Parties (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

(a) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by the CCAA Parties of any Third Party Agreement to which any CCAA Party is a party; and

(b) the beneficiaries of the CCAA Charges shall not have any liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.

51. **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein, (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA or any bankruptcy order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any CCAA Party, and (iii) the provisions of any federal or provincial statute, the payments or disposition

of Property made by the CCAA Parties pursuant to this Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

52. **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the CCAA Parties and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the CCAA Parties.

General

53. **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the CCAA Parties or of the Monitor in relation to the Business or Property of the CCAA Parties, without first obtaining leave of this Court, upon ten (10) days written notice to counsel for the CCAA Parties, the Monitor's counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.

54. **ORDERS** that, subject to further Order of this Court, all motions in these CCAA proceedings are to be brought on not less than ten (10) calendar days' notice to all Persons on the service list. Each Motion shall specify a date (the "**Initial Return Date**") and time (the **"Initial Return Time**") for the hearing.

55. **ORDERS** that any Person wishing to object to the relief sought on a motion in these CCAA proceedings must serve responding motion materials or a notice stating the objection to the motion and the grounds for such objection (a "**Notice of Objection**") in writing to the moving party, the CCAA Parties and the Monitor, with a copy to all Persons on the service list, no later than 5 p.m. Montreal Time on the date that is four (4) calendar days prior to the Initial Return Date (the "**Objection Deadline**").

56. **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of the motion (the "**Presiding Judge**") may determine: (a) whether a hearing is necessary; (b) whether such hearing will be in person, by telephone or by written submissions only; and (c) the parties from whom submissions are required (collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

57. **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concering the Hearing Details. The Monitor shall thereafter advise the service list of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in these proceedings.

58. **ORDERS** that, if a Notice of Objection is served by the Objection Deadline, the interested parties shall appear before the Presiding Judge on the Initial Return Date at the Initial Return Time, or such earlier or later time as may be directed by the Court, to, as the Court may direct: (a) proceed with the hearing on the Initial Return Date and at the Initial Return Time; or (b) establish a schedule for the delivery of materials and the hearing of the contested motion and such other matters, including interim relief, as the Court may direct.

59. **DECLARES** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the CCAA Parties under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.

60. **DECLARES** that, except as otherwise specified herein, the CCAA Parties and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of

the CCAA Parties and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.

61. **DECLARES** that the CCAA Parties and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the CCAA Parties shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.

62. **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the CCAA Parties and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings;

63. **DECLARES** that the CCAA Parties or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other.

64. **DECLARES** that any interested Person may apply to this Court to vary or rescind this Order or seek other relief at the comeback hearing scheduled for February 19 and 20, 2015 (the **"Comeback Hearing"**) upon five (5) days notice to the CCAA Parties, the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;

65. **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

66. **DECLARES** that the Monitor or an authorized representative of the CCAA Parties, and in the case of the Monitor, with the prior consent of the CCAA Parties, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the *U.S. Bankruptcy Code*, including an order for recognition of these CCAA proceedings as "Foreign Main Proceedings" in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, and for which the Monitor, or the authorized representative of the CCAA Parties, shall be the foreign representative of the CCAA Parties. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

67. **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America and any court or administrative body elsewhere, to give effect to this Order and to assist the CCAA Parties, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the CCAA Parties and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the CCAA Parties in any foreign proceeding, to assist the CCAA Parties and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.

68. **ORDERS** the provisional execution of the Order notwithstanding any appeal.

January 27, 2015

66. **DECLARES** that the Monitor or an authorized representative of the CCAA Parties, and in the case of the Monitor, with the prior consent of the CCAA Parties, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the *U.S. Bankruptcy Code*, including an order for recognition of these CCAA proceedings as "Foreign Main Proceedings" in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, and for which the Monitor, or the authorized representative of the CCAA Parties, shall be the foreign representative of the CCAA Parties. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

67. **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America and any court or administrative body elsewhere, to give effect to this Order and to assist the CCAA Parties, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the CCAA Parties and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the CCAA Parties in any foreign proceeding, to assist the CCAA Parties and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.

68. **ORDERS** the provisional execution of the Order notwithstanding any appeal.

January 27, 2015

Honourable Mr. Justice Martin Castonguay, J.S.C.

Jodie Cook

SCHEDULE 3

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

File: No: 500-11-048114-157

SUPERIOR COURT
Commercial Division

Montreal, May 28, 2015

Present: The Honourable
Mr. Justice Stephen W. Hamilton, J.S.C.

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

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

Petitioners

- and -

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

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

Monitor

RECTIFIED INITIAL ORDER

ON READING Petitioners Wabush Iron Co. Limited and Wabush Resources Inc. (the "**Wabush Petitioners**")'s Motion for an Initial Order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the "**CCAA**") and the exhibits, the affidavit of Clifford Smith sworn on May 19, 2015 filed in support thereof (the "**Petition**"), the consent of FTI Consulting Canada Inc. to act as monitor of the Wabush CCAA Parties as hereinafter defined (the "**Monitor**"), relying upon the submissions of counsel for the Petitioners and the Mises-en-cause and the Monitor and being advised that the Interim Lender (as defined herein), the Directors (as defined herein) and the Monitor have received service of the Petition;

GIVEN the provisions of the CCAA;

WHEREFORE, THE COURT:

1. **GRANTS** the Petition.

2. **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:

   - Application of the CCAA
   - Effective Time
   - Plan of Arrangement
   - Procedural Consolidation
   - Stay of Proceedings against Wabush CCAA Parties and the Property
   - Stay of Proceedings against the Directors and Officers
   - Possession of Property and Operations
   - No Exercise of Rights or Remedies;
   - No Interference with Rights
   - Continuation of Services
   - Non-Derogation of Rights
   - Interim Financing (DIP)
   - Directors' Indemnification and Charge

- Restructuring
- Powers of the Monitor
- Priorities and General Provisions Relating to CCAA Charges
- General

Application of the CCAA

3. **DECLARES** that the Wabush Petitioners are debtor companies to which the CCAA applies and although not Petitioners, the Mises-en-cause Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively, the "**Wabush Mises-en-cause**") shall enjoy the protections and authorizations provided by this Order.

Effective time

4. **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montreal time, province of Quebec, on May 20,2015(the "**Effective Time**").

Plan of Arrangement

5. **DECLARES** that the Wabush Petitioners and the Wabush Mises-en-cause (collectively hereinafter referred to as the "**Wabush CCAA Parties**") shall have the authority to file with this Court and to submit to their creditors one or more plans of compromise or arrangement (collectively, the "**Plan**") in accordance with the CCAA.

Procedural Consolidation

6. **ORDERS** that the consolidation of these CCAA proceedings in respect of the Wabush CCAA Parties subject to this Order and the Bloom Lake CCAA Parties subject to the Initial Order of January 27, 2105 (as amended) (collectively, the "**CCAA Parties**") shall be for administrative purposes only and shall not effect a consolidation of the assets and property of each of the CCAA Parties, without limitation, for the purposes of any Plan or Plans that may be hereafter proposed.

Stay of Proceedings against the Wabush CCAA Parties and the Property

7. **ORDERS** that, until and including June 19, 2015, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of Wabush CCAA Parties or affecting the business operations and activities of the Wabush CCAA Parties (the "**Business**") or the Property (as defined below), including as provided in paragraph 11 hereinbelow except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Wabush CCAA Parties or affecting the Business or the Property of the Wabush CCAA Parties are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

8.1 The rights of Her Majesty in right of Canada and Her Majesty in right of a Province are suspended in accordance with the terms and conditions of subsection 11.09 CCAA.

Stay of Proceedings against the Directors and Officers

8. **ORDERS** that during the Wabush Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Wabush CCAA Parties nor against any person deemed to be a director or an officer of any of the Wabush CCAA Parties under subsection 11.03(3) CCAA (each, a "**Director**", and collectively the "**Directors**") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Wabush CCAA Parties where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

Possession of Property and Operations

9. **ORDERS** that the Wabush CCAA Parties shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"), the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph 15 hereof.

10. **ORDERS** that the Wabush CCAA Parties shall be entitled to continue to utilize the central cash management system currently in place as described in the Petition or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Wabush CCAA Parties of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as defined herein below) other than the Wabush CCAA Parties, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

11. **ORDERS** that each of the Wabush CCAA Parties are authorized to complete outstanding transactions and engage in new transactions with other Wabush CCAA Parties or their affiliates, and to continue, on and after the date of this Order, to buy and sell goods and services, including, without limitation head office and shared services, and allocate, collect and pay costs, expenses and other amounts from and to the other Wabush CCAA Parties or their affiliates, or any of them (collectively, together with the Cash Management System and all transactions, inter-company funding and other processes and services among any of the Wabush CCAA Parties or their affiliates, the "**Intercompany Transactions**") in the ordinary course of business. All ordinary course Intercompany Transactions among the Wabush CCAA Parties or their affiliates shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto, or to such governing principles, policies or procedures as the Monitor may require, or subject to further Order of this Court.

12. **ORDERS** that the Wabush CCAA Parties shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, bonuses, employee and current service pension contributions, expenses, benefits, vacation pay and termination and severance obligations payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any agents retained or employed by the Wabush CCAA Parties in respect of these proceedings, at their standard rates and charges.

13. **ORDERS** that, except as otherwise provided to the contrary herein, the Wabush CCAA Parties shall be entitled but not required to pay all reasonable expenses incurred by the Wabush CCAA Parties in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including Directors and Officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Wabush CCAA Parties following the date of this Order.

14. **ORDERS** that the Wabush CCAA Parties shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension Plan, and (iv) income taxes; and

(b) all goods and services, harmonized sales or other applicable sales taxes

(collectively, "**Sales Taxes**") required to be remitted by the Wabush CCAA Parties and in connection with the sale of goods and services by the Wabush CCAA Parties, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order.

No Exercise of Rights or Remedies

15. **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which any of the Wabush CCAA Parties is a party as a result of the insolvency of the Wabush CCAA Parties and/or these CCAA proceedings, any events of default or non-performance by the Wabush CCAA Parties or any admissions or evidence in these CCAA proceedings, of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Wabush CCAA Parties, or affecting the Business, the Property or any part thereof are hereby stayed and suspended except with leave of this Court.

16. **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Wabush CCAA Parties, or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Wabush CCAA Parties, or any of them become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") is appointed in respect of the Wabush CCAA Parties, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Wabush CCAA Parties in determining the 30 day periods

referred to in Sections 81.1 and 81.2 of the BIA.

No Interference with Rights

17. **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Wabush CCAA Parties, except with the written consent of the Wabush CCAA Parties, as applicable, and the Monitor, or with leave of this Court.

Continuation of Services

18. **ORDERS** that during the Stay Period and subject to paragraph 20 hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Wabush CCAA Parties or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility, fuel or other goods or services made available to the Wabush CCAA Parties, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Wabush CCAA Parties, and that the Wabush CCAA Parties shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Wabush CCAA Parties, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Wabush CCAA Parties or such other practices as may be agreed upon by the supplier or service provider and the Wabush CCAA Parties, as applicable, with the consent of the Monitor, or as may be ordered by this Court.

19. **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration

provided to the Wabush CCAA Parties on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Wabush CCAA Parties.

20. **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by any Wabush CCAA Parties with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing or accruing to such Person or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by any of the Wabush CCAA Parties and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into a Wabush CCAA Party's account or the account of any of the Wabush CCAA Parties until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

Non-Derogation of Rights

21. **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Wabush CCAA Parties shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

Interim Financing (DIP)

22. **ORDERS** that the Wabush Petitioners be and are hereby authorized to borrow, repay and reborrow from Cliffs Mining Company (the "**Interim Lender**") such amounts from time to time as the Wabush Petitioners may consider necessary or desirable, up to a maximum principal amount of USD $10 million outstanding at any time, on the terms and

conditions as set forth in the Interim Financing Term Sheet attached hereto as Schedule A (the "**Interim Financing Term Sheet**") and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of the Wabush CCAA Parties and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents (as defined hereinafter) (the "**Interim Facility**").

23. **ORDERS** that the Wabush CCAA Parties are hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the "**Interim Financing Documents**") as may be required by the Interim Lender in connection with the Interim Facility and the Interim Financing Term Sheet, and the Wabush CCAA Parties are hereby authorized to perform all of their obligations under the Interim Financing Documents.

24. **ORDERS** that the Wabush CCAA Parties shall pay to the Interim Lender, when due, all amounts owing under the Interim Financing Documents (including principal, interest, fees and expenses, including without limitation, all reasonable fees and disbursements of counsel and all other reasonably required advisers to or agents of the Interim Lender on a full indemnity basis (the "**Interim Lender Expenses**")) and shall perform all of their other obligations to the Interim Lender pursuant to the Interim Financing Term Sheet, the Interim Financing Documents and this Order.

25. **DECLARES** that all of the Property of the Wabush CCAA Parties is hereby subject to a charge and security for an aggregate amount of CAD $15 million (such charge and security is referred to herein as the "**Interim Lender Charge**") in favour of the Interim Lender as security for all obligations of the Wabush CCAA Parties to the Interim Lender with respect to all amounts owing (including principal, interest and the Interim Lender Expenses) under or in connection with the Interim Financing Term Sheet and the Interim Financing Documents. The Interim Lender Charge shall have the priority established by paragraphs 46 and 47 of this Order.

26. **ORDERS** that the claims of the Interim Lender pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lender, in that capacity, shall be, subject to the terms of this

Order, treated as an unaffected creditor in these proceedings and in any Plan.

27. **ORDERS** that the Interim Lender may:

(a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lender Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and

(b) notwithstanding the terms of the paragraph to follow, refuse in accordance with the provisions of the Interim Financing Term Sheet and the Interim Financing Documents to make any advance to the Wabush Petitioners.

28. **ORDERS** that the Interim Lender shall not take any enforcement steps under the Interim Financing Documents or the Interim Lender Charge without providing at least 5 business days written notice (the "**Notice Period**") of a default thereunder to the Wabush Petitioners, the Monitor and to creditors whose rights are registered or published at the appropriate registers or who have requested a copy of such notice prior to delivery of any such written notice to the Wabush Petitioners and without further order of this Court. Upon expiry of such Notice Period, the Interim Lender shall be entitled to take any and all steps under the Interim Financing Documents and the Interim Lender Charge and otherwise permitted at law, but without having to send any demands under Section 244 of the BIA.

29. **ORDERS** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs 22 to 28 hereof unless either (a) notice of a motion for such order is served on the Interim Lender by the moving party within seven (7) days after that party was served with the Order or (b) the Interim Lender applies for or consents to such order.

Directors' and Officers' Indemnification and Charge

30. **ORDERS** that the Wabush CCAA Parties shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason

of or in relation to their respective capacities as directors or officers of the Wabush CCAA Parties after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA

31. **ORDERS** that the Directors of the Wabush CCAA Parties shall be entitled to the benefit of and are hereby granted a charge and security in the Property of the Wabush CCAA Parties to the extent of the aggregate amount of $2 million (the "**Directors' Charge**"), as security for the indemnity provided in paragraph 30 of this Order as it relates to obligations and liabilities that the Directors of the Wabush CCAA Parties may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs 46 and 47 of this Order.

32. **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph 30 of this Order.

Restructuring

33. **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Wabush CCAA Parties shall have the right, subject to approval of the Monitor or further order of the Court, to:

(a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate and make provision for the consequences thereof in the Plan;

(b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject

to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);

(c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed $100,000 or $1,000,000 in the aggregate except that this amount shall not include amounts with respect to the sale or other disposition of employee homes by the Wabush CCAA Parties and any employee homes may be sold or otherwise disposed of by the Wabush CCAA Parties upon approval of the Monitor;

(d) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Wabush CCAA Parties, as applicable, and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Wabush CCAA Parties may determine;

(e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of their agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Wabush CCAA Parties, as applicable, and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and

(f) subject to section 11.3 CCAA, assign any rights and obligations of Wabush CCAA Parties.

34. **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of any of the Wabush CCAA Parties pursuant to section 33 of the CCAA and subsection 33(e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants

during normal business hours by giving such Wabush CCAA Party and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Wabush CCAA Party, provided nothing herein shall relieve such landlord of their obligation to mitigate any damages claimed in connection therewith.

35. **ORDERS** that the Wabush CCAA Parties, as applicable, shall provide to any relevant landlord notice of the intention of any of the Wabush CCAA Parties to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If a Wabush CCAA Party has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between such Wabush CCAA Party and the landlord.

36. **DECLARES** that, in order to facilitate the Restructuring, the Wabush CCAA Parties may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.

37. **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, the Wabush CCAA Parties are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for the sale of Property, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Wabush CCAA Parties binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Wabush CCAA

Parties or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Wabush CCAA Parties.

38. **ORDERS** that pursuant to clause 3(c)(i) of the *Electronic Commerce Protection Regulations,* made under *An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying Out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act,* S.C. 2010, c. 23, the Wabush CCAA Parties and the Monitor are authorized and permitted to send, or cause or permit to be sent, commercial electronic messages to an electronic address of prospective purchasers or bidders and to their advisors but only to the extent desirable or required to provide information with respect to any sales process in these CCAA proceedings.

Powers of the Monitor

39. **ORDERS** that FTI Consulting Canada Inc. is hereby appointed to monitor the business and financial affairs of the Wabush CCAA Parties as an officer of this Court (the "**Monitor**") and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

(a) shall, as soon as practicable, (i) publish once a week for two (2) consecutive weeks, or as otherwise directed by the Court, in La Presse and the Globe & Mail National Edition and (ii) within five (5) business days after the date of this Order (A) post on the Monitor's website (the "**Website**") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Wabush CCAA Parties of more than $1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the

estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;

(b) shall monitor the receipts and disbursements of the Wabush CCAA Parties;

(c) shall assist the Wabush CCAA Parties, to the extent required by the Wabush CCAA Parties, in dealing with their creditors and other interested Persons during the Stay Period;

(d) shall assist the Wabush CCAA Parties, to the extent required by the Wabush CCAA Parties, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;

(e) shall assist the Wabush CCAA Parties, to the extent required by the Wabush CCAA Parties, to review the Wabush CCAA Parties' businesses and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;

(f) shall assist the Wabush CCAA Parties, to the extent required by the Wabush CCAA Parties, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;

(g) shall report to the Court on the state of the business and financial affairs of the Wabush CCAA Parties or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order and may file consolidated Reports for the Wabush CCAA Parties;

(h) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;

(i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;

(j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;

(k) may act as a "foreign representative" of any of the Wabush CCAA Parties or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;

(l) may give any consent or approval as may be contemplated by the Order or the CCAA;

(m) may hold and administer funds in connection with arrangements made among the Wabush CCAA Parties, any counter-parties and the Monitor, or by Order of this Court;

(n) may, to the extent to which the Monitor considers it necessary or desirable to do so, develop, in consultation with the Wabush CCAA Parties, such principles, policies and procedures as are satisfactory to the Monitor to govern any or all category of Intercompany Transactions (the "**Intercompany Transaction Policies**");

(o) may review and monitor all Intercompany Transactions, including compliance with any Intercompany Transaction Policies that are applicable in the circumstances, in such manner as the Monitor, in consultation with the Wabush CCAA Parties, considers appropriate;

(p) may have direct discussions and communications with the Interim Lender from time to time in accordance with the Interim Financing Documents and in

relation to the Interim Facility; and

(q) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Wabush CCAA Parties, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Wabush CCAA Parties nor shall the Monitor be deemed to have done so.

40. **ORDERS** that the Wabush CCAA Parties and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Wabush CCAA Parties in connection with the Monitor's duties and responsibilities hereunder.

41. **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Wabush CCAA Parties with information in response to requests made by them in writing addressed to the Monitor and copied to the counsel for the Wabush CCAA Parties. In the case of information that the Monitor has been advised by the Wabush CCAA Parties is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Wabush CCAA Parties unless otherwise directed by this Court.

42. **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Wabush CCAA Parties or continues the employment of employees of the Wabush CCAA Parties, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.

43. **DECLARES** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days' notice to the Monitor and its counsel. The entities related to or affiliated

with the Monitor referred to in subparagraph 39(i) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.

44. **ORDERS** that the Wabush CCAA Parties shall pay weekly the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, counsel for the Wabush CCAA Parties, independent counsel to the Directors, and other advisers directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.

45. **DECLARES** that the Monitor, the Monitor's legal counsel, legal counsel for the Wabush CCAA Parties, independent counsel to the Directors, and the Monitor and the Wabush Wabush CCAA Parties' respective advisers, as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property of the Wabush CCAA Parties to the extent of the aggregate amount of $1,750,000 (the "**Administration Charge**"), having the priority established by paragraphs 46 and 47 hereof.

Priorities and General Provisions Relating to CCAA Charges

46. **DECLARES** that the priorities of the Administration Charge, the Directors' Charge and the Interim Lender Charge (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows

(a) first, the Administration Charge;

(b) second, the Directors' Charge; and

(c) third, the Interim Lender Charge.

47. **DECLARES** that each of the CCAA Charges shall rank ahead of all hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") in favour of Cliffs Mining Company and behind any and all other existing Encumbrances affecting the Property of

the Wabush CCAA Parties charged by such Encumbrances, in favour of any Persons that have not been served with notice of this Motion. The Wabush CCAA Parties and the beneficiaries of the CCAA Charges shall be entitled to seek priority for the CCAA Charges ahead of the Encumbrances in favour of parties other than Cliffs Mining Company affecting the Property of the Wabush CCAA Parties on notice to those parties likely to be affected by such priority (it being the intention of the Wabush CCAA Parties to seek priority for the CCAA Charges ahead of all Encumbrances at the Comeback Hearing (as defined below)).

48. **ORDERS** that, except as otherwise expressly provided for herein, the Wabush CCAA Parties shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Wabush CCAA Parties, as applicable, obtain the prior written consent of the Monitor, the Interim Lender and the prior approval of the Court.

49. **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Wabush CCAA Parties, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

50. **DECLARES** that the CCAA Charges, the Interim Financing Term Sheet and the Interim Financing Documents and the rights and remedies of the beneficiaries of the CCAA Charges and the rights and remedies of the Interim Lender under the Interim Financing Term Sheet and the Interim Financing Documents, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) filed pursuant to the BIA or any bankruptcy order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any of the Wabush CCAA Parties; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Wabush CCAA Parties (a "**Third Party Agreement**"), and

notwithstanding any provision to the contrary in any Third Party Agreement:

(a) neither the creation of any of the CCAA Charges nor the execution, delivery, perfection, registration or performance of the Interim Financing Term Sheet or the Interim Financing Documents shall create or be deemed to constitute a breach by the CCAA Parties of any Third Party Agreement to which any CCAA Party is a party; and

(b) the beneficiaries of the CCAA Charges shall not have any liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges or the Wabush CCAA Parties entering into or performing their obligations under the Interim Financing Term Sheet and the Interim Financing Documents.

51. **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein, (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA or any bankruptcy order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Wabush CCAA Party, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Wabush CCAA Parties pursuant to this Order, the Interim Financing Term Sheet and the Interim Financing Documents and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

52. **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Wabush CCAA Parties and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Wabush CCAA Parties.

53. **ORDERS** that if the sale proceeds of assets charged by valid and enforceable security are used to satisfy in priority payment of amounts secured by any of the CCAA Charges, the secured creditor(s) holding such valid and enforceable security charging said assets

(the "**Impaired Secured Creditor**") shall be deemed to have paid the holder of the CCAA Charge and such Impaired Secured Creditor shall be subrogated in its rights to the extent of the lesser of i) the net realization proceeds of the assets, charged in favor of the Impaired Secured Creditor, used to repay in priority amounts secured by the CCAA Charges; and (ii) the amounts otherwise owing to the Impaired Secured Creditor. In the event that more than one Impaired Secured Creditor is subrogated to the CCAA Charges as a result of a payment to the holder of the CCAA Charge, such Impaired Secured Creditors shall rank *pari passu* as subrogees, rateably in accordance with the extent to which each of them is subrogated to the holder of the CCAA Charge. The allocation of the burden of the CCAA Charges amongst the assets and creditors shall be determined by subsequent application to the Court if necessary.

54. **ORDERS** that no Impaired Secured Creditor shall be entitled to enforce any subrogation rights to the CCAA Charges before all the other claims subject to the CCAA Charges have been fully satisfied.

General

55. **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Wabush CCAA Parties or of the Monitor in relation to the Business or Property of the Wabush CCAA Parties, without first obtaining leave of this Court, upon ten (10) days' written notice to counsel for the Wabush CCAA Parties, the Monitor's counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.

56. **ORDERS** that, subject to further Order of this Court, all motions in these CCAA proceedings are to be brought on not less than ten (10) calendar days' notice to all Persons on the service list. Each Motion shall specify a date (the "**Initial Return Date**") and time (the "**Initial Return Time**") for the hearing.

57. **ORDERS** that any Person wishing to object to the relief sought on a motion in these CCAA proceedings must serve responding motion materials or a notice stating the objection to the motion and the grounds for such objection (a "**Notice of Objection**") in

writing to the moving party, the Wabush CCAA Parties and the Monitor, with a copy to all Persons on the service list, no later than 5 p.m. Montreal Time on the date that is four (4) calendar days prior to the Initial Return Date (the "**Objection Deadline**").

58. **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of the motion (the "**Presiding Judge**") may determine: (a) whether a hearing is necessary; (b) whether such hearing will be in person, by telephone or by written submissions only; and (c) the parties from whom submissions are required (collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

59. **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concering the Hearing Details. The Monitor shall thereafter advise the service list of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in these proceedings.

60. **ORDERS** that, if a Notice of Objection is served by the Objection Deadline, the interested parties shall appear before the Presiding Judge on the Initial Return Date at the Initial Return Time, or such earlier or later time as may be directed by the Court, to, as the Court may direct: (a) proceed with the hearing on the Initial Return Date and at the Initial Return Time; or (b) establish a schedule for the delivery of materials and the hearing of the contested motion and such other matters, including interim relief, as the Court may direct.

61. **DECLARES** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Wabush CCAA Parties under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.

62. **DECLARES** that, except as otherwise specified herein, the Wabush CCAA Parties and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or

other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Wabush CCAA Parties and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.

63. **DECLARES** that the Wabush CCAA Parties and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Wabush CCAA Parties shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.

64. **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Wabush CCAA Parties and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings;

65. **DECLARES** that the Wabush CCAA Parties or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other.

66. **DECLARES** that any interested Person may apply to this Court to vary or rescind this Order or seek other relief at the comeback hearing scheduled for June 9, 2015 (the "**Comeback Hearing**") upon five (5) days' notice to the Wabush CCAA Parties, the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;

67. **DECLARES** that the Order and all other orders in these proceedings shall have full force

and effect in all provinces and territories in Canada.

68. **DECLARES** that the Monitor or an authorized representative of the Wabush CCAA Parties, and in the case of the Monitor, with the prior consent of the Wabush CCAA Parties, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the *U.S. Bankruptcy Code*, including an order for recognition of these CCAA proceedings as "Foreign Main Proceedings" in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, and for which the Monitor, or the authorized representative of the Wabush CCAA Parties, shall be the foreign representative of the Wabush CCAA Parties. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

69. **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America and any court or administrative body elsewhere, to give effect to this Order and to assist the Wabush CCAA Parties, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Wabush CCAA Parties and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Wabush CCAA Parties in any foreign proceeding, to assist the Wabush CCAA Parties and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.

70. **ORDERS** the provisional execution of the Order notwithstanding any appeal.

May 28, 2015

Honourable Mr. Justice Stephen W. Hamilton, J.S.C.

SCHEDULE 4

C A N A D A

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. 36, as amended)

N°: **500-11**

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

BLOOM LAKE GENERAL PARTNER LIMITED, a corporation incorporated pursuant to the laws of Ontario, having its head office at 1155 Rue University, Suite 508, Montréal, Québec.

-and-

BLOOM LAKE RAILWAY COMPANY LIMITED, a corporation incorporated pursuant to the laws of Newfoundland and Labrador, having its head office at 1155 Rue University, Suite 508, Montréal, Québec.

-and-

QUINTO MINING CORPORATION, a corporation incorporated pursuant to the laws of British Columbia, having its head office at 1155 Rue University, Suite 508, Montréal, Québec.

-and-

8568391 CANADA LIMITED, a corporation incorporated pursuant to the laws of Canada, having its head office at 1155 Rue University, Suite 508, Montréal, Québec.

-and –

CLIFFS QUÉBEC IRON MINING ULC, an unlimited liability company governed by the laws of British Columbia, having its head office at 1155 Rue University, Suite 508, Montréal, Québec.

Petitioners

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP, a limited partnership formed pursuant to the laws of Ontario, having its head office at 1155 Rue University, Suite 508, Montréal, Québec.

Mise-en-cause

-and-

FTI CONSULTING CANADA INC., a corporation incorporated pursuant to the laws of Canada, having its registered office at 79 Wellington Street West, Suite 2010, Toronto, Ontario.

Proposed Monitor

MOTION FOR THE ISSUANCE OF AN INITIAL ORDER
(Sections 4, 5, 11 and *ff.* of the *Companies' Creditors Arrangement Act* ("**CCAA**"))

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE CCAA PARTIES SUBMIT:

1. INTRODUCTION

1. Bloom Lake General Partner Limited ("**Bloom Lake GP**"), Bloom Lake Railway Company Limited ("**Bloom Lake Railway Company**"), Quinto Mining Corporation ("**Quinto**"), 8568391 Canada Limited ("**8568391**") and Cliffs Québec Iron Mining ULC, formerly Cliffs Québec Iron Mining Limited ("**CQIM**") (collectively, the "**Petitioners**") are debtor companies under the CCAA.

2. While The Bloom Lake Iron Ore Mine Limited Partnership ("**Bloom Lake LP**"), the mise-en-cause in these CCAA proceedings (the "**Mise-en-cause**"), is not a petitioner in these proceedings, it seeks to have the protections and authorizations of these proceedings extended to it as it is intertwined with the Petitioners and forms an integral part of the business, operations and/or assets of certain of the Petitioners and more specifically, the Bloom Lake Mine (as defined below).

3. As described herein, the Petitioners and Bloom Lake LP (collectively, the "**CCAA Parties**") are affiliated companies and their activities, together, comprise substantially all of the Canadian operations of, and related to, the mine located approximately 13 km north of Fermont, Québec in the Labrador Trough, a mature mining district located in Québec and Labrador, known as the Bloom Lake Mine (the "**Bloom Lake Mine**") and the Leased Port Premises (as defined below).

4. A chart illustrating the basic corporate structures of the CCAA Parties is communicated herewith as **Exhibit R-1**. All of the Petitioners, with the exception of Bloom Lake GP, are indirect wholly-owned subsidiaries of Cliffs Natural Resources Inc. ("**CNR**"), an international mining and natural resources company listed on the New York Stock Exchange under the symbol "CLF".

5. Bloom Lake GP and Bloom Lake LP are held 82.848% by CQIM, a Petitioner in these CCAA proceedings, and 17.152 % by an unrelated third party, being Wugang Canada Resources Investment Limited ("**WISCO**"), a subsidiary of Wuhan Iron Steel (Group) Corporation.

6. The CCAA Parties seek protection under the CCAA to facilitate the reorganization of their businesses and operations through a sale of assets or a plan of arrangement and reorganization. More specifically, the CCAA Parties hereby seek the issuance of an initial CCAA order substantially in the form and substance of the draft Initial Order communicated herewith as **Exhibit R-2** (the "**Draft Initial Order**").

7. The Bloom Lake Mine was acquired as part of a share acquisition of Consolidated Thompson Iron Mines Limited ("**CTML**") (now CQIM). Since its acquisition, the Bloom Lake Mine has never been profitable and has suffered operating losses. As a result, it has required significant funding for operations. Since March 2013, that funding has been provided solely by non-Canadian affiliates of the CCAA Parties.

8. Losses associated with the operation of the Bloom Lake Mine increased substantially, especially through 2014, due to a number of factors, including the following:

   a) unanticipated significant additional costs with respect to the Bloom Lake Mine discovered post-acquisition with respect to the tailing ponds, water management and other environmental matters;

   b) significant costs associated with the extraction, processing and shipment of iron ore from the Bloom Lake Mine and the loading thereof onto ocean-going vessels for delivery to overseas customers; and

   c) the significant decline in the market price per tonne of iron ore over the last 12-18 months;

9. Based on market conditions over the past 12-18 months, the CCAA Parties believe it is necessary to either materially reduce its operating costs or expand their capacity in order to reduce the marginal cost per tonne for the extraction, processing and transportation of the iron ore for delivery to customers in order to achieve long term feasibility.

10. It was also the CCAA Parties' belief that if such cost savings could be achieved, there would be adequate demand for the increased capacity of Bloom Lake Mine's high grade iron ore from Asian steel producers and other end users to generate sufficient revenues to make the Bloom Lake Mine sustainable on a long term basis.

11. Significant efforts were undertaken to find buyers, partners and/or investors for the operations and/or assets of the CCAA Parties to offset the losses and assist in the development of the Bloom Lake Mine to the next phase.

12. These efforts were, however, hampered by the economic slowdown in China and other parts of Asia, and in particular the decreased demand for iron ore. This led to a significant decrease over the last 12 months in the price of iron ore, which dropped from USD$134 per tonne as at January 2, 2014 to approximately USD$67 per tonne as at January 22, 2015.

13. As result, in the fall of 2014, CNR announced that it was exiting the Canadian iron ore business and that the operations at the Bloom Lake Mine would be suspended. It also announced that it would be exploring options in respect of its other Canadian subsidiaries.

14. Despite further significant efforts since that time, those efforts have not been successful and no acceptable option has been identified. CNR and its affiliates are not prepared to continue to fund further losses of the CCAA Parties except as may be required to execute the proposed CCAA proceedings described herein on a priority secured basis.

15. Except for non-material amounts of revenue from service arrangements with respect to the ArcelorMittal Mining Canada G.P. ("**ArcelorMittal**") construction mining camp ("**ArcelorMittal Mining Camp**"), given the suspension of operations at the Bloom Lake Mine, none of the CCAA Parties are generating any further revenue, nor are they expected to generate any revenue in the foreseeable future.

16. As a result of the liquidity crisis, the CCAA Parties are no longer capable of meeting their obligations as they generally become due without significant additional financing. In addition, the value of the CCAA Parties' assets are less than their liabilities. The CCAA Parties are now insolvent and therefore seek protection from their creditors from this Court under the CCAA.

17. These CCAA proceedings will allow the CCAA Parties to attempt to preserve and maximize the value of their businesses and assets and will provide the CCAA Parties with the stability they require to consider and review all restructuring and reorganization options. The CCAA Parties will be seeking the approval of the Court to conduct an orderly sale and investor solicitation process at a subsequent hearing before the Court.

18. If the CCAA Parties do not have sufficient liquidity or resources to fund these CCAA proceedings, the CCAA Parties are in the process of negotiating a commitment for additional liquidity through debtor-in-possession (DIP) financing from their non-Canadian affiliates, subject to approval of the Court.

19. When the Bloom Lake Mine was operational, Bloom Lake Railway Company provided essential transportation services to the Bloom Lake Mine. It is believed that the prospects of finding potential investors and/or purchasers for some or all of the other CCAA Parties or their assets would be significantly enhanced if the Bloom Lake Railway Company is included as a petitioner in these CCAA proceedings.

20. At this time, the proposed consolidation of the proceedings in respect of the CCAA Parties is for administrative purposes only and does not effect a consolidation of the assets and property of the CCAA Parties, including for the purposes of any plan or plans of arrangement that may be hereafter proposed.

21. Unless provided otherwise in the Draft Initial Order herein (Exhibit R-2), the CCAA Parties will continue to maintain their separate property and assets.

22. Unless expressly provided to the contrary, any reference herein to monetary amounts refers to Canadian dollars.

2. THE CCAA PARTIES' CORPORATE STRUCTURE

2.1 The Bloom Lake Mine

2.1.1 Bloom Lake GP/Bloom Lake LP

23. Bloom Lake GP is a corporation incorporated pursuant to the laws of Ontario as appears from the company profile communicated herewith as **Exhibit R-3**.

24. Bloom Lake GP's head office is located at 1155 Rue University, Suite 508, Montréal, Québec (the "**Montréal Head Office**") as it appears from page 5 of the CNR 2013 Annual Report communicated herewith as **Exhibit R-4**.

25. As noted above, Bloom Lake GP is owned 82.848% by CQIM and 17.152% by WISCO, an unrelated third party.

26. Bloom Lake GP is the General Partner of Bloom Lake LP (the "**General Partner**"). The primary business of Bloom Lake GP is the operation of the Bloom Lake Mine.

27. The Bloom Lake Mine is managed by CQIM pursuant to a management contract described below. That contract provides for a yearly annual fee, calculated and payable monthly and is based on the level of commercial production by Bloom Lake LP.

28. As commercial production has ceased at the Bloom Lake Mine, Bloom Lake LP and CQIM will have to come to an agreement on fair compensation for CQIM's management services after the date of the Initial Order.

29. Bloom Lake LP is a limited partnership formed pursuant to the laws of Ontario as appears from the partnership profile report communicated herewith as **Exhibit R-5**.

30. Bloom Lake LP's head office is located at the Montréal Head Office as it appears from page 5 of the CNR 2013 Annual Report (Exhibit R-4).

31. The limited partnership units in Bloom Lake LP are held 82.848% by CQIM and 17.152% by WISCO.

32. At the time that CNR indirectly acquired the shares of CTML (now CQIM) in May 2011, CQIM had a 75% interest in Bloom Lake LP. That interest increased to 82.848% on November 20, 2013 upon the dilution of WISCO's interest resulting from WISCO's failure to honour capital calls under the limited partnership agreement and pursuant to a settlement agreement entered into on December 5, 2012.

33. All of Bloom Lake GP and Bloom Lake LP's revenues and substantially all of their liabilities have been generated from their operations in Québec related to the Bloom Lake Mine.

2.1.2 Bloom Lake Railway Company

34. Bloom Lake Railway Company is a corporation incorporated pursuant to the laws of Newfoundland & Labrador as appears from the company profile report communicated herewith as **Exhibit R-6**.

35. Bloom Lake Railway Company's head office is located at the Montréal Head Office as it appears from page 5 of the CNR 2013 Annual Report (Exhibit R-4).

36. Bloom Lake Railway Company is a wholly-owned subsidiary of CQIM.

37. The rail assets comprising the Bloom Lake Railway are owned by CQIM.

38. Bloom Lake Railway Company's primary business was the operation of a short-line railway comprising a 32 kilometre rail spur contained wholly within Newfoundland & Labrador (the "**Bloom Lake Railway**"). The Bloom Lake Railway connects the Bloom Lake Mine to the railway generated by Northern Land Company Limited. (the "**Northern Land Railway**"), the Québec North Shore & Labrador operated railway (the "**QNS&L Railway**"), and ultimately to the railway owned by Arnaud Railway Company (an affiliate of the Petitioners) (the "**Arnaud Railway**") running from the junction where the Arnaud Railway meets the QNS&L Railway north of the Town of Sept-Illes, Québec, to the Bay of Sept-Illes, Québec, for the transport of iron ore concentrate to the Leased Port Premises and ultimately to the Pointe-Noire Port (as defined below) located at the Port of Sept-Iles.

39. The Bloom Lake Railway is operated by Western Labrador Rail Services Inc., an affiliate of Genesee & Wyoming, pursuant to a Railroad Operation and Maintenance Services Agreement.

40. Bloom Lake Railway Company suspended operations in December 2014 and has no employees.

2.1.3 Quinto

41. Quinto is a corporation incorporated pursuant to the laws of British Columbia as it appears from the company profile report communicated herewith as **Exhibit R-7**.

42. Quinto's head office is located at the Montréal Head Office as it appears from page 5 of the CNR 2013 Annual Report (Exhibit R-4).

43. Quinto is a wholly-owned subsidiary of CQIM.

44. Substantially all of Quinto's assets are mining claims related to, and located in proximity to the Bloom Lake Mine and located in Québec.

45. Quinto owns a mine located on the west side of Saddle Mountain overlooking the town of Lumby, British Columbia (the "**Lumby Mine**"). However, the Lumby Mine is not operational and no mining or exploration activities have occurred on the site since 1994. In 2011, Quinto reclamated the Lumby Mine, which reclamation is subject to ongoing monitoring by the Ministry of Energy and Mines of British Columbia. In connection with the reclamation of the Lumby Mine Site, Quinto may continue to have certain non-material liabilities estimated to be approximately $5,000.

46. Quinto has no employees.

2.1.4 8568391

47. 8568391 is a corporation incorporated pursuant to the laws of Canada, having its head office located at the Montréal Head Office as appears from the company profile communicated herewith as **Exhibit R-8**.

48. 8568391 is a wholly-owned subsidiary of CQIM.

49. 8568391's only purpose is to hold bare legal title to the ArcelorMittal Mining Camp and related assets located at Mont Wright near the Bloom Lake Mine. The ArcelorMittal Mining Camp consists of various buildings including 792 rooms for employee housing, a cafeteria, kitchen, gym and lockers and infrastructure related thereto.

50. The land on which the ArcelorMittal Mining Camp is located is owned by ArcelorMittal.

51. Pursuant to a services agreement, CQIM provides certain services to ArcelorMittal in respect of the ArcelorMiittal Mining Camp.

52. 8568391 has no employees.

2.2 CQIM

53. As noted above, CQIM, formerly CTML, was acquired indirectly by CNR in May 2011.

54. Following the acquisition, as part of an internal reorganization, the amalgamated CTML changed its name and was continued as a British Columbia corporation.

55. On December 4, 2014, as part of a larger internal corporate group reorganization, CQIM was converted into an unlimited liability company under the laws of British Columbia as appears from the company profile report communicated herewith as **Exhibit R-9**.

56. CQIM's head office is located at the Montréal Head Office as it appears from page 5 of the CNR 2013 Annual Report (Exhibit R-4).

57. CQIM holds a majority interest in Bloom Lake GP and Bloom Lake LP. The other Petitioners, Quinto, 8568391 and Bloom Lake Railway Company, are wholly-owned subsidiaries of CQIM.

58. As discussed above, CQIM owns the rail assets comprising the Bloom Lake Railway.

59. Pursuant to a management agreement, CQIM manages the Bloom Lake Mine.

60. As described below, mining operations at the Bloom Lake Mine have been suspended and it has been transitioned to care and maintenance mode.

61. In addition to the other Petitioners, CQIM also holds a 100% percent interest in the following subsidiaries: Cliffs Canadian Shared Services Inc., 2313245 Ontario Inc., Cliffs Chromite Ontario Inc. and Cliffs Chromite Far North Inc. and Wabush Resources Inc. ("**Wabush Resources**").

62. Primarily through its wholly-owned subsidiaries Cliffs Chromite Ontario Inc. and Cliffs Chromite Far North Inc., CQIM holds interests in certain chromite projects located in

lands known as the Ring of Fire located 550 kilometres northeast of Thunder Bay, Ontario and 240 kilometres north of Nakina, Ontario ("**Ring of Fire**").

63. Through its wholly-owned subsidiary, Wabush Resources, CQIM also holds a majority interest in an iron ore mine and processing facility located near Wabush City and Labrador City, Newfoundland & Labrador in the Labrador Trough known as the Wabush Mine (the "**Wabush Mine**").

64. The Wabush Mine is owned pursuant to the Wabush Mines joint venture, an unincorporated joint venture ("**Wabush Mines Joint Venture**") by Wabush Resources as to 73.2% and Wabush Iron Co. Limited ("**Wabush Iron**") as to 26.8%. Cliffs Mining Company, the parent company of Wabush Iron, is the managing agent of the Wabush Mines Joint Venture.

65. Wabush Mines Joint Venture also operated, through its managing agent, the port facilities located at Pointe-Noire, Québec in the Bay of Sept-Illes, Québec (the "**Pointe-Noire Port**") and a pellet production facility (the "**Pointe-Noire Pellets**") located at the Pointe-Noire Port.

66. As a result of the depressed global market for steel, particularly in Asia, the corresponding significant decline in the price for iron ore and the high cost structure of the Wabush Mine, operations at the Wabush Mine were not economically sustainable. Pointe-Noire Pellets was idled in June 2013 and the mining operations at the Wabush Mine were suspended in March 2014 and then permanently idled in November 2014.

67. Wabush Mines Joint Venture is currently in the preliminary stages of reclamating the Wabush Mine.

68. Similar to the Bloom Lake Mine, iron ore concentrate from the Wabush Mine was transported by rail by the Wabush Lake Railway Company, Limited, and then transferred to the Northern Land Railway, the QNS&L Railway and the Arnaud Railway for delivery to the Pointe-Noire Port through CQIM leased property and then ultimately shipped from the Pointe-Noire Port to Wabush Mine customers.

69. CQIM holds a lease from the Sept-Illes Port Authority of real property at the Bay of Sept-Iles (the "**Leased Port Premises**") on which it has constructed storage, laydown and transiting facilities. CQIM also has rights, pursuant to the lease, to load iron ore over Dock 31 located at the Pointe-Noire Port and has constructed a series of conveyers from the Leased Port Premises to and across Dock 31 in this regard.

70. As further described below, CQIM also provides administrative and other support to the entities which manage the Wabush Mine, Pointe-Noire Port and Ring of Fire.

71. The majority of CQIM's employees, assets and those assets of its subsidiaries, and its activities are located or conducted in Québec. Substantially all of its revenues and liabilities have been derived from its operations in Québec.

72. None of the Ring of Fire entities, Wabush Resources, Wabush Iron, nor other Wabush related entities are petitioners in these CCAA proceedings.

73. At this time, the intent is to attempt to find buyers for the assets of Wabush Mines Joint Venture, which includes Wabush Mine, the Pointe-Noire Port and Pointe-Noire Pellet, without the need for a CCAA filing. However, circumstances arising in the future may necessitate those entities being added as petitioners and mise-en-cause in these CCAA proceedings.

2.3 Other Corporate Matters

74. In 2014 the CNR group completed a corporate reorganization (the **"2014 Reorganization"**), one of the primary purposes of which was to separate ownership of CNR's Australian and Canadian operations with a view to attracting new direct investment opportunities and/or potential joint venture partners (the **"2014 Reorganization"**).

75. Prior to the 2014 Reorganization, CQIM had served as a holding company for two of CNR's Australian subsidiaries, Cliffs Australia Holdings Pty Ltd. and Cliffs Natural Resources Holdings Pty Ltd. (collectively, the **"Australian Affiliates"**).

76. As part of the 2014 Reorganization, CQIM transferred its entire equity interest in the Australian Affiliates to CQIM's direct parent, Cliffs Natural Resources Luxembourg S.à r.L. (**"CNR Lux"**), as consideration in partial repayment of the principal amount owing under two unsecured intercompany notes owing by CQIM to CNR Lux.

77. The aggregate outstanding principal amount of such notes was accordingly reduced by an amount equal to the fair market value of the Australian Affiliates, the recorded amount of such reduction being based on such fair market value determined at the time of such transfer based on an independent third party valuation of the Australian Affiliates.

78. The CCAA Parties have advised the proposed Monitor of the 2014 Reorganization and the reasons for the 2014 Reorganization and understands that the proposed Monitor intends to provide a report to the Court on the 2014 Reorganization in due course.

79. The CCAA Parties will cooperate with the Monitor to the extent that the Monitor requires any additional information regarding the 2014 Reorganization

2.4 **The CCAA Parties' activities are conducted on a consolidated basis**

80. The head offices of each of the CCAA Parties are located at the Montréal Head Office, the whole as it appears from page 5 of the CNR 2013 Annual Report (Exhibit R-4).

81. As described above, CQIM manages the Bloom Lake Mine and its day to day operations pursuant to a management contract.

82. In addition, CQIM provides administrative and other support to the entities which manage the Wabush Mine, the Pointe-Noire Port, Pointe-Noire Pellet and Ring of Fire.

83. The CCAA Parties' activities are conducted on a consolidated basis, as more fully appears from pages 7, 32-33, 61-62 of the CNR 2013 Annual Report (Exhibit R-4).

84. In light of the above, the procedural consolidation of the proceedings for administrative purposes in respect of the CCAA Parties is appropriate and necessary.

3. THE CCAA PARTIES' BUSINESSES AND AFFAIRS

3.1 The Bloom Lake Mine

85. A map showing the geographical location of the Bloom Lake Mine and the site are communicated herewith as **Exhibit R-10.**

86. CNR indirectly acquired CQIM and thereby the Bloom Lake Mine and Quinto for approximately USD$4.9 billion in 2011. Since 2011, CQIM has invested approximately USD$1.6 billion, including in Phase II, in the Bloom Lake Mine.

87. Bloom Lake Mine is managed by CQIM.

88. The Labrador Trough is the fifth largest iron ore exporting basin in the world. Prior to being idled, the Bloom Lake Mine was one of the largest iron ore mining operations in the Labrador Trough.

89. All iron ore produced from the Bloom Lake Mine was exported. Historically, 95% of total annual production was exported to steel producers in China, Japan and Korea.

90. The Bloom Lake Mine had an estimated current capacity of 7.2 million metric tonnes annually, representing 13.5% of total Canadian capacity. Since its acquisition, the Bloom Lake Mine had produced between 3.5 million and 5.9 million metric tonnes annually (CNR Annual Report 2013 at pages 9 and 43 (Exhibit 4)).

91. As of December 31, 2013, the Bloom Lake Mine had proven iron ore mineral reserves of 250 million metric tonnes and probable iron ore mineral reserves of 765.3 million metric tonnes, totalling approximately 1.015 million metric tonnes (CNR Annual Report 2013 at page 51 (Exhibit 4)).

92. Pricing for customers of the Bloom Lake Mine consisted primarily of short-term pricing arrangements linked to the spot market.

93. In 2011, 2012, 2013 and 2014, the five largest customers of the Bloom Lake Mine accounted for total revenues of USD$571 million, USD$583 million, USD$627 million and USD$500 million, respectively.

94. Certain of the iron ore production at the Bloom Lake Mine was subject to various off-take arrangements with iron ore customers, many of whom are significant producers of steel or sellers of iron ore in Asia.

95. Iron ore concentrate from the Bloom Lake Mine was transported by the Bloom Lake Railway on its 32 kilometre rail spur, transferred to the Northern Land Railway, the QNS&L Railway and then to Arnaud Railway at Arnaud Junction, Québec, for transportation to Pointe-Noire Port at the Bay of Sept-Iles. Most of the iron ore concentrate was then loaded onto transhipping vessels from Dock 31 at the Pointe-Noir Port over which CQIM has certain rights of use and access from the Sept-Iles Port Authority pursuant to the lease agreement with such Port Authority.

96. Transhipping was required because Dock 31 is limited in the size of ships which it can receive. Accordingly, iron ore for many customers was loaded onto smaller

"transhipping" ships (operated by Canada Steamship Lines, a division of The CSL Group pursuant to a Transhipping Agreement with CQIM) which ferried multiple loads of ore concentrate to ocean-going vessels a short distance off-shore in the Bay of Sept-Iles for transport to overseas customers.

97. Phase I of the Bloom Lake Mine development was commissioned in 2010 prior to its acquisition by CNR. During Phase I, the following was developed: an open pit iron ore mine, transportation infrastructure including infrastructure related to the Bloom Lake Railway, a concentrator utilizing single stage crushing and a mill and gravity separation to produce iron ore concentrate. Further, over 40,000 metres of diamond drilling was completed which increased proven and probable mineral reserves by 80% from 580 million to over one billion metric tonnes.

98. Based on current market conditions, it is the CCAA Parties' view that in order for the Bloom Lake Mine to be viable and sustainable, it is necessary to either materially reduce operating costs or expand operations by developing Phase II of the project which would increase the total site production volume to approximately 14 million tonnes per annum and offset the high operating costs.

99. While a significant amount of work has been undertaken in relation to Phase II and a significant quantity of Phase II related assets have been acquired, significant additional work would be required to commission Phase II operations, including: expansion of the mine and of the mine's processing capabilities, and significant capital investment would be required for common infrastructure necessary to sustain current operations and support the expansion.

100. Phase I operations at the Bloom Lake Mine continued until early December, 2014.

101. For reasons discussed below, particularly the costs of Phase II, the failure to find a partner to assist with the funding of Phase II, the depressed market for iron ore, and the inability to obtain additional third-party funding, the process of commissioning Phase II was delayed.

102. For the reasons described herein, the transition of the Bloom Lake Mine to care and maintenance mode commenced on or about November 21, 2014 and mining operations were suspended in December, 2014.

103. Since the suspension of mining activities, Bloom Lake LP has completed processing the remaining iron ore for shipment to the Pointe-Noire Port and loading on customer ships while continuing the transition of the Bloom Lake Mine to care and maintenance mode.

104. On or about January 15, 2015, the last shipment of iron ore was dispatched from Pointe-Noire.

105. As of December 31, 2013, a total of approximately USD$1.6 billion had been expended for Phase I and Phase II. Another USD$1.2 billion is required to complete Phase II.

106. The Amended and Restated Limited Partnership Agreement in respect of Bloom Lake LP, provides that the general partner shall be deemed to have resigned as general partner upon the bankruptcy, insolvency, dissolution or winding-up of the general partner but such resignation does not take effect until the earlier of certain steps or events,

including that a replacement agent would first need to be appointed before the resignation takes effect.

107. The Petitioners, through CQIM, own approximately 83% of the limited partnership units in Bloom Lake LP and, therefore, controls the appointment of any replacement General Partner

108. In order to avoid disruption to the *status quo* and the Petitioners' restructuring efforts, the stay being sought in the Draft Initial Order will preserve the status quo of the CCAA Parties, in particular, Bloom Lake GP and Bloom Lake LP by staying any automatic resignation and replacement of the General Partner.

3.2 Employees

3.2.1 Employee Head Counts

109. Prior to the transition of the Bloom Lake Mine, Bloom Lake Mine was a significant employer and a major contributor to the economic activity in the Fermont, Québec area.

110. All of Bloom Lake LP's employees, except one (who is employed at the Montréal Head Office), are employed at the Bloom Lake Mine.

111. Hourly employees at the Bloom Lake Mine are represented by the United Steel Workers Local 9996. In August 2013, CQIM entered into a new collective agreement for the period September 10, 2013 to September 9, 2016.

112. As described in the summary chart below, from before the transition of Bloom Lake Mine to care & maintenance on November 21, 2014 to after the transition on January 24, 2015, when the Bloom Lake Mine was transitioned to care and maintenance mode, the number of active employees at Bloom Lake Mine fell from approximately 567 to 112.

113. In addition, approximately 330 unionized employees have been placed on lay-off with recall rights in hopes that one or more buyers and/or investors would result in a re-start of operations at the Bloom Lake Mine.

Date	Active Salaried	Active Hourly/Unionized	Total Active Employees	Non-Active (Leave of Absence/ Leave with Pay)	Hourly on Lay-off subject to recall rights	Total Employees (Salaried, Hourly, Leave, Lay-Off)
As at November 21, 2014 (prior to transition to care & maintenance)	170	397	567*	14	0	581
As at January 24, 2015 (after transition to care & maintenance)	37*	75	112*	2	330	444

114. Prior to the transition of the Bloom Lake Mine to care and maintenance mode, CQIM employed approximately 22 salaried employees at the Montréal Head Office. As at January 24, 2015, that number had decreased to approximately 9 salaried employees.

115. Due to the Bloom Lake Mine being transitioned into care and maintenance mode, additional terminations and lay-offs are scheduled to occur during the course of the CCAA proceedings while the CCAA Parties attempt to minimize costs and find a buyer or buyers and/or investors for their businesses.

116. The other CCAA Parties do not have any employees.

3.2.2 Employee Entitlements

117. Subject to the terms of the collective bargaining agreement, Bloom Lake LP employees have recall rights up to 36 months depending on years of service.

118. All salaried employees of the CCAA Parties who have been terminated have received or will receive their accrued and unpaid wages (including any bonuses), accrued and unpaid vacation indemnities (calculated as per company policies) and statutory severance and termination entitlements (the "**Employee Entitlements**"). In order to treat all employees of the CCAA Parties equally, the CCAA Parties intend to pay Employee Entitlements to all other former salaried employees who have been or will be terminated without cause, including any salaried employees who have not to date received such payments.

119. All hourly employees of the CCAA Parties who have been laid off have been or will be provided with their Employee Entitlements. In order to treat all employees equally, the CCAA Parties intend to pay Employee Entitlements to all other hourly employees who have been or will be laid off.

120. All salaried and hourly employees of the CCAA Parties who have been terminated and all employees who are on lay-off have been or will be provided with all regular group insurance coverage (with the exception of long and short-term disability coverage) for 16 weeks from their respective date of lay-off.

121. As with Employee Entitlements, the CCAA Parties intend to continue to pay and provide these benefits to all other salaried and hourly employees who have been or will be terminated without cause or laid-off.

122. The estimated amounts in respect of the pre-filing and post-filing Employee Entitlements and continuation of benefits as set out above are included in the CCAA Parties' weekly cash flow forecast to April 24, 2015 discussed in more detail below (as such cash flow forecast may be amended from time to time, the "**January 23 Forecast**") are communicated herewith as **Exhibit R-11**.

123. Shortly prior to the motion for the relief being requested in the Draft Initial Order, CQIM entered into employee retention agreements with three employees. These agreements provide for aggregate payments in June 2015. The agreements and the amounts payable thereunder have been reviewed by the Monitor and the Monitor has informed the CCAA Parties that it is satisfied that the amounts are reasonable.

124. In addition to the benefits described above, Bloom Lake LP will also provide terminated employees with certain job placement services. All other additional benefits previously provided to former employees that were not part of the standard group insurance coverage will not be provided to former employees and employees post-CCAA filing.

125. All statutory employer remittances are current.

3.3 Pension Plans

126. The pension plans for employees at the Bloom Lake Mine and the Montréal Head Office are defined contribution schemes. Wabush Mines Joint Venture is the administrator of both of these defined contribution schemes.

127. Contributions under the defined contribution schemes are paid with each payroll. The defined contribution schemes also include an employer matching provision whereby the relevant CCAA party as employer contributes a minimum of 6% of each employee's eligible wages with each payroll.

128. All employee and employer contributions are paid current and future contribution amounts have been included in the January 23 Forecast.

3.4 Employee Housing Arrangements

129. CQIM owns 28 houses and 2 buildings, with each building having a 99 room capacity, in the Town of Fermont used by employees for temporary accommodations during their shifts.

130. 8568391 holds the bare legal title and CQIM holds the beneficial interest in a building for employees at the ArcelorMittal Mining Camp that has the capacity to house 792 employees.

131. The ArcelorMittal Mining Camp is subject to a services agreement with ArcelorMittal that permits ArcelorMittal to use rooms in the building as temporary housing for its own employees.

4. ASSETS

132. The aggregate net book values of property, plant, equipment, cash, restricted cash, receivables, inventory, goodwill and intangibles of the CCAA Parties as of December 31, 2014 based on unaudited internal financial statements are shown in the following chart. As a result of the suspension of all mining operations, significant material impairment charges are pending which will result in a material adjustment to these numbers. Subject to the qualifications above, the net book value of the assets broken down by legal entity is provided in the chart communicated herewith as **Exhibit R-12**.

Nature	**Net Book Value**
Property, plant and equipment	$953,779,959
Cash	$17,202,359
Restricted Cash	Nil
Trade and other receivables	$75,021,842
Receivables from associated companies	$210,458,481
Inventory	$27,464,647
Goodwill and intangibles	$1,638,649
TOTAL	**$1,285,565,937**

133. As a result of significant and ongoing losses, in October 2014, the assets of CQIM and its investment in Bloom Lake Mines were written down by approximately USD$6.3 billion.

134. Goods and services tax, harmonized sales tax and Québec sales tax refunds estimated to be approximately $27 million are owing to the CCAA Parties, subject to audit, together with potential refunds which are owing in respect of payroll deductions. These amounts have not been included in the January 23 Forecast because the quantum, if any, and timing of these refunds are uncertain.

135. Pursuant to the sale in April 2012 by Quinto of certain graphite mining claims located in Québec to Mason Graphite Corp. ("**Mason**"), Quinto is still owed $7.5 million.

136. Payment by Mason of the balance of $7.5 million is conditional on the earlier of the passage of set time periods and the completion of a feasibility study and the achievement of commercial production.

137. If Mason completes a feasibility study prior to one or both of the first two payment dates noted below, then the payments become due within 5 business days of completion of the feasibility study. If Mason achieves commercial production prior to the two payment dates, then the payments become due within 5 business days of achieving commercial production.

138. If the conditions set out above are not satisfied, then Mason will be required to pay the balance outstanding as follows: $1.25 million to Quinto on each of April 5, 2015 and October 5, 2015 and $2.5 million on each of October 5, 2016 and April 5, 2017.

139. While the April payment falls within the January 23 Forecast period, the amount of the April payment has not been included in the January 23 Forecast due the risk of a delay in receiving payment. The remaining payments described above have not been included in the January 23 Forecast as they fall outside the forecast period.

5. INDEBTEDNESS

5.1 Overview

140. As described in greater detail below, the CCAA Parties have estimated outstanding liabilities of approximately $6.49 billion as of November 30, 2014.

5.2 Intercompany Indebtedness

141. As of December 31, 2014, the outstanding indebtedness of the CCAA Parties to non-filing affiliated entities is estimated to be approximately USD$1,211,225,810 as summarized in the chart communicated herewith as **Exhibit R-13.**

142. In addition to the amounts described above, there are also obligations which have been guaranteed by affiliates of the CCAA Parties which may give rise to additional intercompany claims against the CCAA Parties.

143. Historically, intercompany funding has taken place between the CCAA Parties and the CCAA Parties intend for such arrangements to continue between the CCAA Parties as required during the CCAA proceedings on terms consistent with the CCAA Parties' cash flow forecasts and as approved by the Monitor.

144. In order to protect the interests of the separate stakeholder constituencies of the individual CCAA Parties, the CCAA Parties seek the granting of a charge to secure such funding (the '**Intercompany Charge**"). Such Intercompany Charge would only apply to funding provided after the commencement of the CCAA proceedings.

145. Pursuant to the Draft Initial Order, the Intercompany Charge is to rank subordinate to the Administration Charge (as defined below) and the D&O Charge. The CCAA Parties intend to deal with the priority of the Intercompany Charge vis-à-vis other secured creditors at a later date.

5.3 Equipment Financing

146. The indebtedness and obligations of the CCAA Parties with respect to the lease and financing of equipment is described below.

147. As the CCAA Parties currently have no mining operations, they are not using the equipment which is subject to the various financing arrangements. The January 23 Forecast does not provide for payment in respect of these arrangements. Therefore, if granted the relief sought on this Motion, and subject to further Order of the Court, the CCAA Parties do not intend to make any payments pursuant to these financing arrangements during these CCAA proceedings.

5.3.1 Key Bank Facility

148. Pursuant to a master loan and security agreement between CQIM, Bloom Lake LP, Wabush Mines Joint Venture and Key Equipment Finance Inc., a financing arm of Key Bank ("**Key**"), Key advanced 10 loans to Bloom Lake LP and 3 loans to CQIM in the aggregate principal amount of USD$164,829,438 to finance the acquisition of certain mining equipment and rail cars for use at or in connection with the Bloom Lake Mine as more particularly described in the loan agreement schedules to the master loan and security agreement. Copies of the master loan and security agreement, including the assignment documents are communicated herewith as **Exhibit R-14**.

149. Most of the loans were subsequently assigned by Key to third party lenders. The current holder of the loans, the original principal amount of each loan, and the current amount outstanding as at January 23, 2015 are summarized in the chart below.

Borrower	**Lender/Assignee**	**Principal Loan Amount (in USD)**	**Current Amounts Outstanding (in USD)**
CQIM	Key	$24,842,747.40	$20,848,104.53
CQIM	Bank of Nova Scotia	$33,871,318.92	$28,112,450.98
CQIM	Bank of Nova Scotia	$1,031,807	$866,568.39
Subtotal for CQIM:		$59,745,873.72	$49,827,123.90
Bloom Lake LP	Key	$4,010,488.00	$3,466,172.89
Bloom Lake LP	Bank of Nova Scotia	$8,710,091.40	$7,245,005.94
Bloom Lake LP	Bank of Nova Scotia	$19,533,337.16	$16,212.240.94
Bloom Lake LP	Bank of Nova Scotia	$9,465,637.94	$7,949,760.91
Bloom Lake LP	Bank of the West	$11,453,805.23	$9,769,931.48
Bloom Lake LP	BBVA Compass Financial Corporation	$11,118,255.52	$9,483,712.37
Bloom Lake LP,	SunTrust Equipment Finance & Leasing Corp	$16,713,827.94	$14,256,655.35
Bloom Lake LP	BBVA Compass Financial Corporation	$13,446,239.40	$11,621,278.63
Bloom Lake LP	Signature Financial LLC	$4,007,305.66	$3,463,422.54

Borrower	Lender/Assignee	Principal Loan Amount (in USD)	Current Amounts Outstanding (in USD)
Bloom Lake LP	Cole Taylor Equipment Finance, LLC	$6,624,576.12	$5,725,469.44
Subtotal for Bloom Lake LP:		$105,083,564.36	$89,193,650.49
TOTAL:		**$164,829,438**	**$139,020,774.39**

5.3.2 CFSL

150. Pursuant to a master lease agreement and related schedules (the "**CFSL Leases**"), CQIM, Bloom Lake GP and Bloom Lake LP leased certain mining equipment from Caterpillar Financial Services Limited ("**CFSL**").

151. As the terms of CFSL Leases expire, the practice of CQIM, Bloom Lake GP and Bloom Lake LP has been to buy out the equipment which was subject to such expired leases.

152. As at January 23, 2015, the only leased equipment subject to unexpired CFSL Leases are as follows:

a) a 2010 793D5 Highway Truck with serial # CAT0793DKFDB01199, and a 2010 793D-4 Highway Truck with serial #CAT0793DPFDB01198 pursuant to Lease Contract No. 7 dated February 12, 2010 which lease expires on March 1, 2015, with a monthly payment of USD$44,709.25 for each truck leased thereunder; and

b) a 2010 793D highway truck with serial # CAT0793DEFDB01200, and a 2010 Caterpillar 793D highway truck with serial # CAT0793DCEFDB01201 pursuant to Lease Contract No. 8 dated March 10, 2010 which lease expires on April 1, 2015, with a monthly payment of USD$44,722.66 for each truck leased thereunder.

153. The aggregate outstanding balance of the remaining CFSL Leases (inclusive of their respective purchase options) is estimated to be approximately USD$3.3 million. Pursuant to the terms of the CFSL Leases, a surety bond in the amount of USD$10,957,415 had been provided to CFSL by a non-filing affiliate.

5.3.3 CIORL

154. Pursuant to a railcar leasing agreement, CQIM has leased certain railcars from Canadian Iron Ore Railcar Leasing LP ("**CIORL**"). The outstanding balance remaining on the CIORL lease is estimated to be approximately USD$34,800,000.

155. The obligations of CQIM under the CIORL lease are guaranteed by Bloom Lake LP and secured by an irrevocable standby letter of credit in the amount of USD$10,000,000 which has been provided by a non-filing affiliate.

5.4 Construction and Mining Liens

156. As of January 22, 2015, there were 15 legal hypothecs in the aggregate amount of approximately $54 million in favor of persons having taken part in the construction or renovation of an immovable, registered against property of the Bloom Lake LP and CQIM (collectively the "**Legal Hypothecs**"), as more fully appears from a table summarizing the Legal Hypothecs of construction and a copy of the Legal Hypothecs of construction registered as of January 22, 2015, communicated herewith, en liasse, as **Exhibit R-15**.

5.5 Worldlink Arbitration

157. In October 2011, CQIM, Bloom Lake GP and Bloom Lake LP commenced an arbitration claim in the International Court of Arbitration of the International Chamber of Commerce ("**ICA**") against Worldlink Resources Limited ("**Worldlink**"), a former customer of the Bloom Lake Mine. The claim was with respect to alleged breaches of an off-take agreement dated August 2011 between the parties for the purchase and sale of iron concentrate produced at the Bloom Lake Mine.

158. CQIM, Bloom Lake GP and Bloom Lake LP claimed damages in excess of USD$85 million. Worldlink counterclaimed for damages in excess of USD$100 million.

159. The claims were heard in May 2014. On November 6, 2014, the ICA awarded Worldlink damages in the principal amount of approximately USD$71 million plus attorneys' fees and accrued interest from the date of termination of the off-take agreement.

160. CQIM, Bloom Lake GP and Bloom Lake LP made submissions to the ICA to clarify and/or correct the amount of pre-award interest granted to Worldlink pursuant to the award. CQIM, Bloom Lake GP and Bloom Lake LP submitted that Worldlink's claim for approximately USD$20.8 million in pre-award interest was incorrectly calculated and should instead have been approximately USD$6.6 million. On January 26, 2015, the ICA dismissed such submissions.

161. On December 22, 2014, a motion was heard before the Québec Superior Court for the homologation of the Worldlink arbitration award. The Court ordered that motives of contestation were to be filed by CQIM, Bloom Lake GP and Bloom Lake LP by January 19, 2015 and that the hearing of the motion for homologation is to be held on February 6, 2015.

162. The motives of contestation were filed on January 19, 2015.

163. Subsequent to the motion on December 22, 2014, Worldlink has requested, among other things, that the CCAA Parties provide it with advance notice of this motion seeking relief under the CCAA and that the homologation proceedings be carved out from the stay of proceedings. In the absence of such notice, Worldlink has requested that the CCAA Parties advise the court of Worldlink's position regarding such notice and other issues.

164. Copies of correspondence between counsel for Worldlink and counsel for CQIM, Bloom Lake GP and Bloom Lake LP are communicated herewith as **Exhibit R-16.**

5.6 Trade Creditors

165. As at January 1, 2015, the CCAA Parties have an estimated total amount outstanding to trade creditors of approximately USD$183,928,720.

5.7 Contracts

166. Due to the CCAA Parties' current circumstances, including the cessation of mining operations and these CCAA proceedings, numerous contracts to which the CCAA Parties are parties have become redundant. Accordingly, if the relief sought on this Motion is granted, it is the intention of CCAA Parties to serve notices of termination of certain contracts pursuant to the CCAA as soon as practicable.

167. The CCAA Parties are also parties to numerous contracts known as "take or pay" contracts. These "take or pay" contracts provide for charges based on the usage of services related to the transportation and shipping of iron ore, with significant minimum monthly payments.

168. As the CCAA Parties currently have no mining operations, they are not using any such services. Therefore, if granted, the relief sought on this Motion, and subject to further Order of the Court, the CCAA Parties do not intend to make any payments pursuant to any such contracts during these CCAA proceedings.

169. The CCAA Parties intend to disclaim many of their contracts as soon as practicable if the relief sought by this Motion is granted.

5.8 Environmental Issues

170. On November 27, 2014, the Québec Ministry of Natural Resources approved the Bloom Lake Mine Rehabilitation Plan (the "**Bloom Lake Mine Closure Plan**"). Pursuant to the Bloom Lake Mine Closure Plan, and absent the CCAA proceedings, Bloom Lake LP is required to provide $41,714,425 in financial assurances by the end of November, 2016. Initially, $20,857,213 (50%) must be provided by February 27, 2015 with $10,428,606 (25%) due on November 27, 2015 and $10,428,606 (25%) due on November 27, 2016. The CCAA Parties do not intend to provide the financial assurances during the stay period in the event that the relief sought on this Motion under the CCAA is granted. Therefore, the payment of these financial assurances is not included in the January 23 Forecast attached to this Motion.

171. On December 19, 2014, Bloom Lake GP was ordered to pay $7.5 million in the Criminal and Penal Division of the Court of Québec in Montréal, after pleading guilty to 45 charges under the *Fisheries Act* (Canada), resulting from several incidents including the breach of a tailings pond dam. Such amount has been paid.

5.9 Municipal Tax Proceedings

172. Bloom Lake GP is currently involved in two separate municipal tax valuation proceedings involving Bloom Lake GP, one related to Phase I and Phase II, and the other for the employee housing and related facilities.

173. Bloom Lake GP has filed an application for review and a motion with the Tribunal administratif du Québec (the **"TAQ"**) with respect to the 2013-2015 municipal assessment for Phase I of the Bloom Lake Mine. While the Fermont municipal assessor has agreed not to increase the current municipal assessment amount from $180,000,000, Bloom Lake GP continues to dispute this assessment. Discussions with the Fermont Municipal assessor are continuing.

174. The Fermont municipal assessor and Bloom Lake GP have agreed on the Phase II municipal assessment for 2013. The municipal assessor has agreed to issue a certificate of modification reducing the Phase II municipal assessment for 2013-2015 from $198,000,000 to $138,000,000. This certificate will be effective as of April 1, 2013.

175. Bloom Lake GP has also filed a motion with the TAQ with respect to certificates of modification issued by the Fermont municipal assessor related to the expansion of the workers' residence at the Bloom Lake Mine to add a cafeteria and sports complex, which expansion has been completed. The 2013-2015 assessment value after modification is $12,786,600.

176. With respect to the municipal assessment matters described above, Bloom Lake GP has paid all of the municipal tax invoices as they have become due, including invoices for municipal taxes which remain in dispute with respect to valuation.

177. Subject to further Order of the Court, the CCAA Parties do not intend to make any payments with respect to any municipal tax amounts during these CCAA proceedings, pending sale of their real property assets.

5.10 Beumer Litigation

178. On July 12, 2013, Beumer Corporation ("**Beumer**") commenced Federal Court proceedings in Ohio against Bloom Lake LP with respect to outstanding payments for Beumer's design and construction of various conveyor assets and an ore storage structure at the Bloom Lake Mine. Pursuant to an escrow agreement with Beumer, Bloom Lake LP paid the final payment of $6,330,854 (the "**Escrowed Funds**") with respect to Beumer's work into escrow with the Bank of Montréal in Montréal, Québec, pending final resolution of this litigation.

179. Beumer originally claimed damages of $7,362,438 and subsequently commenced an arbitration claim against Bloom Lake LP for the amount of the Escrowed Funds. Bloom Lake LP anticipates asserting counterclaims against Beumer in excess of the amount of the Escrowed Funds as a result of defects and delays by Beumer.

180. On September 10, 2013, Bloom Lake LP commenced a motion to dismiss Beumer's claim. This motion was denied as the Court held that it was moot in light of Beumer filing an Amended Complaint. Bloom Lake LP filed another motion to dismiss Beumer's claim on October 15, 2013, which was denied on December 1, 2014.

181. Bloom Lake LP strongly disputes Beumer's claims and is pursuing its own claims against Beumer. On October 31, 2014, Bloom Lake LP filed a statement of claim for $12,354,929.50 alleging Beumer's performance failures on the project.

182. On June 12, 2014, the Federal Court denied a motion by Beumer to refer the dispute to arbitration.

183. Beumer filed a motion to dismiss this claim on January 5, 2015. Bloom Lake LP's response to this motion is not yet due and has not been filed.

184. If the relief sought on this Motion under the CCAA is granted, upon further order of the Court and on notice to Beumer, Bloom Lake LP intends to seek the release of the Escrowed Funds.

185. The Escrowed Funds are not currently included in the January 23 Forecast but will be included if these funds are released during the forecast period to Bloom Lake LP on further order of the Court.

5.11 Registrations in Québec, Ontario, Newfoundland and British Columbia registries

186. For ease of reference, summaries of the search results in respect of the CCAA Parties are communicated herewith:

a) Real estate search report (Québec) on the CCAA Parties immovable property; communicated herewith as **Exhibit R-17**;

b) RPMRR (Québec) search results summary on CCAA Parties' movable property; communicated herewith as **Exhibit R-18**;

c) Personal Property Security Act (Ontario, British Columbia and Newfoundland & Labrador) search results summary on CCAA Parties' movable property; communicated herewith as **Exhibit R-19**; and

d) Search results summary from the Public register of real and immovable mining rights granted under the Mining Act (Québec) on CQIM's, Bloom Lake GP's and Quinto's mining rights; communicated herewith *en liasse* as **Exhibit R-20**.

Copies of the raw search results will be available at the hearing of the motion.

5.12 Foreign Exchange Agreements

187. CQIM and Bloom Lake LP are party to numerous foreign exchange forward purchase agreements which fall due approximately weekly until September 29, 2015. Based on the January 22, 2015 spot rate, the estimated aggregate mark-to-market liability in respect of these agreements is USD$1,890,923 for CQIM and USD$17,132,381 for Bloom Lake LP, for a total net liability of USD$19,023,304.

188. Based on current foreign exchange rates, the CCAA Parties do not anticipate completing the foreign exchange forward purchase agreements.

6. CASH MANAGEMENT SYSTEM

189. Until recently, the CCAA Parties were part of a centralized cash management system for, among other things, the collection of customer receipts and the payment of

suppliers, payroll, employee-related benefits and lease financing amounts. This centralized cash management system was managed by CNR with support from CQIM at the Montréal Head Office with respect to payroll, vendor communications and accounts payable.

190. On January 19, 2015, Bank of Montréal ("**BMO**") advised that due to its concerns with a possible CCAA filing by CQIM and its related Canadian entities, BMO would be terminating the Canadian cash management services that it had been providing to the Canadian subsidiaries of CNR in respect of the "zero balance account structure" and various overdraft and payment risk credit lines with respect to the CCAA Parties.

191. As a consequence of the termination of those particular cash management services by BMO, the CCAA Parties have now transitioned the operation of their bank accounts at BMO to a pre-funded structure.

7. FINANCIAL RESULTS AND LOSSES

192. For the eleven-month period ended November 30, 2014, the CCAA Parties recorded an aggregate net loss estimated to be approximately USD$5.8 billion, inclusive of approximately USD$5.5 billion of asset impairment charges, as appears from the financial statements of the CCAA Parties communicated herewith as **Exhibit R-21**, which financial statements have not been prepared in accordance with generally accepted accounting principles, as more specifically set out in the notes in Exhibit R-21.

8. EVENTS LEADING TO THE COURT FILING

193. A combination of factors have caused liquidity demands for the CCAA Parties including, among other things:

a) Unanticipated significant additional costs with respect to the Bloom Lake Mine discovered post-acquisition with respect to the tailing ponds, water management and other environmental matters;

b) The depressed global market for steel, particularly in Asia, and the resulting decrease in the price of iron ore. Since 2011, when Bloom Lake Mine was acquired, the price of iron ore has fallen from USD$190 per tonne to below USD$67 per tonne;

c) The significant costs associated with the extraction, transportation and shipping of iron ore concentrate from the Bloom Lake Mine and the development of Phase II of the Bloom Lake Mine, which development would have provided increased production at a lower marginal cost per tonne;

d) The failure to find investment partners for the commissioning of Phase II of the Bloom Lake Mine and/or the failure to find a buyer or buyers for the Canadian iron ore business, including the Bloom Lake Mine;

e) WISCO's continuing failure to fund operations at the Bloom Lake Mine despite the terms of the limited partnership agreement and the settlement agreement entered into on December 5, 2012. The last funds advanced by WISCO were in March 2013 when WISCO advanced USD$5.7 million representing 25% of a

cash call made by Bloom Lake LP. Pursuant to a cash call in the aggregate amount of USD$507,211,299 on July 2, 2013, WISCO was required to advance USD$126,802,824. As WISCO failed to advance this amount, it was funded by CQIM resulting in the dilution of WISCO's interest in Bloom Lake LP, as described above;

f) Notices of default have been delivered under significant commercial contracts and demands for payment have been made on the CCAA Parties;

g) Approximately $54 million of construction liens have been filed against the properties related to Bloom Lake Mine, as described above;

h) The arbitration award in favour of Worldlink against CQIM, Bloom Lake GP and Bloom Lake LP, in the principal amount of over USD$70 million, plus significant accruing interest, and the pending hearing seeking homologation of the arbitration award in Québec;

i) Inability to negotiate cost reductions in certain material logistics and other contracts; and

j) The CCAA Parties do not have sufficient resources or the ability to generate sufficient funds to pay the Worldlink arbitration award and/or to satisfy their other outstanding obligations in the normal course.

194. Beginning in early 2014, the CCAA Parties have engaged in numerous efforts to find a solution to the financial challenges facing the CCAA Parties, which included, amongst other things, the following:

a) seeking financial contribution and support from WISCO, its business partner in the Bloom Lake Mine;

b) seeking investments, support and other financial contributions from its overseas customers;

c) seeking investment, support and other financial contributions from other potential customers and end users of iron ore;

d) seeking to reduce costs through re-negotiation of certain material contracts;

e) seeking buyer or buyers for the iron ore business or parts thereof; and

f) seeking financing or other investment contributions from financial institutions and investment and pension funds.

195. These efforts proved unsuccessful and losses relating to the operations of the CCAA Parties continued to escalate to unsustainable levels.

196. In the late fall 2014, CNR announced that it was pursuing exit options for its Canadian iron ore operations which may result in the closure of the Bloom Lake Mine, as it appears from the CNR press release dated November 19, 2014 communicated herewith as **Exhibit R-22**.

197. CNR also announced that despite the continued interest of prospective equity partners in the Bloom Lake Mine and its high quality ore, the potential investment was not achievable within a time frame acceptable to CNR. With expansion no longer viable, CNR shifted its focus to executing an exit option for its Canadian iron ore operations that minimized the cash out flows and associated liabilities, all as it appears from the CNR press release dated November 19, 2014 (Exhibit R-22).

198. Subsequent to that announcement and until shortly before the finalization of this Motion, efforts were made to:

a) secure a buyer or buyers for the Canadian iron ore business, including the Bloom Lake Mine, with the assistance of Investissement Québec;

b) reduce operating costs by transitioning the Bloom Lake Mine into care & maintenance mode and substantially reducing its workforce; and

c) seek additional funding for the ongoing expenses associated with the care & maintenance of the Bloom Lake Mine from WISCO and/or the CCAA Parties' non-Canadian affiliates.

199. In respect of its efforts to find a buyer or buyers for the Canadian iron ore business, including the Bloom Lake Mine, contact was made, and negotiations ensued, with a number of potential purchasers, including parties who have investments in and/or are operators of, similar businesses.

200. In respect of its efforts to obtain additional funding for its ongoing care and maintenance expenses at the Bloom Lake Mine, requests were made to WISCO to provide funding, which it declined to do.

201. Given WISCO's failure to commit to provide any financial support to the Bloom Lake Mine, Bloom Lake GP sought additional funding from the CCAA Parties' non-Canadian affiliates who indicated that they were prepared to provide funding on a secured basis.

202. Notwithstanding that WISCO's consent or approval is not required for secured funding to the Bloom Lake Mine because of CQIM's majority interest in Bloom Lake GP and Bloom Lake LP, an attempt was made on a cooperative basis to negotiate reasonable terms, on an interest free basis, with WISCO with respect to secured funding for the Bloom Lake Mine. These efforts were unsuccessful as the parties were not able to reach a consensus prior to the filing of this Motion on the amount and terms of such funding.

203. At this time, given the growing pressures that have been asserted by creditors on the CCAA Parties, the continued financial losses and the significant but unsuccessful efforts to consummate a solution to their financial issues outside of a CCAA filing, the CCAA Parties have no other alternative but to seek protection from their creditors under the CCAA so that they can continue to pursue restructuring and/or sale options under a court-supervised process.

9. 13 WEEK FORECAST

204. Based on the financial position of the CCAA Parties, it is the position of the CCAA Parties that the assumptions set out in the January 23 Forecast (Exhibit R-11), the January 23 Forecast are fair and reasonable.

205. The January 23 Forecast has been prepared by the CCAA Parties' management in consultation with FTI Consulting Canada Inc. ("**FTI**"), the proposed Monitor. FTI has advised that it will be filing a pre-filing report on the January 23 Forecast.

206. Based on the January 23 Forecast, the CCAA Parties expect to be able to pay their post-filing obligations in the ordinary course without additional funding during the 13 week forecast period. After this period, the CCAA Parties may require additional funding by way of interim debtor-in-possession funding. The CCAA Parties would seek approval of interim debtor-in-possession funding, if necessary, at a future date.

207. As described above, the CCAA Parties are not using the equipment which is subject to the various financing arrangements and the January 23 Projections do not provide for payments in respect of these arrangements. Therefore, subject to further Order of the Court, the CCAA Parties do not intend to make any payments pursuant to these financing arrangements during these CCAA proceedings.

208. As described above, for similar reasons, the CCAA Parties, subject to further Order of the Court, also do not intend to make any payments with respect to usage agreements which provide for minimum monthly payments.

209. Certain non-filing affiliates of the CCAA Parties provide certain services to the CCAA Parties, including accounting, treasury and other services. The CCAA Parties will require continued access to these services during these CCAA proceedings and will be charged for these services consistent with historic practice or as otherwise agreed with the Monitor. Payment for such services is provided for in the January 23 Forecast.

210. In addition, certain costs, such as insurance premiums, are paid by non-filing affiliates on behalf of the CCAA Parties. To the extent such payments are made after the date of the Initial Order, the CCAA Parties intend to reimburse the relevant non-filing affiliates for such amounts.

10. NEED FOR CREDITOR PROTECTION

10.1 The CCAA Parties are Insolvent

211. Notwithstanding significant efforts of management and the Board of Directors of the CCAA Parties and affiliates, the CCAA Parties are currently insolvent.

212. Except for certain non-material amounts of revenue, the CCAA Parties are no longer generating any revenue and no further revenue is anticipated to be generated in the short term.

213. The CCAA Parties have limited cash resources and such resources are insufficient to pay their liabilities in the normal course.

214. Based on the January 23 Forecast filed, the CCAA Parties are anticipated to have sufficient funding and liquidity to cover anticipated post-filing costs and expenses during the 13 week forecast period. The CCAA Parties will be seeking Court approval of debtor-in-possession financing, if needed, prior to such date.

11. PROPOSED RESTRUCTURING

215. The CCAA Parties require the benefit of the relief requested in this Motion, including a stay of proceedings, in order to allow them to explore further restructuring and/or sale efforts, engage in further discussions with key stakeholders such as employees, suppliers, governmental authorities, equipment lessors, lenders and affected communities under the stability and guidance of a court supervised process, and to generally pursue available options for the benefit of all stakeholders.

216. With the protection from their creditors requested herein, the CCAA Parties will focus their resources on:

a) obtaining court approval for and implementing a Sale and Investor Solicitation Process ("**SISP**") in consultation with the Monitor, as may be approved by this Court;

b) continuing care and maintenance efforts at the Bloom Lake Mine to maintain the status quo during these proceedings;

c) based on the availability of resources, taking other steps to preserve and maintain the value of the CCAA Parties' assets and properties; and

d) such other matters that may arise throughout the process.

217. The CCAA Parties intend to seek the Court's approval of the SISP within the initial stay period on notice to interested parties, including those parties holding a contractual right or rights in respect of certain of the assets of the CCAA Parties.

218. Given a reasonable period of time to implement a SISP, the overall value of the CCAA Parties' businesses and assets will likely be maximized for the benefit of their stakeholders.

219. In the CCAA Parties' view, the prospects for these restructuring efforts are significantly enhanced if the CCAA Parties obtain the relief being sought on this motion by the granting of protection under the CCAA by this Court on the terms of the Draft Initial Order (Exhibit R-2).

12. RELIEF SOUGHT

12.1 General

220. The CCAA Parties are deeply concerned that unless a stay of proceedings is granted pursuant to the terms of the CCAA, certain suppliers, creditors and other stakeholders may attempt to take steps to try to improve their positions in comparison to other similarly situated stakeholders. This would jeopardize and potentially deplete the value of the CCAA Parties' estates to the detriment of all stakeholders and disrupt the ongoing

restructuring efforts. The granting of the CCAA stay will preserve the status quo and permit the CCAA Parties to continue with their restructuring efforts.

221. In the event of a forced liquidation and permanent termination of operations, the value of the CCAA Parties' assets will be substantially reduced as the Bloom Lake Mine would need to be reclaimed. It is the CCAA Parties' view that pursuing options under the CCAA will yield significantly better results for the diverse group of stakeholders than any conceivable liquidation scenario.

222. On this present Motion, the CCAA Parties seek an initial stay period of 30 days (the "**Stay Period**"). Before the expiration of this initial 30-day period, the CCAA Parties intend to return to this Court for a hearing(s), on notice to interested parties for, among other things, approval of the granting of priority for the court approved charges set out in the Draft Initial Order (Exhibit R-2), approval of a SISP and related matters, an extension of the Stay Period and any other matters which may require the Court's attention at that time.

12.2 Appointment of the Proposed Monitor

223. FTI has been retained by the CCAA Parties to act as Monitor in the event of an Initial Order being granted in these CCAA proceedings.

224. Prior to these proceedings, FTI has been assisting the CCAA Parties as financial advisor and is familiar with the CCAA Parties' assets, businesses and personnel. In this role, FTI has obtained significant information in respect of the businesses, operations and assets of the CCAA Parties, an understanding of the many issues faced by the CCAA Parties and relevant to their restructuring efforts and a familiarity with the management and personnel of the CCAA Parties. FTI is therefore in the CCAA Parties' view best qualified to act as Monitor and it is appropriate that FTI be appointed Monitor.

225. FTI is prepared to act as Monitor during these CCAA proceeding and to assist the CCAA Parties with preparation of the January 23 Forecast and with all aspects in relation to a restructuring pursuant to, and subject to, the terms of the Initial Order of the Court and the statutory provisions of the CCAA.

226. If so directed by the Court, FTI is also prepared to monitor the operations of the CCAA Parties, to provide direction and guidance to management during the CCAA proceedings, and to generally assist the CCAA Parties with their restructuring efforts.

227. Subject to court approval, FTI has consented to act as Monitor of the CCAA Parties in their CCAA proceedings.

228. The CCAA Parties have been informed by FTI that it is a licensed trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* (Canada). FTI is not subject to any of the restrictions on who may be appointed monitor as set out in section 11.7(2) of the CCAA.

229. At no time during the preceding two years has FTI been:

a) a director, officer or employee of the CCAA Parties;

b) related to the CCAA Parties or to any former director or officer of the CCAA Parties; or

c) the CCAA Parties' auditor, accountant or legal counsel, or a partner or employee of the auditor, accountant or legal counsel of the CCAA Parties.

230. FTI is not a trustee under a trust indenture issued by the CCAA Parties or any person related to the CCAA Parties, and is not a holder of a power of attorney granted by the CCAA Parties or by any person related to the CCAA Parties. FTI is not related to a trustee or holder of a power of attorney noted above.

231. Therefore, FTI is qualified to act as Monitor and there is no restriction on FTI being appointed Monitor in these CCAA proceedings.

12.3 Administration Charge

232. Counsel for the CCAA Parties, the independent counsel for the CCAA Parties' Directors and Officers (as defined below), the Proposed Monitor and the Proposed Monitor's counsel are essential to the restructuring and/or sale efforts contemplated in these proceedings.

233. They have each advised that they are prepared to provide or continue to provide professional services to the CCAA Parties only if they are protected by a charge over the assets of the CCAA Parties.

234. The Monitor currently holds a retainer in the amount of $75,000.

235. It is contemplated that the CCAA Parties will be invoiced and pay fees and expenses of the beneficiaries of the Administration Charge on a weekly basis and a court ordered charge is sought as security for the fees and disbursements relating to services rendered up to a maximum amount of $2.5 million with the priority set out in the Draft Initial Order (Exhibit R-2).

236. Pursuant to the Draft Initial Order, the charge sought by the CCAA Parties in favour of their counsel, the Proposed Monitor, the Proposed Monitor's counsel and independent counsel for the CCAA Parties' Directors and Officers would rank behind the security or other encumbrances over the property of the CCAA Parties in favour of any parties not served with notice of the presentation of this Motion. However, as provided in the Draft Initial Order (Exhibit R-2) it is the intention of the CCAA Parties to seek priority over all creditors at a later date. Creditors with security interests which would be affected by such priority will be served with notice of this motion.

237. The amount of the charge has been determined not on the basis of the total fees payable to these professionals during the proceedings but on an assessment of what could be an amount outstanding to these professionals at any given time in the proceedings.

12.4 Directors & Officers' Protection

238. Restructuring efforts for the CCAA Parties will be significantly enhanced with continuity on the boards' of directors (collectively, the "**Directors**") as well as continuity in the

make-up of their respective officers (collectively, the "**Officers**"), given the complexity of the CCAA Parties' businesses and assets and the historical and specialized expertise and knowledge they possess with respect to the CCAA Parties' businesses, assets and the mining industry as a whole.

239. CNR maintains primary and excess directors' and officers' liability insurance policies for the directors and officers of its subsidiaries which include the Directors and Officers of the CCAA Parties (together, the "**D&O Insurance**").

240. The D&O Insurance contains limits and exclusions that could potentially affect the total amount of insurance available to the Directors and Officers of the CCAA Parties. For example:

a) The D&O Insurance has an aggregate limit of liability (inclusive of defence costs) of USD$215 million and expires on July 15, 2015. Additionally, USD$45 million of the D&O Insurance limit only applies in narrow circumstances and is only available to covered claims made during the policy period where CNR fails or refuses to indemnify insured Directors & Officers;

b) The aggregate limit of liability applies to all covered claims made during the policy period. All insureds (including the directors and officers of CNR and of CNR subsidiaries which are not CCAA Parties) share the limits available under the D&O Insurance, which could further reduce amounts available to satisfy claims of the Directors and Officers;

c) Certain insureds who are not CCAA Parties have already provided notice of claims unrelated to the CCAA filing to the D&O Insurance carriers which is impairing the aggregate limits of liability under the relevant policies; and

d) Certain claims and certain types of losses are excluded under the D&O Insurance which may mean that not all post-filing claims which could be made against the Directors and Officers would be covered. Some principal exclusions include:

i) Claims for actual or alleged bodily injury or property damage;

ii) Losses that constitute compensation earned by the claimant in the course of employment but unpaid by the insured, including salary, wages, commissions, bonuses or incentive compensation;

iii) Losses for any actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 (ERISA) or a similar Canadian statute;

iv) Losses that constitute fines, penalties or taxes imposed by law;

v) Losses that constitute costs associated in testing for, monitoring or cleaning up pollutants;

vi) Fines penalties or taxes imposed by law other than penalties assessed against any insured Person pursuant to the Foreign Corrupt Practices Act; and

vii) Any amount of Loss attributable to the cost of any non-monetary relief, including costs associated with complying with injunctive relief.

241. A number of the foregoing exclusions may preclude coverage for employee wages, pension contributions and other employment-related claims, taxes and/or penalties. These exclusions in the D&O Insurance could foreclose any recovery for such claims under the D&O Insurance. These claims account for approximately half of the estimated post-filing amounts outstanding from time to time that the Directors and Officers would be exposed to.

242. The Directors and Officers have expressed significant concern with respect to potential personal liability if they continue in their current capacities through this restructuring process. In the CCAA Parties' view it is important that adequate protection be afforded to the Directors and Officers to provide incentive for them to remain as Directors and Officers, respectively, of the CCAA Parties.

243. In light of the potential for significant personal liability, all of the Directors and Officers of the CCAA Parties, other than the representative for WISCO on the Bloom Lake GP board, have advised that they will not continue their service and involvement in the proposed restructuring unless the Draft Initial Order (Exhibit R-2) grants a charge as security for the CCAA Parties' obligations to the Directors and Officers in the manner and with the priority as described above. The CCAA Parties have not been advised of the WISCO's Bloom Lake GP board representative's position with respect his continued service and involvement on the Bloom Lake GP board.

244. The CCAA Parties have made inquiries through an insurance broker who has advised that no additional directors' and officers' insurance is obtainable by the CCAA Parties.

245. With the assistance of FTI, a calculation has been performed to estimate the potential quantum of post-filing amounts outstanding from time to time for which Directors and Officers may have potential personal liability under various statutes.

246. This amount has been calculated as up to approximately $3.5 million, depending on certain assumptions.

247. The CCAA Parties propose that a charge in favour of the Directors and Officers be granted in the amount of $3.5 million (the "**D&O Charge**") to the extent such claims are not covered by the D&O Insurance, in order to provide a reasonable level of protection to the Directors and Officers.

248. The CCAA Parties believe that the amount of the D&O Charge is fair and reasonable in the circumstances.

12.5 Execution Notwithstanding Appeal

249. In view of the urgency and severity of the circumstances confronting the CCAA Parties, it is essential that execution of the order requested be granted notwithstanding appeal.

13. CONCLUSIONS

250. The Draft Initial Order (Exhibit R-2) presented on this Motion is based on the form of standard CCAA Initial Order approved by the Superior Court of Québec, Commercial Division (the "**Model Order**"). A black-lined version comparing the Model Order to the Draft Initial Order is communicated as **Exhibit R-23**.

251. For the reasons set forth above, the CCAA Parties believe that it is both appropriate and necessary that the relief being sought in the Draft Initial Order (Exhibit R-2) be granted for the purposes of maximizing the restructuring and realization efforts of the CCAA Parties for the benefit of their stakeholders.

252. The CCAA Parties respectfully submit that this motion should be granted in accordance with its conclusions.

253. The present motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Motion for the Issuance of an Initial Order;

ISSUE an Initial Order in the form of the Draft Initial Order (Exhibit R-2) communicated in support hereof;

THE WHOLE WITHOUT COSTS, save and except in case of contestation.

Montréal, January 26, 2015

BLAKE, CASSELS & GRAYDON LLP
Attorneys for the CCAA Parties

AFFIDAVIT

I, the undersigned, **CLIFFORD T. SMITH**, the Executive Vice-President and a director of the Petitioners, Bloom Lake General Partner Limited and Cliffs Québec Iron Mining ULC, having a place of business at 1155 Rue University, Suite 508, in the city and district of Montréal, Québec, solemnly affirm that all the facts alleged in the present Motion for the Issuance of an Initial Order are true.

AND I HAVE SIGNED:

Clifford T. Smith

CLIFFORD T. SMITH

SOLEMNLY DECLARED before me
at Montréal, Québec,
this 26th day of January, 2015

Commissioner of Oaths for Québec

COMMISSAIRE À L'ASSERMENTATION
COMMISSIONER FOR OATHS
EDITH MESSIER
#80 049
POUR LE QUÉBEC / FOR QUEBEC

22669376.6

N°: 500-11

SUPERIOR COURT
DISTRICT OF MONTREAL
(Commercial Division)

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

BLOOM LAKE GENERAL PARTNER LIMITED & ALS.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Proposed Monitor

MOTION FOR THE ISSUANCE OF AN INITIAL ORDER AND AFFIDAVIT
(Section 4, 5, 11 and ff. of CCAA)

ORIGINAL

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SCHEDULE 5

Unclassified / Low Sensitivity

OSFI Plan ID: P-W180

December 16, 2015

Mr. Kurt Holland
Director, Compensation and Benefits
Cliffs Natural Resources
1155 University Street, Suite 508
Montreal, QC H3B 3A7

Subject: **Termination of the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, and Wabush Lake Railway Company, Limited (the Plan)**
OSFI Registration Number: 57777
***Pension Benefits Standards Act, 1985* (PBSA)**
***Pension Benefits Standards Regulations, 1985* (the Regulations)**

I am writing to you in your capacity as the Plan administrator. Pursuant to subsections 29(2), (2.1) and (3) of the PBSA I am terminating the Plan effective immediately. The Newfoundland Superintendent of Pensions, in a letter dated December 16, 2015, has also declared the Plan terminated effective as of today.

On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc. and certain of their affiliates, including Wabush Mines, Arnaud Railway Company[1] and Wabush Lake Railway Company Limited (collectively the "Wabush Group") were made subject to proceeding under the Companies' Creditors Arrangement Act (CCAA). As part of the CCAA proceeding, payments of special payments have been suspended as of May 2015. In addition, the Wabush Mine has been shut down and substantially all of its employees have been terminated. As a result, I am of the opinion that the Plan has failed to meet the prescribed tests and standards for solvency as required by subsection 9(1) of the PBSA and sections 8 and 9 of the Regulations, and that the employer has discontinued all of its business operations.

Furthermore, it is OSFI's understanding based on recent communication with you and your legal counsel that, although there may be some prospects with respect to the sale of at least some of the Wabush Group's assets, it is highly unlikely that any potential buyer would agree to assume the assets and liabilities of the Plan. Given the Plan's future prospects and its current financial position, I consider that it would be in the best interests of members to terminate the Plan effective immediately.

[1] Arnaud Railway Company is a federally regulated railway and is a participating employer in the Plan. The Plan was registered with the Office of the Superintendent of Financial Institutions (OSFI) on March 20, 2015 following a decision issued by the Canada Industrial Relations Board accrediting the union representing Plan members working at the Arnaud Railway Company at Pointe-Noire and Sept-îles, Quebec, under the Canada Labour Code.

Based on the above, I declare the Plan terminated effective the date of issuance of this letter, December16, 2015.

Subsection 29(6) of the PBSA provides that upon termination of a plan the employer must pay into the pension fund all amounts that would otherwise have been required to be paid to meet the prescribed tests and standards for solvency referred to in subsection 9(1) of the PBSA.

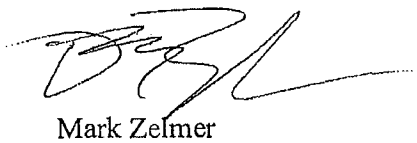
Note that subsection 29(6.1) of the PBSA requires that on plan termination the employer pay into the pension fund the amount that is required to ensure that any obligation of the plan with respect to pension benefits, as they are determined on the date of the termination, is satisfied. Under subsection 29(6.4), this amount is payable immediately on the winding-up of the pension plan, or the liquidation, assignment or bankruptcy of the employer. Subsections 29(6.2) and 29(6.5), as well as subparagraph 8(1)(c)(ii), set out rules with respect to the application of the deemed trust upon plan termination.

I wish to inform you that following the termination of a plan, an actuarial termination report must be filed with my office pursuant to subsection 29(9) of the PBSA. Furthermore, upon termination of a plan, OSFI's approval would be required before the Plan's funds could be distributed. Section VI of OSFI's Instruction Guide titled "Filing and Reporting Requirements for Defined Benefit Pension Plan Terminations" outlines the documents that are expected to be filed with OSFI within 90 days of the termination date.

Please inform all Plan members and stakeholders of my decision to declare the Plan terminated as soon as possible.

If you have any questions you may contact Stephen Reid at 613-990-2537 or Chuck Saab at 613-990-8027.

Yours truly,



Mark Zelmer
Deputy Superintendent
Office of the Superintendent of Financial Institutions

cc: Marthe Brodeur, Cliffs Natural Resources
Natalie Bussière, Blakes
Michael Delaney, Newfoundland, Superintendent of Pensions
Michel Drolet, Régie des rentes du Québec
Nigel Meakin, FTI Consulting

References – Pension Benefits Standards Act, 1985 — Appendix

Subsection 29(2) of the PBSA:
Where Superintendent may declare a plan terminated

29(2) The Superintendent may declare the whole or part of a pension plan terminated where
(a) there is any suspension or cessation of employer contributions in respect of all or part of the plan members;
(b) the employer has discontinued or is in the process of discontinuing all of its business operations or a part thereof in which a substantial portion of its employees who are members of the pension plan are employed; or
(c) the Superintendent is of the opinion that the pension plan has failed to meet the prescribed tests and standards for solvency in respect of funding referred to in subsection 9(1).

Subsection 29(6) of the PBSA:
Payments by employer to meet solvency requirements

29(6) If the whole of a pension plan is terminated, the employer shall, without delay, pay into the pension fund all amounts that would otherwise have been required to be paid to meet the prescribed tests and standards for solvency referred to in subsection 9(1) and, without limiting the generality of the foregoing, the employer shall pay into the pension fund
(a) an amount equal to the normal cost that has accrued to the date of the termination;
(b) the amounts of any prescribed special payments that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;
(c) the amounts of payments that are required to be made under a workout agreement that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;
(d) all of the following amounts that have not been remitted to the pension fund at the date of the termination:
(i) the amounts deducted by the employer from members' remuneration, and
(ii) other amounts due to the pension fund from the employer; and
(e) the amounts of all of the payments that are required to be made under subsection 9.14(2).

Subsection 29(6.1) of the PBSA:
Payments by employer of pension benefits

29(6.1) If the whole of a pension plan that is not a negotiated contribution plan is terminated, the employer shall pay into the pension fund, in accordance with the regulations, the amount — calculated periodically in accordance with the regulations — that is required to ensure that any obligation of the plan with respect to pension benefits, as they are determined on the date of the termination, is satisfied.

Subsection 29(6.4) of the PBSA:
Winding-up or bankruptcy

29(6.4) On the winding-up of the pension plan or the liquidation, assignment or bankruptcy of the employer, the amount required to permit the plan to satisfy any obligations with respect to pension benefits as they are determined on the date of termination is payable immediately.

SCHEDULE 6

Newfoundland Labrador

Government of Newfoundland and Labrador
Service NL

December 16, 2015

Mr. Kurt Holland
Director - Benefits
c/o Cliffs Natural Resources, Inc.
200 Public Square, Suite 3300
Cleveland, Ohio
USA
44114 – 2315

Dear Mr. Holland:

Re: Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited; (the "Plan")
NL Registration Number 0021314

I am writing to you in your capacity as the Plan administrator. Pursuant to subsections 59(1)(b) and (d) of the *Pension Benefits Act, 1997* (the Act), I am terminating the Plan effective immediately.

On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc. and certain of their affiliates, including Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the "Wabush Group") were made subject to proceeding under the Companies' Creditors Arrangement Act (CCAA). As part of the CCAA proceeding, payments of special payments have been suspended as of May 2015. In addition, the Wabush Mine has been shut down and substantially all of its employees have been terminated. As a result, I am of the opinion that the Plan has failed to meet the requirements prescribed by the *Pension Benefits Act Regulations* (the Regulations) for solvency in respect of funding as required by section 12 of the Regulations, and that the employer has discontinued all of its business operations

Furthermore, it is my understanding based on recent communication with you and your legal counsel that, although there may be some prospects with respect to the sale of at least some of the Wabush Group's assets, it is highly unlikely that any potential buyer would agree to assume the assets and liabilities of the Plan. Given the Plan's future prospects and its current financial position, I consider that it would be in the best interests of members to terminate the Plan effective immediately.

Based on the above, I declare the Plan terminated effective the date of issuance of this letter, December 16, 2015.

Subsection 61(1) of the Act provides that upon termination of a plan the employer must pay into the pension fund all amounts that would otherwise have been required to be paid to meet the requirements prescribed by the Regulations for solvency. Under section 25 of the Regulations, this amount is required within 30 days of the date of termination of the Plan.

Additionally, subsection 61(2) of the Act requires that on plan termination the employer shall, as prescribed by the Regulations, pay into the pension fund the amount that is necessary to fund the benefits provided under the Plan. Section 25.1 of the Regulations outlines the rules with respect to the required funding.

Section 32 of the Act sets out rules with respect to the application of the deemed trust upon plan termination.

I wish to inform you that following the termination of a plan, an annual information return and actuarial termination report must be filed with my office pursuant to subsection 60(2) of the Act. Please be advised that funds cannot be transferred until the Superintendent has approved the termination report and transfer in writing. Please refer to the Act and associated regulations and Directives (in particular Nos. 8, 9 and 11) for additional details. The Directives can be found on the Service NL website.

Once the wind-up report has been approved, option statements must be provided to members in accordance with the Act and Directives. However, please note that copies/templates are required by this office prior to approving the termination report. Please refer to the requirements under Directive No. 8 (and any additional requirements under Directive No. 11).

Please inform all Plan members of my decision to declare the Plan terminated effective the date of issuance of this letter, December 16, 2015.

Should you have any questions or concerns please contact me directly at (709) 729-6014.

Yours truly,

Michael Delaney
Superintendent of Pensions
Pension Benefit Standards Division

cc: Marthe Brodeur, Cliffs Natural Resources
Natalie Bussière, Blakes
Nigel Meakin, FTI Consulting
Michel Drolet, Regie des rentes

Newfoundland Labrador

Government of Newfoundland and Labrador
Service NL

December 16, 2015

Mr. Kurt Holland
Director - Benefits
c/o Cliffs Natural Resources, Inc.
200 Public Square, Suite 3300
Cleveland, Ohio
USA
44114 – 2315

Dear Mr. Holland:

Re: Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, and Wabush Lake Railway Company, Limited; (the "Plan")
NL Registration Number 0024699

I am writing to you in your capacity as the Plan administrator. Pursuant to subsections 59(1)(b) and (d) of the *Pension Benefits Act, 1997* (the Act), I am terminating the Plan effective immediately. I am aware the federal pension regulator, who is jointly responsible for regulating the Plan is issuing a similar decision based on their legislative authority.

On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc. and certain of their affiliates, including Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the "Wabush Group") were made subject to proceeding under the Companies' Creditors Arrangement Act (CCAA). As part of the CCAA proceeding, payments of special payments have been suspended as of May 2015. In addition, the Wabush Mine has been shut down and substantially all of its employees have been terminated. As a result, I am of the opinion that the Plan has failed to meet the requirements prescribed by the *Pension Benefits Act Regulations* (the Regulations) for solvency in respect of funding as required by section 12 of the Regulations, and that the employer has discontinued all of its business operations

Furthermore, It Is my understanding based on recent communication with you and your legal counsel that, although there may be some prospects with respect to the sale of at least some of the Wabush Group's assets, it is highly unlikely that any potential buyer would agree to assume the assets and liabilities of the Plan. Given the Plan's future prospects and its current financial position, I consider that it would be in the best interests of members to terminate the Plan effective immediately.

Based on the above, I declare the Plan terminated effective the date of issuance of this letter, December 16, 2015.

Subsection 61(1) of the Act provides that upon termination of a plan the employer must pay into the pension fund all amounts that would otherwise have been required to be paid to meet the requirements prescribed by the Regulations for solvency. Under section 25 of the Regulations, this amount is required within 30 days of the date of termination of the Plan.

Additionally, subsection 61(2) of the Act requires that on plan termination the employer shall, as prescribed by the Regulations, pay into the pension fund the amount that is necessary to fund the benefits provided under the Plan. Section 25.1 of the Regulations outlines the rules with respect to the required funding.

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Please inform all Plan members of my decision to declare the Plan terminated effective the date of issuance of this letter, December 16, 2015.

Should you have any questions or concerns please contact me directly at (709) 729-6014.

Yours truly,

Michael Delaney
Superintendent of Pensions
Pension Benefit Standards Division

cc: Marthe Brodeur, Cliffs Natural Resources
Natalie Bussière, Blakes
Nigel Meakin, FTI Consulting
Mark Zelmer, OSFI
Michel Drolet, Regie des rentes