

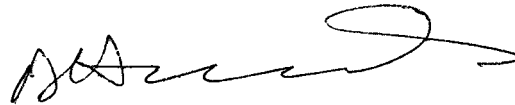
LIST OF SCHEDULES

(In support of the Applicants, Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson (as Representatives of the Salaried/Non-Union Employees and Retirees) *Application for Leave to Appeal from an Interlocutory Decision and to Suspend Provisional Execution*

Schedule 1	September 11, 2017 Judgment on the Motion of the Monitor for Directions with Respect to Pension Claims, rendered by the Honourable Stephen W. Hamilton, J.S.C. in Superior Court file no. 500-11-048114-157
Schedule 2	January 30, 2017 Judgment on the Motion of the Monitor, rendered by the Honourable Stephen W. Hamilton, J.S.C. in Superior Court file no. 500-11-048114-157
Schedule 3	June 26, 2015 Judgment on Motion of the Wabush CCAA Parties to Grant Priority to the Interim Lender Charge and to Suspend the Payment of Certain Pension Amortization Payments and Post-Retirement Employee Benefits, and Related Matters, rendered by the Honourable Stephen W. Hamilton, J.S.C. in Superior Court file no. 500-11-048114-157
Schedule 4	August 18, 2015 Judgment on Motion for Leave to Appeal, rendered by the Honourable Nicholas Kasirer, J.A. in Court of Appeal file no. 500-09-025441-155
Schedule 5	June 22, 2015 Order Appointing Representatives and Representative Counsel, rendered by the Honourable Stephen W. Hamilton, J.S.C. in Superior Court file no. 500-11-048114-157
Schedule 6	April 13, 2017 Amended Motion by the Monitor for Directions with Respect to Pension Claims, without attachments
Schedule 7	October 7, 2016 Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims
Schedule 8	Notice of Objection by Superintendent of Pensions of Newfoundland and Labrador
Schedule 9	Notice of Objection by Morneau Shepell, in its capacity as the Replacement Pension Plan Administrator
Schedule 10	Affidavit of Terry Watt in support of the October 7, 2016 Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims, sworn on

	December 14, 2016
Schedule 11	Wind-Up Actuarial Valuation as at December 16, 2015 of the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush lake Railway Company, Limited
Schedule 12	June 21, 2017 FTI Consulting Canada Inc.'s Thirty-Eighth Report to the Court in its Capacity as Monitor, without appendices
Schedule 13	April 26, 2017 FTI Consulting Canada Inc.'s Thirty-Fourth Report to the Court in its Capacity as Monitor, without appendices
Schedule 14	March 27, 2017 Certified true copy of a Minute of a Meeting of the Committee of the Executive Council of Newfoundland and Labrador approved by His Honour the Lieutenant-Governor directing a Reference

TORONTO, October 2, 2017



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TAB 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 LABEL 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 NEWFOUNDLAND 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

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*

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,

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

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

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 immovable 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.

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 immovable 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

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.

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?

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

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

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 railways³⁵ 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:

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 1986⁴² 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.

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 SPPA⁴⁴ 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

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

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,

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 Schrage, 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

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.

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 une 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.

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 Schragger 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 égard, 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:

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 LRRCR, 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 LRRCR 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.

⁵⁵ *Timmiinco Itée (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

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 Schragger 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.

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.

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. SPPA⁶⁴

[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).

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.

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 immovable 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

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 CCAs 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 CCAs 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

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 uncertainty 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.

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.

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

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

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.

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

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.

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

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.

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
BLAKE, CASSELS & GRAYDON
For the Debtors

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PINK LARKIN
For Morneau Shepell Ltd, in its capacity as replacement pension plan administrator

Mtre Doug Mitchell
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Superintendent of Financial Institutions

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For Retraite Québec

Mtre Martin Roy
STEIN MONAST
For Ville de Sept-Îles

Dates of hearing: June 28 and 29, 2017

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TAB 2

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No: 500-11-048114-157

DATE: January 30, 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.**

Petitioners

And

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY LIMITED
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
HER MAJESTY IN RIGHT OF NEWFOUNLAND
AND LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

**THE ATTORNEY GENERAL OF CANADA, ACTING
ON BEHALF OF THE OFFICE OF THE SUPERINTENDENT
OF FINANCIAL INSTITUTIONS
RÉGIE DES RENTES DU QUÉBEC
VILLE DE SEPT-ÎLES**

Mises en cause

And

FTI CONSULTING CANADA INC.

Monitor

JUDGMENT

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 has filed a motion for directions with respect to the priority of the various components of the pension claims.

[2] A preliminary issue has arisen as to whether the Court should request the aid of the Supreme Court of Newfoundland and Labrador (the "NL Court") with respect to the scope and priority of the deemed trust and other security created by the Newfoundland and Labrador *Pension Benefit Act* ("NLPBA"),² which regulates in part the pension plans.

CONTEXT

[3] 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.

[4] Prior to the filing of the 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 port facilities and a pellet production facility at Pointe-Noire, Québec. Arnaud Railway and Wabush Lake Railway are both federally regulated

¹ R.S.C. 1985, c. C-36.

² S.N.L. 1996, c. P-40.1.

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.

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

- 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 (the "Salaried Plan"); and
- 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 Company and Wabush Lake Railway Company (the "Union Plan").

[6] Wabush Mines was the administrator of both plans.

[7] The majority of the employees covered by the plans reported for work in Newfoundland and Labrador while some reported for work in Québec. Moreover, some of the employees covered by the Union Plan worked for Arnaud Railway, which is a federally regulated railway. The result is that the Salaried Plan is governed by the NLPBA, while the Union Plan is governed by both the NLPBA and the federal *Pension Benefits Standards Act* ("PBSA").³ Further, the Union suggests that the Québec *Supplemental Pension Plans Act* ("SPPA")⁴ might be applicable to employees or retirees who reported for work in Québec. Both plans are subject to regulatory oversight by the provincial regulator in Newfoundland and Labrador, the Superintendent of Pensions (the "NL Superintendent"), while the Union Plan is also subject to regulatory oversight by the federal pension regulator, the Office of the Superintendent of Financial Institutions ("OSFI"). The Québec regulator, Retraite Québec, might also have a role to play.

[8] On June 26, 2015, in the context of approving the interim financing of the debtors, the Court 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

³ R.S.C. 1985 (2nd Supp.), c. 32.

⁴ CQLR, c R-15.1, s. 49.

suspension of payment of other post-retirement benefits, including life insurance, health care and a supplemental retirement arrangement plan.⁵

[9] On December 16, 2015, the NL Superintendent terminated both plans effective immediately on the basis that the plans failed to meet the solvency requirements under the regulations, the employer has discontinued all of its business operations and it was highly unlikely that any potential buyer of the assets would agree to assume the assets and liabilities of the plans.⁶ On the same date, OSFI terminated the Union Plan effective immediately for the same reasons.⁷

[10] Both the NL Superintendent and OSFI reminded the Wabush CCAA Parties of the employer's obligation upon termination of the 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.⁸

[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%.⁹ Retirees under the Union Plan had their benefits reduced by 21% on March 1, 2016.¹⁰

[12] On March 30, 2016, the NL Superintendent and OSFI appointed Morneau Shepell Ltd as administrator for the plans.¹¹

[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 as of December 16, 2015.¹² The monthly normal cost payments for the Salaried Plan had been overpaid in the amount of \$169,961 as of December 16, 2015.¹³

⁵ 2015 QCCS 3064; motion for leave to appeal dismissed, 2015 QCCA 1351.

⁶ Exhibit R-13.

⁷ Exhibit R-14.

⁸ Exhibits R-13 and R-14.

⁹ Exhibit RESP-7.

¹⁰ Affidavit of Terence Watt, sworn December 14, 2016, par. 19.

¹¹ Exhibit R-15.

¹² There is a debate as to whether the Wabush CCAA Parties were required to pay the full monthly payment for December or only a pro-rated portion. The amount at issue for the period from December 17 to 31, 2015 is \$21,462.

¹³ Exhibit R-16.

[14] However, the Wabush CCAA Parties ceased making the special payments in June 2015 pursuant to the order issued by the Court, with the result that unpaid special payments as of December 16, 2015 total \$2,185,752 for the Salaried Plan¹⁴ and \$3,146,696 for the Union Plan.¹⁵

[15] Further, the Wabush CCAA Parties did not make the lump sum "catch-up" special payments that came due after June 2015. The amount payable is now calculated to be \$3,525,125.¹⁶ These amounts became known with certainty only when the actuarial report was completed and filed in July 2015, but some of these amounts may relate to the pre-filing period.

[16] Finally, the plans are underfunded. The Plan Administrator estimates the wind-up deficits as at December 16, 2015 to be approximately \$26.7 million for the Salaried Plan and approximately \$27.7 million for the Union Plan.

[17] As a result, according to the Monitor, the total amounts owing are approximately \$28.7 million to the Salaried Plan and \$34.4 million to the Union Plan.

[18] The Plan Administrator filed a proof of claim in respect of the Salaried Plan that includes a secured claim in the amount of \$24 million and a restructuring claim in the amount of \$1,932,940,¹⁷ and a proof of claim with respect to the Union Plan that includes a secured claim in the amount of \$29 million and a restructuring claim in the amount of \$6,059,238.¹⁸

[19] The differences in the numbers are not important at this stage. It is sufficient to note that there are very large claims and that the Plan Administrator claims the status of a secured creditor with respect to a substantial part of its claims.

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

[21] The Monitor is now working through the claims procedure. In that context, 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;

¹⁴ Exhibit R-16.

¹⁵ Exhibit R-17.

¹⁶ Exhibit R-17.

¹⁷ Exhibit R-18.

¹⁸ Exhibit R-19.

- 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.

[22] Those issues are not yet before the Court. A preliminary issue has arisen as to whether the Court should request the aid of the NL Court with respect to 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.

POSITION OF THE PARTIES

[23] All parties agree that (1) the Court has jurisdiction to deal with all of the issues, and (2) the Court has the discretion to request the aid of the NL Court.

[24] Three parties suggest that the Court should exercise that discretion and request the aid of the NL Court:

- The Plan Administrator;
- The representatives of the salaried employees and retirees; and
- The NL Superintendent.

[25] The representatives of the salaried employees and retirees have proposed that the following questions should be resolved by the NL Court:

1. The Supreme Court of Canada has confirmed in *Indalex* that provincial laws apply in CCAA proceedings, subject only to the doctrine of paramountcy. Assuming there is no issue of paramountcy, what is the scope of section 32 in the NPBA [NLPBA] deemed trusts in respect of:
 - a) unpaid current service costs;
 - b) unpaid special payments; and,
 - c) unpaid wind-up liability.
2. The Salaried Plan is registered in Newfoundland and regulated by the NPBA.

- a) (i) Does the PBSA 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 NPBA and PBSA if so, how is the conflict resolved?
 - b) (i) Does the SPPA also apply to those members of the Salaried Plan who reported for work in Québec?

(ii) If yes, is there a conflict with the NPBA and SPPA and if so, how is the conflict resolved?

(iii) Do the Quebec SPPA deemed trusts also apply to Québec Salaried Plan members?
3. Is the NPBA lien and charge in favour of the pension plan administrator in section 32(4) of the NPBA a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass?

[26] Three other parties suggest that the Court should not transfer any issues to the NL Court and should decide all of the issues:

- The Monitor;
- The Syndicat des métallos, sections locales 6254 et 6285; and
- The Ville de Sept-Îles.

[27] The Ville de Sept-Îles argues that the request to transfer should be dismissed because it is too late.

[28] Finally, two parties do not take a position on the request to transfer:

- The Attorney-General of Canada, acting on behalf of OSFI; and
- Retraite Québec.

ANALYSIS

1. The jurisdiction of the CCAA Court

[29] In principle, all issues relating to a debtor's insolvency are decided before a single court.¹⁹ This rule is based on the "public interest in the expeditious, efficient and

¹⁹ *Sam Lévy & Associés Inc. v. Azco Mining Inc.*, 2001 SCC 92, par. 25-28.

economical clean-up of the aftermath of a financial collapse.”²⁰ This public interest favours a “single control” of insolvency proceedings by one court as opposed to their fragmentation among several courts.²¹

[30] The Supreme Court in *Sam Lévy* concluded as follows with respect to the relevant test:

76 In the present case, we are confronted with a federal statute that *prima facie* establishes one command centre or “single control” (*Stewart, supra*, at p. 349) for all proceedings related to the bankruptcy (s. 183(1)). Single control is not necessarily inconsistent with transferring particular disputes elsewhere, but a creditor (or debtor) who wishes to fragment the proceedings, and who cannot claim to be a “stranger to the bankruptcy”, has the burden of demonstrating “sufficient cause” to send the trustee scurrying to multiple jurisdictions. Parliament was of the view that a substantial connection sufficient to ground bankruptcy proceedings in a particular district or division is provided by proof of facts within the statutory definition of “locality of a debtor” in s. 2(1). The trustee in that locality is mandated to “recuperate” the assets, and related proceedings are to be controlled by the bankruptcy court of that jurisdiction. The Act is concerned with the economy of winding up the bankrupt estate, even at the price of inflicting additional cost on its creditors and debtors.²²

(Emphasis added)

[31] Although the *Sam Lévy* case was decided in the context of the *Bankruptcy and Insolvency Act* (“BIA”),²³ the same principles apply in the context of the other insolvency legislation, including the CCAA.²⁴ The CCAA court has jurisdiction to deal with all of the issues that arise in the context of the CCAA proceedings.²⁵ The stay of proceedings under the CCAA gives effect to this principle by preventing creditors from bringing proceedings outside the CCAA proceedings without the authorization of the CCAA court.

[32] There are clear efficiencies to having a single court deal with all of the issues in a single judgment.

²⁰ *Ibid*, par. 27.

²¹ *Ibid*, par. 64.

²² *Ibid*, par. 76.

²³ R.S.C. 1985, c. B-3.

²⁴ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, par. 22; *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67, par. 21; *Montreal, Maine & Atlantic Canada Co./Montréal, Maine & Atlantique Canada Cie (Arrangement relatif à)*, 2013 QCCS 5194, par. 24-25; *Re Nortel Networks Corporation et al*, 2015 ONSC 1354, par. 24; *Re Essar Steel Algoma Inc.*, 2016 ONSC 595, par. 29-30, judgment of Court of Appeal ordering (i) Cliffs to seek leave to appeal the Order, (ii) the hearing of the leave to appeal motion be expedited, and (iii) the issuance of a stay pending the disposition of the leave to appeal motion, 2016 ONCA 138.

²⁵ Section 16 CCAA provides that the orders of the CCAA court are enforced across Canada.

[33] The general rule is therefore that the Court should rule on all issues that arise in the context of these insolvency proceedings.

2. The discretion to ask for the assistance of another court

[34] There are however situations where another court can deal more efficiently with specific issues. The CCAA Court has jurisdiction to ask for the assistance of another court under Section 17 CCAA:

17 All courts that have jurisdiction under this Act and the officers of those courts shall act in aid of and be auxiliary to each other in all matters provided for in this Act, and an order of a court seeking aid with a request to another court shall be deemed sufficient to enable the latter court to exercise in regard to the matters directed by the order such jurisdiction as either the court that made the request or the court to which the request is made could exercise in regard to similar matters within their respective jurisdictions.

[35] The representative of the salaried employees and retirees also pleaded the notion of *forum non conveniens* under the Civil Code:

3135. Even though a Québec authority has jurisdiction to hear a dispute, it may, exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another State are in a better position to decide the dispute.

[36] The Supreme Court held in *Sam Lévy*²⁶ that Article 3135 C.C.Q. does not apply in bankruptcy matters because of Section 187(7) BIA, which provides:

187 (7) The court, on satisfactory proof that the affairs of the bankrupt can be more economically administered within another bankruptcy district or division, or for other sufficient cause, may by order transfer any proceedings under this Act that are pending before it to another bankruptcy district or division.

[37] While Section 17 CCAA is not as explicit, the Court is satisfied that it is not necessary or appropriate to refer to Article 3135 C.C.Q. in the present context. The CCAA court is not being asked to decline jurisdiction, but rather it is being asked to seek the assistance of another court.

[38] The Court is therefore satisfied that, notwithstanding the general rule that it should rule on all issues that arise in the context of these insolvency proceedings, it can seek the assistance of another court. It is a discretionary decision of this Court, based on factors such as cost, expense, risk of contradictory judgments, expertise, etc.

²⁶ *Supra* note 19, par. 62.

3. Specific grounds

[39] The arguments put forward in support of the referral of the issues to the NL Court can be summarized as follows:

a) Legal considerations:

- These are complex and important issues of provincial law;
- The courts in Newfoundland and Labrador possess far greater expertise in interpreting the NLPBA than does the courts in Québec, although these specific questions have not yet been considered by any court in Newfoundland and Labrador;
- The interpretation of the NLPBA is a question of the intention of the legislator in Newfoundland and Labrador, and the NL Court is better situated to determine this intention;

b) Factual considerations:

- It is a question of purely local concern and it may significantly impact a large number of residents of Newfoundland and Labrador;
- The province of Newfoundland and Labrador is closely connected to the dispute: a majority of the employees reported for work in the province and the Wabush CCAA Parties maintained significant business operations in the province;
- If justice is to be done and be seen to be done it is important that consequential decisions on provincial legislation be made by the courts of that province;
- The representatives of the salaried employees and retirees want the NL Court to interpret the NLPBA;

c) Practical considerations:

- The law of another province is treated as a question of fact in Québec, with the result that the conclusion on a matter of foreign law is not binding on subsequent courts and can only be overturned in the presence of a palpable and overriding error;
- It might be difficult to prove the law of Newfoundland and Labrador in a Québec court given the lack of jurisprudence on the specific issues;

- There will be increased costs if the Québec Court interprets the NLPBA because of the need to retain experts to provide legal opinions;
- There is no reason to believe that fragmenting the proceedings will result in additional delay;
- The judgment to be rendered will be a precedent and only a decision of the courts of Newfoundland and Labrador would be an authoritative precedent;
- Other persons or parties may wish to intervene on the issue of the scope of the Section 32 NLPBA deemed trusts, which would be more practical in the NL Court.

[40] These arguments do not convince the Court that this is an appropriate case to refer the issues to the NL Court.

a) Legal considerations

[41] This is the key argument put forward by the parties suggesting that the NLPBA issues be referred to the NL Court: the issues relate to the NLPBA, and the NL Court is best qualified to interpret the NLPBA.

[42] The Court accepts as a starting point that the NLPBA applies in the present matter: the pension plans are regulated by the NL Superintendent in accordance with the NLPBA (although OSFI also regulates the Union Plan in accordance with the PBSA) and the plans expressly provide that they are interpreted in accordance with the NLPBA.

[43] The Court also accepts the obvious proposition that the NL Court is more qualified to deal with an issue of Newfoundland and Labrador law than the courts of Québec, particularly since Newfoundland and Labrador is a common law jurisdiction and Québec is a civil law jurisdiction.

[44] However, that does not mean that the Court will automatically refer every issue governed by the law of another jurisdiction to the courts of that other jurisdiction.

[45] First, there are rules in the Civil Code with respect to how Québec courts deal with issues governed by foreign law. Articles 3083 to 3133 C.C.Q. set out the rules to determine which law is applicable to a dispute before the Québec courts, and Article 2809 C.C.Q. sets out how the foreign law is proven before the Québec courts.

[46] Further, pursuant to these rules, Québec courts regularly hear matters governed by foreign law. The Court of Appeal recently held that the fact that a dispute is governed by foreign law does not have much weight in a *forum non conveniens* analysis:

[98] Si on revoie les considérations du Juge, portant sur dix points, pour conclure que le for géorgien est préférable, deux aspects principaux en ressortent, soit les coûts et la loi applicable.

[99] Quant à cette dernière considération, elle n'est pas d'un grand poids, à mon avis. Parce que le débat porte sur les faits plutôt que sur le droit. Parce que la *common law* est tout de même familière aux tribunaux québécois. Parce que faire la preuve de la loi d'un État américain n'est pas un grand défi, c'est même chose courante.

[100] Et surtout, parce que le critère de la loi applicable ne constitue pas en soi un facteur important. Dans tout litige international, les conflits de lois sont l'ordinaire et non l'exception.²⁷

[47] In other words, the mere fact that a dispute is governed by foreign law is not a good reason to send the case to the foreign jurisdiction. This principle was applied in a CCAA context in the *MMA* case.²⁸

[48] There are examples in the insolvency context of the court with jurisdiction over the insolvency declining to send an issue governed by foreign law to the foreign court. In *Sam Lévy*, the Supreme Court declined to send an insolvency matter to British Columbia simply because there was a choice of B.C. law, stating, "The Quebec courts are perfectly able to apply the law of British Columbia."²⁹

[49] In *Lawrence Home Fashions Inc./Linge de maison Lawrence inc. (Syndic de)*, Justice Schragar, then of this Court, stated :

[18] In any event, should equitable set-off under Ontario law become relevant to the case, Québec judges sitting in such matters, on the presentation of the appropriate evidence, are readily capable of dealing with foreign law issues. Indeed, this is a frequent occurrence particularly in insolvency matters.³⁰

[50] The Ontario courts rejected similar arguments in *Essar Algoma*:

[80] Ontario courts can and do often apply foreign law. In this case I do not consider the fact that the law to be applied is Ohio law much of a factor, if any.³¹

²⁷ *Stormbreaker Marketing and Productions Inc. c. Weinstock*, 2013 QCCA 269, par. 98-100.

²⁸ *MMA*, *supra* note 24, par. 20.

²⁹ *Sam Lévy*, *supra* note 19, par. 61.

³⁰ 2013 QCCS 3015, par. 18.

³¹ *Supra* note 24, par. 80. See also *Nortel Networks*, *supra* note 24, par. 29.

[51] The Monitor submitted cases in which Québec courts have interpreted different provisions of the pension laws of other provinces.³² The Court also notes that it dealt to a more limited extent with the deemed trust under the NLPBA in its decision dated June 26, 2015.

[52] There are nevertheless circumstances where the CCAA court has referred legal issues to the courts of another province. The *Curragh*³³ and *Yukon Zinc*³⁴ judgments were cited as examples of such cases. However, in both cases, the legal issues related to the Yukon *Miners Lien Act*.³⁵ Justice Farley in *Curragh* wrote :

This legislation and its concept of the lien affecting the output of the mine or mining claim is apparently unique to the Yukon Territory.³⁶

[53] Moreover, both cases involved real rights on property in Yukon.

[54] The parties also pointed to *Timminco* as precedent authority directly on point supporting the transfer of a pension issue by the CCAA court to the jurisdiction where the pension plan is registered and has been administered.³⁷ However, *Timminco* is not a precedent in that the parties in that case consented to the referral of the issue and Justice Morawetz simply gave effect to their consent.

[55] Without concluding that the Court would only refer a legal issue if the foreign law at issue is unique, the Court concludes that the arguments favouring the referral of a legal issue are stronger when the foreign law is unique.

[56] It is therefore important to examine the issues that might be referred to the NL Court and the uniqueness of the NLPBA provisions that are at issue in the present matter.

[57] The representatives of the salaried employees and retirees identify the relevant questions as being the scope of the deemed trust and of the lien and charge under Section 32 NLPBA, as well as the interaction between the NLPBA and the federal and Québec statutes.

[58] Section 32 NLPBA provides:

³² *Emerson Électrique du Canada Itée c. Chatigny*, 2013 QCCA 163; *Bourdon c. Stelco inc.*, 2004 CanLII 13895 (QC CA).

³³ *Canada (Minister of Indian Affairs and Northern Development) v. Curragh Inc.*, [1994] O.J. No. 953 (Gen. Div.)

³⁴ *Yukon Zinc Corp. (Re)*, 2015 BCSC 1961.

³⁵ R.S.Y. 2002, c. 151.

³⁶ *Supra* note 33, par. 11. See also *Yukon Zinc*, *supra* note 34, par. 47 and 57.

³⁷ *Timminco Limited (Re)*, 2012 ONSC 5959.

32. (1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that

- (a) the money in the pension fund;
- (b) an amount equal to the aggregate of
 - (i) the normal actuarial cost, and
 - (ii) any special payments prescribed by the regulations, that have accrued to date; and
- (c) all
 - (i) amounts deducted by the employer from the member's remuneration, and
 - (ii) other amounts due under the plan from the employer that have not been remitted to the pension fund

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.

(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.

(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).

[59] The first point is that there is nothing particularly unique about Section 32 NLPBA.

[60] There is a very similar deemed trust provision in Section 8(1) and (2) PBSA:

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:

(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).

(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.

[61] In Québec, the SPPA provides :

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.

[62] There are similar deemed trusts and/or liens in every Canadian province outside Québec except Prince Edward Island: Ontario,³⁸ British Columbia,³⁹ Alberta,⁴⁰ Saskatchewan,⁴¹ Manitoba,⁴² Nova Scotia⁴³ and New Brunswick.⁴⁴

[63] The second point is that there is no Newfoundland and Labrador jurisprudence interpreting the relevant provisions of the NLPBA. The NL Superintendent pleaded that "the courts of Newfoundland & Labrador possess far greater expertise in interpreting the PBA [NLPBA] than does the Superior Court of Québec." While this is undoubtedly true with respect to the NLPBA as a whole, it is not true with respect to Section 32 NLPBA. In an earlier ruling also issued in the *Yukon Zinc* matter, Justice Fitzpatrick of the B.C. Supreme Court refused to decline jurisdiction and refer a matter involving the Yukon *Miners Lien Act* to the courts of Yukon and one of the factors that went against referring the matter to the Yukon court was the lack of jurisprudence in the Yukon court.⁴⁵

[64] Moreover, in this case, because of the similarities between the NLPBA and the federal and other provincial pension laws, the judge interpreting the NLPBA will likely refer to decisions of the courts of other provinces interpreting their legislation or the federal PBSA.

[65] The Québec Court should be in as good a position as the NL Court in that exercise.

[66] Finally, as is typical in these cases, there is a close interplay between the NLPBA and the CCAA. The first question proposed by the representatives of the salaried employees and retirees is: "Assuming there is no issue of paramountcy, what is the scope of section 32 in the NPBA [NLPBA] deemed trusts". The scope of the NLPBA is not relevant if the NLPBA does not apply because of a conflict with the CCAA and federal paramountcy. In that sense, there may not even be a need to deal with the interpretation of the NLPBA.

[67] Moreover, there are issues in this case with the federal PBSA and the Québec SPPA. The representatives of the salaried employees and retirees suggest that the following questions are relevant:

2. The Salaried Plan is registered in Newfoundland and regulated by the NPBA.

³⁸ Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.8, s. 57.

³⁹ British Columbia *Pension Benefits Standards Act*, S.B.C. 2012, c. 30, s. 58

⁴⁰ Alberta *Employment Pension Plans Act*, S.A. 2012, c. E-8.1, s. 58 and 60.

⁴¹ Saskatchewan *Pension Benefits Act, 1992*, S.S. 1992, c P-6.001, s. 43

⁴² Manitoba *Pension Benefits Act*, C.C.S.M., c. P32, s. 28.

⁴³ Nova Scotia *Pension Benefits Act*, S.N.S. 2011, c. 41, s. 80.

⁴⁴ New Brunswick *Pension Benefits Act*, S.N.B. 1987, c P-5.1, s. 51.

⁴⁵ *Yukon Zinc Corporation (Re)*, 2015 BCSC 836, par. 90.

- a) (i) Does the PBSA 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 NPBA and PBSA if so, how is the conflict resolved?
- b) (i) Does the SPPA also apply to those members of the Salaried Plan who reported for work in Québec?

(ii) If yes, is there a conflict with the NPBA and SPPA and if so, how is the conflict resolved?

(iii) Do the Quebec SPPA deemed trusts also apply to Québec Salaried Plan members?

[68] The representatives of the salaried employees and retirees and the NL Superintendent suggest that, in the interests of simplicity and expediency, all of these questions should be referred to the NL Court.

[69] The Court has great difficulty with this suggestion. On what basis should the Court conclude that the NL Court is in a better position to decide whether the Québec SPPA and deemed trust apply to employees who reported for work in Québec (question 2(b)(i) and (iii)) and how the conflict between the NLPBA and the SPPA should be resolved (question 2(b)(ii))? The first are pure questions of Québec law, and the last is a question where the laws of Québec and of Newfoundland and Labrador have equal application. There are similar questions with respect to the federal PBSA (question 2(c)), which the Court is in as good a position to decide as the NL Court.

[70] The Court will not refer issues of Québec law or federal law to the NL Court, and if those issues are too closely interrelated to the NLPBA issues, or if in the interests of simplicity and expediency they should all be decided by the same court, then the solution is not to refer any issues to the NL Court.

[71] In the earlier *Yukon Zinc* ruling where Justice Fitzpatrick refused to refer the matter to the courts of Yukon, she found that the issues related to the interrelationship between the Yukon *Miners Lien Act* and the rights asserted by others under B.C. law, in relation to assets the majority of which were located in British Columbia:

[89] As for the law to be applied to the various issues, it is clear that whatever forum is used to resolve these issues, there will be a blend of both British Columbian contract law and Yukon miner's lien law. The majority of the concentrate is located in British Columbia and was in this Province well before the 2015 Procon Lien was registered. Further, the contract rights are to be decided in accordance with British Columbian law, particularly as to if, and if so, when, title to the concentrate passed from Yukon Zinc to Transamine.

[90] This is not akin to the situation discussed in *Ecco Heating Products Ltd. v. J.K. Campbell & Associates Ltd.*, 1990 CanLII 1631 (BC CA), [1990] 48 B.C.L.R. (2d) 36 (C.A.), where the major issue arose under builder's lien legislation in British Columbia and where the court referred to the "extensive existing relevant jurisprudence" in British Columbia: at 43-44. It is common ground here that there is no case law on the issues of scope and priority under the *MLA* that arise here, let alone relevant Yukon jurisprudence.

[91] It is quite apparent that some issues arise under the *MLA* and, in particular, issues relating to Procon's rights in relation to the concentrate remaining in Yukon which is claimed by Transamine under British Columbian law. Transamine argues that this Court can take judicial notice of the *MLA*: see *Evidence Act*, R.S.B.C. 1996, c. 124, s. 24(2)(e). In any event, Procon has fully researched the issues as they arise under the *MLA* and made submissions on them. To turn the tables on Procon, if I were to decline jurisdiction in favour of the Yukon courts, there equally would be issues as to the Yukon court interpreting and applying British Columbian law on the contract issues.

[92] It would be impossible in the circumstances to bifurcate the issues based on the applicable law. Even if bifurcation was available, it would be neither a practical nor an efficient strategy in resolving the issues between Yukon Zinc, Procon and Transamine.

(Emphasis added)

[72] In the present matter, the bulk of the assets on which the deemed trust or the lien created by the NLPBA may apply are the proceeds of the sale of assets in Québec.

[73] On balance, the legal considerations do not favour referring the issues to the NL Court.

b) Factual considerations

[74] The parties suggesting that the NLPBA issues be referred to the NL Court also argue that these are essentially local issues that should be decided by the local court.

[75] It is clear that there are significant factual links between these issues and the province of Newfoundland and Labrador.

[76] In particular, the Wabush mine is located in Newfoundland and Labrador and most of the employees reported to that mine. As a result, many of the retirees are currently resident in Newfoundland and Labrador. The representatives of the salaried employees and retirees want the NL Court to interpret the NLPBA.

[77] However, there are equally strong factual links to the province of Québec: the Pointe-Noire facility is in Québec and most of the railway joining the Wabush mine and the Pointe-Noire facility is in Québec. There are almost as many employees and retirees in Québec:

	Salaried Plan	Union Plan
Newfoundland and Labrador	313	1,005
Québec	329	661
Other	14	66 ⁴⁶

[78] As a result, this is not a matter of purely local concern in Newfoundland and Labrador.

[79] Although the representatives of the salaried employees and retirees want the NL Court to interpret the NLPBA, more than half of the persons that they represent live in Québec.

[80] It is also worth noting that the Union, which represents more employees and retirees, asks that the case remain in Québec, even though most of their members reside in Newfoundland and Labrador.

c) Practical considerations

[81] The parties suggesting that the NLPBA issues be referred to the NL Court argue that the law of Newfoundland and Labrador is in principle a question of fact in a Québec court which is proven with expert witnesses. They argue that this has a series of somewhat inconsistent consequences:

- The parties will have to hire experts, which is costly and time consuming;
- It will be difficult to find experts because these questions have never been litigated before;
- If there is an appeal, the interpretation of the NLPBA will be treated as a question of fact and therefore only subject to be overturned if there is a palpable and overriding error.

⁴⁶ Watt Affidavit, par. 16.

[82] This seems to exaggerate the difficulty. The Court can take judicial notice of the law of another province.⁴⁷ This is particularly true when it is an issue of interpreting a statute.⁴⁸ In this case, where the parties plead that it will be difficult to find an expert, it seems unlikely that the Court would require expert evidence. This is particularly so when the provisions of the NLPBA which are at issue are similar to the provisions of the federal PBSA with respect to which expert evidence is not admissible. If there is no expert evidence to be offered, then there is no expense. A finding of fact with respect to expert evidence may attract the higher standard for appellate review of a palpable and overriding error.⁴⁹ This does not mean that every ruling on an issue of foreign law attracts the same standard. If the judge decides the interpretation of the NLPBA without considering the credibility of expert witnesses, then there is no reason for the Court of Appeal to apply the higher standard for appellate review.

[83] In terms of cost, it is difficult to see how the cost of continuing the proceedings in Québec will be higher than the cost of hiring attorneys in Newfoundland and Labrador and debating part of the issues there. The Union and Sept-Îles argued that it would be more expensive for them to argue the issues in Newfoundland and Labrador, and they added that they pay their own costs, unlike the representatives of the salaried employees and retirees and the Plan Administrator.

[84] Another issue is the delays that the referral might create.

[85] Sept-Îles bases its argument that it is too late now to raise the issue of a transfer on the fact that the Court already dealt with some of these issues 18 months ago. The representatives of the salaried employees and retirees plead that they raised the issue of a possible transfer of issues to the NL Court at the hearing of the motion for approval of the Claims Procedure Order on November 16, 2015.

[86] The Court will not dismiss the issue for lateness. However, it is relevant that the issue is being debated now as opposed to 18 months ago. If the issue had been debated at that time, the Court might have been less concerned about the possible delays that would result from referring the issues to the NL Court.

[87] The parties suggesting that the NLPBA issues be referred to the NL Court plead that there is no reason to believe that fragmenting the proceedings will result in additional delay. They do not however offer the Court any concrete indication of how quickly the case could proceed through the NL Court and any appeal.

[88] The Court is concerned by the possible delay. The parties pointed to *Timminco*, where the CCAA Court transferred a pension issue to the Québec Superior Court, as an example of how these referrals should work. In that case, the parties consented to refer

⁴⁷ Article 2809 C.C.Q.

⁴⁸ *Constructions Beauce-Atlas inc. c. Pomerleau inc.*, 2013 QCCS 4077, par. 14.

⁴⁹ *Canada (Minister of Citizenship and Immigration) v. Asini*, 2001 FCA 311, par. 26.

the Québec pension aspects of the CCAA file that was being litigated in Ontario to a Québec court. Even in those circumstances, the delay between the referral (October 18, 2012)⁵⁰ and the final judgment of the Québec court (January 24, 2014)⁵¹ was over 15 months.

[89] Finally, the Court does not consider the question of whether its decision will or will not be treated as a precedent to be a relevant consideration. Similarly, the Court does not consider the possibility of intervenants to be relevant. The Court's focus is on resolving the difficulties of the parties appearing before it. If the government of Newfoundland and Labrador wishes to obtain a judgment from the courts of the province on the interpretation of the NLPBA, it can refer a matter to the Court of Appeal of Newfoundland and Labrador.⁵²

CONCLUSION

[90] For all of the foregoing reasons, the Court concludes that it is not appropriate in the present circumstances to refer the proposed questions to the NL Court.

FOR THESE REASONS, THE COURT:

[91] **DECIDES** that it has jurisdiction to deal with the issues related to the interpretation of the Newfoundland and Labrador *Pension Benefits Act* in the context of the present proceedings under the *Companies' Creditors Arrangement Act* and that it will not refer those issues to the Supreme Court of Newfoundland and Labrador;

[92] **THE WHOLE WITHOUT JUDICIAL COSTS.**



Stephen W. Hamilton, J.S.C.

Mtre Bernard Boucher
BLAKE, CASSELS & GRAYDON
For the Petitioners

Mtre Sylvain Rigaud
Mtre Chrystal Ashby
NORTON ROSE FULBRIGHT CANADA
For the Monitor

⁵⁰ *Supra* note 37.

⁵¹ 2014 QCCS 174.

⁵² *Judicature Act*, R.S.N.L. 1990, c. J-4, Section 13.

Mtre Nicholas Scheib

SCHEIB LEGAL

Mtre Andrew Hatnay

KOSKIE MINSKY LLP

For the mises en cause Michael Keeper, Terence Watt,
Damien Lebel, and Neil Johnson

Mtre Daniel Boudreault

PHILION, LEBLANC, BEAUDRY

For the mise en cause Syndicat des métallos, sections locales 6254 et 6285

Mtre Ronald A. Pink

PINK LARKIN

For the mise en cause Morneau Shepell Ltd, in its capacity
as replacement pension plan administrator

Mtre Doug Mitchell

Mtre Edward Béchard-Torres

IRVING MITCHELL KALICHMAN

For the mise en cause Her Majesty in Right of Newfoundland and
Labrador, as represented by the Superintendent of Pensions

Mtre Pierre Lecavalier

MINISTÈRE DE LA JUSTICE CANADA

For the mise en cause the Attorney General of Canada, acting on behalf
of the office of the Superintendent of financial institutions

Mtre Sophie Vaillancourt

Mtre Roberto Clocchiatti

RETRAITE QUÉBEC

For the mise en cause Régie des rentes du Québec

Mtre Martin Roy

STEIN MONAST

For the mise en cause Ville de Sept-Îles

Date of hearing: December 20, 2016

TAB 3

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-048114-157

DATE: June 26, 2015

BY THE HONOURABLE STEPHEN W. HAMILTON

**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
WABUSH RESOURCES INC.**

Petitioners

And

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

Mises-en-cause

And

FTI CONSULTING CANADA INC.

Monitor

And

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

THE ATTORNEY GENERAL OF CANADA,

SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254,

SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285,

**MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL AND NEIL JOHNSON, AS
REPRESENTATIVES OF THE SALARIED/NON-UNION EMPLOYEES AND
RETIRES**

Objecting parties

**JUDGMENT ON THE MOTION OF THE WABUSH CCAA PARTIES TO GRANT
PRIORITY TO THE INTERIM LENDER CHARGE AND TO SUSPEND THE
PAYMENT OF CERTAIN PENSION AMORTIZATION PAYMENTS AND POST-
RETIREMENT EMPLOYEE BENEFITS (#144), AND RELATED MATTERS**

INTRODUCTION

[1] These proceedings raise essentially three issues:

1. Can and should the Court order that the charge in favour of the interim lender rank ahead of the statutory deemed trusts for payments due by the debtors to the pension plan?
2. Can and should the Court suspend the debtors' obligation to pay the special amortization payments to the pension plan?
3. Can and should the Court suspend the debtors' obligation to pay the other post-employment benefits for the retirees?

BACKGROUND

The parties

[2] On May 20, 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 (the "Wabush CCAA Parties") filed a motion for the issuance of an

initial order under the *Companies' Creditors Arrangement Act*¹ (CCAA), which was granted on that date by the Court (the "Wabush Initial Order").

[3] Prior to the filing of the motion, Wabush Mines operated the iron ore mine and processing facility located near the Town of Wabush and Labrador City, Newfoundland and Labrador, and the port facilities and a pellet production facility at Pointe-Noir, Québec. Arnaud and Wabush Lake Railway are both federally regulated railways that are involved in the transportation of iron ore concentrate from the Wabush mine to the Pointe-Noir port.

The pension plans and other post-employment benefits

[4] The Wabush CCAA Parties have two defined benefit pension plans for their employees:

- The pension plan for salaried employees at the Wabush mine and the Pointe-Noire port hired before January 1, 2013, called the Contributory Pension Plan for Salaried Employees of Wabush Mines JV, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company; and
- The pension plan for unionized hourly employees at the Wabush mine and Pointe-Noire port, called the Pension Plan for Bargaining Unit Employees of Wabush Mines JV, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company.

[5] Wabush Mines is the administrator of both plans.

[6] Because some of the employees covered by the plans work in Newfoundland and Labrador and because others work in federally regulated industries, the plans are subject to regulatory oversight by both the federal pension regulator, the Office of the Superintendent of Financial Institutions ("OSFI"), and the provincial regulator in Newfoundland and Labrador, the Superintendent of Pensions (the "N&L Superintendent").

[7] The monthly normal cost payments for the plans for 2015 based on a valuation as at January 1, 2014 are \$50,494.83 for the hourly plan and \$41,931.25 for the salaried plan, for a total monthly normal cost payment of \$92,46.08. All monthly normal cost payments in respect of the plans for January through April, 2015 have been paid in full.

[8] The plans are underfunded. Based on estimate received from the Wabush CCAA Parties' pension consultant, the Wabush CCAA Parties believe the estimated wind-up

¹ R.S.C. 1985, c. C-36, as amended.

deficiencies for the plans as at January 1, 2015 to be a total of approximately \$41.5 million, consisting of approximately \$18.2 million for the salaried plan and approximately \$23.3 million for the hourly plan.

[9] The Wabush CCAA Parties are required to pay monthly amortization payments based on the 2014 valuation of \$393,337.00 for the hourly plan and \$273,218.58 for the salaried plan, for a total monthly amortization payment of \$666,555.58. All monthly amortization payments in respect of the plans for January through April, 2015 have been paid in full, save for a shortfall of approximately \$130,000.

[10] In addition to the monthly amortization payments, the Wabush CCAA Parties are also required to make a lump sum "catch-up" amortization payment for the plans estimated to be approximately \$5.5 million due in July 2015.

[11] The Wabush CCAA Parties currently provide other post-employment benefits ("OPEBs"), including life insurance and health care, to former hourly and salaried employees hired before January 1, 2013, which vary based on whether retirees were formerly members of a bargaining unit or were non-unionized salaried employees.

[12] As of December 31, 2014, accumulated benefits obligations for the OPEBs totalled approximately \$52.1 million. The premiums required to fund the foregoing OPEBs are approximately \$182,000 a month.

[13] In addition to the foregoing, there is a supplemental retirement arrangement plan for certain current and former salaried employees of Wabush Mines JV. The obligations under this plan are approximately \$1.01 million.

The Interim Financing

[14] Prior to filing the motion for the issuance of an initial order, the Wabush CCAA Parties entered into the Interim Financing Term Sheet with Cliffs Mining Company (the "Interim Lender"). The Interim Lender is a subsidiary of the ultimate parent of the Wabush CCAA Parties.

[15] The cash flow statement filed with the motion for the issuance of an initial order showed that the Wabush CCAA Parties had run out of cash and were not anticipating any receipts from operations other than two small rental payments, with the result that they needed the Interim Financing to continue even their limited operations for the duration of the CCAA process.

[16] The Interim Financing Term Sheet provided that the Interim Lender would advance a maximum principal amount of US\$10,000,000 to provide for short-term liquidity needs of the Wabush CCAA Parties while they are under CCAA protection. The Interim Lender's obligation to advance funds is subject to a number of conditions and covenants, including the following:

- The Interim Lender will have a charge in the principal amount of CDN\$15,000,000 which will have priority over all charges against the Wabush CCAA Parties' property except for certain specified charges;² and
- The Wabush CCAA Parties will not make any special payments in relation to the pension plans or any payments in respect of OPEBs.³

CCAA proceedings

[17] As a result of the foregoing, the Wabush CCAA Parties asked the Court as part of the Wabush Initial Order on May 20, 2015 to approve the Interim Financing Term Sheet and to create the Interim Lender Charge, but not to give the Interim Lender Charge priority over the existing secured creditors until they had the chance to be heard.

[18] The Monitor filed its Fifth Report in which it recommended that the Court approve the Interim Financing Term Sheet and the granting of the Interim Lender Charge.

[19] Based on the evidence presented at the hearing on May 20, 2015,⁴ the Court granted the Wabush Initial Order, including the approval of the Interim Financing Term Sheet and the create of the Interim Lender Charge ranking after the existing secured creditors.

[20] The Wabush Initial Order provided for a comeback hearing on June 9, 2015.

[21] On May 29, 2015, the Wabush CCAA Parties filed their "Motion for the issuance of an order in respect of the Wabush CCAA parties (1) granting priority to certain CCAA charges, (2) approving a Sale and Investor Solicitation Process *nunc pro tunc*, (3) authorizing the engagement of a Sale Advisor *nunc pro tunc*, (4) granting a Sale Advisor Charge, (5) amending the Sale and Investor Solicitation Process, (6) suspending the payment of certain pension amortization payments and post-retirement employee benefits, (7) extending the stay of proceedings, (8) amending the Wabush Initial Order accordingly", in which they sought various conclusions including (1) an order granting priority to the Interim Lender Charge over all charges against the Wabush CCAA Parties' property, subject to certain exceptions not relevant here, and (2) an order suspending the payment of the special payments and the OPEBs.

² Sections 7(1) and 8(2) of the Interim Financing Term Sheet

³ Section 25(h), which does specify that the Wabush CCAA Parties shall be entitled to make normal cost payments under defined benefit plans.

⁴ The Court heard the evidence of Clifford Smith, an officer of the Wabush CCAA Parties, and Nigel Meakin, a representative of the Monitor.

[22] In addition, the Wabush CCAA Parties sent a letter on May 29, 2015 to 2,092 retirees and to the union representatives to advise them of the hearing on June 9, 2015 and to advise them that they would present on June 9, 2015 requests that the Interim Lender Charge be given priority over the deemed trusts relating to pension payments and that the special payments and the payment of the OPEBs be suspended.

[23] Prior to the comeback hearing, the Wabush CCAA Parties and the Monitor received various notices of objection, which can be classified into two categories as follows:

- (a) the first category of notices of objection were filed on behalf of (1) the Administration Portuaire de Sept-Îles/Sept-Iles Port authority ("SIPA"), (2) the Iron Ore Company of Canada ("IOC"), and (3) MFC Industrial Ltd., and pertained to the reservation of certain contractual rights;
- (b) the second category of notices of objection were filed on behalf of (1) the N&L Superintendent, (2) OSFI, (3) United Steelworkers Locals 6254 and 6285 (the "Union"), and (4) Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson in their personal capacity and as the proposed representatives of all non-union employees and retirees of the Wabush CCAA Parties. These notices of objection will be described more fully below.

[24] On June 9, 2015, the Court granted the Wabush comeback motion in part and issued an order, which reserved the rights of SIPA, IOC and MFC as follows:

[10] **DECLARES** that this Order approving the SISP as it relates to the Wabush CCAA Parties *nunc pro tunc* is without prejudice to the rights, if any, of the Administration Portuaire de Sept-Îles/Sept-Iles Port Authority (hereinafter the "SIPA"), vis à vis the Wabush CCAA Parties, including: (i) the rights of the SIPA, acting as successor in the rights of the National Harbours Board, pursuant to the agreement referred to and communicated as Exhibit O-1 in support of SIPA's Notice of objection dated April 13, 2015; and (ii) the rights of SIPA, acting as successor in the rights of the Canada Ports Corporation, pursuant to the agreement referred to and communicated as Exhibit O-7 in support of SIPA's Notice of objection already filed in the Court record and dated April 13, 2015;

[11] **DECLARES** that this Order approving the SISP as it relates to the Wabush CCAA Parties *nunc pro tunc* is without prejudice to the rights, if any of the Iron Ore Company of Canada or its related companies (hereinafter the "IOC"), vis-à-vis the Wabush CCAA Parties, including, but not limited to, the rights pursuant to the Subscription Agreement dates August 3, 1959 referred to in IOC's Notice of objection already filed in the Court record and dated April 13, 2015;

[12] **DECLARES** that this Order approving the SISP as it relates to the Wabush CCAA Parties *nunc pro tunc* is without prejudice to the rights, if any, of MFC Industrial Ltd. ("MFC") if any, vis-à-vis the Wabush CCAA Parties, including pursuant to an Amendment and Consolidation of Mining Leases dated September 2, 1959 and related sub-leases (as amended from time to time) as it relates to the property of Wabush CCAA Parties.

[13] **RESERVES** the right of IOC, SIPA and of MFC to raise any such rights at a later stage if need be;

[25] The Court scheduled a hearing on June 22, 2015 to deal with the remaining requests of the Wabush CCAA Parties in relation to the priority of the Interim Lender Charge and the suspension of the special payments and the OPEBs:

[6] **RESERVES** the rights of Her Majesty in right of Newfoundland and Labrador, as represented by the Superintendent of Pensions, the Syndicat des Métallos, Section Locale 6254, the Syndicat des Métallos, Section 6285 and the Attorney General of Canada to contest the priority of the Interim Lender Charge over the deemed trust(s) as set out in the Notices of Objection filed by each of those parties in response to the Motion, which shall be heard and determined at the hearing scheduled on June 22, 2015;

[...]

[21] **ORDERS** the request by the Wabush CCAA Parties for an order for the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date is adjourned to June 22, 2015;

[22] **ORDERS** the request by Wabush CCAA Parties for an order for the suspension of payment by the Wabush CCAA parties of the annual lump sum "catch-up" payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date is adjourned to June 22, 2015;

[23] **ORDERS** the Wabush CCAA Parties' request for an order for the suspension of payment by the Wabush CCAA Parties of other post-retirement benefits to former hourly and salaried employees of their Canadian subsidiaries hired before January 1, 2013, including without limitation payments for life insurance, health care and a supplemental retirement arrangement plan, *nunc pro tunc* to the Wabush Filing Date is adjourned to June 22, 2015;

THE POSITION OF THE OBJECTING PARTIES

[26] Prior to the hearing on June 22, 2015, the parties exchanged outlines of their respective arguments. The four retirees also filed the "Motion for an order appointing the Petitioners-Mises-en-cause as representative of salaried/non-union and retired employees of the Wabush CCAA Parties" seeking to be appointed as representatives of salaried/non-union and retired employees of the Wabush CCAA Parties and to seek funding for their counsel. This motion was granted by consent on June 22, 2015.

[27] The positions taken by the objecting parties can be summarized as follows:

<u>Objection Raised/Objecting Parties</u>	<u>N&L S.</u>	<u>OSFI</u>	<u>Union</u>	<u>Non-union retirees</u>
Suspension of Amortization Payments	Objects	Objects*	Objects	Object**
Suspension of OPEBs	--	--	Objects	Object
Superpriority of Interim Lender Charge	Objects*	Objects	Objects	--

* Not in the notice of objection, but in the written argument

** In the notice of objection and the written argument, but partly withdrawn at hearing

[28] Moreover, in its notice of objection and written argument, the Union requests that that one officer from each of the two locals be designated by the Court as the persons responsible for responding to questions from unionized retirees of the Wabush CCAA Parties and providing them with information about their rights and recourses, and that those persons be funded by the Wabush CCAA Parties.

N&L Superintendent

[29] The N&L Superintendent objects to the Wabush CCAA Parties' request for a suspension of the special payments. He argues that the suspension of the special payments sought by the Wabush CCAA Parties contravenes Sections 32 and 61(2) of the Newfoundland and Labrador *Pension Benefits Act, 1997*⁵ (the "N&L Act").

[30] He does not raise any objection with respect to the suspension of the OPEBs.

[31] In his notice of objection, the N&L Superintendent also reserved his right to raise additional objections. In his written argument, he adds an argument with respect to the priority of the Interim Lender Charge, which he also claims would contravene Sections 32 and 61(2) of the N&L Act.

[32] In addition to the foregoing, the N&L Superintendent also claims in its written argument that the Wabush CCAA Parties are in a conflict of interest when it comes to

⁵ SNL 1996, c. P-4.01, as amended.

the administration of the pension plans, and suggests that other, less stringent financing alternatives would have been available.

[33] Finally, the N&L Superintendent further claims that additional information with regards to paragraphs 83 to 91 of the Wabush Comeback Motion needs to be divulged in order for it to be able to properly carry out its statutory duties under the N&L Act, including to assess the financial status of the plans. However, at the hearing, representations were made that information had been provided and no specific order was sought. The Court reserves the N&L Superintendent's rights in this regard.

OSFI

[34] In its notice of objection, OSFI objects solely to the granting of the priority of the Interim Lender Charge, and only inasmuch as this would result of a priming rank over the normal cost payments owing to the pension plans which benefit from priority under Sections 8 and 36(2) of the *Pension Benefits Standards Act, 1985*⁶ ("PBSA").

[35] In its written argument, OSFI instead invokes the statutory deemed trust in connection with outstanding special payments.

[36] OSFI now also challenges the suspension of the special payments on the basis that the Wabush CCAA Proceedings would not constitute a restructuring, but rather a liquidation.

[37] According to OSFI, the impact of the deemed trust is to render any and all amount owing to the pension plans inalienable and exempt from seizure, such that, as a result, the Interim Lender Charge could not obtain a security on those assets.

The Union

[38] In its notice of objection, the Union opposes the suspension of both the special payments and the OPEBs, and seeks an order that the Wabush CCAA parties be forced to make such payments notwithstanding the terms of the Interim Financing Term Sheet.

[39] In doing so, the Union insists on the hardship such a suspension would cause for the retirees, whose claims are alimentary in nature.

[40] The Union also asks the Court to preserve the rank of the deemed trust for amounts owing to the pension plans, and seeks to have this deemed trust rank ahead of or equal with the Interim Lender Charge.

⁶ R.S.C. 1985, c. 32 (2nd Supp.), as amended.

[41] The notice of objection and the written argument also argue for the appointment of a representative to handle the numerous queries of union members.

Non-union retirees

[42] In their notice of objection, the non-union retirees object to the suspension of the OPEBs and the special payments sought by the Wabush CCAA Parties on the basis of the significant prejudice such relief would cause to the retirees.

[43] In their written argument, they argue that such a suspension would in fact amount to a disclaimer or resiliation of agreements, subject to the provisions of Section 32 CCAA, which it is argued were not respected in the case at hand.

[44] They add that the conditions of the Interim Lender Term Sheet should not allow the Wabush CCAA Parties to circumvent the requirements of said Section 32 CCAA.

[45] At the hearing, they indicated that they objected most strenuously to the suspension of the OPEBs, because of the impact on the retirees. They indicated that they would not object to a short-term suspension of the special payments, until the Wabush CCAA Parties collected the tax refunds they were expecting and therefore had funds other than the Interim Financing with which to make the special payments.

POSITION OF THE WABUSH CCAA PARTIES

[46] The Wabush CCAA Parties argue that they do not have any funds or any source of funds and therefore that they need the Interim Financing.

[47] They also argue that even with the Interim Financing, they do not have any funds available to continue to pay the special payments or any of the OPEBs, as the Interim Financing Term Sheet prohibits such payments.

[48] On the law, they argue that the deemed trusts created under the PBSA and the N&L Act are not effective to protect the special payments or the OPEBs in the CCAA context. As a consequence, the Interim Lender Charge requested by the Wabush CCAA Parties does not prime any security under the PBSA or the N&L Act. Further, since those payments are unsecured and relate to pre-filing services, there is no reason for the Wabush CCAA Parties to make those payments.

[49] They therefore argue that the Court should exercise its discretion to give the Interim Lender Charge priority over the deemed trusts and to suspend the obligation to pay the special payments and the OPEBs.

POSITION OF THE MONITOR

[50] The Monitor filed its Seventh Report for purposes of the comeback hearing.

[51] In its report, it supports the position taken by the Wabush CCAA Parties.

[52] Its legal argument supports the legal argument put forward by the Wabush CCAA Parties.

ISSUES IN DISPUTE

[53] The issues in dispute can be outlined as follows;

- (a) Can and should the Court order that the Interim Lender Charge rank ahead of all encumbrances, including statutory deemed trusts?
- (b) Can and should the Court suspend the Wabush CCAA Parties' obligation to pay the special payments?
- (c) Can and should the Court suspend the Wabush CCAA Parties' obligation to pay the OPEBs?

ANALYSIS

[54] The three issues have significant overlaps. The Court will nevertheless analyze them sequentially, and will adopt its previous reasoning to the extent it is relevant.

1. Super-priority of the Interim Lender Charge***General***

[55] What is at issue is the conflict between the super-priority of the interim lender charge under Section 11.2 CCAA and the statutory deemed trusts created by Section 8 PBSA and Section 32 of the N&L Act.

[56] Section 11.2 CCAA allows the Court, after considering the factors set out in Section 11.2(4) CCAA, to create an interim lender charge and to give that charge priority over the claim of any secured creditor of the debtor:

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard

to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

(Emphasis added)

[57] OSFI and the N&L Superintendent, supported by the Union, argue that Section 11.2 CCAA does not allow the Court to give the interim lender charge priority over the deemed trusts in pension matters created by their respective legislations.

[58] The argument put forward by OSFI and the N&L Superintendent is essentially that the employer is deemed to hold the amounts in trust, and therefore they are not "part of the company's property" and cannot be charged under Section 11.2 CCAA.

[59] The Wabush CCAA Parties argue that there is a conflict between the legislation creating the deemed trusts and the CCAA and that the CCAA must prevail:

- The CCAA prevails over the PBSA as a matter of statutory interpretation of two pieces of federal legislation, and

- The CCAA prevails over the N&L Act because of the constitutional doctrine of federal paramountcy.

[60] Because the arguments are different with respect to the PBSA and the N&L Act, the Court will deal with them separately.

[61] These are not new issues. The courts, including the Supreme Court, have been called upon to deal with the effect of federal and provincial deemed trusts in the insolvency context on numerous occasions. There have also been a number of statutory amendments, some designed to overturn the results of judgments.

[62] Because of the urgency of rendering judgment in this matter, the Court will not embark on an exhaustive analysis of all of these judgments and amendments.

Effectiveness of the PBSA deemed trust in CCAA proceedings

[63] OSFI relies on Sections 8(1) and (2) and 36(2) of the PBSA, which provide 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:

(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).

(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.

36. (2) Any agreement or arrangement to assign, charge, anticipate or give as security

(a) any benefit provided under a pension plan, or

(b) any money withdrawn from a pension fund pursuant to section 26

is void or, in Quebec, null.

(Emphasis added)

[64] The deemed trust created by Section 8 PBSA is intended to cover all amounts due by the employer to the pension fund. These would include the normal payments, as well as the special payments.

[65] Section 8(1) PBSA requires the employer to keep the required amounts separate and apart from its own moneys, and deems the employer to hold them in trust. In the present matter, the required amounts have not been kept separate and apart and the assets subject to the trust have been comingled with other assets. Pursuant to the decision of the Supreme Court in *Sparrow Electric*, the consequence is that the trust created by Section 8(1) PBSA does not exist because the subject-matter of the trust cannot be and never was identifiable.⁷

[66] As a result, the relevant provision is Section 8(2) PBSA which provides that the amount shall be deemed to be separate and apart, 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.

[67] However, Section 8(2) PBSA only applies "[i]n the event of any liquidation, assignment or bankruptcy of an employer". It attaches to any property which lawfully belongs to the employer when the triggering event occurred.⁸

[68] The issue of the triggering event could be determinative in the present case. If the triggering event has not occurred, then there is no deemed trust and no obstacle to the Court granting the priority required by the Interim Lender.

⁷ *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411, par. 28.

⁸ *Ibid*, par. 38.

[69] It is clear that there has been no assignment or bankruptcy in the present matter. Further, there is no liquidation under Part XVIII of the *Canada Business Corporations Act*⁹ or equivalent provincial legislation. A CCAA proceeding does not appear to trigger the application of Section 8(2) PBSA. However, OSFI argues that these CCAA proceedings are really a liquidation, because it is very likely that the ongoing sale process will result in the sale of all of the assets of the Wabush CCAA Parties.

[70] In interpreting the word "liquidation" in Section 8(2) PBSA, and in particular whether it includes a liquidation under the CCAA,¹⁰ the Court will consider more generally how the deemed trust under Section 8(2) PBSA is dealt with under the CCAA.

[71] It must be emphasized at the outset that the deemed trust under Section 8(2) PBSA is not a deemed trust in favour of the Crown. This is a fundamental distinction. Section 37(1) CCAA, which renders all deemed trusts in favour of the Crown ineffective in the CCAA context, subject to certain exceptions, has no application to the deemed trust under Section 8(2) PBSA. As a result, many of the cases cited to the Court, which deal with the effectiveness of deemed trusts in favour of the Crown, must be applied with caution in the present circumstances.

[72] In particular, the Wabush CCAA Parties rely on language in the Supreme Court's judgment in *Century Services*¹¹ that must be read carefully. Justice Deschamps refers in paragraph 45 to "the general rule that deemed trusts are ineffective in insolvency". There is no such general rule, other than Section 37(1) CCAA (and Section 67(2) of the *Bankruptcy and Insolvency Act*¹²) which applies only to deemed trusts in favour of the Crown. She begins the paragraph with a reference to the predecessor of Section 37(1) CCAA and she refers throughout the paragraph to Crown claims and Crown priorities. She must be referring to Crown deemed trusts in that sentence as well. Justice Fish's comments in paragraph 95 must be similarly limited. The Court respectfully disagrees with Justice Schragger in *Aveos*¹³ on this issue and concludes that there is no general rule that deemed trusts in favour of anyone other than the Crown are ineffective in insolvency. Deemed trusts will be interpreted restrictively as exceptions to the general principle that the assets of the debtor are available for all of the creditors,¹⁴ but there is no general rule that they are ineffective.

[73] However, other provisions of the CCAA deal expressly with pension obligations. Sections 6(6) and 36(7) CCAA were added to the CCAA in 2009. They provide that an

⁹ R.S.C. 1985, c. C-44, as amended.

¹⁰ In *Aveos Fleet Performance Inc./Aveos Performance aéronautique inc. (Arrangement relatif à)*, 2013 QCCS 5762, par. 66, Justice Schragger (then of this Court) leaves open the possibility that the liquidation of Aveos under the CCAA may have triggered Section 8(2) PBSA.

¹¹ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379.

¹² R.S.C. 1985, c. B-3, as amended.

¹³ *Aveos*, *supra* note 10, par. 74-75.

¹⁴ *White Birch Paper Holding Company (Arrangement relatif à)*, 2012 QCCS 1679, par. 141-142.

arrangement can only be sanctioned or an asset sale approved by the Court, if provision is made for the payment of certain enumerated pension obligations, including deductions from employee salaries and normal cost contributions of the employer, but not including special payments.

[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.

[75] In *Century Services*, the Supreme Court was faced with a conflict between the deemed trust for GST and the CCAA. Justice Deschamps adopted "a purposive and contextual analysis to determine Parliament's true intent".¹⁵ She concluded that the deemed trust for GST did not apply in a CCAA proceeding, even though the language in the *Excise Tax Act*¹⁶ provided that the deemed trust was effective notwithstanding any law of Canada other than the BIA. She attached importance to the "internal logic of the CCAA".¹⁷

[76] Moreover, in *Indalex*, Justice Deschamps referred to the conclusions of a Parliamentary committee which had considered extending the protection afforded the beneficiaries of pension plans. The committee made the policy decision not to extend that protection. Justice Deschamps concluded that "courts should not use equity to do what they wish Parliament had done through legislation."¹⁸

[77] The Court therefore adopts the following reasoning to resolve the conflict in the present case:

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

¹⁵ *Century Services*, *supra* note 11, par. 44.

¹⁶ R.S.C. 1985, c. E-15, as amended.

¹⁷ *Century Services*, *supra* note 11, par. 46.

¹⁸ *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 272, par. 81-82. See also *Aveos*, *supra* note 10, par. 77.

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 pension claims would have protection in insolvency and restructurings only to the limited extent set out in the *BIA* and the *CCAA*.¹⁹

(Emphasis added)

[78] For all of these reasons, the Court concludes that Parliament's intent is that federal pension claims are protected in insolvency and restructurings only to the limited extent set out in the *BIA* and the *CCAA*, notwithstanding the potentially broader language in the *PBSA*.

[79] In the alternative, the Court could conclude that a liquidation under the *CCAA* does not fall within the term "liquidation" in Section 8(2) *PBSA* such that there has been no triggering event.

[80] Either way, the Court concludes that the deemed trust under Section 8(2) *PBSA* does not prevent the Court from granting priority to the Interim Lender Charge, if the conditions of Section 11.2 *CCAA* are met.

Effectiveness of the N&L Act deemed trust in CCAA proceedings

[81] The N&L Superintendent relies on the combined effect of Sections 32 and 61(2) of the N&L Act:

- 32.** (1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that
- (a) the money in the pension fund;
 - (b) an amount equal to the aggregate of
 - (i) the normal actuarial cost, and
 - (ii) any special payments prescribed by the regulations, that have accrued to date; and
 - (c) all
 - (i) amounts deducted by the employer from the member's remuneration, and

¹⁹ 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.

- (ii) other amounts due under the plan from the employer that have not been remitted to the pension fund

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.

(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.

(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).

61. (1) On termination of a pension plan, the employer shall 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, including

- (a) an amount equal to the aggregate of
 - (i) the normal actuarial cost, and
 - (ii) special payments prescribed by the regulations,that have accrued to the date of termination; and
- (b) all
 - (i) amounts deducted by the employer from members' remuneration, and
 - (ii) other amounts due to the pension fund from the employer that have not been remitted to the pension fund at the date of termination.

(2) Where, on the termination, after April 1, 2008, of a pension plan, other than a multi-employer pension plan, the assets in the pension fund are less than the value of the benefits provided under the plan, the employer shall, as prescribed by the regulations, make the payments into the pension fund, in

addition to the payments required under subsection (1), that are necessary to fund the benefits provided under the plan.

(Emphasis added)

[82] The key provision, Section 32(2) of the N&L Act, is virtually identical to Section 8(2) PBSA. As a result, much of the analysis set out above applies here as well.

[83] However, the analysis takes a different turn once one reaches the conclusion that it is difficult to reconcile the broad deemed trust under Section 32(2) of the N&L Act with the more limited protection under Section 6(6) and 36(7) CCAA.

[84] This is a conflict between provincial legislation and federal legislation. Constitutional doctrine instructs the courts to try to interpret the federal and provincial legislation in such a way as to avoid the conflict, but this is not the same exercise as trying to find the intent of a single legislator who adopted conflicting pieces of legislation.

[85] For the purposes of this analysis, the Court will assume that the N&L Act is valid and is intended to be effective in an insolvency context. This means that the province granted greater protection to pension obligations than the federal legislator recognized in the CCAA. The principles of interpretation set out above do not apply to resolve a conflict between a federal statute and a provincial statute. There is no basis for interpreting the statutes in such a way as to make them consistent.

[86] There is also a potential conflict with respect to the priority of the interim Lender Charge: under Section 11.2 CCAA, the Court can create an interim lender charge over all of the debtor's property and give it priority over all other charges, except that the province has created a deemed trust which, if it is effective, subtracts assets from the debtor's property and makes them unavailable to be charged in favour of the interim lender.

[87] The question is therefore whether the province can create such a charge that could prevent the Court from granting priority to an interim lender charge.

[88] The Supreme Court in *Indalex* held in the circumstances of that case, that the interim lender charge had priority over the provincial deemed trust by reason of the application of the doctrine of federal paramountcy, because the CCAA's purpose would be frustrated without the interim lender charge.²⁰ The trial judge in *Indalex* had rejected the deemed trust and therefore had not considered the doctrine of paramountcy. However, in granting the interim lender charge, he had considered the factors in Section 11.2(4) CCAA and had concluded that the interim lender charge was necessary and in

²⁰ *Indalex*, *supra* note 18, par. 60. See also *White Birch*, *supra* note 14, par. 217; *Timminco Itée (Arrangement relatif à)*, 2014 QCCS 174, par. 85.

the best interest of *Indalex* and its stakeholders. The Supreme Court held that these findings were sufficient for paramourncy to apply.

[89] As a result, the Court can give priority to the Interim Lender Charge over the deemed trust under the N&L Act if the test for federal paramourncy is met. The Court will consider the paramourncy issue as part of its analysis of the factors under Section 11.2(4) CCAA.

Factors under Section 11.2(4) CCAA

[90] Section 11.2(4) CCAA sets out a non-exhaustive list of the factors the Court should consider before it creates an interim lender charge:

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

[91] The Court already considered those factors when it decided to create the Interim Lender Charge on May 20, 2015.

[92] In his Fifth Report dated May 19, 2015, the Monitor provided the following comments on the factors listed in Section 11.2(4) CCAA:

The period during which the company is expected to be subject to proceedings under the CCAA

(a) While the deadline for the submission of binding offers pursuant to the SISP has yet to be set, based the Wabush May 18 Forecast and preliminary discussions regarding the potential timeline for the completion of the SISP, it is

believed that the Interim Financing Term Sheet provides sufficient liquidity to enable the Wabush CCAA Parties to complete the SISP;

How the company's business and affairs are to be managed during the proceedings

(b) The Wabush CCAA Parties' senior personnel and Boards of Directors remain in place to manage the business and affairs of the Wabush CCAA Parties. The Wabush CCAA Parties and their management will also have the benefit of the expertise and experience of their legal counsel and the Monitor;

Whether the company's management has the confidence of its major creditors

(c) The largest creditors of the Wabush CCAA Parties are affiliated companies who the Monitor understands to have confidence in the Wabush CCAA Parties' management. Other major creditors include the pension plans described in the May 19 Motion, employee groups in respect of other post-retirement benefits and various contract counterparties. None of the major creditors has to date expressed any concern to the Monitor in respect of the Wabush CCAA Parties' management;

Whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company

(d) Based on the Wabush May 18 Forecast, without the Interim Facility the Wabush CCAA Parties would be unable to pay their obligations, maintain their assets or complete the SISP. The Wabush CCAA Parties and the Monitor are of the view that approval of the Interim Facility would likely enhance the prospects of generating recoveries for stakeholders, whether through a sale or a restructuring plan;

The nature and value of the company's property

(e) The Wabush CCAA Parties' assets are described in the May 19 Motion, and consist primarily of real estate, equipment, inventory and income tax receivables. The value of the Wabush CCAA Parties' property will be determined through the SISP. Nothing has come to the attention of the Monitor in respect of the nature of the Wabush CCAA Parties' property that, in the Monitor's view, ought to be given particular consideration in connection with the Interim Lender Charge;

Whether any creditor would be materially prejudiced as a result of the proposed Charge

(f) The proposed Interim Facility will provide the Wabush CCAA Parties the opportunity to complete the SISP and to maximize recoveries for stakeholders. Borrowings under the Interim Financing Term Sheet are limited to a maximum of US\$10 million. The Interim Lender Charge secures only the Interim Financing Obligations and is limited to \$15 million. The Monitor is of the view that any

potential detriment caused to the Wabush CCAA Parties' creditors by the Interim Lender Charge should be outweighed by the benefits that it creates; and

Other potential considerations

(g) The Monitor has researched the terms of recent interim financings based on information publicly available, a summary of which is attached hereto as Appendix C. Based on this research and Monitor's experience, the Monitor believes that the terms of the Interim Financing Term Sheet are in line with or better than market. The Monitor is of the view that the Interim Financing Term Sheet represents the best alternative available in the circumstances that would provide access to financing within the necessary timeframe.

[93] In his testimony before the Court on May 20, 2015, Clifford Smith testified that the Wabush CCAA Parties had attempted to obtain financing elsewhere, but that only a related party was willing to provide financing.

[94] The Court makes the following findings:

- The Sale and Investor Solicitation Process (SISP) is in the interests of the Wabush CCAA Parties and their stakeholders because it should lead to greater recovery;
- Without new financing, the Wabush CCAA Parties do not have enough cash to complete the SISP. The cash flow projection attached to the Fifth Report shows the Wabush CCAA Parties running out of cash in the week ending May 22, 2015;
- Without new financing, it is therefore likely that the Wabush CCAA Parties will go bankrupt;
- The Wabush CCAA Parties and the Monitor have not identified any other sources of new financing;
- The terms and conditions of the Interim Financing are reasonable, and the security is limited to the amount of the new financing.

[95] This is sufficient for the Court to conclude that the Interim Financing should be approved and the Interim Lender Charge should be granted with priority over the deemed trust under the PBSA, if it is effective in the CCAA context.

[96] With respect to the deemed trust under the N&L Act, there is the added issue of whether giving effect to the deemed trust would frustrate the federal purpose under the CCAA. Under the Interim Lender Term Sheet, the super-priority is a condition precedent to the Interim Lender's obligation to advance the funds. That condition will not be met if

the Court gives effect to the deemed trust under the N&L Act, which puts the financing at risk.

[97] The objecting parties argue that the Court's jurisdiction to make appropriate orders should not be ousted by the terms of the Interim Lender Term Sheet. However, there is nothing peculiar about this provision in the Interim Lender Term Sheet. The importance of the super-priority to interim lenders has consistently been recognized by the courts. As stated by the Supreme Court in *Indalex*:

... case after case has shown that "the priming of the DIP facility is a key aspect of the debtor's ability to attempt a workout" (J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* (2007), at p. 97). The harsh reality is that lending is governed by the commercial imperatives of the lenders, not by the interests of the plan members or the policy considerations that lead provincial governments to legislate in favour of pension fund beneficiaries.²¹

(Emphasis added)

[98] Similarly, Justice Morawetz stated in *Timminco*:

[49] In the absence of the court granting the requested super priority, the objectives of the CCAA would be frustrated. It is neither reasonable nor realistic to expect a commercially motivated DIP lender to advance funds in a DIP facility without super priority. The outcome of a failure to grant super priority would, in all likelihood, result in the Timminco Entities having to cease operations, which would likely result in the CCAA proceedings coming to an abrupt halt, followed by bankruptcy proceedings. Such an outcome would be prejudicial to all stakeholders, including CEP and USW.²²

(Emphasis added)

[99] The objecting parties also plead that the Interim Lender is related to the Wabush CCAA Parties and therefore has interests which might be different than those of an arm's length lender.

[100] However, there is no evidence that gives credence to the suggestion that the Interim Lender will advance funds without the super-priority. To the contrary, the attorney representing the Interim Lender made it clear at the hearing that there would be no advance of funds if the super-priority was not confirmed. Further, the Court is not satisfied that it has the jurisdiction to order the Interim Lender to advance the funds on terms other than those that it has accepted.

²¹ *Indalex*, *supra* note 18, par. 59

²² *Timminco Limited (Re)*, 2012 ONSC 948, par. 49. This passage was quoted with approval in *White Birch*, *supra* note 14, par. 215.

[101] In all of these circumstances, the Court concludes that giving effect to the deemed trust under the N&L Act carries a serious risk of frustrating the CCAA process. The Court therefore concludes that the doctrine of federal paramountcy is engaged, and it concludes that the N&L Act is not effective to that extent.

[102] The Court will therefore order that the Interim Lender Charge shall have priority over the deemed trusts under the PBSA and the N&L Act.

2. Suspension of special payments

[103] Further, the Wabush CCAA Parties asked that their obligation to make the special payments to the pension plans be suspended.

[104] The Courts have consistently recognized a jurisdiction to suspend the obligation to make special payments and OPEB payments "when necessary to enhance liquidity to promote the survival of a company in financial distress."²³

[105] Several reasons underlie the existence of this jurisdiction.

[106] First, the normal pension payments that the employer is required to make relate to the current services rendered by the current employees and the Court's jurisdiction to affect those payments is limited by the principle that the debtor must pay for current services. However, the special payments relate to a deficit that has accumulated in the pension plan. Pension benefits are deferred compensation for services that were provided by the retiree while he or she was an employee.²⁴ As a result, the special payments relate to services provided to the employer before the filing, and as such, they can be qualified as pre-filing obligations.²⁵

[107] Second, the special payments are unsecured in the CCAA context. Sections 6(6) and 36(7) create a priority in the CCAA context for the normal payments but not for the special payments. As discussed above, the deemed trust under Section 8(2) PBSA has no effect in a CCAA proceeding, and the deemed trust under Section 32(2) of the N&L

²³ *Aveos*, supra note 10, par. 88. See also *White Birch Paper Holding Company (Arrangement relatif à)*, 2010 QCCS 764, par. 94-100; *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 2028, par. 27, 31-32; *Papiers Gaspésia Inc., Re*, 2004 CanLII 40296 (QC CS), par. 87-92; *Collins & Aikman Automotive Canada Inc. (Re)*, 2007 CanLII 45908 (ON SC), par. 90-92; *Fraser Papers Inc. (Re)*, 2009 CanLII 39776 (ON SC), par. 20; *Timminco Limited (Re)*, 2012 ONSC 506, par. 61-63.

²⁴ *IBM Canada Limited v. Waterman*, 2013 SCC 70, [2013] 3 S.C.R. 985, par. 4.

²⁵ *White Birch*, supra note 23, par. 97; *Fraser Papers*, supra note 23, par. 20; *Sroule v. Nortel Networks Corporation*, 2009 ONCA 833, par. 20-21. In *Aveos*, supra note 10, par. 86-88, Justice Schragger concluded that this characterization was not necessary for the court to have jurisdiction to suspend the payments.

Act, in purporting to create a security interest not recognized under the CCAA, is not effective to the extent that it conflicts with the CCAA.²⁶

[108] As a result, the payment of the special payments would constitute payments to an unsecured pre-filing creditor, which could be qualified as preferential in the sense that no other unsecured pre-filing creditor is being paid.

[109] In any event, even without this characterization, the courts have a broad discretion under the CCAA to render orders that are necessary to allow the debtor to make a proposal to its creditors.

[110] In the exercise of this discretion, it is important to consider the facts.

[111] The special payments for the two plans are made up of monthly amortization payments in the amount of \$666,555.58 per month and a lump sum "catch-up" amortization payment of approximately \$5.5 million due in July 2015.

[112] The Wabush CCAA Parties do not have the funds available to make these payments. The cash flow statements filed with the Court show that the Wabush CCAA Parties need the funds from the Interim Financing to meet their current obligations other than the special payments. The Interim Lender Term Sheet expressly requires the Wabush CCAA Parties not to make any special payments. As a result, forcing the Wabush CCAA Parties to make the special payments would lead to a default under the Interim Financing and a likely bankruptcy.²⁷

[113] The objecting parties criticize the position taken by the Interim Lender in prohibiting the payment of the special payments.

[114] However, the position taken by the Interim Lender in this file is consistent with the position taken by other interim lenders in other files:

[55] *Fairfax* [the interim lender] a indiqué au Tribunal que ce financement avait été octroyé pour financer les activités courantes de *Bowater* et ne pouvait ainsi être utilisé pour payer les cotisations d'équilibre aux régimes de retraite. Le financement est aussi sujet au respect de différents ratios de solvabilité.²⁸

[115] Moreover, the Interim Lender's position makes sense as a commercial matter. Why should the Interim Lender advance funds that will be used to pay someone else's debt, particularly one which is pre-filing and unsecured? It is the Interim Lender's intention to fund the Wabush CCAA Parties with the amount required to get them

²⁶ *Indalex*, *supra* note 18, par. 56.

²⁷ See a similar argument in *Collins & Aikman*, *supra* note 23, par. 91-92; *Fraser Papers*, *supra* note 23, par. 21;

²⁸ *AbitibiBowater*, *supra* note 23, par. 55. See also *Ivaco Inc. (Re)*, 2006 CanLII 34551 (Ont.C.A.), par. 17; *Fraser Paper*, *supra* note 23, par. 23.

through the SISF so that they can repay the loan. It is not in the Interim Lender's interest to fund preferential payments to unsecured pre-filing creditors. The language cited above about the harsh commercial realities of interim financing applies here as well.

[116] Moreover, the Court is being asked to suspend the obligation to make the special payments, and is not being asked to alter the collective agreement or extinguish the obligation to pay these amounts.²⁹

[117] As a result, the beneficiaries of the pension plans would not be prejudiced by this suspension. The wind-up deficiencies for the two pension plans as at January 1, 2015 are estimated to be a total of approximately \$41.5 million. The purpose of the special payments is to reduce that deficiency and to improve the situation over time such that the beneficiaries will receive the full amounts to which they are entitled. The suspension of the special payments means that their position is not improved, but it is not worsened. Their debt remains and benefits from whatever priority it is entitled to at law.

[118] For all of these reasons, the Court will order the suspension of the special payments to the pension funds.

3. Suspension of the OPEBs

[119] The Wabush CCAA Parties currently provide OPEBs, including life insurance and health care, to former hourly and salaried employees.

[120] As of December 31, 2014, accumulated benefits obligations for the OPEBs totaled approximately \$52.1 million. The premiums required to fund the foregoing OPEBs are approximately \$182,000 a month.

[121] In addition to the foregoing, there is a supplemental retirement arrangement plan for certain current and former salaried employees of Wabush Mines JV. The obligations under this plan are approximately \$1.01 million.

[122] The Wabush CCAA Parties do not have any funding available to continue to pay any of the foregoing OPEBs, as the Interim Financing Term Sheet prohibits such payments. They seek an order from the Court suspending the payment of the OPEBs *nunc pro tunc* to the Wabush Filing Date.

[123] The reasoning as to the existence and the exercise of the discretion to suspend these payments is much the same as for the special payments. The Wabush CCAA Parties do not have the funds to make the payments, and the Interim Lender Term Sheet does not allow them to make these payments. These amounts relate to services

²⁹ Section 33 CCAA; *Syndicat national de l'amiante d'Asbestos inc. c. Mine Jeffrey inc.*, [2003] R.J.Q. 420 (C.A.), par. 57-58.

provided pre-filing and they are unsecured. They are in a sense even less secured than the special payments because the deemed trusts created by the PBSA and the N&L Act do not purport to cover these payments.

[124] The retirees plead that there are two important differences.

[125] First, the amount at issue is only \$182,000 per month. The retirees suggest that the Wabush CCAA Parties should be able to find this amount somewhere. The Wabush CCAA Parties continue to argue that they do not have the funds with which to make these payments, and the Interim Lender Term Sheet in any event prevents them from making these payments. Given the cash flow statement filed with the Court and the language of the Interim Lender Term Sheet, the Court accepts that the Wabush CCAA Parties do not have the funds.

[126] The second difference pleaded by the retirees is that they suffer a clear prejudice. The OPEBs are provided through an insurance policy, and if the Wabush CCAA Parties fail to pay the premium, the policy will be cancelled, leaving the retirees with no health insurance and only a claim against the insolvent Wabush CCAA Parties. The Court assumes this to be correct and accepts that this will cause hardship to the retirees.

[127] The retirees argue that this is equivalent to a disclaimer or resiliation of the insurance contract by the Wabush CCAA Parties, which is invalid because the formalities under Section 32(1) CCAA were not followed, and the test under Section 32(4) CCAA for the Court to authorize the disclaimer or resiliation was not met. Section 32(4)(c) provides that one of the factors to be considered is "whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement."

[128] This argument does not withstand scrutiny.

[129] There is a tri-partite relationship. The employer has obligations to the beneficiaries, and has entered into an insurance policy with the insurer so that the insurer provides those benefits to the beneficiaries. If the employer stops paying the premiums, the insurer will terminate the insurance policy. This does not affect the employer's obligations to the beneficiaries,³⁰ but the beneficiaries will be left with an insolvent debtor instead of the insurer.

[130] However, the contract that is being terminated is the contract between the Wabush CCAA Parties and the insurer for the benefit of the beneficiaries. The counterparty is the insurer. It is not suggested that the insurer will suffer any significant financial hardship as a result of the termination of the contract. The contract between the Wabush CCAA Parties and the beneficiaries is not being terminated.

³⁰ *Ibid*, par. 58.

[131] Moreover, the Wabush CCAA Parties are not disclaiming or resiliating the contract. The Wabush CCAA Parties are seeking authorization to stop paying under a contract, just as they have undoubtedly stopped paying under a number of other contracts. When the debtor defaults, the counter-party has a number of options, including terminating the contract. Even if termination by the counter-party is the likely result, as in this case, it does not mean that the debtor has disclaimed or resiliated the contract. Otherwise, the debtor would have to follow the formalities and pass the test in Section 32 CCAA every time it defaulted under a contract.

[132] At the end of the day, the answer is the same as for the special payments, and the payment of the OPEBs should also be suspended.³¹

[133] The Court is very mindful of the hardship that the suspension of the OPEB payments and the termination of the insurance policy will cause to the beneficiaries. Unfortunately, that hardship appears to be inevitable. Even if the Court ordered the Wabush CCAA Parties to keep paying the premium during the SISF, that would be only a temporary solution and it is very likely if not inevitable that following the conclusion of the SISF, the Wabush CCAA Parties will cease their operations and the insurance policy will be terminated.

4. Breach of fiduciary duties

[134] The objecting parties also pleaded that Wabush Mines is in a situation of conflict of interest because it is both the administrator of the pension plans and one of the Wabush CCAA Parties seeking relief with respect to the pension plans.

[135] The PBSA and the N&L Act allow the employer to act as administrator, and the insolvency of the employer inevitably leads to the type of potential conflict in which Wabush Mines finds itself.

[136] Consistent with the views expressed by the Supreme Court in *Indalex*, the Court concludes that the giving of notice to the regulators, the Union and the retirees, the postponement of the hearing from June 9, 2015 to June 22, 2015 to allow the objecting parties to present their arguments, and the consent to the motion presented by the four retirees for a representation order allowing them to represent all salaried/non-union employees and retirees and related beneficiaries at the expense of the Wabush CCAA Parties, all show that the employer acted in good faith in a way consistent with its fiduciary duties to the beneficiaries of the pension plans.³²

³¹ See also *White Birch*, *supra* note 23, par 40.

³² *Indalex*, *supra* note 18, par. 73.

5. Representation order sought by the Union

[137] The Union requests that one officer from each of the two locals be designated by the Court as the persons responsible for responding to questions from unionized retirees of the Wabush CCAA Parties and providing them with information about their rights and recourses. Further, the Union asks that those persons be funded by the Wabush CCAA Parties.

[138] The individuals that the Union proposes are officers of the two locals. The Union is essentially asking the Court to designate these individuals and to order that a portion of their salary be paid by the Wabush CCAA Parties. At the present time, the Union estimates that the two individuals spend one half of their time responding to calls, although that time seems to be decreasing. The admissions filed in lieu of the testimony of Frank Beaudin refer to the volume of calls received by the Union since the May 29, 2015 letter was sent to the retirees.

[139] The Monitor is a Court officer whose duties include providing information of this nature. However, the Court also recognizes that the Union has received and will continue to receive calls from the unionized retirees. It is appropriate for the Union to provide information to its retired members and to designate specific individuals to provide the information in order to ensure that there is consistency in the information provided.

[140] However, this is not a matter that requires the intervention of the Court. The Union can handle matters of communications with its former members without a Court order. The Union does not seek an order that it be authorized to represent these unionized retirees. If the Union were to make such a motion, the Court would have to consider whether there is a potential conflict between the current employees and the retirees.

[141] Further, the Court does not consider it appropriate that the Wabush CCAA Parties be ordered to pay part of the salary of the two individuals. They are salaried union officers. Providing information of this nature is within their functions.

[142] For these reasons, the Union's motion will be dismissed.

FOR THESE REASONS, THE COURT:

[143] **DISMISSES** the contestations by Her Majesty in right of Newfoundland and Labrador, represented by the Superintendent of Pensions, the Attorney General of Canada and the Syndicat des Métallos, Section Locale 6254 and the Syndicat des Métallos, Section Locale 6285 to the priority of the Interim Lender Charge over deemed trusts, as set out in paragraph 47 of the Wabush Initial Order, as amended on June 9,

2015, and **CONFIRMS** the priority of the Interim Lender Charge over deemed trusts, as set out in paragraph 47 of the Wabush Initial Order, as amended on June 9, 2015;

[144] **ORDERS** the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date;

[145] **ORDERS** the suspension of payment by the Wabush CCAA parties of the annual lump sum "catch-up" payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date;

[146] **ORDERS** the suspension of payment by the Wabush CCAA Parties of other post-retirement benefits to former hourly and salaried employees of their Canadian subsidiaries hired before January 1, 2013, including without limitation payments for life insurance, health care and a supplemental retirement arrangement plan, *nunc pro tunc* to the Wabush Filing Date.

[147] **DISMISSES** the Motion to Modify the Initial Order presented by the Syndicat des Métallos, Section Locale 6254 and the Syndicat des Métallos, Section Locale 6285;

[148] **WITHOUT COSTS.**


STEPHEN W. HAMILTON, J.S.C.

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Mtre Louis Dumont
DENTON
For the Interim Lender Cliffs Quebec Iron Mining ULC

Hearing date: June 22, 2015

TAB 4

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No: 500-09-025441-155
500-09-025469-156
(500-11-048114-157)

DATE: AUGUST 18, 2015

PRESIDING: THE HONOURABLE NICHOLAS KASIRER, J.A.

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

500-09-025441-155

**MICHAEL KEEFER, TERENCE WATT, DAMIEN LEBEL AND NEIL JOHNSON, as
representatives of the salaried / non-union employees and retirees
APPLICANTS – objecting parties**

v.

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

RESPONDENTS – petitioners

and

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

IMPLEADED PARTIES – impleaded parties

and

FTI CONSULTING CANADA INC.

IMPLEADED PARTY – monitor

and
**HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR, as represented
by THE SUPERINTENDENT OF PENSIONS
THE ATTORNEY GENERAL OF CANADA
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285
IMPLEADED PARTIES – objecting parties**

500-09-025469-156

**SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285
APPLICANTS – objecting parties**

v.

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUEBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC
RESPONDENTS – petitioners**

and

**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY LIMITED
IMPLEADED PARTIES – impleaded parties**

and

**FTI CONSULTING CANADA INC.
IMPLEADED PARTY – monitor**

and

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR, as represented
by
THE SUPERINTENDENT OF PENSIONS
THE ATTORNEY GENERAL OF CANADA
MICHAEL KEEFER, TERENCE WATT, DAMIEN LABEL AND NEIL JOHNSON, as
representatives of the salaried / non-union employees and retirees
IMPLEADED PARTIES – objecting parties**

and

QUEBEC NORTHSORE AND LABRADOR RAILWAY COMPANY INC.

IRON ORE COMPANY OF CANADA
IMPLEADED PARTY – impleaded parties

JUDGMENT

[1] Sitting as judge in chambers pursuant to sections 13 and 14 of the *Companies' Creditors Arrangement Act*¹ ("CCAA") and articles 29, 511 and 550 C.C.P., I am seized of two motions for leave to appeal from a judgment of the Superior Court, District of Montreal (the Honourable Stephen Hamilton), rendered on June 26, 2015. The Superior Court dismissed contestations made on behalf of the petitioners, who are, respectively, representatives of non-union employees and retired employees (petitioners in court file C.A.M. 500-09-025441-155 and hereinafter designated the "Salaried Members") and the Syndicat des Métallos, sections locales 6254 and 6285 (in court file C.A.M. 500-09-025469-156, hereinafter referred to together as the "Union"). In so doing, the Superior Court confirmed the respondent's request to grant priority to an interim lender charge over claims made by the petitioners based on deemed trusts in pension legislation. The Court also suspended certain payments due under pension plans as well as for post-retirement benefits.

[2] The Union filed an amended motion prior to the hearing. Both motions for leave also ask for orders to suspend provisional execution of the judgment notwithstanding appeal.

I Background

[3] The facts are usefully and completely recounted in the judgment *a quo*.²

[4] On May 20, 2015, the CCAA Judge Hamilton, J. granted a motion for the issuance of an initial order to commence proceedings under the CCAA to respondents Wabush Iron Ore Co. Ltd., Wabush Resources Inc., Wabush Mines, Arnaud Railway Company and Wabush Railway Co. Ltd. (the "Wabush CCAA Parties"). The CCAA proceedings as they concern the Wabush CCAA Parties were joined to CCAA proceedings started some four months earlier involving the "Bloom Lake CCAA Parties".³

¹ R.S.C. 1985, c. C-36.

² 2015 QCCS 3064.

³ The pre-existing CCAA proceedings were commenced on January 27, 2015, by an initial order issued by Castonguay, J. of the Superior Court, in respect of Bloom Lake General Partner Ltd., Quinto Mining Corp., 8568391 Canada Ltd., Cliffs Quebec Iron Mining ULC, The Bloom Lake Iron Ore Partnership and Bloom Lake Railway Co. Ltd. (the "Bloom Lake CCAA Parties").

[5] Prior to the filing of the motion, Wabush Mines operated an iron ore mine located near the Town of Wabush and Labrador City, in the province of Newfoundland and Labrador, with facilities at Pointe-Noire, Quebec.

[6] The Wabush CCAA Parties are currently involved in a court-ordered sales process, originally commenced in the Bloom Lake CCAA proceedings, whereby they seek to sell assets with a view either to concluding a plan of compromise with their creditors (including the petitioners) or disposing of assets and distributing the proceeds to creditors (including the petitioners).

[7] The Wabush CCAA Parties have two defined pension plans for their employees, one for salaried employees and the other for unionized employees paid an hourly wage. Because some employees work in a provincially-regulated setting in Newfoundland and Labrador and others work in federally-regulated industries, the plans are subject to oversight by both the federal Office of Superintendent of Financial Institutions and the Newfoundland and Labrador Superintendent of Pensions.

[8] Both plans are underfunded. The CCAA Judge set forth estimated amounts to be paid as winding-up deficiencies, monthly amortization payments and lump-sum "catch-up" amortization payments. He noted as well that the Wabush CCAA Parties provide other post-employment benefits ("OPEB"), including health care and life insurance, to certain retired employees. Accumulated benefits' obligations for the OPEBs, as well as monthly premiums required to fund those benefits, are to be paid by the Wabush CCAA Parties. In addition, amounts are due pursuant to a supplemental retirement arrangement plan for certain salaried employees (see paras [4] to [13] of the judgment).

[9] The Wabush CCAA Parties arranged for interim financing (a debtor-in-possession or "DIP" loan) from Cliffs Mining Company, a related company. The CCAA Judge was of the view that the Wabush CCAA Parties' cash-flow was compromised and that the interim financing was necessary to continue operations during restructuring. The Wabush initial order approved an interim financing term sheet pursuant to which the interim lender would provide US\$10M of interim financing, on conditions, for the Wabush CCAA Parties short-term liquidity needs during the CCAA proceedings. These conditions included, as the CCAA Judge recorded in paragraph [16] of his reasons, a requirement that the interim lender have a charge in the principal amount of CDN \$15M, with priority over all charges, against Wabush CCAA Parties' property, subject to some exceptions. There is a further condition that Wabush CCAA Parties may not make any special payments in relation to the pension plans or any payments in respect of the OPEBs. The initial order granted the interim lender charge of \$15M but did not give priority to that charge over existing secured creditors in order to allow the parties to make representations at a comeback hearing.

[10] At that comeback hearing, the Wabush CCAA Parties sought, *inter alia*, priority for the interim lender charge ahead of deemed trusts created by pension legislation and a suspension of obligations to pay amortization payments in relation to the pension

plans and payments for OPEBs. The Salaried Members and the Union contested these matters. The CCAA Judge issued an order on June 9, 2015 granting priority to the interim lender charge, subject to the rights of, *inter alia*, the Salaried Members, the Union and the federal and provincial pension authorities to be determined at a later hearing.

[11] That hearing on June 22, 2015 gave rise to the judgment *a quo* in which the CCAA Judge granted the Wabush CCAA Parties' comeback motion and dismissed the contestations brought by the Salaried Members and the Union.

II The judgment of the Superior Court

[12] The CCAA Judge made numerous findings and rendered different orders, not all of which concern the motions before me. I will limit my comments to those aspects of the judgment relevant here.

[13] After setting forth the context and the arguments of the parties, the CCAA Judge considered the conflict between the super-priority of the interim lender charge and the deemed trusts created by federal and provincial legislation. (His findings in respect of the provincial rules do not concern us directly at this stage).

[14] As to the impact of CCAA proceedings on the deemed trust created by subsection 8(2) of the *Pension Benefits Standards Act, 1985*,⁴ the judge wrote "there is no general rule that deemed trusts in favour of anyone other than the Crown are ineffective in insolvency" (para. [72]). He then considered the effect of subsection 8(2) PBSA on the provisions of the CCAA that deal with pension obligations, including subsections 6(6) and 36(7) CCAA that were added to the Act in 2009. Based on his interpretation of the general rule in subsection 8(2) PBSA and the particular rules in the CCAA, the judge concluded, as an exercise of statutory interpretation, that "Parliament's intent is that federal pension claims are protected in [...] restructurings only to the limited extent set out in the [...] CCAA, notwithstanding the potentially broader language in the PBSA" (para. [78]). In the alternative, he wrote, "the Court could conclude that a liquidation under the CCAA does not fall within the term "liquidation" in Subsection 8(2) PBSA such that there has been no triggering event" (para. [79]). Either way, he observed, the deemed trust in subsection 8(2) PBSA did not prevent him from granting a priority to the interim lending charge if the conditions of section 11.2 CCAA were met.

[15] After considering the relevant factors under the CCAA to the facts of the case, the CCAA Judge decided that the proposed sale was in the interests of the Wabush CCAA Parties and their stakeholders as it should lead to a greater recovery. The sale required new financing and, without that financing, it is likely that the Wabush CCAA Parties would go bankrupt. The judge also expressed his view that the terms and conditions of the interim financing were reasonable, and that the security is limited to

⁴ R.S.C. 1985, c. 32 (2nd Supp.).

the amount of the new financing. He then wrote that “[t]his is sufficient for the Court to conclude that the Interim Financing should be approved and the interim lender charge should be granted with priority over the deemed trust under the PBSA, if it is effective in the CCAA context” (para. [95]). He also found that the terms of the interim lending sheet, including the requirement that the interim lender be granted super priority, were not unusual and that he was not satisfied that the Superior Court had jurisdiction to order the lender to advance the funds on other terms (para. [100]).

[16] The CCAA Judge then gave reasons for his decision to grant the Wabush CCAA Parties’ request that their obligation to make special and OPEB payments be suspended. He held that forcing the Wabush CCAA Parties to make special payments would lead to a default under the interim financing arrangement and a likely bankruptcy (para. [112]). He came to the same conclusion in respect of the OPEBs (para. [122]). In so doing, he rejected the argument that the suspension of the OPEBs amounted to a resiliation of the insurance contract under which the benefits are provided, resiliation which would have required notice under section 32 CCAA (paras [127] to [131]).

[17] The CCAA Judge rejected all other grounds for contestation. He confirmed the priority of the interim lending charge over the deemed trusts as set out in the initial order; he ordered the suspension of payment by the Wabush CCAA Parties of monthly amortization payments, of the annual lump sum catch-up payments, and of other post-retirement benefits.

III The motions for leave

[18] The two motions raise some similar issues but are different in scope.

[19] The Salaried Members ask for leave to appeal in respect of conclusions relating to two aspects of the judgment.

[20] First, the Salaried Members seek to reverse the CCAA Judge’s approval of what they characterize as the termination of OPEBs and of payment of supplemental pension benefits imposed by the Wabush CCAA Parties without proper notice as required by section 32 CCAA. In this regard, the Salaried Members object to the following paragraph in the judgment *a quo*:

[146] ORDERS the suspension of payment by the Wabush CCAA Parties of other post-retirement benefits to former hourly and salaried employees of their Canadian subsidiaries hired before January 1, 2013, including without limitation payments for life insurance, health care and a supplemental retirement arrangement plan, *nunc pro tunc* to the Wabush Filing Date.

[21] In argument, the Salaried Members also contended that the CCAA Judge’s finding that the Wabush CCAA Parties did not have the funds to meet the \$182,000

monthly payments for the premiums to fund the OPEBs and the supplemental pension benefits was mistaken.

[22] Second, the Salaried Members seek to reverse that portion of the CCAA Judge's reasons bearing on the ineffectiveness of the federal statutory deemed trust in CCAA proceedings. They say that to hold the deemed trust priority under the PBSA to be "of no force and effect in CCAA Proceedings on a wholesale basis" is wrong in law. Specifically they state that the deemed trust priority should continue to apply for the benefit of Salaried Members over the assets of the company in future priority distributions (after the DIP and CCAA-ordered priorities). For this second argument, the Salaried Members target the following paragraphs of the CCAA Judge's reasons as they pertain to the effectiveness of the PBSA deemed trust in CCAA proceedings:

[78] For all of these reasons, the Court concludes that Parliament's intent is that federal pension claims are protected in insolvency and restructurings only to the limited extent set out in the *BIA* and the *CCAA*, notwithstanding the potentially broader language in the PBSA.

[79] In the alternative, the Court could conclude that a liquidation under the CCAA does not fall within the term "liquidation" in Section 8(2) PBSA such that there has been no triggering event.

[23] It may be noted that the Salaried Members had initially contemplated objecting to the non-payment of other amounts owing by the Wabush CCAA Parties in respect of the pension plans. But given limits to the Wabush CCAA Parties' cash-flow and the significant amounts of these payments, the Salaried Members chose not to pursue the objections in these proceedings.

[24] As noted, the Salaried Members also ask to suspend provisional execution notwithstanding appeal of this order.

[25] The Union's proposed appeal is somewhat broader.

[26] In respect of the portion of the judgment regarding the deemed trust provided in the PBSA, the Union is of the view, like the Salaried Members, that the CCAA Judge erred in holding that the subsection 8(2) PBSA deemed trust is ineffective in CCAA proceedings. Moreover, the Union disagrees with the CCAA Judge that the pension amortization payments constitute ordinary, unsecured claims under the CCAA rather than trust claims (paras [103] to [118] of the judgment). The Union also says the CCAA Judge was mistaken in deciding that the financing conditions in respect of the interim financial loan were reasonable insofar as those conditions precluded the payment of OPEBs (paras [119] to [133]). The judge should have set aside the unreasonable conditions in the interim lending sheet. Had he done so, the judge would have found that the Wabush CCAA Parties had the necessary funds to make the payments owed under the plans.

[27] The Union also seeks a stay of provisional execution of the judgment.

[28] It bears mentioning that the Union's motion was filed late. In keeping with section 14(2) CCAA, the Union obtained permission from the CCAA Judge to bring the late appeal, subject to the determination by a judge in chambers of this Court as to whether the appeal is a serious one.⁵ None of the parties objected to this way of proceeding and I find the Union's amended motion to be correctly before me.

IV Criteria for granting leave

[29] The test for leave under the CCAA is well known. Writing for the Court of Appeal for Saskatchewan in *Re Stomp Pork Farm Ltd.*,⁶ Jackson, J.A. wrote:

[15] In a series of cases emanating first from British Columbia and then from Quebec, Alberta and Ontario, there has developed a consensus among the Courts of Appeal that leave to appeal an order or decision made under the CCAA should be granted only where there are serious and arguable grounds that are of real significance and interest to the parties and to the practice in general. The test is often expressed as a four-part one:

1. whether the issue on appeal is of significance to the practice;
2. whether the issue raised is of significance to the action itself;
3. whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and,
4. whether the appeal will unduly hinder the progress of the action.

[30] Judges sitting in chambers of this Court have consistently applied this four-part test to measure the seriousness of a proposed appeal. As my colleague Hilton, J.A. observed in *Statoil Canada Ltd. (Arrangement relative à)*,⁷ the above-mentioned four criteria are understood to be cumulative, with the result that if a petitioner fails to establish any one of them, the motion for leave will be dismissed. Hilton, J.A. alluded to the oft-repeated injunction that a petitioner seeking leave to appeal faces a heavy burden given the role of a CCAA judge, the discretionary character of the decisions he or she must make and the nature of the proceedings. He recalled the longstanding cautionary note that motions for leave should only be granted "sparingly".⁸

⁵ 2015 QCCS 3584, paras [32] to [34] (*per* Hamilton, J.).

⁶ 2008 SKCA 73 (footnotes omitted).

⁷ 2013 QCCA 851, para. [4] (in chambers).

⁸ *Ibid.*, para. [4].

[31] The grounds upon which a stay of provisional execution notwithstanding appeal may be granted by a judge in chambers are also well known.⁹ Applying the principles developed pursuant to article 550 C.C.P. to this case, I note that the petitioners must show that the judgment suffers from a plain weakness; that failing to grant the stay would result in serious harm (sometimes characterized as irreparable harm) to them; and that the balance of inconvenience favours granting a stay.

IV Analysis

[32] Despite the importance of certain of the questions raised in the motions for leave to the practice and to this action, and notwithstanding the *prima facie* meritorious character of some arguments made by the petitioners, I am of the respectful view that both the Salaried Members and the Union have failed to meet the test for leave. In particular, they have not convinced me that an appeal would not unduly hinder the progress of the action.

[33] I shall make brief comments on each of the four criteria in turn.

IV.1 Importance of the questions to the practice

[34] Some questions raised in both motions, to varying degrees, have importance to the practice as that notion is understood in connection with applications for leave brought under sections 13 and 14 CCAA.

[35] The issue of the effectiveness of the PBSA deemed trust in CCAA proceedings raised in both motions meets this first criterion. This issue is not, as the respondent argued, a settled matter. In pointing to the CCAA Judge's comment in paragraph [61] to the effect that "[t]hese are not new issues", respondent has, it seems to me, quoted the judge out of context. It is of course true, as the CCAA Judge observed, that courts, including the Supreme Court, have been called upon to consider the effect of statutory deemed trusts in insolvency on numerous occasions. But as the CCAA Judge's own reasons make plain, the interpretation of the deemed trust protection in subsection 8(2) PBSA in light of amendments made to the CCAA in 2009, in particular subsections 6(6) and 36(7), involve a different exercise of statutory interpretation. In undertaking that work, the judge did have the benefit of principles set out in *Century Services*¹⁰ relating to the conflict between the deemed trust for the GST and the CCRA, in *Sparrow Electric*¹¹ dealing with a deemed trust in favour of the Crown in respect of payroll deductions for taxation, as well as *Indalex*¹² in which a conflict between provincial deemed trust and federal insolvency law was in part at issue. But these settings were different from that of the case at bar. Others have observed that difficulties arising out of

⁹ Recently summarized by the Court in *Imperial Tobacco Canada Ltd. v. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1224, para. [14].

¹⁰ *Century Services Inc. v. Canada (Attorney General)*, [2010] 3 S.C.R. 379.

¹¹ *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411.

¹² *Sun Indalex Finance, LLC v. United Steelworkers*, [2013] 1 S.C.R. 272.

the interaction between deemed trust rules for pensions and the CCAA persist, notwithstanding the jurisprudence of the Supreme Court on point.¹³ Moreover, the narrow issue would be new to this Court and the practice would have a precise consideration of the interaction between the federal deemed trust in subsection 8(2) and the CCAA by an appellate court.

[36] This is not to say that the CCAA Judge was the first to consider the problem. He had the benefit of *Aveos*¹⁴, decided by Schragger, J., as he then was, as well as a scholarly paper on the topic which he cited with approval in paragraph [77]. And while the CCAA Judge and Schragger, J. agree on central aspects of that interpretation exercise, they are not at ones on all points, including the importance of a Crown exception in this context (as the CCAA Judge himself noted at para. [72]). While I recognize the care with which the CCAA Judge examined the question of statutory interpretation, as well as the alternative argument as to whether “any liquidation” within the meaning of subs. 8(2) PBSA includes CCAA proceedings – a point not given full analysis in *Aveos* – the matter of the effectiveness of the federal deemed trust in CCAA proceedings is not settled law and remains important to CCAA practice.

[37] Is the issue raised by the Salaried Members of the proper scope of section 32 CCAA, and the prior notice rule, also of sufficient importance to the practice?

[38] As I will note below, I am of the respectful view that the merits of this argument are less strong. Nonetheless, the matter of the proper scope of section 32 in light of the kind of insurance contract that provided benefits here, and in particular of competing notions of suspension and termination of OPEBs, is one of importance to the practice.

[39] What about the Union’s argument that the judge erred in holding that the terms of the interim financing were reasonable?

[40] This decision was one that called upon the CCAA Judge to make a determination of fact and exercise discretion afforded him under the Act, matters generally viewed as less consequential to the practice. Moreover, it would seem to me that the ability of a lender to determine the basis of risk he or she is willing to tolerate in a restructuring is not a matter widely disputed. I have not been convinced that this point, viewed on its own, is important to the practice.

¹³ Scholars have alluded to the different permutations of the deemed trust problem in CCAA matters as important to the practice: see, e.g., Janis P. Sarra, *Rescue! The Companies’ Creditors Arrangement Act*, 2nd ed. (Toronto: Carswell, 2013) at 370 *et seq.* and a useful comment by Jassmine Girgis entitled “*Indalex*: Priority of Provincial Deemed Trusts in CCAA Restructuring” posted by the University of Calgary Faculty of Law on the website <http://ablawg.ca> in which the author comments on the on-going importance of the issue after *Indalex*.

¹⁴ *Aveos Fleet Performance Inc. (arrangement relatif à)*, 2013 QCCS 5762.

IV.2 Importance of the questions to the present action

[41] The decision not to apply the PBSA deemed trust in CCAA proceedings has meaningful negative consequences for both the Salaried Members and the Union. The importance to the action in this regard seems beyond serious dispute.

[42] I agree with the petitioners that the question relating to the suspension or termination of the OPEBs is also significant to the action. The CCAA Judge recognized at para. [126] and again at para. [133] of his reasons that if the Wabush CCAA Parties fail to pay the premiums on the insurance policy, the policy will be cancelled thereby causing hardship to the Petitioners. I agree too with the position of counsel to the Union who argued that aspects of the pension claims may usefully be compared to alimentary claims, and that the hardship in suspending them gives the question sufficient importance to the action.

IV.3 The proposed appeals are *prima facie* meritorious and not frivolous

[43] The arguments brought in service of the petitioners' view that the deemed trust under the PBSA remains effective in CCAA proceedings are not frivolous. While the exercise of statutory interpretation undertaken by the CCAA Judge – which, it should be noted, is not a discretionary exercise in and of itself – shows no *prima facie* weakness, that is not to say that it precludes an arguable case for the other side.¹⁵ There are, in my view, grounds for framing a statutory interpretation argument for the petitioners' position that have *prima facie* merit when one considers, for example, that the CCAA amendments are the product of a complicated evolution; that the CCAA and the PBSA have different policy objectives which may shape interpretation; that the relevance of principles developed by the Supreme Court in other settings to the deemed trusts problem faced in this case is the matter of fair debate; that comparisons might be made with deemed trust regimes from the provinces or other statutes, and more. All of these factors suggest to me that, notwithstanding the strength of the judgment *a quo*, there are *prima facie* meritorious lines of argument that might be pressed on appeal. The parties debated vigorously the scope of "any liquidation" in subs. 8(2) PBSA before me, for example, as they did the proper scope of amendments to the CCAA and the policy they reflect. On the question of the effectiveness of the PBSA deemed trust as raised by the Salaried Members and in the first three grounds of appeal in the Union's amended motion, I am of the view that this criterion is satisfied.

¹⁵ The gradation between "*prima facie* meritorious" and "frivolous" is not always clear, and the better view may well be that "meritorious" and "frivolous" do not constitute a *summa divisio* for proposed appeals: see *Statoil, supra*, note 7, para. [11]. It is certainly true that the petitioners may have an arguable case – one with *prima facie* merit – but that the judgment *a quo* may still be said to suffer from no apparent weakness: see the helpful comments, albeit in another context, in *Droit de la famille – 081957*, 2008 QCCA 1541, para. [4] (Morissette, J.A., in chambers).

[44] The issue of the proper scope of section 32 CCAA, and the prior notice rule, strikes me, from my disadvantaged position, to be less compelling, but I would not say it is wholly lacking in merit.

[45] Counsel for the monitor argued, in support of the respondents' position that leave should be refused, that this ground of appeal was frivolous. He contended that the CCAA Judge rightly held that section 32 plainly did not apply to the resiliation of the Wabush CCA Parties' insurance contract. Like the respondents, the monitor said the CCAA Judge rightly relied on *Mine Jeffrey*¹⁶ decided by this Court in 2003, and that his analysis of the "tri-partite relationship" between the employer, the insurer and the beneficiary in paragraphs [129] *et seq.* is free from error.

[46] The question as to the applicability of section 32 here is not frivolous, even if *Mine Jeffrey* presents a formidable obstacle to a successful appeal. While not equal in strength, arguments raised by counsel for the Salaried Members as to type of contract to which the rule applies and, in particular, to the distinction between the termination of a contract and the suspension of a contract, are not without some merit. While I recognize that the test of the relative merit of the arguments proposed can be construed in some circumstances as requiring more than "a limited prospect of success"¹⁷ given the nature of CCAA proceedings, I would not dismiss the motions on this narrow issue on this basis alone.

[47] The Union says the interim lender's conditions should be set aside as unreasonable. I am not convinced that this argument is *prima facie* meritorious.

[48] Counsel for the Union argues strongly that the interim lender should not be allowed to dictate terms to the CCAA Judge or to the stakeholders as a whole by imposing conditions on financing that have the effect of exploiting the vulnerability of the employees and former employees. He says that if the interim lender's conditions were struck as unreasonable, the Wabush CCAA Parties would have access to those funds and that there would be no need to suspend the various payments due to the petitioners.

[49] With respect, this argument strikes me as flawed in two respects. First, it requires an overturning of the CCAA Judge's view – with all the advantages of perspective he has in so deciding – that as a matter of fact the conditions of the interim financing are reasonable. Secondly, the Union has left unanswered the questions raised by the judge concerning the "harsh commercial realities of interim financing" at paragraph [115]. Why indeed should the interim lender advance funds be used to pay someone else's debt, particularly one that is pre-filing and unsecured? Why should a condition of the financing be ignored, effectively forcing the lender to advance funds on disadvantageous terms to

¹⁶ *Syndicat national de l'amiante d'Asbestos inc. c. Mine Jeffrey Inc.*, [2003] R.J.Q. 420 (C.A.).

¹⁷ *Doman Industries Ltd. v. Communications, Energy and Paperworkers' Union, Local 514*, 2004 BCCA 253, para. [15] (per Prowse, J.A., in chambers).

which it did not agree? It is not a matter of the CCAA Judge being callous or insensitive to hardship faced by vulnerable parties. In my view, the comment of Deschamps, J. for the majority in *Indalex*, as adapted to the setting of federal deemed trusts, is apposite here: “The harsh reality is that lending is governed by the commercial imperatives of the lenders, not by the interests of the plan members or the policy considerations that lead provincial governments to legislate in favour of pension fund beneficiaries”.¹⁸

IV.4 The appeal will not hinder the progress of the action

[50] The petitioners argue that the Wabush CCAA Parties are undergoing a court-supervised sales process in accordance with timelines and procedures that are supervised by the CCAA Judge with the oversight of the monitor. In the circumstances, they say, the proposed appeal, especially if it were placed on an accelerated roll, would not hinder the progress of the action. They contend, to differing degrees, that the CCAA Judge erred in his measure of the financial vulnerability of the Wabush CCAA Parties. Mindful no doubt of the difficulty that this aspect of the analysis presents to their leave application, the Salaried Members “part company” (to use the expression of counsel) with the Union in framing their appeal more narrowly, in particular in respect of the recognition that the DIP loan enjoys a wider priority than does the Union, and in limiting their claim in respect of the payments that should escape suspension.

[51] Given the findings of fact concerning the fragility of the Wabush CCAA Parties as observed by the CCAA Judge, I find the positions of both petitioners on this point unconvincing. Even the “strategic” decision of the Salaried Members to contest the judgment on a narrower basis does not satisfy this criterion. In my view, both proposed appeals would unduly hinder the action.

[52] My conclusion is based largely on the findings of fact arrived at by the CCAA Judge regarding the vulnerability of the Wabush CCAA Parties at this stage of the restructuring.

[53] In canvassing the circumstances in which the interim financing was put in place, the CCAA Judge observed that the cash-flow position of the Wabush CCAA Parties was compromised with the result that they needed the interim financing to continue even their limited operations during the CCAA process (para. [16]). The CCAA Judge made the following specific findings, which I consider to be findings of fact: (1) that the sale and investor solicitation process in progress are in the interests of the Wabush CCAA Parties and their stakeholders because they will likely lead to a greater recovery; (2) that without new financing, the Wabush CCAA Parties could not complete the sale; (3) that without new financing allowing them to complete the sale, it is likely that the Wabush CCAA Parties will go bankrupt; (4) that the Wabush CCAA Parties and the monitor have not identified any other source of new financing; and (5) that the terms of the interim financing are reasonable (para. [94]).

¹⁸ *Indalex*, *supra* note 12, para. [59].

[54] When discussing the suspension of special payments, the CCAA Judge observed, at para. [112]:

[112] The Wabush CCAA Parties do not have the funds available to make these payments. The cash flow statements filed with the Court show that the Wabush CCAA Parties need the funds from the Interim Financing to meet their current obligations other than the special payments. The Interim Lender Term Sheet expressly requires the Wabush CCAA Parties not to make any special payments. As a result, forcing the Wabush CCAA Parties to make the special payments would lead to a default under the Interim Financing and a likely bankruptcy.

[Footnote omitted.]

[55] In respect of the suspension of the OPEBs – including what the Salaried Members characterize as the modest premiums of \$182,000 per month and the supplemental retirement arrangement plan amount – the CCAA Judge recalled at para. [122] that “[t]he Wabush CCAA Parties do not have any funding valuable to continue to pay any of the foregoing OPEBs, as the Interim Financing Sheet prohibits such payments”. In para. [125], the CCAA Judge explained that it was not enough to say, as did the Salaried Members, that \$182,000 and the supplemental amount could be found elsewhere if the interim lending sheet prevents them from making the payments: “Given the cash flow statement filed with the Court and the language of the Interim Lender Sheet, the Court accepts that the Wabush CCAA Parties do not have the funds”.

[56] These findings of fact, while not immune from review, are deserving of deference on appeal. It is not enough to say, without more, that the amount is a small one in the grand scheme of things, as do the Salaried Members, or that another interim lender could be found without difficulty as the action proceeds. The CCAA Judge decided specifically otherwise. A reviewable error would have to be shown on this point to overcome the strong impression that comes from reading the judgment that granting leave and suspending provisional execution would hinder the action.

[57] In like circumstances, leave has been denied. Recently in *Bock inc. (arrangement relative à)*,¹⁹ my colleague Bich, J.A. declined to grant leave, notwithstanding the presence of a question she characterized as “interesting” for the purposes of an eventual appeal and one in respect of which, like ours, there was a paucity of appellate court consideration. “Granting leave to appeal”, she wrote at para. [12] of her reasons, “would most likely jeopardize the course of the action and cause irreparable harm to the debtor company and, consequently, all other stakeholders (creditors, employees, etc.)”. Similarly, in *Re: Consumer Packaging Inc.*,²⁰ a bench of

¹⁹ 2013 QCCA 851 (in chambers).

²⁰ 2001 CanLII 6708 (Ont. C.A.).

the Court of Appeal for Ontario declined to grant leave in circumstances where conditions set by the interim lender meant that the time and financial constraints that would have come with an appeal were prohibitive: “Leave to appeal should not be granted”, wrote the Court at para. [5], “where, as in the present case, granting leave would be prejudicial to restructuring the business for the benefit of stakeholders as a whole [...]”.²¹

[58] All told, the risk of default on the interim financing and of bankruptcy to the Wabush CCAA Parties is serious. Granting leave would, in this setting, risk hindering the action. If leave were granted, the petitioners would likely obtain, at best, a Pyrrhic victory if they succeeded on appeal.

[59] Given my conclusion that leave should be denied, the motions seeking a stay of the judgment pursuant to article 550 C.C.P. are without further object and should be dismissed as well. In any event, the conditions necessary for a stay were not present. While the petitioners have, to be sure, shown that they have an arguable case, they have not pointed to something I would characterize as a weakness in the judgment *a quo*. They did satisfy the burden of showing that the failure to grant a stay would cause them harm. However, the balance of inconvenience – considering the impact that lifting the stay would have on the Wabush CCAA Parties – would not have favoured granting a stay.

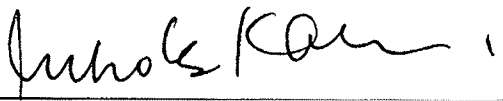
[60] Counsel should be commended for their helpful presentation of the matter in dispute.

[61] **FOR THE AFOREMENTIONED REASONS:** the undersigned:

[62] **DISMISSES** the Salaried Members motion for leave to appeal and for a stay, with costs;

²¹ As a final observation on this point, it may be recalled that, prudently, the CCAA Judge offered a further observation that gives weight, I think, to the conclusion that granting leave would be inopportune here. He suggested that even if the PBSA deemed trusts were effective in CCAA proceedings, he would have exercised his discretion under the CCAA to grant priority to the interim lender: see para. [95].

[63] **DISMISSES** the Union's amended motion for leave to appeal and for a stay, with costs.



NICHOLAS KASIRER, J.A.

Mtre Andrew J. Hatnay
Mtre Ari Nathan Kaplan
KOSKIE MINSKY LLP
Mtre Geeta Narang
NARANG & ASSOCIÉS
Mtre Nicholas Scheib (absent)
SCHEIB LEGAL
For Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson

Mtre Bernard Boucher
BLAKE CASSELS & GRAYDON S.R.L. (MONTREAL)
For Bloom Lake General Partner

Mtre Steven Weisz
BLAKE CASSELS & GRAYDON S.R.L. (TORONTO)
For Bloom Lake General Partner

Mtre Louis Dumont
DENTONS CANADA LLP
For Cliffs Quebec Iron Mining ULC

Mtre Sylvain Rigaud
NORTON ROSE FULBRIGHT CANADA LLP
For FTI Consulting Canada Inc.

Mtre Douglas Mitchell (absent)
Mtre Leslie-Anne Wood (absent)
IRVING MITCHELL KALICHMAN
For Her Majesty in right of Newfoundland and Labrador, as represented by the
Superintendent of Pensions

Mtre Pierre Lecavalier
DEPARTMENT OF JUSTICE – CANADA
For the Attorney General of Canada

Mtre Jean-François Beaudry

PHILION, LEBLAND, BEAUDRY, AVOCATS, S.A.

For the Syndicat des Métallos, Section Locale 6254 and Section Locale 6285

Mtre Gerald N. Apostolatos

LANGLOIS KRONSTRÖM DESJARDINS

For the Creditors Quebec North Shore and Labrador Railway Company Inc. and Iron Ore Company of Canada

Date of hearing: August 5, 2015

TAB 5

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

File: No: 500-11-048114-157

Montreal, June 22, 2015

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

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

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

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

Petitioners

-and-

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

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL, and NEIL JOHNSON**

Petitioners-Mises-en-cause

ORDER APPOINTING REPRESENTATIVES AND REPRESENTATIVE COUNSEL

1. **THE COURT**, upon reading the Petitioners-Mises-en-cause *Motion for an order appointing the Petitions-Mises-en-cause as Representatives of Salaried/Non-Union and Retired Employees of the Wabush CCAA Parties*, having examined the affidavit of Michael Keeper affirmed the 15th day of June, 2015, and the exhibits thereto;
2. **CONSIDERING** the submissions of counsel for the Petitioners-Mises-en-cause, the submissions of counsel for the Wabush CCAA Parties, and such other counsel as were present;
3. **GIVEN** the Monitor's 7th Report and the recommendations contained therein concerning the appointment of the Representatives and Representative Counsel for the Salaried Members, as defined below; and
4. **GIVEN** the provisions of the *Companies' Creditors Arrangement Act*;

FOR THESE REASONS, THE COURT HEREBY:

5. **GRANTS** the motion of the Petitioners-Mises-en-cause (the "**Representatives**") appointing them as representatives of all salaried/non-Union employees and retirees of the Wabush CCAA Parties (namely, Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway company and Wabush Lake Railway Company Limited) or any person claiming an interest under or on behalf of such employees or former employees or pensioners and surviving spouses, or group or class of them (excluding Opt-Out Individuals, as defined below, if any), (collectively, the "**Salaried Members**"), in these CCAA proceedings, for the purpose of representing the Salaried Members in these CCAA proceedings and in particular with respect to proving, settling or compromising the rights and claims of the Salaried Members in these CCAA proceedings, who shall be bound by the actions of the Representatives and Representative Counsel (as defined below) in these CCAA proceedings;
6. **GRANTS** the appointment of Koskie Minsky LLP and Nicholas Scheib (collectively, "**Representative Counsel**") as legal counsel to the Representatives in their capacity as representatives for the Salaried Members in these CCAA proceedings with the mandate to provide assistance to the Salaried Members so that the Salaried Members are able to

participate in the CCAA proceedings and the restructuring process in a more efficient manner, including to assist the Salaried Members in the evaluation of their entitlements and claims in a cost-effective and timely manner;

7. **ORDERS** that, subject to an agreement among the Representatives, Representative Counsel and the Wabush CCAA Parties (the "**Representative Counsel Letter**"), all reasonable legal fees, taxes and disbursements that may be incurred on or after the Filing Date by the Representatives and by Representative Counsel in these CCAA proceedings only shall be paid by the Wabush CCAA Parties on a monthly basis, forthwith upon the rendering of sufficiently detailed accounts (subject to reasonable redaction due to solicitor-client privilege) to the Wabush CCAA Parties and subject to the invoices being approved by the Monitor, in the following amounts: \$45,000 (CDN) in respect of legal fees of the Salaried Members as an initial payment in respect of the legal fees incurred by the Salaried Members from the inception of these CCAA proceedings to the date of this order; an amount of up to \$30,000 per month for the legal fees of the Salaried Members thereafter commencing for and including the month of June, 2015 for a total cap for legal fees of \$150,000. Any amount that is remaining in the cap in a given month can be carried forward to be applied to increase the cap in a future month, or can be applied toward the legal fees incurred in a past month(s) that exceeded the cap in such past month(s) and has not been paid. Notwithstanding any other provision of this Order, the Wabush CCAA Parties shall not pay any legal fees, taxes or disbursements of the Representatives and Representative Counsel if payment thereof by the Wabush CCAA Parties would be prohibited by the Interim Financing Term Sheet approved by Order of the Court dated May 20, 2015, in particular, any legal fees, taxes and disbursements of the Representatives and Representative Counsel in respect of: a) any contestation by the Representatives or Representative Counsel to the Interim Facility provided by Cliffs Mining Company pursuant to the Interim Financing Term Sheet (the "**Interim Facility**"), including any terms thereof or b) any litigation that may be brought or supported by the Representatives or Representative Counsel against the directors of the Wabush CCAA parties in their personal capacity or against Cliffs Mining Company, in its capacity as Interim Lender under the Interim Facility;

8. **DIRECTS** that any disagreement regarding the legal fees, taxes and disbursements of the Representatives and Representative Counsel may be remitted to this Court for determination;
9. **DIRECTS** a notice of the granting of this Order be provided to the Salaried Members by advertisement in a national and French newspaper at the expense of the Wabush CCAA Parties and under such other terms and conditions as to be agreed upon by the Representatives, the Wabush CCAA Parties and the Monitor, and the form of the advertisement shall be as agreed by Representative Counsel, the Wabush CCAA Parties and the Monitor (and in the event of any dispute, such dispute to be decided by this Court);
10. **ORDERS** that any individual Salaried Member who does not wish to be represented by the Representatives and Representative Counsel and thereby bound by their subsequent actions and decisions shall, within the later of 90 days of publication of the newspaper notice, so notify the Monitor, in writing, by facsimile, mail or email, substantially in the form attached hereto as Appendix A, that he or she wishes to opt out of representation by the Representatives or Representative Counsel (an "**Opt-Out Notice**") and thereafter he or she shall not be represented by the Representatives or Representative Counsel in these proceedings and shall represent himself or herself, personally or through counsel that he or she may retain at his or her own expense as an independent, individual party to the extent that they wish to participate in these proceedings (any such persons who deliver an Opt-Out Notice in compliance with the terms of this paragraph are hereinafter referred to individually as an "Opt-Out Individual and collectively, "**Opt-Out Individuals**") and the Representatives and Representative Counsel shall have no obligation to represent the Opt-Out Individuals;
11. **AUTHORIZES** the Representatives and Representative Counsel to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto;

12. **DIRECTS** the Wabush CCAA Parties to provide to the Representatives and Representative Counsel, without charge, the following information, documents and data (the “Information”):

- a. the names, last known address and last known email addresses (if any) of all the Salaried Members as well as applicable data regarding their entitlements, subject to a confidentiality agreement as applicable and to only be used for the purposes of these proceedings; and
- b. upon request of Representative Counsel, such documents and data as may be relevant to matters relating to the issues in these proceedings, including documents and data pertaining to pension plans, group RRSPs, supplemental retirement arrangements, and post-retirement benefit plans of the Salaried Members, including up to date financial information regarding the funding and investments of any of these arrangements and including, in particular, documents and data pertaining to:
 - (i) the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (CRA registration No. 0343558) (the “**Salaried Plan**”);
 - (ii) Participants in the Wabush Mines Registered Retirement and Savings Plan (the “**Group RRSP**”);
 - (iii) Wabush Mines, Cliffs Mining Company, Managing Agent – Supplemental Retirement Arrangement (the “**SRA**”); and
 - (iv) post-retirement benefit plans applicable to salaried employees of the Wabush Group (the “**Health Benefits**”);

and that, in so doing, the Wabush CCAA Parties are not required to obtain express consent from such Salaried Members authorizing disclosure of the Information to the Representatives and Representative Counsel and, further, in accordance with section 18(9) of *An Act respecting the Protection of Personal Information in the Private Sector*, CQLR c P-39.1, this Order shall be sufficient to authorize the disclosure of the Information without the knowledge or consent of the Salaried Members;

13. **AUTHORIZES** the Representatives and Representative Counsel, the Wabush CCAA Parties and the Monitor to apply to this Honourable Court for advice and directions in respect of any matter in relation to the discharge or variation of their respective powers and duties in relation to this Order;
14. **DECLARES** that the Representatives and Representative Counsel shall have no liability as a result of their appointment or the fulfilment of their duties in carrying out the provisions of this Order save and except for claims based on any gross negligence or wilful misconduct on their part;
15. **DECLARES** that service and notice of this motion was good and sufficient and hereby dispenses with further service thereof;
16. **WITHOUT COSTS.**

June 22, 2015



STEPHEN W. HAMILTON, J.S.C.

APPENDIX A

NOTICE TO OPT-OUT OF REPRESENTATION IN CCAA PROCEEDINGS

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: ●

Telephone: 416-649-8074
Toll free phone number: 1-844-846-7135
Email: Wabush@fticonsulting.com

Re: Notice to Opt-Out of Representation in the Matter of Bloom Lake & Wabush Mines – CCAA (the “CCAA Proceedings”)

I _____, am a Non-Union Employee or Retiree.

The Order directs that Salaried Members who do not wish to be represented in the CCAA Proceedings by Representative Counsel and bound by their actions may opt out by delivering this letter in accordance with the terms of the Order.

I hereby notify the Monitor that I do not wish to be represented by the Representatives and bound by their action and I will be separately represented to the extent that I wish to appear in the CCAA Proceedings.

DATE

NAME

TAB 6

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-048114-157

SUPERIOR COURT

Commercial Division

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

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

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

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

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

-and-

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

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

**MICHAEL KEEPER, TERENCE WATT, DAMIEN LABEL
AND NEIL JOHNSON**

UNITED STEEL WORKERS, LOCALS 6254 AND 6285

RETRAITE QUÉBEC

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

Mis-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**AMENDED MOTION BY THE MONITOR FOR DIRECTIONS
WITH RESPECT TO PENSION CLAIMS**

(Sections 11 and 23(k) of the *Companies' Creditors Arrangement Act*)

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

I. INTRODUCTION

1. On January 27, 2015, the Honourable Justice Martin Castonguay, J.S.C., issued an Order (as subsequently amended, rectified and/or restated, the **Bloom Lake Initial Order**) pursuant to the *Companies' Creditors Arrangement Act* (**CCAA**) in respect of the Petitioners Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, and Cliffs Québec Iron Mining ULC (**CQIM**), as well as Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited (collectively, the **Bloom Lake CCAA Parties**), as appears from the Court record;
2. Pursuant to the Bloom Lake Initial Order, *inter alia*, FTI Consulting Canada Inc. was appointed as monitor of the Bloom Lake CCAA Parties (the **Monitor**), and a stay of proceedings was granted in respect of the Bloom Lake CCAA Parties until February 26, 2015 (subsequently extended from time to time, and most recently until September 30, 2016 by Order dated April 20, 2016);
3. On May 20, 2015, the Honourable Justice Stephen W. Hamilton, J.S.C., issued an Order (as subsequently amended, rectified and/or restated, the **Wabush Initial Order**) extending the scope of these CCAA proceedings to the Petitioners Wabush Iron Co. Limited (**Wabush Iron**) and Wabush Resources Inc. (**Wabush Resources**), as well as Mises-en-cause Wabush Mines, an unincorporated contractual joint venture (**Wabush Mines**), Arnaud Railway Company (**Arnaud Railway**), and Wabush Lake Railway Company Limited (**Wabush Railway**) (collectively, the **Wabush CCAA Parties**, and together with the Bloom Lake CCAA Parties, the **CCAA Parties**), as appears from the Court record. For ease of reference a copy of the Wabush Initial Order dated May 20, 2015, as rectified on May 28, 2015, is communicated herewith as **Exhibit R-1**;
4. Pursuant to the Wabush Initial Order (R-1), *inter alia*, the Monitor was appointed as the monitor of the Wabush CCAA Parties, and a stay of proceedings was granted in respect of the Wabush CCAA Parties until June 19, 2015 (subsequently extended from time to time, and most recently until September 30, 2016 by Order dated April 20, 2016);
5. On November 5, 2015, the Honourable Justice Stephen W. Hamilton, J.S.C., issued an order (as amended on November 16, 2015, the **Claims Procedure Order**), which approved and established a procedure for the filing of creditors' claims against the CCAA Parties and their directors and officers (the **Claims Procedure**), as appears from the Claims Procedure Order, a copy of which is communicated in support herewith for ease of reference as **Exhibit R-2**;

6. Capitalized terms not otherwise defined herein have the meaning ascribed thereto in the Claims Procedure Order (R-2);
7. Both the Bloom Lake Initial Order and the Wabush Initial Order provide that the Monitor assist the CCAA Parties in dealing with their creditors over the course of the Stay Period, and declare that the Monitor may apply to the Court for directions as becomes necessary in discharging its duties, the whole as appears from, *inter alia*, paragraphs 39 and 65 the Wabush Initial Order (R-1);
8. Moreover, paragraphs 61 and 68 of the Claims Procedure Order (R-2) entitle the Monitor to apply to the Court for advice and directions in connection with the discharge or variation of its powers and duties thereunder;
9. The Monitor hereby applies for directions with respect to the priority of Pension Claims filed by the Plan Administrator pursuant to the Claims Procedure Order (R-2), and the applicability and scope of deemed trusts, if any, under the *Pension Benefits Standards Act*, R.S.C. 1985, c. 32 (2nd Supp.) (**PBSA**) and the Newfoundland & Labrador *Pension Benefits Act*, S.N.L. 1996, c. P-4.01 (**PBA**) as well as the Québec Supplemental Pension Plans Act, R.L.R.Q., c. R-15.1 (**SPPA**), the whole as more fully set out below;
10. Specifically, the Monitor is asking the Court to issue an Order in the form of the draft Order communicated herewith as **Exhibit R-3** with respect to the priority of the various components of the Salaried DB Plan Claim and the Union DB Plan Claim (each as defined herein below);

II. OVERVIEW OF WABUSH CCAA PROCEEDINGS

11. As stated in paragraphs 16 to 19 and 21 of the *Motion for the Issuance of an Initial Order* of the Wabush CCAA Parties dated May 19, 2015 (the **Wabush Initial Motion**), a copy of which is communicated herewith as **Exhibit R-4**, there were no operations as of the date of the Wabush Initial Order at either the Wabush Pointe-Noire pellet plant (the **Pointe-Noire Plant**) or the Wabush Mine (as defined in the Wabush Initial Motion);
12. The Pointe-Noire Plant had been shut down in June 2013, while the Wabush Mine was shut down in the first quarter of 2014, and substantially all of the employees at both sites had been terminated or laid off prior to the issuance of the Wabush Initial Order, as stated in paragraphs 37 and 38 and 87 to 96 of the Wabush Initial Motion (R-4);
13. The Wabush Initial Order (R-1) provided for *inter alia*:
 - a) The creation of non-priming charges, including an Administration Charge for an aggregate amount of \$1,750,000, a Directors' Charge for an aggregate amount of \$2,000,000, and an Interim Lender Charge for an aggregate amount of \$15,000,000 (each as defined in the Wabush Initial Order, and collectively referred to as the **CCAA Charges**);
 - b) The permission, but no requirement, for the Wabush CCAA Parties to pay normal cost pension contributions payable on or after the date thereof as follows:

[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; [...] [Emphasis added]

14. On June 9, 2015, the Court issued an order with respect to the Wabush CCAA Parties (the **Wabush Comeback Order**), a copy of which is communicated herewith for ease of reference as **Exhibit R-5**, which provided for *inter alia*:

- a) The approval on a *nunc pro tunc* basis of the **SISP** (as defined therein) with respect to the Wabush CCAA Parties;
- b) The creation of the **Sale Advisor Charge** (as defined in paragraph 16 thereof);
- c) The priority status of the CCAA Charges and the Sale Advisor Charge, to rank ahead of all Encumbrances (as defined therein), subject to the rights of the various parties having objected to the priming of the Interim Lender Charge;
- d) The adjournment to June 22, 2015 of the debate as to both the proposed priority of the Interim Lender Charge and the suspension by the Wabush CCAA Parties of its special payments to the DB Plans (as defined below), as follows:

[5] **ORDERS** that paragraph 47 of the Wabush Initial Order shall be amended as follows:

[47] **DECLARES** that each of the CCAA Charges shall rank ahead of all hypothecs, mortgages, liens, security interests, priorities, trusts, deemed trusts (statutory or otherwise), charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") [...] affecting the Property of the Wabush CCAA Parties whether or not charged by such Encumbrances [...], with the exception of the Crown deemed trusts for sources deductions described in Section 37(2) CCAA and the sums that could be subject to a claim under Section 38(3) CCAA. For greater certainty, the CCAA Charges only extend to assets or rights against assets over which the Wabush CCAA Parties hold or acquire title and the Interim Lender's Charge is subject to the Permitted Priority Liens (as defined in the Interim Financing Term Sheet). [underlining in the original]

[6] **RESERVES** the rights of Her Majesty in right of Newfoundland and Labrador, as represented by the Superintendent of Pensions, the Syndicat des Métallos, Section Locale 6254, the Syndicat des Métallos, Section 6285 and the Attorney General of Canada to contest the priority of the Interim Lender Charge over the deemed trust(s) as set out in the Notices of Objection filed by each of those parties in response to the Motion, which shall be heard and determined at the hearing scheduled on June 22, 2015. [Emphasis added.]

[...]

[21] **ORDERS** the request by the Wabush CCAA Parties for an order for the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date is adjourned to June 22, 2015; [Emphasis added.]

[22] ORDERS the request by the Wabush CCAA Parties for an order for the suspension of payment by the Wabush CCAA Parties of the annual lump sum "catch-up" payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date is adjourned to June 22, 2015; [Emphasis added.]

the whole as it appears from the Wabush Comeback Order (R-5);

15. A copy of the *Motion for the Issuance of an order in respect of the Wabush CCAA parties (1) granting priority to certain CCAA charges, (2) approving a Sale and Investor Solicitation Process nunc pro tunc, (3) authorizing the engagement of a Sale Advisor nunc pro tunc, (4) granting a Sale Advisor Charge, (5) amending the Sale and Investor Solicitation Process, (6) suspending the payment of certain pension amortization payments and post-retirement employee benefits, (7) extending the stay of proceedings, (8) amending the Wabush Initial Order accordingly* of the Wabush CCAA Parties dated May 29, 2015 (the **Wabush Comeback Motion**), which led to the Wabush Comeback Order (R-5), is also communicated herewith for ease of reference as **Exhibit R-6**;

16. By way of judgment dated June 26, 2015, the Court rendered Orders with respect to the priority of the Interim Lender Charge and the suspension of payment of monthly and annual lump sum "catch-up" payments (the **Pension Priority and Suspension Order**), as follows:

[143] [...] **CONFIRMS** the priority of the Interim Lender Charge over deemed trusts, as set out in paragraph 47 of the Wabush Initial Order, as amended on June 9, 2015;

[144] ORDERS the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date;

[145] ORDERS the suspension of payment by the Wabush CCAA parties of the annual lump sum "catch-up" payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date; [Emphasis added.]

the whole as it appears from the Pension Priority and Suspension Order, a copy of which is communicated herewith as **Exhibit R-7**;

17. Motion for leave to appeal the Pension Priority and Suspension Order (R-7) was dismissed by the Court of Appeal on August 18, 2015, as appears from the judgment of the Honourable Nicholas Kasirer, J.C.A., a copy of which is communicated herewith as **Exhibit R-8**;

18. On February 1, 2016, the Court issued Approval and Vesting Orders with respect to:
- a) An Asset Purchase Agreement dated as of December 23, 2015, a copy of which is communicated herewith as **Exhibit R-9**, whereby CQIM, Wabush Resources, Wabush Iron and Arnaud Railway (collectively, the **Port Vendors**) agreed to sell to Investissement Québec (together with Société ferroviaire et portuaire de Pointe-Noire s.e.c., its subsequent assignee pursuant to an agreement dated January 29, 2016, the **Port Purchaser**), substantially all of the assets, with the exception of certain excluded assets, of the Port Vendors relating to the Pointe-Noire Plant, the port facility located in the Bay of Sept-Îles (the **Pointe-Noire Port Facility**), and the Arnaud railway (collectively, the **Port Assets**), the whole as appears from the Approval and Vesting Order dated February 1, 2016 issued with respect to the Port Assets (the **Port Approval and Vesting Order**), communicated herewith as **Exhibit R-10**;
 - b) An Asset Purchase Agreement dated as of January 26, 2016, a copy of which is communicated herewith as **Exhibit R-11**, whereby Wabush Resources and Wabush Iron (the **Block Z Vendors**) agreed to sell to Administration Portuaire de Sept-Îles / Sept-Îles Port Authority (the **Block Z Purchaser**), the immovable property known as "Block Z" located near the Pointe-Noire Port Facility, the whole as appears from the Approval and Vesting Order dated February 1, 2016 issued with respect to Block Z (the **Block Z Approval and Vesting Order**), communicated herewith as **Exhibit R-12**;
19. The Port Approval and Vesting Order (R-10) and the Block Z Approval and Vesting Order (R-12) provided for the vesting of the assets on a free and clear basis, with the net proceeds from both transactions to stand in "the place and stead" of the Port Assets and the Block Z, respectively:
- ORDERS that for the purposes of determining the nature and priority of the Encumbrances, the balance of the Proceeds remaining following deduction for applicable Cure Costs (if any) and Transfer Taxes (if any is payable) that are remitted by the Monitor pursuant to Paragraph 10 of this Order (the "Net Proceeds") shall stand in the place and stead of the Purchased Assets, and that upon the issuance of the Certificate, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the Closing.
- [Para. 21 of the Port Approval and Vesting Order and para. 19 of the Block Z Approval and Vesting Order. Emphasis added.]
20. The total outstanding amount owing to the Interim Lender under the Interim Financing Documents (as defined in the Port Approval and Vesting Order) was repaid by the Monitor using the proceeds of the sale of the Port Assets, as contemplated in the Port Approval and Vesting Order (R-10);

III. DEFINED BENEFIT PENSION PLANS AND CONTRIBUTIONS

A. Defined Benefit Pension Plans

21. Two of the Pensions Plans in place for the CCAA Parties' Employees contained defined benefit schemes:

- a) 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, registered with the Newfoundland & Labrador Superintendent of Pensions (**the N&L Superintendent**) under member 021314 and the Canada Revenue Agency under number 0343558, as amended and restated effective as of January 1, 1997, together with subsequent amendments thereto¹, communicated herewith as **Exhibit R-23 (the Salaried DB Plan)**, which included both defined benefit and defined contribution components [...]; and
- b) A pension plan for unionized hourly employees at the Wabush Mine and the Pointe-Noire Port, known as the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, [...] Wabush Lake Railway Company, Limited, registered with the Newfoundland & Labrador Superintendent of Pensions under number 024699, the Office of the Superintendent of Financial Institutions of Canada (OSFI) under number 57777, and the Canada Revenue Agency under number 0555201, as amended and restated effective as of March 1, 1996, together with subsequent amendments thereto², communicated herewith as **Exhibit R-24 (the Union DB Plan, and together with the Salaried Pension Plan, the DB Plans)**;

both of which were administered by Wabush Mines (**the Plan Administrator**), until the DB Plans were terminated in December 2015. The Plan Administrator was subsequently replaced by Morneau Shepell Ltd. (**the Replacement Plan Administrator**), the whole as further detailed herein below;

22. [...]

23. [...]

24. On December 15, 2015, the Wabush CCAA Parties received two notices from the [...] N&L Superintendent announcing the termination, effective as of that date, of both DB Plans (**the N&L Termination Notices**), as appears from the copy of said notices, communicated herewith *en liasse* as **Exhibit R-13**;

¹ It would appear that the amendments were only received by the N&L Superintendent on July 30, 2015.

² It would appear that the amendments were only received by the N&L Superintendent on July 30, 2015.

25. In the N&L Termination Notice (R-13), the N&L Superintendent noted the following:
- a) The Wabush CCAA Parties had discontinued or were in the process of discontinuing all of their business operations within the meaning of Section 59(1)(b) PBA; and
 - b) The N&L Superintendent was of the opinion that the DB Plans had failed to meet the solvency requirements prescribed by the applicable regulations within the meaning of Section 59(1)(d) PBA;
26. Also on December 15, 2015, the Wabush CCAA Parties received a notice from [...] **OSFI**, declaring the termination, effective as of that date, of the Union DB Plan (the **OSFI Termination Notice**, and collectively with the N&L Termination Notices, the **Termination Notices**), as appears from a copy of the OSFI Termination Notice, communicated herewith as **Exhibit R-14**;
27. In the OSFI Termination Notice (R-14), OSFI noted the following:
- a) Special payments had been suspended in the CCAA Proceedings;
 - b) The Wabush Mine had been shut down and substantially all the Wabush CCAA Parties' employees had been terminated;
 - c) OSFI was of the opinion that the DB Plans had failed to meet the prescribed tests and standards for solvency under the PBSA;
 - d) There had been a cessation of crediting of benefits to plan members;
28. In the Termination Notices (R-13 and R-14), both OSFI and the N&L Superintendent indicated that the Wabush CCAA Parties were required to pay into the pension funds all amounts that would have been required to be paid to meet the prescribed solvency requirements, as well as the amounts necessary to fund the benefits provided for in the DB Plans. Both OSFI and the N&L Superintendent of Pensions also took the position that a deemed trust had arisen in respect of such amounts;
29. On March 30, 2016, upon written requests by the Wabush CCAA Parties, OSFI and the N&L Superintendent appointed the Replacement Pension Plan Administrator in respect to both DB Plans, as appears from the three notices received from OSFI and the N&L Superintendent, communicated herewith *en liasse* as **Exhibit R-15**;

B. Employer Contributions

(i) Normal Costs

30. The normal cost payments were made to the [...] DB Plans by the Wabush CCAA Parties based on the actuarial reports prepared by Towers Watson Canada Inc. (as it then was, now Willis Towers Watson, hereinafter **Towers Watson**) in its capacity as consultant to the Plan Administrator [...] prior to the appointment of the Replacement Pension Plan Administrator;

31. The normal cost payments with respect to the Salaried DB Plan were fully paid as of the Wabush Initial Order, and were in fact overpaid in the amount of \$169,961 as of December 15, 2015, the date of the termination of the Salaried DB Plan, as appears from the summary table with respect to the Salaried DB Plan prepared by the Replacement Pension Plan Administrator (the **Salaried DB Plan Summary**), a copy of which is communicated herewith as **Exhibit R-16**;
32. The normal cost payments with respect to the Union DB Plan were fully paid as of the Wabush Initial Order and continued to be paid up until December 15, 2015, the date of the termination of the Union DB Plan, (including a payment of \$ 22,893 for December 2015 being the amount for the month prorated to the Union DB Plan termination date), as appears from the summary table with respect to the Union DB Plan prepared by the Replacement Pension Plan Administrator (the **Union DB Plan Summary**), communicated herewith as **Exhibit R-17**. It is noted that the Salaried DB Plan Summary and the Union DB Plan Summary appear to have rounding errors in the some of the totals shown thereon;

(ii) **Special Payments**

33. As appears from Section 2 of the Salaried DB Plan Summary (R-16):
 - a) The special payments with respect to the Salaried DB Plan 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 granting of the Pension Priority and Suspension Order (R-7), which payment constituted an underpayment of \$1;
 - c) The special payments required to be paid after the date of the Pension Priority and Suspension Order (R-7) , and which, in conformity with the Pension Priority and Suspension Order (R-7), were not paid, amount to \$ 2,185,752;

the whole based on a Towers Watson actuarial report dated September 12, 2014 for actuarial valuation as at January 1, 2014;

34. As appears from Section 2 of the Union DB Plan Summary (R-17):
 - a) The special payments with respect to the Union DB Plan 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 granting of the Pension Priority and Suspension Order (R-7), which payment constituted an overpayment of \$16,308;
 - c) The special payments required to be paid after the date of the Pension Priority and Suspension Order (R-7), and which, in conformity with the Pension Priority and Suspension Order (R-7), were not paid, amount to \$3,016,232;

the whole based on a Towers Watson actuarial report dated September 12, 2014 for actuarial valuation as at January 1, 2014;

(iii) Catch-Up Special Payments

35. In the Wabush Comeback Motion (R-6), the Wabush CCAA Parties indicated that lump sum "catch up" special payments (each, a **Catch-Up Payment**) were estimated to be approximately \$5.5 million for both DB Plans and would become payable as of July 2015 (at paragraph 88);
36. Subsequently, the Wabush CCAA Parties determined that no such Catch-Up Payment was due in respect of the Salaried DB Plan;
37. The Catch-Up Payment in respect of the Union DB Plan for its part was revised and estimated to be approximately \$1.9 million;
38. In fact, pursuant to a Towers Watson actuarial report dated July 1, 2015 for an actuarial valuation as of January 1, 2015, which only became available after the issuance of the Wabush Initial Order, additional special payments in the aggregate amount of \$3,525,120 were required with respect to the Union DB Plan, as appears from the Union DB Plan Summary (R-17);
39. As also appears from Section 3 thereof (R-17), these additional special payments with respect to the Union DB Plan were payable by way of a Catch-Up Payment of \$1,762,560 due August 26, 2015, and thereafter in additional special payments payable in six monthly instalments of \$293,760 starting August 30, 2015;
40. None of these monthly additional special payments were paid or kept separate and apart from their own moneys by the Wabush CCAA Parties, nor was any Catch-Up Payment made (or kept separate and apart by the Wabush CCAA Parties from their own moneys) with respect to the Union DB Plan, the whole as contemplated and authorized by the Pension Priority and Suspension Order (R-7);

(iv) Wind-Up Deficiencies

41. In the Wabush Comeback Motion (at paragraph 83), based on estimates received from Towers Watson, the Wabush CCAA Parties estimated the wind-up deficits to be approximately \$18.2 million for the Salaried DB Plan and \$23.3 million for the Union DB Plan;
42. [...] The Replacement Pension Plan Administrator [...] later informed the Monitor that it [...] expected the wind-up deficits as at December 16, 2015, to be approximately \$26.7 million for the Salaried DB Plan and \$27.7 million for the Union DB Plan;
- 42.1 In December 2016, Morneau Shepell filed a report titled "Wind-Up Actual Valuation as at December 16, 2015" in respect of the Salaried DB Plan (the **Salaried DB Plan Wind-Up Report**), a copy of which is communicated herewith as **Exhibit R-25**;
- 42.2 Based on the Salaried DB Plan Wind-Up Report (R-25), the financial position of the Salaried DB Plan as of December 16, 2015 presented a wind-up deficit of \$27.45 million, as appears from page 3 thereof;

42.3 On December 14, 2016, Towers Watson filed a report titled "Plan Termination as at December 16, 2015" in respect of the Union DB Plan (the **Union DB Plan Wind-Up Report** and together with the Salaried DB Plan Wind-Up Report, the **Wind-Up Reports**)³, a copy of which is communicated herewith as **Exhibit R-26**;

42.4 Based on the Union DB Plan Wind-Up Report (R-26), the financial position of the Union DB Plan as of December 16, 2015 presented a wind-up deficit of \$27,486,548, as appears from pages 8 and 9 thereof. This calculation does not account for the benefits covered by Section 17 PBSA, which is qualified as "Priority no. 2" ranking after the wind-up deficit and would represent an additional wind-up liability of \$2,349,912, as appears from pages 4 and 10 of the Union DB Plan Wind-Up Report;

(v) Summary of Amounts Owing

43. In summary and based on the foregoing, the amounts owing to the [...] DB Plans based on payment due date are as follows:

	Salaried DB Plan	Union DB Plan
Normal Cost Payments		
Pre-filing	\$0	\$0
Post-Filing	\$0	\$0
Total	\$0	\$0
Special Payments		
Pre-filing	\$3	\$146,776
Post-Filing	\$2,185,753	\$2,999,924
Total	\$2,185,756	\$3,146,700
Catch-up Special Payments		
Pre-filing	\$0	\$0
Post-Filing	\$0	\$3,525,120
Total	\$0	\$3,525,120
[...] Wind-Up Deficits	\$27,450,000	\$27,486,548⁴

³ Both Wind-up Reports remain subject to review and approval by the pension regulators.

⁴ Excluding the additional wind-up deficit in the amount of \$ 2,349,912 (see para. 42.4 above).

IV. PENSION CLAIMS

44. The Claims Procedure Order (R-2) provides for specific procedures with respect to Pension Claims, as follows:

[32] **ORDERS** that the Plan Administrator will have the sole authority to file Proofs of Claim with respect to any and all Pension Claims.

[32.1] **ORDERS** that the Monitor shall provide to the Pension Regulator and the Representatives' Counsel a copy of each Proof of Claim filed in respect of the Salaried Pension Plan and details of any determination by the Monitor of a Pension Claim in respect of the Salaried Pension Plan.

[32.2] **ORDERS** that the Monitor shall provide to the Pension Regulator and the USW a copy of each Proof of Claim filed in respect of the Union Pension Plan and details of any determination by the Monitor of a Pension Claim in respect of the Union Pension Plan.

[...]

[38.1] **ORDERS** that the Pension Regulator and the Representatives' Counsel may file a Notice of Dispute with respect to any determination by the Monitor of a Pension Claim in respect of the Salaried Pension Plan, including for the purpose of asserting any trust claims in respect of the Salaried Pension Plan, and if no Notice of Dispute is filed within fourteen (14) days of the date of receipt of the Monitor's notice of its determination of a Pension Claim in respect of the Salaried Pension Plan such determination shall be deemed to be the Allowed Claim. If a Notice of Dispute is filed by the Pension Regulator or the Representatives' Counsel within the time specified herein, paragraphs 37 and 46 to 51 hereof shall apply *mutatis mutandi*.

[38.2] **ORDERS** that the Pension Regulator and the USW may file a Notice of Dispute with respect to any determination by the Monitor of a Pension Claim in respect of the Union Pension Plan, including for the purpose of asserting any trust claims in respect of the Union Pension Plan, and if no Notice of Dispute is filed within fourteen (14) days of the date of receipt of the Monitor's notice of its determination of a Pension Claim in respect of the Union Pension Plan such determination shall be deemed to be the Allowed Claim. If a Notice of Dispute is filed by the Pension Regulator or the USW within the time specified herein, paragraphs 37 and 46 to 51 hereof shall apply *mutatis mutandi*.

[38.3] **ORDERS** that the Pension Regulator and the Representatives' Counsel shall be given written notice by the Monitor of, and are entitled to participate in (i) any hearing before a Claims Officer concerning a Pension Claim in respect of the Salaried Pension Plan and (ii) any hearing before the Court concerning a Pension Claim in respect of the Salaried Pension Plan.

[38.4] **ORDERS** that the Pension Regulator and the USW shall be given written notice by the Monitor of, and are entitled to participate in (i) any hearing before a Claims Officer concerning a Pension Claim in respect of the Union Pension Plan and (ii) any hearing before the Court concerning a Pension Claim in respect of the Union Pension Plan. [Emphasis added]

45. On December 18, 2015, the Plan Administrator filed, in accordance with the Claims Procedure Order (R-2), Proofs of Claim with respect to each of the DB Plans, as follows:
- a) With respect to the Salaried DB Plan, (i) a secured Claim in the amount of \$24,000,000 against Wabush Mines, Arnaud Railway and Wabush Railway (for

the wind-up deficit), and (ii) a Restructuring Claim in the amount of \$1,932,940 against Wabush Mines, Arnaud Railway and Wabush Railway (for unpaid special payments), the whole as appears from said Proof of Claim (in the amount finally determined in accordance with the Claims Procedure Order, the **Salaried DB Plan Claim**), a copy of which is communicated herewith as **Exhibit R-18**; and

- b) With respect to the Union DB Plan, (i) a secured Claim in the amount of \$29,000,000 against Wabush Mines, Arnaud Railway and Wabush Railway (for the wind-up deficit), and (ii) a Restructuring Claim in the amount of \$6,059,238 against Wabush Mines, Arnaud Railway and Wabush Railway (for unpaid special payments), the whole as appears from said Proof of Claim (in the amount finally determined in accordance with the Claims Procedure Order, the **Union DB Plan Claim**), a copy of which is communicated herewith as **Exhibit R-19**;

V. APPLICABLE STATUTORY REGIME

46. [...]

46.1 As noted above, the DB Plans are registered with OSFI and/or the N&L Superintendent;

46.2 The PBSA applies to pension plans providing benefits to employees and retirees employed in "included employment", which in turn is defined as work, undertaking of business that falls within the legislation authority of the Parliament of Canada, including navigation and shipping and extra-provincial railways, the whole as provided for in Section 4 PBSA:

4 (1) This Act applies in respect of pension plans.

(2) In this Act, pension plan means a superannuation or other plan organized and administered to provide pension benefits to employees employed in included employment (and former employees) and to which the employer is required under or in accordance with the plan to contribute [...]

(4) In this Act, included employment means employment, other than excepted employment, on or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including, without restricting the generality of the foregoing,

(a) any work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of a ship and transportation by ship anywhere in Canada;

(b) any railway, canal, telegraph or other work or undertaking connecting a province with another province or extending beyond the limits of a province [...]

(6) The Governor in Council may make regulations excepting from included employment [...]

(b) any other employment if the Governor in Council, on a report of the Minister, is satisfied that

(i) provision has been made for the coverage of employees employed in that employment under the terms of a pension plan that is organized and administered for the benefit primarily of employees employed in other than included employment and that is required to be registered under the law of a designated province [...] [Emphasis added.]

- 46.3 No regulation exempting the DB Plans from the application of the PBSA were adopted pursuant to Subsection 4(6)(b) above;
- 46.4 The PBA applies to pension plans for persons employed in Newfoundland & Labrador, except those to which an Act of the Parliament of Canada applies, as provided for in Section 5 PBA:
5. This Act applies to all pension plans for persons employed in the province [of Newfoundland & Labrador], except those pension plans to which an Act of the Parliament of Canada applies.
- 46.5 Subsection 2(ee) PBA defines "province of employment" as "the province where an employee reports for work, but if the employee is not required to report for work, the province where an employer's establishment is located from which an employee's remuneration is paid";
- 46.6 The SPPA applies to pension plans provided for employees who report for work at an establishment of their employer located in Québec, as provided for in Section 1 thereof:
1. This Act applies to pension plans provided
- (1) for employees who report for work at an establishment of their employer located in Québec or, if not, who receive their remuneration from such an establishment, provided, in the latter case, they do not report for work at any other establishment of their employer;
- (2) for employees not referred to in paragraph 1 who, while residing in Québec and being employed by an employer whose main establishment is located in Québec, work outside Québec, provided the plans are not governed by an Act of a legislative body other than the Parliament of Québec which provides for a deferred pension.
- 46.7 The Salaried DB Plan is comprised of 656 members, approximately half of which were employed in the province of Québec, with the other half in Newfoundland & Labrador⁵;
- 46.8 The Union DB Plan is comprised of 1732 members, the majority of which are in the province of Newfoundland & Labrador;
- 46.9 Following the termination of the Salaried DB Plan, 14 of its members were found to be subject to federal legislation as a result of the nature of their functions, as explained at page 4 of the Salaried DB Plan Wind-Up Report (R-25)⁶;
- 46.10 As for the Union DB Plan, it would appear that 55 of its 1732 members are governed by federal jurisdiction as a result of the nature of their functions;
- 46.11 Based on the foregoing and the information found in the Wind-Up Reports (R-25 and R-26), the members of both DB Plans appear to be subject to the following jurisdictions:

⁵ As noted in Appendix C of the Salaried DB Plan Wind-Up Report (R-25, at page 19), the membership data is currently under review and remains subject to change.

⁶ See note 3 above with respect to membership data.

	Salaried DB Plan ⁷	Union DB Plan	TOTAL
Newfoundland & Labrador PBA	313	1005	1318
Québec SPPA	329	661	990
Federal PBSA	14	66	80
TOTAL	656	1732	2388

46.12 Sections 6.1 PBSA, 8(2) PBA and 249 SPPA each provide for the entering into of multilateral agreements as between the federal government and that of provinces with a view to determine, *inter alia*, the legislative regime applicable to multi-jurisdictional pension plans;

V.1 DEEMED TRUSTS

46.13 The PBSA, the PBA and the SPPA all include provisions with respect to deemed trusts applicable under certain circumstances with respect to unpaid pension contributions;

A. PBSA

47. Section 8(1) of the PBSA requires an employer to segregate funds from its own moneys, including for certain types of payments owing to the pension fund, and further provides that a trust is deemed to have arisen with respect to said funds for the benefit of the pension members:

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:

(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).

[Emphasis added.]

⁷ See note 3 above with respect to membership data.

48. Section 8(2) PBSA provides that the amounts deemed to be held in trust pursuant to Section 8(1) shall not form part of the estate of the employer upon in the event of its liquidation, assignment or bankruptcy:

(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.

[Emphasis added.]

49. Section 29 PBSA permits OSFI to declare the whole or part of a pension plan terminated in certain circumstances, and further provides for payments by the employer into the pension fund upon termination:

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).

(2.1) The Superintendent may also declare the whole of a pension plan terminated if there is a cessation of crediting of benefits to the plan members.

(3) In a declaration made under subsection (2) or (2.1), the Superintendent shall declare a pension plan or part of a pension plan, as the case may be, to be terminated as of the date that the Superintendent considers appropriate in the circumstances.

[...]

(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).

[...]

(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). [...]

B. PBA

50. The PBA contains similar provisions to those described above in respect of the PBSA. Section 32 PBA deems a trust to come into existence under certain circumstances:

32 (1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that

- (a) the money in the pension fund;
- (b) an amount equal to the aggregate of
 - (i) the normal actuarial cost, and
 - (ii) any special payments prescribed by the regulations, that have accrued to date; and

(c) all

- (i) amounts deducted by the employer from the member's remuneration, and
- (ii) other amounts due under the plan from the employer that have not been remitted to the pension fund 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.

(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.

(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).

51. Sections 59 PBA sets out the circumstances in which the N&L Superintendent may declare a plan to be terminated;

59 (1) The superintendent may declare the whole or part of a pension plan terminated where

(a) there is a suspension or cessation of employer contributions in respect of all or part of the plan membership, except where surplus is used to meet funding requirements;

(b) the employer has discontinued or is in the process of discontinuing all of its business operation or a part in which a substantial portion of its employees who are members of the plan are employed;

(c) the employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada);

(d) the superintendent is of the opinion that the plan has failed to meet the requirements prescribed by the regulations for solvency in respect of funding; or

(e) all or part of the business or assets of a predecessor employer's business are sold, assigned or otherwise disposed of and the successor employer who acquired the business or assets does not provide a pension plan for the members of the predecessor employer's plan who become employees of the successor employer.

(2) A declaration made under subsection (1) shall declare the whole or part of a pension plan to be terminated as of a date determined by the superintendent.

52. The wind-up of a pension plan commences immediately after the termination of the plan unless the N&L Superintendent postpones the wind-up by giving written approval, pursuant to Section 60(3) PBA;

53. Section 61 PBA provides for certain termination payments as follows:

61 (1) On termination of a pension plan, the employer shall 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, including

(a) an amount equal to the aggregate of

(i) the normal actuarial cost, and

(ii) special payments prescribed by the regulations, that have accrued to the date of termination; and

(b) all

(i) amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer

that have not been remitted to the pension fund at the date of termination.

(2) Where, on the termination, after April 1, 2008, of a pension plan, other than a multi-employer pension plan, the assets in the pension fund are less than the value of the benefits provided under the plan, the employer shall, as prescribed by the regulations, make the payments into the pension fund, in addition to the payments required under subsection (1), that are necessary to fund the benefits provided under the plan.

C. SPPA

53.1 The only deemed trust provided for under the SPPA is that found in Section 49 thereof with respect to unpaid contributions and accrued interest:

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.

53.2 In addition, Section 264 SPPA provides that contributions payable into the pension fund are 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; [...]

53.3 With respect to the employer's obligations upon termination of a pension plan, Sections 228-230 SPPA provides:

§4 – Debts of the employer

228. The amount to be funded to ensure full payment of the benefits of the members or beneficiaries affected by the withdrawal of an employer from a multi-employer pension plan or the termination of a pension plan shall constitute a debt of the employer. The amount to be funded shall be established at the date of termination.

If, at the date of termination, the employer has failed to pay contributions into the pension fund or to the insurer, as the case may be, the debt shall be the amount by which the amount to be funded exceeds such contributions. [...]

229. Any amount owed by an employer under section 228 must, upon its determination, be paid into the pension fund or to the insurer, as the case may be. However, Retraite Québec may, on the conditions it determines, allow any employer to spread the payment of such amount over a period of not more than five years.

Any amount not paid into the pension fund or to the insurer shall bear interest from the date of default, at the rate determined pursuant to section 61 that was applicable at the date of termination.

230. Any amount paid by an employer under this subdivision, including any amount recovered after the date of termination, particularly in respect of contributions outstanding and unpaid at the date of termination, shall be applied to the payment of benefits of members or beneficiaries in the order of priority established under this Act.

such that the termination deficit, if any, is a debt of the employer and not a "contribution" subject to a deemed trust;

D. SUMMARY OF AVAILABLE DEEMED TRUSTS

54. The [...] PBSA and PBA provisions set out above provide for two types of deemed trust:
- (1) a trust that is deemed to exist while the employer continues in business and that covers amounts that the employer is required to keep separate and apart from its own moneys (Sections 8(1) PBSA and 32(1) PBA, hereinafter referred to as **limited deemed trusts**); and
 - (2) a trust that arises in the event of any liquidation, assignment or bankruptcy of an employer and that covers amounts that the employer is required to keep separate and apart from its own moneys, whether or not the amounts have in fact been kept separate and apart from the employer's own moneys or assets (Sections 8(2) PBSA and 32(2) PBA, hereinafter referred to as **liquidation deemed trusts**);
55. In the case at hand, OSFI and the N&L Superintendent issued the Termination Notices (R-13 and R-14) with respect to the DB Plans after the CCAA Proceedings had commenced;

V.2 MULTI-JURISDICTIONAL AGREEMENTS AND CONFLICT OF LAWS

56. While the assets of the Wabush CCAA Parties have not been fully realized to date, the Court may need to consider whether any eventual shortfall between the sale proceeds of the Wabush CCAA Parties' assets in Newfoundland and the amounts potentially duly secured by a pension deemed trust created under the PBA could possibly extend to the sale proceeds of the Wabush CCAA Parties' assets formerly located in Quebec;
57. Should it determine that the amounts potentially duly secured by a pension deemed trust created under the PBA exceed the value of sale proceeds generated from assets located in Newfoundland, this Court will need to consider applicable conflict rules so as to determine whether the applicable pension deemed trust under the PBA could extend to the sale proceeds of assets formally located in Quebec;
58. Under the general conflict rules in Quebec, real rights and by extension priority disputes over property are governed by the laws where the property is located, subject to an exception for property in transit (3097 C.c.Q.);
59. The Province of Quebec is also party to certain multi-jurisdictional agreements in relation to pension matters that may provide in certain circumstances for the application of laws of another jurisdiction by way of incorporation where the Quebec government has agreed to do so and its supervisory authority has delegated its authority to the supervisory authority of another jurisdiction;
60. In 2011, the Canadian Association of Pension Supervisory Authorities (**CAPSA**) developed an Agreement Respecting Multi-Jurisdictional Pension Plans (the **2011 Agreement**), which was adopted by the Provinces of Ontario and Quebec, a copy of which is communicated herewith as **Exhibit R-20**;

61. CAPSA also developed in 2016 a revised version thereof (the **2016 Agreement**), which was adopted by the Provinces of British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan, a copy of which is communicated herewith as **Exhibit R-21**;

62. These 2011 and 2016 Agreements (R-20 and R-21) provide *inter alia* that:

6 (1) While a pension supervisory authority is the major authority for a pension plan in accordance with this Agreement:

(a) the provisions of the pension legislation of the major authority's jurisdiction in respect of matters referred to in Schedule B¹ apply to the plan instead of those of the corresponding provisions of the pension legislation of any minor authority's jurisdiction that would apply to the plan if this Agreement did not exist; and

(b) subject to the provisions of this Agreement, the provisions of the pension legislation of each jurisdiction that are applicable to the plan under the terms of such legislation apply to the plan in respect of matters not referred to in Schedule B.¹

¹ Schedule B states: "8. Legislative provisions respecting: [...] (c) requirements that the pension fund be held separate and apart from the employer's assets and deeming the pension fund to be held in trust for the active members or other persons; (d) an administrator's lien and charge on the employer's assets equal to the amounts deemed held in trust [...]".

63. However, Newfoundland & Labrador is not a party to the 2011 and 2016 Agreements (R-20 and R-21);

64. The only applicable multi-jurisdictional agreement between the governments of Quebec and Newfoundland & Labrador is a Memorandum of Agreement⁸, to which the government of Newfoundland & Labrador became a party in 1986, communicated herewith as **Exhibit R-22**;

65. The Memorandum of Agreement (R-22) does not provide for the incorporation and application of legislative provisions and administrative powers by the participating pension supervisory authorities, but merely provides for a certain delegation of powers as follows:

2. The major authority¹ 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.

[...]

9. Where a major authority is unable to exercise a particular power of enforcement available to one of the minor authorities, it shall so advise that minor authority.

¹ According to the Memorandum of Agreement (R-22), "major authority" means, with respect to a plan, the participating authority of the province where the plurality of the plan members are employed, excluding members employed in a province not having a participating authority.

⁸ The Memorandum of Agreement (R-22) remains effective, as provided by Section 284 SPPA.

66. As such, the Memorandum of Agreement (R-22) could not serve as the basis for the application of the PBA in relation to property located in Quebec;
67. In view of the foregoing and absent a multi-jurisdictional agreement providing for the application in Quebec of the laws of Newfoundland & Labrador, it is submitted that this Court is bound to apply the laws applicable in the Province of Quebec to adjudicate a dispute with respect to tangible assets located in Québec (or the proceeds standing in their stead);
68. The Monitor notes Article 3079 of the *Civil Code of Québec*:

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.

but is of the view that this exception is not applicable in the circumstances as the possible application of the PBA could have been properly achieved by way of a multi-jurisdictional agreement and absent the execution of the 2011 and 2016 Agreements (R-20 and R-21) by Newfoundland & Labrador it could not justify why its legislation should override Quebec law in the present circumstances, including Articles 2644 and 2647 C.c.Q.;

VI. DIRECTIONS WITH RESPECT TO PENSION CLAIMS

69. Based on its review of the relevant statutes and applicable case-law, the Monitor is of the view that:
 - a) Unpaid and accrued normal costs or special costs owing at the date of the Wabush Initial Order would be subject to a limited deemed trust pursuant to subsections 8(1) of the PBSA and 32(1) of the PBA;
 - b) A liquidation deemed trust did not arise prior to or since the Wabush Initial Order pursuant to subsections 8(2) PBSA or 32(2) PBA, as none of the applicable triggering events, including a "liquidation", have occurred, either before or since the date of the Wabush Initial Order;
 - c) In any event, any liquidation deemed trust triggered after the Wabush Initial Order with respect to unpaid amortization payments as a result of a "liquidation" would be ineffective given the terms of the Wabush Initial Order and applicable stay thereunder, the terms of the Pension Priority and Suspension Order, the fact that the special costs were assessed on the basis of a deficit which existed as of the Wabush Initial Order and were calculated for past services rendered as of a pre-filing reference date, the treatment of special costs under the CCAA generally, and legislative choices made with respect to same;
 - d) As a matter of statutory interpretation of the applicable pension legislation alone, the full amount of the wind-up deficit of the DB Plans would not be subject to a pension deemed trust pursuant to the PBSA or the PBA;

- e) Even if the wind-up deficits of the DB Plans were to be subject to a pension deemed trust pursuant to the terms of PBSA or the PBA, such deemed trust would be ineffective considering the Wabush Initial Order and applicable stay thereunder, the pre-filing nature of deficits of the DB Plans even if crystalized post-filing upon termination of the DB Plans, the treatment of pension deficits under the CCAA and legislative choices made with respect to same;
 - f) Even if the deemed trusts under the PBA were to cover assets located outside of Newfoundland & Labrador, this Court should not recognize and enforce it to the extent applicable the PBA deemed trust against assets located in this Province or the sale proceeds thereof;
70. The Monitor accordingly seeks an Order determining the priority of the various components of the Salaried DB Plan Claim (R-18) and the Union DB Plan Claim (R-19) to be as follows:
- a) normal costs and special payments outstanding as at the date of the Wabush Initial Order to be 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 to constitute an unsecured Claim;
 - c) wind-up deficiency to constitute an unsecured Claim;
 - d) any trust created pursuant to the PBA may only charge property located in Newfoundland & Labrador;
71. Pursuant to paragraphs 38.1 and following of the Claims Procedure Order (R-2), reproduced above, the Pension Regulators, Representatives' Counsel and well as USW are all entitled to challenge the adjudication of Pension Claims by the Monitor;
72. The Monitor fully expects that various other stakeholders will have an interest in the determination of these priority issues;
73. The Monitor submits that it is proper to seek and obtain directions at this stage in respect of questions outlined above. [...] The amounts and the membership data included herein, including the wind-up deficits, are based on the information appearing in the Wind-Up Reports and are provided solely as information, as it is not necessary to know the actual quantum of the Pension Claims in order to determine their relative priority in these CCAA Proceedings;
74. In any event, should a dispute over the quantum of the wind-up deficits or any other factual information affecting the quantum of the Pension Claims arise, that issue could easily (and efficiently) be bifurcated and resolved independently from the directions sought herein;
75. The Monitor further submits that any proposed distribution of proceeds to creditors, including the choice of the mechanism to effect same, will be impacted by the issues set out herein above;

76. Based on the foregoing, the Monitor hereby submits that the Court will need to deal with the following questions:

Liquidation giving rise to a liquidation deemed trust

- a) What is the proper meaning of "liquidation" pursuant to subsections 8(2) PBSA and 32(2) PBA?
- b) Did a "liquidation" within the meaning of subsections 8(2) PBSA and 32(2) PBA occur prior or since the Wabush Initial Order?
- c) Would such a liquidation deemed trust (...) be effective if triggered by a "liquidation" occurring after the Wabush Initial Order?

Deficit upon termination

- d) Absent CCAA or BIA proceedings with respect to an employer, could the full amount of the deficit upon termination of a defined benefit pension plan be subject to a deemed trust pursuant to either of the PBSA or the PBA?
- e) Would such a wind-up deficit deemed trust be effective if triggered by a termination occurring after the Wabush Initial Order?

Enforcement or recognition of a PBA deemed trust charging assets located in Québec

- f) Is the deemed trust arising under the PBA specifically or implicitly limited to assets of the employer located in Newfoundland & Labrador?
- g) Could this Court nonetheless recognize and enforce a PBA deemed trust against assets located in this Province (or the sale proceeds standing in their stead)?

VII. CONCLUSIONS AND PROCEDURAL MATTERS

77. The Monitor submits that the notices given of the presentation of the present Amended Motion, the initial iteration of which was originally notified to all Persons on the Service List on September 20, 2016, are proper and sufficient;
78. Pursuant to paragraph 56 of the Wabush Initial Order (R-1), all motions in these CCAA Proceedings are to be brought on no less than ten (10) calendar days' notice to all Persons on the Service List;
- 78.1 Following discussions amongst the Monitor and various interested parties, the Motion was first made returnable on a pro forma basis on October 28, 2016;
- 78.2 Prior to the October 28, 2016 hearing, the following Notices of Objection were filed:
- a) Notice of Objection dated October 7, 2016 filed by the USW;
 - b) Notice of Objection dated October 7, 2016 filed by the Representatives; and
 - c) Notice of Objection dated October 7, 2016 filed by the Replacement Plan Administrator;

the whole as appears from the Court record;

79. [...] Both before and after the October 28, 2016, the Monitor has made efforts in order [...] to agree to a timetable for the filing of materials and the presentation of the Motion with the CCAA Parties, Representative Counsel, the USW, the Replacement Plan Administrator and the relevant regulators that would allow relevant parties sufficient opportunity to respond and ensure the efficient hearing of the present Motion [...];
- 79.1 The N&L Superintendent went on to file a Notice of Objection on December 15, 2016, as appears from the Court record. While they have not filed a formal Notice of Objection, the Monitor also understands that OSFI and Retraite Québec intend to take position with respect to the issues raised in the Motion;
- 79.2 A hearing was held on December 20, 2016 to debate the preliminary issues raised in the Notices of Objection, mainly the jurisdictional argument raised by the Representatives as to whether the Court should refer parts or all of the questions arising in the Motion to the Supreme Court of Newfoundland & Labrador;
- 79.3 On January 30, 2017, the Court issued a ruling whereby it determined that it had jurisdiction to deal with all issues stemming from this Motion, including the interpretation of the PBA in the context of the CCAA Proceedings and therefore refused to refer the matter to the Supreme Court of Newfoundland & Labrador;
- 79.4 During a case management hearing held on April 5, 2017, hearing dates on the merits were set (June 28 and 29, 2017), with the Court reserving the right of all parties to submit their position concerning the legal issues this Court needed or ought to rule on to resolve the issues raised by the present Motion;
- 79.5 The service of the present Amended Motion serves as notice pursuant to [...] paragraph 56 of the Wabush Initial Order (R-1);
80. [...];
81. The CCAA Parties have been consulted by the Monitor and support the conclusions sought herein;
82. The present Motion is well founded in fact and in law.


FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Amended Motion;

ISSUE an Order [...] determining the various priority disputes and issues raised by the present Amended Motion;

WITHOUT COST, save and except in case of contestation.

Montréal, April 13, 2017



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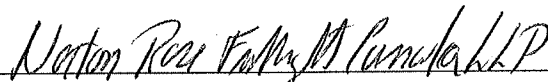
NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the present *Amended Motion by the Monitor for Directions with Respect to Pension Claims* will be presented for adjudication before the Honourable Stephen W. Hamilton, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on a date, at a time and in a room to be determined by the Court.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, April 13, 2017



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CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-048114-157

SUPERIOR COURT

Commercial Division

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

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

BLOOM LAKE GENERAL PARTNER LIMITED *et al*

Petitioners

-and-

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

Mises-en-cause

-and-

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

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

**MICHAEL KEEPER, TERENCE WATT, DAMIEN LABEL
AND NEIL JOHNSON**

UNITED STEEL WORKERS, LOCALS 6254 AND 6285

RÉGIE DES RENTES DU QUÉBEC

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

Mis-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

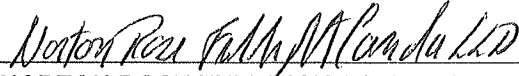
**AMENDED LIST OF EXHIBITS IN SUPPORT OF THE
AMENDED MOTION BY THE MONITOR FOR DIRECTIONS
WITH RESPECT TO PENSION CLAIMS**

- Exhibit R-1** Wabush Initial Order dated May 20, 2015, as rectified on May 28, 2015;
- Exhibit R-2** Claims Procedure Order dated November 5, 2015, as amended on November 16, 2015;
- Exhibit R-3** Draft Order;
- Exhibit R-4** Wabush Initial Motion dated May 19, 2015;
- Exhibit R-5** Wabush Comeback Order dated June 9, 2015;
- Exhibit R-6** Wabush Comeback Motion dated May 29, 2015;
- Exhibit R-7** Pension Priority and Suspension Order dated June 26, 2015;
- Exhibit R-8** Decision of Justice Kasirer, J.C.A. dated August 18, 2015;
- Exhibit R-9** Asset Purchase Agreement (Port Assets) dated December 23, 2015;
- Exhibit R-10** Port Approval and Vesting Order dated February 1, 2016;
- Exhibit R-11** Asset Purchase Agreement (Block Z) dated January 26, 2016;
- Exhibit R-12** Block Z Approval and Vesting Order dated February 1, 2016;
- Exhibit R-13** N&L Termination Notices dated December 15, 2015;
- Exhibit R-14** OSFI Termination Notice dated December 15, 2015;
- Exhibit R-15** Notices with respect to the Replacement of the Pension Plan Administrator dated March 30, 2016;
- Exhibit R-16** Salaried DB Plan Summary Table;
- Exhibit R-17** Union DB Plan Summary Table;
- Exhibit R-18** Salaried DB Plan Proof of Claim dated December 18, 2015;
- Exhibit R-19** Union DB Plan Proof of Claim dated December 18, 2015;
- Exhibit R-20** 2011 CAPSA Agreement Respecting Multi-Jurisdictional Pension Plans;
- Exhibit R-21** 2016 CAPSA Agreement Respecting Multi-Jurisdictional Pension Plans;
- Exhibit R-22** Memorandum of Agreement entered into by Newfoundland & Labrador in 1986;
- Exhibit R-23** Salaried DB Plan, together with Amendments;
- Exhibit R-24** Union DB Plan, together with Amendments;

Exhibit R-25 Salaried DB Plan Wind-Up Report;

Exhibit R-26 Union DB Plan Wind-Up Report.

Montréal, April 13, 2017



NORTON ROSE FULBRIGHT CANADA, LLP
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Our reference : 01028478-0001

NO: 500-11-048114-157

SUPERIOR COURT
DISTRICT OF MONTREAL

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

BLOOM LAKE GENERAL PARTNER LIMITED ET AL

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
ET AL.

Mises-en-cause

-and-

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

Mis-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

AMENDED MOTION BY THE MONITOR FOR DIRECTIONS
WITH RESPECT TO PENSION CLAIMS
(Sections 11 and 23(k) of the *Companies' Creditors
Arrangement Act*)

ORIGINAL

BO-0042

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Mtre. Sylvain Rigaud and Mtre. Chrystal Ashby
NORTON ROSE FULBRIGHT CANADA LLP

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TAB 7

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-048114-157

SUPERIOR COURT
(Commercial Division)

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

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

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

Petitioners

-and-

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

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL AND NEIL JOHNSON

OBJECTING PARTIES-Mises-en-cause

-and-

UNITED STEELWORKERS, LOCAL 6254,
UNITED STEELWORKERS, LOCAL 6285

Mises-en-cause

-and-

MORNEAU SHEPELL
Mise-en-cause

**NOTICE OF OBJECTION BY THE REPRESENTATIVES OF THE SALARIED
EMPLOYEES AND RETIREES TO THE MOTION BY THE MONITOR FOR
DIRECTIONS WITH RESPECT TO PENSION CLAIMS**
(Sections 11 and 23(k) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

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

The court-appointed Representatives to the non-union employees and retirees (the "**Salaried Members**") of the Wabush CCAA Parties object to the Motion by the Monitor for Directions with respect to Pension Claims dated September 20, 2016 ("**Motion for Directions**") on the following basis:

Background

1. The Wabush CCAA Entities are under CCAA protection but are not restructuring. The Wabush CCAA Entities have shut down operations, terminated the vast majority of the employees, and are selling their assets in a sales process in the CCAA proceedings. The shutdown of Wabush Mines is part of the disengagement by Cliffs Natural Resources based in Cleveland, Ohio, the parent company of Wabush Mines (and Bloom Lake), from its mining operations in Eastern Canada.
2. The Wabush Salaried Plan (and Union plans) are registered in Newfoundland and regulated under the Newfoundland *Pension Benefits Act*, S.N.L. 1996 c. P-4.01 ("**Newfoundland PBA**"). The Plans are significantly underfunded. They are in the process of being wound up by Morneau Shepell who was appointed as the replacement pension plan administrator by the Newfoundland Superintendent of Pensions.
3. As a result of the underfunding of the pension plans, the monthly pension benefits of the Salaried Members have been significantly reduced by 25%. Coupled with the loss of their earned health and life insurance benefits that occurred in June, 2015 at the

commencement of the Wabush CCAA proceedings, the Salaried Members are suffering significant financial losses and hardship in the course of this CCAA proceeding. The Salaried Members are a very significant creditor group.

The Newfoundland PBA deemed trust priority for pension plan beneficiaries

4. On August 14, 2015, Representative Counsel wrote to the company and other parties asserting that the deemed trust priority provisions in the Newfoundland PBA (the "**Newfoundland PBA Deemed Trust**") apply as a priority claim in favour of the beneficiaries of the Wabush Salaried Plan. A copy of the letter is communicated herewith as **Exhibit OP-1**.
5. On November 16, 2015, at the hearing of the motion by the Monitor for approval of the Claims Procedure Order, Representative Counsel advised the Monitor and this Honourable Court that it is the Representatives' position that any issue(s) regarding the interpretation of the Newfoundland PBA Deemed Trust should be referred to the Supreme Court of Newfoundland and Labrador for adjudication.
6. Despite the previously communicated position of Representative Counsel, the Motion for Directions seeks to have such questions put before by this Court. Further, Representative Counsel does not agree with the relevance and/or the formulation of certain of the Monitor's proposed questions in its Motion for Directions.
7. In the event of dispute on the issue of transferring the Newfoundland PBA Deemed Trust question to the Newfoundland Court, that issue should be addressed first and scheduled for a hearing. There are a number of reasons that support such a transfer, including, but not limited to, the following:
 - a) The Wabush pension plans are registered in Newfoundland and Labrador and have been funded, administered and regulated in accordance with the Newfoundland PBA since their inception. The pension plans have been,

and continue to be, regulated by the Newfoundland Superintendent of Pensions pursuant to the provisions of Newfoundland PBA;

- b) The Québec Superior Court is a court of civil jurisdiction. The Newfoundland court is a court of common law jurisdiction. The Newfoundland PBA is a statute of a common law jurisdiction. It is respectfully submitted that it is more appropriate for a common law court to interpret a common law statute than a civil court interpreting a common law statute;
- c) It is more efficient and cost-effective for the Newfoundland Court to interpret the Newfoundland PBA Deemed Trust rather than the Québec CCAA court. Respectfully, this court does not have expertise in interpreting the Newfoundland PBA Deemed Trust. The adjudication of the Newfoundland PBA Deemed Trust will therefore require expert evidence to be adduced before the Québec court. That process involves the identification, retainer, and payment of suitable expert(s) by the adversarial parties who will be required to prepare expert affidavits on the interpretation of the Newfoundland PBA. The process to retain such expert(s) is time-consuming and costly and will contribute to delay and costs to the estate. Such delay and costs can be avoided by transferring the issue to a Newfoundland court which, as a court of competent jurisdiction to interpret Newfoundland statute law, does not require expert evidence;
- d) There is precedent authority directly on point supporting the transfer of a pension issue to the jurisdiction where the pension plan is registered and has been administered, where that jurisdiction is different from the jurisdiction of the court where the company filed for CCAA protection. For example, in the CCAA proceeding of *Timminco*, the company obtained CCAA protection in the Ontario Superior Court of Justice (Commercial List). An issue arose in the course of that proceeding on the

interpretation of the deemed trust priority provisions in the Québec *Supplemental Pension Plan Act*, chapter R-15.1 ("SPPA") which regulated one of the Timminco pension plans. The CCAA judge supervising Timminco ordered adjudication of those issues to be transferred to the Québec Superior Court. The monitor of Timminco (FTI Consulting), and counsel to the company (Blakes LLP) did not oppose the transfer in that case. A decision was ultimately released by Mr. Justice Mongeon of the Quebec court interpreting the provisions of the deemed trust provisions of the Quebec SPPA to the Québec Timminco Plan. A copy of the order of Mr. Justice Morawetz dated October 18, 2012 ordering the transfer is communicated herewith as **Exhibit OP-2**;

- e) Section 17 of the CCAA contemplates the possibility of a transfer of an issue that arises in a CCAA proceeding to another Canadian court from the CCAA court to "act in aid of and be auxiliary to each other". Accordingly, the transfer of the Newfoundland PBA Deemed Trust to the Newfoundland court is readily permissible by the CCAA;
 - f) The Monitor states in its Motion for Directions that it believes another issue on which it needs direction is whether the proceeds derived from the sale of assets located in Quebec could be used toward the payment of a valid Newfoundland PBA Deemed Trust claim, should the court hold that the Newfoundland PBA Deemed Trust priority is valid. As a Québec *property* issue, that is not a factor to consider in transferring the Newfoundland PBA Deemed Trust *priority* issue to the Newfoundland court. The issue of whether Quebec property laws apply in the manner suggested by the Monitor may only arise, if at all, if the Newfoundland PBA Deemed Trust priority applies in favour of the pension plan beneficiaries. The Québec property issue may not arise at all.
8. The process to determine disputed claims in the Claims Process was extensively negotiated by Representative Counsel and USW and other affected parties and

culminated in the Claims Procedure Order of November 5, 2015. The Motion for Directions proposes an alternate process – a motion for directions – without prior consultation or agreement of Representative Counsel (nor other parties). Moreover, the Motion for Directions is in substance largely an advocacy piece and not a neutral document. Representative Counsel requests the opportunity to consult with the Monitor as to the appropriateness of a motion for directions instead of the Claims Process and on the questions to be proposed to the applicable court prior to the Motion for Directions proceeding further.

9. Representative Counsel agrees with the Objection of Morneau Shepell, concurrently filed herein.

Disagreement as to substance of questions and arguments in the Motion for Directions and reservation of rights

10. The Representatives disagree with the position adopted by the Monitor.
11. At the appropriate time, Representative Counsel will submit substantive arguments to such effect that all of the deficits in the Salaried Pension Plan should benefit from the priority deemed trust provisions set out in the Newfoundland PBA, in priority to all other claims against the Wabush CCAA Parties (other than the CCAA-ordered charges).
12. Representative Counsel reserve their rights to raise all other grounds for opposition of the matters raised in the Motion for Directions.
13. This Notice of Objection is well founded in fact and in law.

FOR THESE REASONS THE OBJECTING PARTIES-MISES-EN-CAUSE ASKS THAT THIS HONOURABLE COURT:

- [A] **GRANT** the present Notice of Objection;
- [B] **DISMISS** the Motion for Directions in respect of the Pension Claims;

- [C] **REQUIRE:** (1) the Monitor to consult with the affected parties and make best efforts to reach agreement on a procedure for the adjudication of the Newfoundland PBA Deemed Trust claims, including: the issues to be adjudicated, the appropriate forum for adjudication, the evidence on which the issues are to be adjudicated or the manner in which such evidence is to be tendered, and an appropriate timeline for adjudication; and (2) a motion be brought to amend the Amended Claims Procedure Order;

IN THE ALTERNATIVE:

- [D] **RESERVE** the rights of the Representatives to file a further Notice of Objection as to the specific issues raised in the Motion for Directions in respect of the Pension Claims no later than ten (10) business days after final adjudication of their present Notice of Objection;

IN THE FURTHER ALTERNATIVE

- [E] **DECLARE** the deemed trusts provided in section 52 of the Newfoundland PBA is applicable to the entirety of the deficits in the Wabush Salaried Plan in favour of the pension plan beneficiaries.

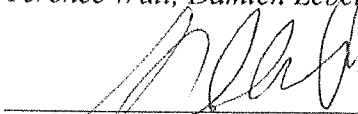
THE WHOLE WITHOUT COSTS, EXCEPT IN THE CASE OF CONTESTATION.

Toronto, October 7, 2016



KOSKIE MINSKY LLP

*Court-appointed Representative Counsel for the
OBJECTING PARTIES-Mises-en-cause Michael Keeper,
Terence Watt, Damien Lebel and Neil Johnson*



NICHOLAS SCHEIB

*Court-appointed Representative Counsel for the
OBJECTING PARTIES-Mises-en-cause Michael Keeper,
Terence Watt, Damien Lebel and Neil Johnson*

NOTICE OF PRESENTATION

**IN SUPPORT OF NOTICE OF OBJECTION BY THE REPRESENTATIVES OF THE
SALARIED EMPLOYEES AND RETIREES TO THE MOTION BY THE MONITOR FOR
DIRECTIONS WITH RESPECT TO PENSION CLAIMS**

TO: **Me Bernard Boucher** (bernard.boucher@blakes.com)
Me Sébastien Guy (sebastien.guy@blakes.com)
BLAKE, CASSELS & GRAYDON LLP
600 de Maisonneuve West, Suite 2200
Montreal, Quebec H3A 3J2
Counsel for the Petitioners and the Mises-en-cause (i.e., Wabush CCAA Parties)

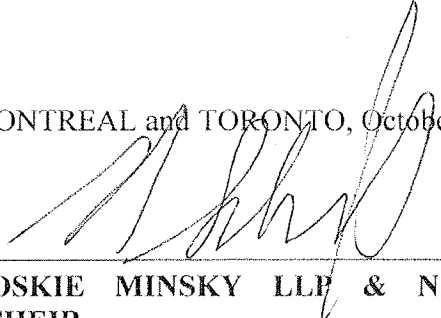
AND TO: **Me Sylvain Rigaud** (sylvain.rigaud@nortonrosefulbright.com)
NORTON ROSE FULBRIGHT CANADA LLP
1 Place Ville Marie, Suite #2500
Montreal, Quebec H3B 1R1
Counsel for the Monitor

AND TO: SERVICE LIST

TAKE NOTICE that the present *Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims* will be presented for adjudication before The Honourable Mr. Justice Stephen W. Hamilton, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montreal, at the Montreal Courthouse located at 1 Notre-Dame Street East, Montreal, Québec, on **October 12, 2016** at a room and at a time to be determined (or such other date to be determined by the Court for hearing of the *Motion by the Monitor for Directions with Respect to Pension Claims*).

GOVERN YOURSELF ACCORDINGLY.

MONTREAL and TORONTO, October 7, 2016



KOSKIE MINSKY LLP & NICHOLAS SCHEIB

Attorneys for the OBJECTING PARTIES-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

No.: 500-11-048114-157

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

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

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

Petitioners

-and-

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

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON
OBJECTING PARTIES-Mises-en-cause

-and-

UNITED STEELWORKERS, LOCAL 6254,
UNITED STEELWORKERS, LOCAL 6285
Mises-en-cause

-and-

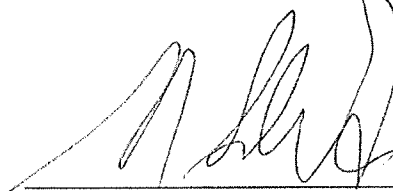
MORNEAU SHEPELL
Mise-en-cause

LIST OF EXHIBITS

(In support of the *Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims*)

Exhibit OP-1	Letter dated August 24, 2015 from Representative Counsel to counsel for the Wabush CCAA Parties
Exhibit OP-2	Copy of the Order (Approval of Priority Claim Adjudication Protocol) of Mr Justice Morawetz, J.S.C., of the Ontario Superior Court of Justice (Commercial List) dated October 18, 2015 in The Matter of the Plan of Compromise or Arrangement of Timminco Limited <i>et al</i>

MONTREAL and TORONTO, October 7, 2016



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

N° / No.: 500-11-048114-157

SUPERIOR COURT
(COMMERCIAL DIVISION)

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

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

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

- and -
Petitioners

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

- and -
Mises-en-cause

FTI CONSULTING CANADA INC.

- and -
Monitor

MICHAEL KEEPER, TERENCE WATT, DAMIEN LABEL & NEIL JOHNSON

- and -
OBJECTING PARTIES-Mises-en-cause

UNITED STEELWORKERS, LOCAL 6254, UNITED STEELWORKERS, LOCAL 6285

- and -
Mises-en-cause

MORNEAU SHEPELL

Mise-en-cause

“Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims”, Notice of Presentation, List of Exhibits and Exhibits OP-1 and OP-2

M^{es} NICHOLAS SCHEIB, ANDREW HATNAY AND BARBARA WALANCIK

Co-Attorneys for the Objecting Parties-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson

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TAB 8

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: 500-11-048114-157

SUPERIOR COURT
(Commercial Division)

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

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

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

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

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

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL AND NEIL JOHNSON**

UNITED STEEL WORKERS, LOCALS
6254 AND 6285

RÉGIE DES RENTES DU QUÉBEC

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

Mis-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**NOTICE OF OBJECTION BY THE SUPERINTENDENT OF PENSIONS
OF NEWFOUNDLAND & LABRADOR TO THE MOTION BY THE MONITOR
FOR DIRECTIONS WITH RESPECT TO PENSION CLAIMS**

(Sections 11 and 23(k), *Companies' Creditors Arrangement Act*, RSC 1985, c C-36)

TO MR. JUSTICE STEPHEN W. HAMILTON, J.S.C., OR TO ONE OF THE
HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE
COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE
SUPERINTENDENT OF PENSIONS OF NEWFOUNDLAND & LABRADOR
RESPECTFULLY SUBMITS AS FOLLOWS:

1. The Superintendent of Pensions of Newfoundland & Labrador objects to the Motion by the Monitor for Directions with Respect to Pension Claims dated September 20, 2016 ("Motion for Directions").
2. The Superintendent of Pensions first objects to a number of the Monitor's conclusions on questions of law. Having reviewed the relevant statutes and applicable case-law, the Superintendent of Pensions is of the view that:
 - a. A liquidation deemed trust did arise pursuant to subsection 32(2) of the *Pension Benefits Act*, SNL 1996, c. P-4.01 ("PBA"), and that it is inconsequential that the triggering event – in this case, a "liquidation" – would have occurred after the Wabush Initial Order;
 - b. As such, all unpaid and accrued normal costs and special costs up to the date the pension plans were terminated are subject to a deemed trust, in priority to all other claims against the Wabush CCAA Parties (excepting the CCAA-ordered charges);

- c. Interpreting the relevant provisions of the *PBA*, the full amount of the wind-up deficit would either be subject to a deemed trust, in priority to all other claims against the Wabush CCAA Parties (excepting the CCAA-ordered charges), or subject to a lien and charge held by the Plan Administrator;
 - d. The deemed trusts and liens created pursuant to Newfoundland & Labrador's *PBA* charge the sale proceeds of assets formerly located in Quebec and currently held by the Monitor; or,
 - e. In the alternative, this Court ought to give effect, in Quebec, to the provisions of Newfoundland & Labrador's *PBA* pursuant to article 3079 of the *Civil Code of Quebec*, CQLR c. CCQ-1991.
3. The Superintendent notes that these objections have all been previously raised with the Monitor, with the Wabush CCAA parties, and with various counsel representing the pension interests at this Court's *pro forma* hearing on October 28th, 2016.
4. Furthermore, the Superintendent of Pensions objects to two assertions relating to issues of fact, or mixed fact and law, set out in the Monitor's Motion for Directions.
5. First, in the Superintendent of Pensions' view, the Monitor has erred in calculating the catch-up special payments that accrued pre-filing. A number of catch-up special payments were created by a January 1, 2015 actuarial report that was not filed until after the CCAA filing date. These catch-up payments covered, *inter alia*, the months of January, February, March and April 2015, the period before the CCAA filing date. While the amounts due for these months only became known with certainty when the actuarial report was completed and filed in July 2015, these payments "accrued" at the point at which they were completely constituted, before the CCAA filing date: on this point, see e.g. *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271, at paras. 34-36.
6. For the Union Plan, the catch-up special payments that accrued pre-filing for the months of January, February, March and April 2015 amount to \$1,175,040. This would reduce the amount of catch-up special payments currently classified as "post-filing" in the Monitor's Motion for Directions from \$3,525,120 to \$2,350,080.
7. Second, there is an additional amount of \$21,462 of normal costs for December 2015 that was never contributed to the Union Plan. Based on the terms of the Union Plan, members who worked the partial month of December, up until the termination date of December 16th, 2015, must receive credited service for the entire month. Therefore, the normal costs

for December 2015 should not have been pro-rated, as the Monitor suggests in paragraph 32 of its Motion for Directions.

8. Finally, for the reasons detailed in a Plan of Argument dated December 15th, 2016, the Superintendent of Pensions is also of the view that certain questions that relate solely to the interpretation and application of Newfoundland & Labrador law ought to be determined by the Supreme Court of Newfoundland & Labrador, pursuant to section 17 of the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.
9. The Superintendent of Pension reserves its right to raise all other grounds for opposition to the matters raised in the Motion for Directions.
10. At the appropriate time, the Superintendent of Pensions will outline its substantive arguments in further detail.
11. This Notice of Objection is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Notice of Objection;

DISMISS the Motion for Directions in Respect of the Pension Claims;

ORDER that the adjudication of the aforementioned issues be referred to the Supreme Court of Newfoundland & Labrador for determination.

THE WHOLE WITHOUT COSTS, EXCEPT IN CASE OF CONTESTATION

MONTREAL, December 15, 2016

Irving Mitchell Kalichman.

M^e Doug Mitchell

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M^e Edward Bécharde-Torres

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Lawyers for the Mis-en-cause

SUPERINTENDENT OF PENSIONS OF

NEWFOUNDLAND & LABRADOR

Our file: 1606-4 | BI0080

NOTICE OF PRESENTATION

TO: Service List

TAKE NOTICE that the present *Notice of Objection to the Monitor's Motion for Directions* will be presented for adjudication before The Honourable Mr. Justice Stephen W. Hamilton, J.C.S., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, at the Montréal Courthouse located at 1, Notre-Dame Street, East, Montréal, Québec, on **December 20th, 2016, at room 15.09 at 9:30am** (a room and at a time to be determined).

GOVERN YOURSELF ACCORDINGLY.

MONTREAL, December 15, 2016

Irving Mitchell Kalichman

M^{re} Doug Mitchell
dmitchell@imk.ca

M^{re} Edward Bécharde-Torres
ebecharde@imk.ca

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Lawyers for the Mis-en-cause
SUPERINTENDENT OF PENSIONS OF
NEWFOUNDLAND & LABRADOR
Our file: 1606-4 | BI0080

N° 500-11-048114-157

**SUPERIOR COURT
DISTRICT OF MONTRÉAL
PROVINCE OF QUÉBEC**

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

BLOOM LAKE GENERAL PARTNER LIMITED, *et al.*

Petitioners

and

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

Mises-en-cause

and

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

**THE ATTORNEY GENERAL OF CANADA, ACTING ON
BEHALF OF THE OFFICE OF THE SUPERINTENDENT OF
FINANCIAL INSTITUTIONS *et al.***

Mis-en-cause

ET AL.

**NOTICE OF OBJECTION BY THE SUPERINTENDENT OF
PENSIONS OF NEWFOUNDLAND & LABRADOR TO THE
MOTION BY THE MONITOR FOR DIRECTIONS WITH
RESPECT TO PENSION CLAIMS**

ORIGINAL

IMK

**IRVING
MITCHELL
KALICHMAN**

BI0080

IRVING MITCHELL KALICHMAN S.E.N.C.R.L./LLP

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3500, boulevard De Maisonneuve Ouest | bureau 1400
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M^{re} Doug Mitchell 📧 1606-1

dimitchelle@imk.ca

☎ 514 935-2725

TAB 9

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-048114-157

SUPERIOR COURT
(Commercial Division)

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

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

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

Petitioners

-and-

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

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON

Objecting Mises-en-cause

-and-

UNITED STEELWORKERS, LOCAL 6254,
UNITED STEELWORKERS, LOCAL 6285

Objecting Mises-en-cause

-and-

MORNEAU SHEPELL
Objecting Mise-en-cause

**NOTICE OF OBJECTION BY MORNEAU SHEPELL, IN ITS CAPACITY AS THE
REPLACEMENT PENSION PLAN ADMINISTRATOR, TO THE MOTION FOR
DIRECTIONS WITH RESPECT TO PENSION CLAIMS**
(Sections 11 and 23(k) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

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

INTRODUCTION

- 1) The Monitor has made a Motion for Directions with respect to certain issues relating to the Pension Claims filed pursuant to the Claims Procedure established by an Order of this Court. The Motion is returnable on a *pro forma* basis on October 12, 2016.
- 2) In accordance with paragraph 32 of the Amended Claims Procedure Order dated November 16, 2015, the Pension Administrator filed Proofs of Claim with respect to the Claims of the Pension Plans.
- 3) Morneau Shepell, in its capacity as Replacement Pension Plan Administrator, has not yet received from the Monitor either a Notice of Revision or a Notice of Disallowance stating reasons for any revision or disallowance of the Pension Claims as required under paragraph 35 of the Amended Claims Procedure Order.
- 4) In turn, the Replacement Pension Plan Administrator has not filed a Notice of Dispute as required under paragraph 36 of the Amended Claims Procedure Order. That Order also authorizes the Pension Regulators, Representative Counsel, and the USW to file Notices

of Dispute in respect of any Notice of Revision or Notice of Disallowance affecting their interests.

- 5) Under paragraph 37 of the Amended Claims Procedure Order, the Monitor may, among other things, bring a motion before the Court to adjudicate a disputed Claim, but only after being in receipt of a Notice of Dispute. Under this procedure, the parties and the Court would have the benefit of the Monitor's Notice of Revision or Disallowance, setting out the reasons therefore, and the claimant's Notice of Dispute, all of which would frame the issues to be adjudicated.
- 6) The Motion for Directions was filed by the Monitor without any consultation with, or agreement by, the Replacement Pension Plan Administrator. There has been no Motion made by the Monitor to amend the procedure for adjudicating Claims authorized by this Court in the Amended Claims Procedure Order.

OBJECTION

- 7) The Replacement Pension Plan Administrator objects to the Motion for Directions on the ground that it seeks to adjudicate the Pension Claims by a procedure that is not in accordance with the Amended Claims Procedure Order, and which has not been consented to.
- 8) Prior to any motion being made to adjudicate any aspect of the Pension Claims, there should be a motion to amend the Amended Claims Procedure Order, with prior consultation with, and agreement by, the affected parties on: the issues to be adjudicated, the appropriate forum for adjudication, the evidence on which the issues are to be

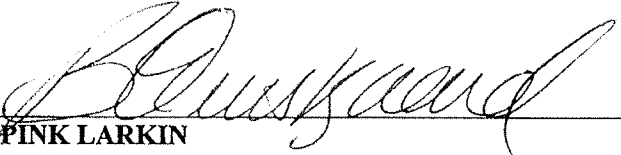
adjudicated or the manner in which such evidence is to be tendered, and an appropriate timeline for adjudication.

- 9) The Replacement Pension Plan Administrator does not agree with all of the alleged facts set out in the Motion for Directions, or with the characterization of the issues in relation to the Pension Claims. In bringing the Motion for Directions outside the procedure established by the Amended Claims Procedure Notice, the Monitor has unilaterally identified and formulated issues to be adjudicated and the alleged evidence upon which it seeks to have the Court determine these issues. This is procedurally unfair.

FOR THESE REASONS THE PETITIONERS-MISES-EN-CAUSE ASKS THAT THIS HONOURABLE COURT:

DISMISS the Motion for Directions in respect of the Pension Claims and require: (1) the Monitor to consult with the affected parties and make best efforts to reach agreement on a procedure for the adjudication of the Pension Claims, including: the issues to be adjudicated, the appropriate forum for adjudication, the evidence on which the issues are to be adjudicated or the manner in which such evidence is to be tendered, and an appropriate timeline for adjudication; and (2) a motion be brought to amend the Amended Claims Procedure Order.

Halifax, Nova Scotia, October 7, 2016



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*Attorneys for the Petitioners-Mises-en-cause Morneau
Shepell in its capacity as the Replacement Pension Plan
Administrator*


NOTICE OF PRESENTATION

TO: Service List

TAKE NOTICE that the present Notice of Objection with respect to the Motion for Directions (Pension Claims) will be presented for adjudication before the Honourable Stephen W. Hamilton, J.S.C., or another of the Honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montreal, in the Montreal Courthouse located at 1 Notre-Dame Est, Montreal, Quebec, on a date and at a time and location to be determined by the Court.

DO GOVERN YOURSELVES ACCORDINGLY.

Halifax, Nova Scotia, October 7, 2016

A handwritten signature in cursive script, appearing to read "B. Quistgaard", written over a horizontal line.

Ronald A. Pink, Q.C. and Bettina Quistgaard

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*Attorneys for the Objecting Mise-en-cause Morneau
Shepell in its capacity as the Replacement Pension Plan
Administrator*

No. 500-11-048114-157
SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTREAL

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

BLOOM LAKE GENERAL PARTNER LIMITED ET AL.
Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP ET AL.

Mises-en-cause

-and-

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

Objecting Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

NOTICE OF OBJECTION BY MORNEAU SHEPELL, IN
ITS CAPACITY AS REPLACEMENT PENSION PLAN
ADMINISTRATOR, TO A MOTION BY THE MONITOR
FOR DIRECTIONS WITH RESPECT TO PENSION
CLAIMS (Sections 11 and 23(k) of the *Companies' Creditors
Arrangement Act*)

ORIGINAL

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TAB 10

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: 500-11-048114-157

SUPERIOR COURT
(Commercial Division)

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

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

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

Petitioners

-and-

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

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON

Petitioners-Mises-en-cause

AFFIDAVIT OF TERENCE WATT
(Sworn December 14, 2016)

I, **TERENCE W. WATT**, of 6 Willow Street Suite 1001, City of Waterloo, in the Province of Ontario, SOLEMNLY DECLARE AND MAKE OATH AND SAY:

Introduction

1. I am the former Mine Superintendent and Technical Assistant to the Resident Manager of the Scully Mine located in Newfoundland and Labrador. I worked with Wabush Mines for more than 30 years before retiring on April 30, 1999.
2. At the time of my retirement, I earned various post-retirement benefits from Wabush Mines, including a monthly pension benefit to be paid from the Contributory Defined Benefit Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (Nfld & Lab. Reg. No. 0021314, CRA Reg. No. 0343558) (the "**Salaried Plan**") (and together with the Union plan, the "**Wabush Pension Plans**").
3. On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company, and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**") obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C 1985, c. C-36 ("**CCAA**") (the "**Wabush CCAA Proceedings**") by order of Mr. Justice Hamilton of the Superior Court of Québec ("**CCAA Judge**"). FTI Canada Consulting Inc. was appointed as Monitor.
4. The shutdown of Wabush Mines via a CCAA proceeding is part of the corporate decision by its parent company, Cliffs National Resources Inc. ("**CNR**") to disengage from its operations in Eastern Canada. Attached hereto as **Exhibit "REPS-1"** are copies of

CNR's Press Releases dated February 11, 2014, November 19, 2014, and January 27, 2015, respectively.

5. On June 22, 2015, I was appointed along with Neil Johnson, Damien Lebel, and Michael Keeper (the "**Representatives**") as representatives of all Non-Union Active Employees and Retirees (the "**Salaried Members**") in the Wabush CCAA Proceedings by the CCAA Judge. Koskie Minsky LLP and Scheib Legal were appointed as Representative Counsel with respect to all matters pertaining to any recovery, compromise of rights or entitlements of Non-Union Active Employees and Retirees in the Wabush CCAA Proceedings.
6. As a Representative, I am very familiar and actively involved with the Wabush CCAA Proceedings. I have knowledge of the matters to which I hereinafter depose except where stated to be based on information or belief and regarding such matters I believe same to be true. All capitalized terms used herein are the same as used and defined by the Petitioners in their prior materials except where noted. When reference is made herein to the "company" it applies to my former employer Wabush Mines.
7. I swear this affidavit:
 - (a) in opposition to the Motion by the Monitor for Directions with respect to Pension Claims dated September 20, 2016 ("**Motion for Directions**"); and
 - (b) in support of the transfer of certain issue(s) regarding the interpretation of the deemed trust priority provisions in the Newfoundland *Pension Benefits Act, 1997*,

SNL c. P-4.01 (the "NPBA") (the "Newfoundland PBA Deemed Trust") to the Supreme Court of Newfoundland and Labrador for adjudication.

Personal and Work Background

8. I started working with Wabush Mines at the Scully Mine location in Labrador in April, 1969. At first I was working in Plant Engineering, where I was responsible for housing construction for the Wabush townsite. After a series of promotions from Plant Engineer to Mine Engineer to Mine Foreman, in 1980, I became a Mine Superintendent, and worked in that position for 15 years until 1995. As indicated above, I remained employed at Wabush Mines for 30 years, working as a Technical Assistant to the Resident Manager of Scully Mine in my last four years of employment.
9. I have spent the majority of my working life in Newfoundland and Labrador.
10. I retired from Wabush Mines on April 30, 1999. I am now 72 years old and, like all other retirees of Wabush Mines, am highly dependent on my post-employment benefits and pension benefits for my everyday living expenses.

The Employment Contract, Salary, Pensions and Benefits

11. In consideration for my 30 years of service with the company, I had a contract of employment in which Wabush Mines paid and I earned wages and a salary, other employment benefits such as health benefits (payable during employment and after my retirement), and a pension.

12. For my employment service with the company, I earned the following compensation:
- (a) **Pension Benefits.** I am a pensioner member of the Salaried Plan. Attached as **Exhibit "REPS-2"** is a copy of the Salaried Plan text. Section 4.02 of the Salaried Plan text directs the Employer (the Wabush CCAA Parties) to file the latest actuarial valuation report with the Newfoundland pension regulatory authority and Revenue Canada. Attached as **Exhibit "REPS-3"** are copies of the Annual Information Return for the 2013 and 2014 plan year, respectively, which are also filed with the Newfoundland pension regulatory authority.
 - (b) **Health Benefits.** I earned an entitlement to post-retirement health benefits including Major Medical Benefits, Life Insurance, Hospital Expense Insurance, and Travel Insurance. The company is obliged to contribute the cost of the premiums necessary to maintain these benefits, "for as long as you live".
13. I have reviewed documentation relating to the Salaried Pension Plan, which indicate that:
- (a) the Plan is registered in the Province of Newfoundland and Labrador;
 - (b) the Plan has been funded and administered in accordance with the NPBA and its Regulations since their inception;
 - (c) the actuarial reports have been and continue to be prepared in accordance with the NPBA;
 - (d) the Plan has been, and continues to be, regulated by the Newfoundland Superintendent of Pensions, pursuant to the provisions of the NPBA; and

- (e) the Plan is to be interpreted pursuant to the laws applicable in the province of Newfoundland (pursuant to section 12.06 of the Salaried Plan text, which is attached hereto as **Exhibit “REPS-2”**).
14. The Salaried Members are both a significant and vulnerable stakeholder group. There are over 600 Salaried Members impacted by these CCAA Proceedings, in addition to the union retirees.
15. I have received a copy of the most recent Actuarial Valuation Report on the Salaried Pension Plan as at January 1, 2014 (attached hereto as **Exhibit “REPS-4”**), which discloses the membership breakdown of the Salaried Pension Plan totaling 695 Salaried Members as of that date, as follows:
- (a) 188 active and disabled employees in the Salaried Plan located predominantly in Newfoundland and Labrador, and Québec;
 - (b) 324 retired members and beneficiaries in payment of a monthly pension, located across Canada and elsewhere; and
 - (c) 183 transferred and terminated vested members, located across Canada and elsewhere.
16. On December 6, 2016, I received updated data from Morneau Shepell, the actuarial consulting firm who was appointed by the Newfoundland Superintendent of Pensions on March 30, 2016 as the replacement pension plan administrator, in respect of the

membership breakdown of the Wabush Mines employees and retirees in each jurisdiction, as follows:

Salaried Plan	Union Plan
• Federal – 14	• Federal – 66
• Newfoundland – 313	• Newfoundland – 1,005
• Québec – 329	• Québec – 661

The NPBA Deemed Trust in favour of pension plan beneficiaries

17. The Wabush pension plans are significantly underfunded. On August 14, 2015, Representative Counsel wrote to the Company and other parties asserting that the deemed trust provisions in the NPBA apply in favour of the Salaried Pension Plan pension plan beneficiaries and as such, that the amounts that are subject to the trust (i.e., unpaid employer contribution) are not available for distribution to other creditors. Attached as **Exhibit "REPS-5"** is a copy of the said correspondence.
18. On December 16, 2015, the Newfoundland Superintendent of Pensions declared that the Salaried Plan be terminated effective on that date. Attached as **Exhibit "REPS-6"** is a copy of the letter dated December 16, 2015 from the Superintendent to Cliffs Natural Resources, in its capacity as the Plan administrator.
19. On January 26, 2016, the retirees received a letter from Wabush Mines notifying them that, due to the underfunding in the pension plans, the Newfoundland Superintendent of Pensions has directed Wabush Mines to reduce the amount of monthly benefits being paid to all retirees. Attached hereto as **Exhibit "REPS-7"** is a copy of said letter received by another Representative, Michael Keeper. The monthly benefits of the Salaried Plan

retirees (including my own) have been reduced by 25% and those of the Union Plan retirees by 21%, to my knowledge and belief.

20. The reduction of retirees' monthly pension benefits, coupled with the loss of their health and life insurance benefits, has caused very significant financial hardship for myself and, as I have been told countless times by different people, for other Salaried and former unionized Wabush Mines retirees as well.
21. I am advised and believe that on November 16, 2015, at the hearing of the motion by the Monitor for approval of the Claims Procedure Order, our Representative Counsel Mr. Andrew J. Hatnay of Koskie Minsky LLP and Mr. Nicholas Scheib of Étude Légale Scheib, indicated in court that it is the Representatives' position that any issue(s) regarding the interpretation of the Newfoundland PBA Deemed Trust should be referred to the Supreme Court of Newfoundland and Labrador for adjudication. There was no decision made on that issue at the time, nor was a decision sought.

The Monitor's Motion for Directions

22. The Monitor filed a motion returnable on September 20, 2016 seeking:

*...directions with respect to the priority of Pension claims filed by the Plan Administrator...and the applicability and scope of deemed trusts under the Pension Benefits Standards Act, R.S.C. 1985, c. 32 (2nd Supp.) (PBSA) and the Newfoundland & Labrador Pension Benefits Act, S.N.L. 1996, c. P-401 (PBA)...¹(emphasis added) (the "**Monitor's Motion for Directions**").*

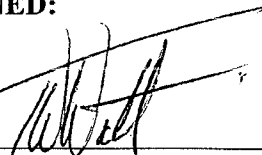
¹ Monitor's Notice of Motion dated September 20, 2016 at para. 9.

23. The Monitor's Motion for Directions seeks to have certain questions prepared by the Monitor concerning the priority of the various components of the Salaried DB Plan Claim and the Union DB Plan Claim, including questions involving the interpretation of the Newfoundland PBA Deemed Trust, put before the Superior Court of Québec and not the Newfoundland Court.
24. I disagree both with the approach adopted by the Monitor and its formulation of its questions. On October 7, 2016, Representative Counsel filed our Notice of Objection to the Monitor's Motion for Directions on our behalf. The Notice of Objection repeats that it is the Representatives' positions that any issue(s) regarding the interpretation of the NPBA Deemed Trust should be referred to the Supreme Court of Newfoundland and Labrador for adjudication. Attached hereto as **Exhibit "REPS-8"** is a copy of said Objection.
25. Morneau Shepell also filed a Notice of Objection objecting to the Monitor's Motion for Direction, including objections that there should be resolution between the affected parties with respect to the appropriate forum for the adjudication of any NPBA Deemed Trust issues.
26. The NPBA deemed trust is a critical remedy for the members of the Wabush Pension Plans to help relieve us from financial hardship caused by the underfunding of the Plans by Wabush Mines.
27. I and the other Representatives have been contacted by many Salaried Members and USW retirees, who have told us that they want to have the issue(s) regarding the

interpretation of the NPBA Deemed Trust be referred to the Supreme Court of Newfoundland and Labrador for adjudication.

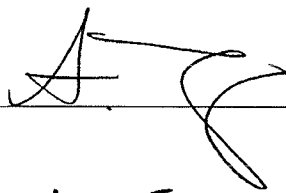
28. I understand that the Newfoundland Superintendent of Pensions and Graham Letto, the Member of the House of Assembly to Labrador West, are also in support of a transfer to Supreme Court of Newfoundland and Labrador in respect of any issue(s) regarding the interpretation of the NPBA Deemed Trust.

AND I HAVE SIGNED:



TERENCE WATT

SOLEMNLY AFFIRMED before me in Toronto,
the Province of Ontario, this 14th day of December
2016.



AMY TANG

LIST OF EXHIBITS

(In support of the Affidavit of Terence Watt accompanying the response to the Motion by the Monitor for Directions with respect to Pension Claims and the transfer of certain questions to the Newfoundland Court)

Exhibit "REPS-1"	CNR's Press Releases dated February 11, 2014, November 19, 2014, and January 27, 2015
Exhibit "REPS-2"	Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliff Mining Company, Managing Agent Arnaud Railway Company and Wabush Lake Railway Company, Limited, as amended and restated effective as at January 1, 1997
Exhibit "REPS-3"	Annual Information Return for 2013 and 2014
Exhibit "REPS-4"	Actuarial Valuation Report on the Salaried Pension Plan as at January 1, 2014
Exhibit "REPS-5"	Letter from Andrew Hatnay (Koskie Minsky LLP) to Bernard Boucher, Milly Chow, and Steven Weisz (Blake, Cassels & Graydon LLP) dated August 14, 2015
Exhibit "REPS-6"	Letter from Superintendent of Pensions, Newfoundland & Labrador, to Kurt Holland (Cliffs Natural Resources Inc.) dated December 15, 2015
Exhibit "REPS-7"	Letter from Wabush Mines to Michael Keeper dated January 26, 2016
Exhibit "REPS-8"	Notice of Objection to the Monitor's Motion for Pension Directions of Representative Counsel dated October 7, 2016

Montreal and Toronto, December 14, 2016

**KOSKIE MINSKY LLP & NICHOLAS
SCHEIB**

Attorneys for the Petitioners-Mises-en-cause
Michael Keeper, Terence Watt, Damien Lebel, and
Neil Johnson

EXHIBIT "REPS-1"



February 11, 2014

Cliffs Natural Resources Inc. Announces Significant Reduction in 2014 Capital Expenditures



- Bloom Lake Mine Expansion Capital Curtailed; Cliffs to Run Phase I Operation Only
- Company Will Idle Wabush Mine by End of First-Quarter 2014
- Cash Flow Priorities to Drive Near-term Capital Allocation Decisions

CLEVELAND - Feb. 11, 2014 - Cliffs Natural Resources Inc. (**NYSE: CLF**) (**Paris: CLF**) announced today it expects its full-year 2014 capital expenditures to be in a range of \$375 - \$425 million, a greater than 50% year-over-year reduction from its full-year 2013 capital spending of \$862 million. This decrease is driven by a significant reduction in the Company's expansion and tailings and water management capital spending at its Bloom Lake Mine in Québec. Cliffs also announced that it will idle production at its Wabush Mine in the Province of Newfoundland and Labrador by the end of the first quarter of 2014.

Gary Halverson, president and chief operating officer, said, "Sharper capital allocation must drive our decisions. Today's announcement to reduce overall capital spending is an important first step." Mr. Halverson further noted that, "Bloom Lake's ore body is well suited for a global market that increasingly values quality and diversification of supply, but it also requires time and capital to be properly developed, built out, and operated to realize its full potential. Ultimately we must extract the highest value from Bloom Lake for our shareholders and operating Phase I preserves all possible options for this asset. Given the wide range of outlooks for iron ore prices, we reduced our 2014 capital expenditures at Bloom Lake Mine as we evaluate the best alternatives for this asset as part of our overall focus on enhancing value for shareholders."

Bloom Lake Mine

In the current pricing environment, Cliffs expects to produce and sell 5.5 - 6.5 million tons from Bloom Lake Mine's first phase in 2014, which is in line with full-year 2013 results. Cliffs expects Bloom Lake Mine's full-year 2014 cash costs to be \$85 - \$90 per ton versus fourth-quarter 2013's results of \$89 per ton. Cliffs indicated that it would idle Phase I if pricing significantly decreased for an extended period of time. With the Phase II expansion indefinitely suspended, the Company has made adjustments to various components of the mine plan, largely in the project's tailings and water management strategy. This has enabled Cliffs to defer and lower its year-over-year capital spending while continuing to operate Phase I.

Cliffs expects Bloom Lake Mine's full-year 2014 capital expenditures to be approximately \$200 million. This is comprised of \$65 million in carryover capital spending from 2013, with required license-to-operate and sustaining capital expenditures making up the remainder.

Wabush Mine

Cliffs' Wabush Scully Mine in Newfoundland and Labrador will be idled by the end of the first quarter of 2014. With costs unsustainably high, including fourth-quarter 2013 cash costs of \$143 per ton, it is not economically viable to continue running this operation. As previously disclosed, Cliffs idled Wabush Mine's Pointe Noire pellet plant in June of 2013. Approximately 500 employees at both the Wabush Scully Mine and the Pointe Noire rail and port operation in Québec will be impacted by these actions.

Gary Halverson continued, "Over the past three years we have seen pricing drop and Wabush Mine's costs escalate all while we have made significant capital investments into the operation. This is a regrettable but necessary decision. We simply cannot continue operating a high-cost mine while pricing and freight markets are so volatile. We do value the hard work of all our employees and are committed to easing the transition for the people and communities, including providing severance and

other support services as a result of this decision."

Cliffs anticipates incurring idle costs related to Wabush Mine of approximately \$100 million in 2014. Also, due to the idling of Wabush Mine, Cliffs' will record impairment and write-off charges of approximately \$183 million, which will be reflected in its fourth-quarter 2013 results. Cliffs will continue operating the port at Pointe Noire in Sept-Îles, Québec.

2014 Capital Allocation

Cliffs expects its full-year 2014 consolidated capital expenditures to be \$375 - \$425 million. This includes approximately \$100 million in cash-carryover capital, with the remainder primarily comprised of sustaining and license-to-operate capital. The first priority for any additional cash generated in excess of consolidated capital expenditures and dividend payments during the year will be to lower the Company's net debt position. Cliffs is in the process of evaluating a range of options for the next best use of the capital, all of which must have attractive return rates and drive long-term shareholder value.

Mr. Halverson added, "We will adhere to a return-driven approach to allocating capital. This will establish a prudent balance among key priorities relating to liquidity management, business investment, and capital allocation initiatives that provide for a more direct return to enhance long-term shareholder value."

Conference Call Information

As previously disclosed, Cliffs Natural Resources Inc. intends on announcing its fourth-quarter and full-year 2013 results after-market close on Thursday, Feb. 13, 2014. Cliffs will host a conference call to discuss the results at 10:00 a.m. ET on Friday, Feb. 14, 2014. The call will be broadcast live and archived on Cliffs' website: www.cliffsnaturalresources.com.

About Cliffs Natural Resources Inc.

Cliffs Natural Resources Inc. is an international mining and natural resources company. A member of the S&P 500 Index, the Company is a major global iron ore producer and a significant producer of high- and low-volatile metallurgical coal. Cliffs' strategy is to continually achieve greater scale and diversification in the mining industry through a focus on serving the world's largest and fastest growing steel markets. Driven by the core values of social, environmental and capital stewardship, Cliffs associates across the globe endeavor to provide all stakeholders operating and financial transparency.

The Company is organized through a global commercial group responsible for sales and delivery of Cliffs' products and a global operations group responsible for the production of the minerals the Company markets. Cliffs operates iron ore and coal mines in North America and an iron ore mining complex in Western Australia.

Forward-Looking Statements

This release contains forward-looking statements within the meaning of the federal securities laws. Although the Company believes that its forward-looking statements are based on reasonable assumptions, such statements are subject to risks and uncertainties relating to Cliffs' operations and business environment that are difficult to predict and may be beyond Cliffs' control. Such uncertainties and factors may cause actual results to differ materially from those expressed or implied by forward-looking statements for a variety of reasons including without limitation: trends affecting our financial condition, results of operations or future prospects, particularly the continued volatility of iron ore and coal prices; uncertainty or weaknesses in global economic conditions, including downward pressure on prices, reduced market demand, increases in supply and any slowing of the economic growth rate in China; our ability to successfully identify and consummate any strategic investments or capital projects and complete planned divestitures; our ability to successfully integrate acquired companies into our operations and achieve post-acquisition synergies, including without limitation, Cliffs Quebec Iron Mining Limited (formerly Consolidated Thompson Iron Mining Limited); our ability to cost effectively achieve planned production rates or levels; changes in sales volume or mix; the outcome of any contractual disputes with our customers, joint venture partners or significant energy, material or service providers or any other litigation or arbitration; the impact of price-adjustment factors on our sales contracts; the ability of our customers and joint venture partners to meet their obligations to us on a timely basis or at all; our ability to reach agreement with our iron ore customers regarding modifications to sales contract pricing escalation provisions to reflect a shorter-term or spot-based pricing mechanism; our actual economic iron ore and coal reserves or reductions in current mineral estimates, including whether any mineralized material qualifies as a reserve; the impact of our customers using other methods to produce steel or reducing their steel production; events or circumstances that could impair or adversely impact the viability of a mine and the carrying value of associated assets, as well as any resulting impairment charges; the results of prefeasibility and feasibility studies in relation to development projects; impacts of existing and increasing governmental regulation and related costs and liabilities, including failure to receive or maintain required operating and environmental permits, approvals, modifications or other authorization of, or from, any governmental or regulatory entity and costs related to implementing improvements to ensure compliance with regulatory changes; uncertainties associated with natural disasters, weather conditions, unanticipated geological conditions, supply or price of energy, equipment failures and other unexpected events; adverse changes in currency values, currency exchange rates, interest rates and tax laws; availability of capital and our ability to maintain adequate liquidity and successfully implement our financing plans; our ability to maintain appropriate relations with

unions and employees and enter into or renew collective bargaining agreements on satisfactory terms; risks related to international operations; the potential existence of significant deficiencies or material weakness in our internal controls over financial reporting; problems or uncertainties with leasehold interests, productivity, tons mined, transportation, mine-closure obligations, environmental liabilities, employee-benefit costs and other risks of the mining industry; and other factors and risks that are set forth in the Company's most recently filed reports with the Securities and Exchange Commission. The information contained herein speaks as of the date of this release and may be superseded by subsequent events. Except as may be required by applicable securities laws, we do not undertake any obligation to revise or update any forward-looking statements contained in this release.

Important Additional Information

Cliffs, its directors and certain of its executive officers may be deemed to be participants in the solicitation of proxies from Cliffs stockholders in connection with the matters to be considered at Cliffs' 2014 Annual Meeting. Cliffs intends to file a proxy statement with the U.S. Securities and Exchange Commission (the "SEC") in connection with any such solicitation of proxies from Cliffs stockholders. **CLIFFS STOCKHOLDERS ARE STRONGLY ENCOURAGED TO READ ANY SUCH PROXY STATEMENT AND ACCOMPANYING WHITE PROXY CARD WHEN THEY BECOME AVAILABLE AS THEY WILL CONTAIN IMPORTANT INFORMATION.** Information regarding the ownership of Cliffs' directors and executive officers in Cliffs stock, restricted stock and options is included in their SEC filings on Forms 3, 4 and 5. More detailed information regarding the identity of potential participants, and their direct or indirect interests, by security holdings or otherwise, will be set forth in the proxy statement and other materials to be filed with the SEC in connection with Cliffs' 2014 Annual Meeting. Information can also be found in Cliffs' Annual Report on Form 10-K for the year ended Dec. 31, 2012, filed with the SEC on Feb. 12, 2013. Stockholders will be able to obtain any proxy statement, any amendments or supplements to the proxy statement and other documents filed by Cliffs with the SEC for no charge at the SEC's website at www.sec.gov. Copies will also be available at no charge at Cliffs' website at www.cliffsnr.com or by contacting Carolyn Cheverine, Vice President, General Counsel & Secretary at (216) 694-7605.

SOURCE: Cliffs Natural Resources Inc.

News releases and other information on the Company are available on the Internet at:
<http://www.cliffsnaturalresources.com>

Follow Cliffs on Twitter at: <http://twitter.com/CliffsNR>.

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NEWS RELEASE

Cliffs Natural Resources Inc. to Pursue Exit Options for its Eastern Canadian Operations

CLEVELAND – Nov. 19, 2014 – Cliffs Natural Resources Inc. (NYSE: CLF) announced today that it is pursuing exit options for its Eastern Canadian iron ore operations which may result in the closure of the Bloom Lake mine.

Lourenco Goncalves, Cliffs' Chairman, President and Chief Executive Officer said, "Despite the continued interest of the prospective equity partners in Bloom Lake and in its high quality ore, the potential investment is not achievable within a time frame acceptable to Cliffs. With expansion no longer viable, we have shifted our focus to executing an exit option for Eastern Canadian operations that minimizes the cash outflows and associated liabilities."

The Company previously disclosed that to make Bloom Lake viable, the development of the mine's Phase 2 was necessary. The investment was estimated to cost \$1.2 billion. In the event of a closure, the estimated closure costs are expected to be in the range of \$650 million to \$700 million in the next five years.

Cliffs stated also that the Company's subsidiary, Cliffs Quebec Iron Mining Limited, along with Bloom Lake General Partner Limited and The Bloom Lake Iron Ore Limited Partnership, recently lost an arbitration claim they filed against a former Bloom Lake customer relating to the August 2011 termination of an iron ore sales agreement. In November 2014, the arbitrators decided in favor of the former customer and awarded it damages in an amount of approximately \$71 million as well as attorneys' fees and accrued interest from the date of termination of the offtake agreement in August 2011. Cliffs Quebec Iron Mining Limited is currently reviewing the award to determine appropriate next steps.

About Cliffs Natural Resources Inc.

Cliffs Natural Resources Inc. is a leading mining and natural resources company. The Company is a major iron ore producer in the Great Lakes region and a significant producer of high-and low-volatile metallurgical coal in the U.S. Additionally, Cliffs operates iron ore mines in Eastern Canada and an iron mining complex in Western Australia. Driven by the core values of social, environmental and capital stewardship, Cliffs' employees endeavor to provide all stakeholders

operating and financial transparency. News releases and other information on the Company are available at: <http://www.cliffsnaturalresources.com>.

Forward-Looking Statements

This release contains forward-looking statements within the meaning of the federal securities laws. Although the Company believes that its forward-looking statements are based on reasonable assumptions, such statements are subject to risks and uncertainties relating to Cliffs' operations and business environment that are difficult to predict and may be beyond Cliffs' control. Such uncertainties and factors may cause actual results to differ materially from those expressed or implied by forward-looking statements for a variety of reasons including without limitation: our ability to successfully execute an exit option for Bloom Lake mine that minimizes the cash outflows and associated liabilities of our Canadian operations; trends affecting our financial condition, results of operations or future prospects, particularly the continued volatility of iron ore and coal prices; our actual levels of capital spending; uncertainty or weaknesses in global economic conditions, including downward pressure on prices, reduced market demand and any slowing of the economic growth rate in China; our ability to successfully integrate acquired companies into our operations and achieve post-acquisition synergies; our ability to successfully identify and consummate any strategic investments and complete planned divestitures; the outcome of any contractual disputes with our customers, joint venture partners or significant energy, material or service providers or any other litigation or arbitration; the ability of our customers and joint venture partners to meet their obligations to us on a timely basis or at all; our ability to reach agreement with our iron ore customers regarding any modifications to sales contract provisions; the impact of price-adjustment factors on our sales contracts; changes in sales volume or mix; our actual economic iron ore and coal reserves or reductions in current mineral estimates, including whether any mineralized material qualifies as a reserve; the impact of our customers using other methods to produce steel or reducing their steel production; events or circumstances that could impair or adversely impact the viability of a mine and the carrying value of associated assets; the results of prefeasibility and feasibility studies in relation to projects; impacts of existing and increasing governmental regulation and related costs and liabilities, including failure to receive or maintain required operating and environmental permits, approvals, modifications or other authorization of, or from, any governmental or regulatory entity and costs related to implementing improvements to ensure compliance with regulatory changes; our ability to cost-effectively achieve planned production rates or levels; uncertainties associated with natural disasters, weather conditions, unanticipated geological conditions, supply or price of energy, equipment failures and other unexpected events; adverse changes in currency values, currency exchange rates, interest rates and tax laws; availability of capital and our ability to maintain adequate liquidity and successfully implement our financing plans; our ability to maintain appropriate relations with unions and employees and enter into or renew collective bargaining agreements on satisfactory terms; risks related to international operations; availability of capital equipment and component parts; the potential existence of significant deficiencies or material weakness in our internal control over financial reporting; problems or uncertainties with productivity, tons mined, transportation, mine-closure obligations, environmental liabilities, employee-benefit costs and other risks of the mining industry; and other factors and risks that are set forth in the Company's most recently filed reports with the

U.S. Securities and Exchange Commission (the "SEC"). The information contained herein speaks as of the date of this release and may be superseded by subsequent events. Except as may be required by applicable securities laws, we do not undertake any obligation to revise or update any forward-looking statements contained in this release.

Contact:

Patricia Persico
Director, Global Communications
(216) 694-5316

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For Immediate Release

Cliffs Natural Resources Inc. Announces Decision on Bloom Lake Mine *Commences Formal Canadian Restructuring Proceedings*

CLEVELAND – Jan. 27, 2015 – Cliffs Natural Resources Inc. (NYSE: CLF) announced today that Bloom Lake General Partner Limited and certain of its affiliates, including Cliffs Quebec Iron Mining ULC (collectively, "Bloom Lake Group") commenced restructuring proceedings in Montreal, Quebec, under the Companies' Creditors Arrangement Act (Canada) ("CCAA"). The Bloom Lake Group had recently suspended operations and for several months has been exploring options to sell certain of its Canadian assets, among other initiatives.

The decision to seek protection under the CCAA was based on a thorough legal and financial analysis of the options available to the Bloom Lake Group. The Bloom Lake Group is no longer generating any revenues and is not able to meet its obligations as they come due. The Initial CCAA Order will address the Bloom Lake Group's immediate liquidity issues and permit the Bloom Lake Group to preserve and protect its assets for the benefit of all stakeholders while restructuring and sale options are explored.

As part of the CCAA process, the Court has appointed FTI Consulting Canada Inc. as the Monitor. The Monitor's role in the CCAA process is to monitor the activities of the Bloom Lake Group and provide assistance to the Bloom Lake Group and its stakeholders in respect of the CCAA process.

Lourenco Goncalves, Chairman of the Board, President and Chief Executive Officer of Cliffs Natural Resources Inc. said, "For several months, we have been seeking equity investors and exploring sale options for Bloom Lake including working collaboratively with Investissement Québec. We support the decision by the directors of the Bloom Lake Group to conduct a restructuring process under the supervision of the Court."

Cliffs Natural Resources Inc. will file a Current Report on Form 8-K that provides pro forma financial information reflecting the deconsolidation of the Bloom Lake Group. Additional information regarding CCAA proceedings will be available on the Monitor's website at <http://cfcanda.fticonsulting.com/bloomlake>.

About Cliffs Natural Resources Inc.

Cliffs Natural Resources Inc. is a leading mining and natural resources company. The Company is a major supplier of iron ore pellets to the U.S. steel industry from its mines and pellet plants located in Michigan and Minnesota. Cliffs also produces low-volatile metallurgical coal in the U.S. from its mines located in West Virginia and Alabama. Additionally, Cliffs operates an iron ore mining complex in Western Australia and owns two non-operating iron ore mines in Eastern

Canada. Driven by the core values of social, environmental and capital stewardship, Cliffs' employees endeavor to provide all stakeholders operating and financial transparency.

News releases and other information on the Company are available at:

<http://www.cliffsnaturalresources.com>.

Forward-Looking Statements

This release contains forward-looking statements within the meaning of the federal securities laws. Although the Company believes that its forward-looking statements are based on reasonable assumptions, such statements are subject to risks and uncertainties relating to Cliffs' operations and business environment that are difficult to predict and may be beyond Cliffs' control. Such uncertainties and factors may cause actual results to differ materially from those expressed or implied by forward-looking statements for a variety of reasons including without limitation: our ability to successfully execute an exit option for Bloom Lake mine that minimizes the cash outflows and associated liabilities of our Canadian operations including the CCAA process; trends affecting our financial condition, results of operations or future prospects, particularly the continued volatility of iron ore and coal prices; our actual levels of capital spending; uncertainty or weaknesses in global economic conditions, including downward pressure on prices, reduced market demand and any slowing of the economic growth rate in China; our ability to successfully identify and consummate any strategic investments and complete planned divestitures; the outcome of any contractual disputes with our customers, joint venture partners or significant energy, material or service providers or any other litigation or arbitration; the ability of our customers and joint venture partners to meet their obligations to us on a timely basis or at all; our ability to reach agreement with our iron ore customers regarding any modifications to sales contract provisions; the impact of price-adjustment factors on our sales contracts; changes in sales volume or mix; our actual economic iron ore and coal reserves or reductions in current mineral estimates, including whether any mineralized material qualifies as a reserve; the impact of our customers using other methods to produce steel or reducing their steel production; events or circumstances that could impair or adversely impact the viability of a mine and the carrying value of associated assets; the results of prefeasibility and feasibility studies in relation to projects; impacts of existing and increasing governmental regulation and related costs and liabilities, including failure to receive or maintain required operating and environmental permits, approvals, modifications or other authorization of, or from, any governmental or regulatory entity and costs related to implementing improvements to ensure compliance with regulatory changes; our ability to cost-effectively achieve planned production rates or levels; uncertainties associated with natural disasters, weather conditions, unanticipated geological conditions, supply or price of energy, equipment failures and other unexpected events; adverse changes in currency values, currency exchange rates, interest rates and tax laws; availability of capital and our ability to maintain adequate liquidity and successfully implement our financing plans; our ability to maintain appropriate relations with unions and employees and enter into or renew collective bargaining agreements on satisfactory terms; risks related to international operations; availability of capital equipment and component parts; the potential existence of significant deficiencies or material weakness in our internal control over financial reporting; problems or uncertainties with productivity, tons mined, transportation, mine-closure obligations, environmental liabilities, employee-benefit costs and other risks of the mining industry; and other factors and risks that are set forth in the Company's most recently filed reports with the U.S. Securities and Exchange Commission. The information contained herein speaks as of the date of this release and may be superseded by subsequent events. Except as may be required by applicable securities laws, we do not undertake any obligation to revise or update any forward-looking statements contained in this release.

Contact:

Patricia Persico
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EXHIBIT "REPS-2"

**Contributory Pension Plan for Salaried Employees of
Wabush Mines, Cliffs Mining Company, Managing Agent
Arnaud Railway Company and
Wabush Lake Railway Company, Limited**

As Amended and Restated Effective as of January 1, 1997

Revenue Canada / Canada Customs and Revenue Agency
Registration Number 0343558

Newfoundland Registration Number 021314-000

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Section 1 — Amendment and Restatement

1.01 Amendment and Restatement

Effective as of January 1, 1997, the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited, Revenue Canada registration number 0343558, is amended and restated to allow active Members to choose, on a one-time-only basis, one of two forms of pension benefits:

- a Defined Benefit Provision; or
- a Defined Benefit Provision plus a Defined Contribution Provision.

For active Members who terminated employment, died or retired on or after October 1, 1996 and before January 1, 1997, the Defined Benefit Provision as described in this amended and restated plan text shall apply.

Section 2 — Definitions

The following words and phrases, when used in this Plan, shall have the following meanings unless the context clearly indicates otherwise:

2.01 Account

“Account” means, in respect of a Member, the account established to record the Member's contributions pursuant to Sections 4.01(b), 4.01(c) and 4.03(a) and the Employer contributions pursuant to Sections 4.02(b), 4.03(b) and 4.04 plus any Credited Interest thereon.

2.02 Actuarial Equivalent

“Actuarial Equivalent” means, with respect to a benefit, the equivalent value, computed on the basis of actuarial assumptions last adopted for this purpose by the Employer on the recommendation of the Actuary. The determination of Actuarial Equivalent values shall not differentiate on the basis of gender, unless required by law.

2.03 Actuary

“Actuary” means the actuary or firm of actuaries retained by the Employer for the purposes of the Plan who is, or in the case of a firm of actuaries at least one of whom is, a Fellow of the Canadian Institute of Actuaries.

2.04 Approved Leave of Absence

“Approved Leave of Absence” means a period of paid or unpaid leave of absence authorized by the Employer for the purposes of the Plan.

2.05 Beneficiary

“Beneficiary” means the person last designated by a Member under Section 9.07 by written notice filed with the Employer to receive benefits payable from the Plan upon the Member's death and who survives the Member.

2.06 Commuted Value

“Committed Value” means, with respect to pension benefits that a person has a present or future entitlement to receive, a lump-sum amount of the Actuarial Equivalent value of said benefits as of a specified date as determined by the Actuary in accordance with the Recommendations for the Computation of Transfer Values from Registered Pension Plans issued by the Canadian Institute of Actuaries, or such other basis as may be permitted or required from time to time under the *Pension Benefits Act* and the *Income Tax Act*.

2.07 Continuous Service

- (a) "Continuous Service" means the period of regular employment with the Employer from the later of the date of commencement of employment with the Employer or the date of re-employment following the last break in service, if any and shall include service with any subsidiary, affiliated or predecessor employer designated by the Employer.
- (b) Continuous Service shall be broken by an Employee's resignation or other voluntary termination of employment or termination of employment by the Employer or retirement.
- (c) Notwithstanding (a) and (b) above, Employees with eight or more years of Continuous Service as of the date they become eligible for long term disability benefits pursuant to the Employer's program of insurance benefits shall continue to accrue Continuous Service until the earlier of 30 years of Credited Service, Normal Retirement Date, or the date the payment of or eligibility for such benefits ceases.
- (d) Notwithstanding (a) and (b) above, a break in Continuous Service shall occur as of the date:
 - (i) the Employee fails to return to work promptly at the termination of any leave of absence; or
 - (ii) the Employee has been absent from work due to disability for more than 1 year in the case of an Employee with less than 3 years' service at the beginning of the absence, and for more than 2 years in the case of other Employees unless such absence was due to a temporary Disability compensable under workers' compensation laws or similar law in the province of employment and the Employee returns to work within 30 days after the termination of weekly compensation payments in respect of the disability, unless otherwise provided for under (c) above.
- (e) Notwithstanding anything to the contrary in the Plan, a transfer of employment from one Employer to an affiliate or subsidiary of the Employer shall not constitute a break in Continuous Service for the purpose of determining eligibility for benefits pursuant to the Plan.

2.08 Credited Interest

With respect to the Defined Contribution Provision, "Credited Interest" means interest on the amount in a Member's Account including any additional voluntary contributions pursuant to Section 4, compounded annually and computed from the first day of the month following the month in which the contributions were made to the first day of the calendar month in which a determination thereof is to be made, at the rate equal to the rate of return calculated on the portion of the Pension Fund in which the Member's Account and the additional voluntary contributions are deposited.

With respect to the Defined Benefit Provision, Credited Interest means interest at the rate of 3% per annum for all periods prior to January 1, 1971, 3 ½% per annum for the period January 1, 1971 through December 31, 1975, 5% per annum for the period January 1, 1976 through May 31, 1989 and the calendar year average of the yields of five-year personal fixed term chartered bank deposit rates published monthly in the Bank of Canada Review as CANSIM Series B14045 for the preceeding calendar year after May 31, 1989, compounded annually at the end of each calendar year and, on and after January 1, 1990, computed from the first day of the month following the month in which contributions were made to the date of retirement, death or other termination of employment.

2.09 Credited Service

(a) "Credited Service" means a Member's years and completed calendar months (expressed as twelfths of a year) of Continuous Service during which the Member participated in or was credited with participation in the Plan. Credited Service shall also include periods during which a Member is on an Approved Leave of Absence. For the purposes of this section, a "completed calendar month" shall include a calendar month during which an employee has participated or was credited with participation in the Plan for 15 or more days in the month.

(b) In no event shall the total period of unpaid Approved Leave of Absence on and after January 1, 1991 for the purposes of Credited Service exceed the sum of:

- (i) five years; and
- (ii) the period of parenting as defined in the Income Tax Act, subject to a maximum of 36 months of such periods of parenting and a maximum of 12 months for any one period of parenting.

The limitation on Credited Service set out in this Section 2.09(b) shall not apply to a period of disability.

2.10 Deferred Vested Termination Date

"Deferred Vested Termination Date" means the date described in Section 5.05.

2.11 Defined Benefit Provision

"Defined Benefit Provision" means the pension benefits calculated with reference to Section 6.01(a) and Section 6.01(b)(i) and excludes the pension benefits derived from the Defined Contribution Provision.

2.12 Defined Contribution Provision

"Defined Contribution Provision" means the pension benefits derived from the Members' contributions made pursuant to Section 4.01(b), 4.03(a), and the Employer's contributions made pursuant to Section 4.02(b), 4.03(b) and 4.04, and as calculated with reference to Section 6.01(b)(ii) and excludes the pension benefits derived from the Defined Benefit Provision .

2.13 Disability or Disabled

"Disability " or "Disabled" means, suffering from a physical or mental impairment, as certified by a medical doctor, that prevents an Employee from performing the duties of employment in which the Employee was engaged before the commencement of the impairment.

2.14 Early Retirement Date

"Early Retirement Date" means the date of a Member's early retirement pursuant to Section 5.02.

2.15 Earnings

"Earnings" means the base salary paid by the Employer to a Member, including taxable income from cost of living adjustments, overtime pay, Sunday, shift and holiday premium payments, cash bonuses, the Northern allowance, and special vacation, regular vacation, and out-of-season vacation bonus pay. Earnings excludes lump sum payments paid to an individual as a consequence of the termination of employment of the individual and all other forms of remuneration, including but not limited to, all non-cash benefits, any remuneration resulting from the exercise of a qualified stock option, incentive stock option or other stock option or appreciation right, and all allowances (except the Northern allowance), including but not limited to, the housing, travel and tax equalization allowances. In determining the Earnings of a Member during a calendar month, the Earnings in the calendar year shall be divided by twelve.

2.16 Effective Date

"Effective Date" means January 1, 1982.

2.17 Employee

"Employee" means an individual who is employed by the Employer and receives a salary.

2.18 Employer

"Employer" means Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited.

2.19 Final Average Earnings

"Final Average Earnings" means the highest average annual Earnings of a Member during any 60 consecutive months of the last 120 full calendar months of Credited Service, excluding periods of layoff, immediately preceding the date of retirement, termination or death, whichever occurs first, except in the case of a Disabled Member, where Final Average Earnings shall be determined based on Earnings and Credited Service prior to the date the Member becomes Disabled. If, during the last ten consecutive calendar years of Credited Service, the Member was absent from work without pay or with reduced pay because of layoff, the references to "60 consecutive months" in this definition shall be read as the "number of months not exceeding 60".

2.20 Funding Agency

"Funding Agency" means the trust company or insurance company, or any successor trust or insurance company, the Employer may appoint from time to time to hold, invest and administer the assets in the Pension Fund.

2.21 Funding Agreement

"Funding Agreement" means the agreement entered into between the Employer and the Funding Agency governing the custody, investment and administration of the assets in the Pension Fund.

2.22 Income Tax Act

"Income Tax Act" means the *Income Tax Act (Canada)*, as amended from time to time, the regulations made thereunder and the information circulars, interpretation bulletins and published administrative guidelines of Revenue Canada or any successor thereto.

2.23 Member

"Member" means an Employee who has been enrolled in the Plan pursuant to Section 3 and who continues to have rights or contingent rights to benefits pursuant to the Plan. "Member" includes a former Employee who has retired or terminated employment with the Employer but who retains a right to benefits pursuant to the Plan.

2.24 Normal Retirement Date

"Normal Retirement Date" means the date of a Member's normal retirement pursuant to Section 5.01.

2.25 Pension Benefits Act

"Pension Benefits Act" means the Newfoundland *Pension Benefits Act 1997*, S.N. 1996, c.P-4.01, as amended from time to time, and the Regulations thereunder as well as any similar statute applicable in a particular circumstance and any regulation pursuant thereto adopted by the federal or any provincial government.

- 2.26 Pension Commencement Date
"Pension Commencement Date" means the date upon which a Member's payment of pension benefits is due to commence.
- 2.27 Pension Committee
"Pension Committee" means the committee described in Section 11.
- 2.28 Pension Fund
"Pension Fund" means the fund established pursuant to the terms of the Plan and the Funding Agreement to which all contributions under the Plan are made and from which the benefits and expenses of the Plan are paid.
- 2.29 Plan
"Plan" means the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited.
- 2.30 Plan Year
"Plan Year" means each 12 month period ending December 31.
- 2.31 Pre-Pension Spouse Coverage
"Pre-Pension Spouse Coverage" means the optional benefit pursuant to Section 8.03.
- 2.32 Québec Member
"Québec Member" means a Member who reports for work in the Province of Québec.
- 2.33 Special Early Retirement Date
"Special Early Retirement Date" means the date of a Member's special early retirement pursuant to Section 5.03.
- 2.34 Special Postponed Retirement Date
"Special Postponed Retirement Date" means the date of a Member's special postponed retirement pursuant to Section 5.04.
- 2.35 Spouse
"Spouse" means a person of the opposite sex of a Member who, on the date of determination of marital status, either:
- (a) is legally married to the Member and is not living separate and apart from the Member;
 - (b) is not legally married to the Member but who has been living with the Member in a conjugal relationship continuously for a period of at least 3 years; or

- (c) is not legally married to the Member, but who is living with the Member in a conjugal relationship continuously for a period of at least one year and who, together with the Member, is the natural or adoptive parent of a child, both as defined in applicable family law legislation.

It is provided, however, that a person described in (b) or (c) above shall not be considered the Spouse of the Member for the purposes of the Plan if there is also a legal Spouse pursuant to (a) above, unless the Member has submitted a written election to the contrary to the Employer. With respect to same-sex spouses or equivalent, effective June 16, 1999, the definition set out in this section shall not apply where prohibited by the Pension Benefits Act in which case such other definition of spouse or equivalent as set out in the Pension Benefits Act shall apply.

2.36 Surplus Assets

"Surplus Assets" means, at any particular point in time, the excess of assets in the Pension Fund over the liabilities of the Plan, as determined by the Actuary. The assets and liabilities shall be as set out in the most recent going concern valuation report with respect to the determination of Surplus Assets on a going concern basis or the most recent wind-up valuation report with respect to the determination of Surplus Assets on a wind-up basis, as the case may be, filed with the applicable regulatory authorities.

2.37 YMPE

"YMPE" means the Year's Maximum Pensionable Earnings as defined in the *Canada Pension Plan* or the *Québec Pension Plan*, as applicable.

Words importing the singular number shall include the plural and vice versa depending upon the context.

Section 3 — Membership

3.01 Immediate Membership

A person who is hired by the Employer as an Employee shall join the Plan as of the Employee's date of hire.

3.02 Opting Out of Membership Not Permitted

A Member shall not discontinue or suspend his or her membership in the Plan while the Member is an Employee.

3.03 Change of Employment Status

If a Member's employment status with the Employer changes such that the Member is no longer an Employee, the Member's active participation in the Plan shall cease as of the date of said change in status and the Member shall cease to accrue further benefits pursuant to the Plan as of the date of said change in status.

3.04 Participation in Defined Benefit Provision and Defined Contribution Provision

(a) Current Members

An Employee who is a Member as of December 31, 1996 shall participate in the Defined Benefit Provision and may elect to participate in the Defined Contribution Provision, effective as of January 1, 1997, by completing the form prescribed by the Employer.

(b) New Members

An Employee who becomes a Member on or after January 1, 1997 shall participate in both the Defined Benefit Provision and the Defined Contribution Provision, effective as of the date the Employee becomes a Member.

3.05 Transfers of Employment

(a) A Member who ceases to be an Employee, but who remains employed with the Employer, shall cease accruing benefits pursuant to the Plan; however, such Member shall remain eligible to receive the benefits accrued pursuant to the Plan upon his or her subsequent termination of employment, retirement or death. Employment with the Employer in a capacity other than as an Employee shall continue to count as Continuous Service for the purpose of vesting of benefits, eligibility for retirement, and pre-retirement death benefits, but not as Credited Service for benefit calculation purposes pursuant to the Plan.

- (b) Should an employee of the Employer transfer to a position in which the employee is classified as an Employee pursuant to the Plan, any pension benefits to which the employee is entitled by reason of his or her prior service shall be dealt with pursuant to any pension plan applicable to his or her prior employment. For the purposes of the Plan, such prior service shall be counted as Continuous Service for the purposes of eligibility for participation and benefits, but not as Credited Service for the purposes of benefit calculation.

Section 4 — Contributions

4.01 Member Contributions

(a) Defined Benefit Provision

Members who elect not to participate in the Defined Contribution Provision shall contribute 2% of their Earnings to the Defined Benefit Provision of the Plan by payroll deduction. Once a Member has acquired 30 years of Credited Service, no further contributions shall be required of such Member.

(b) Defined Contribution Provision

A Member who elects to participate in the Defined Contribution Provision of the Plan shall contribute 2% of Earnings to his or her Account by payroll deduction.

(c) Additional Voluntary Contributions

A Member who participates in the Defined Contribution Provision may, in addition to the contributions pursuant to (b) above, make additional voluntary contributions to the Member's Account, by payroll deduction, up to such amounts as are permissible pursuant to the *Income Tax Act* as deductible contributions to a registered pension plan.

(d) Remittance of Contributions

The Employer shall remit Member contributions pursuant to (a) not later than the date specified in the *Pension Benefits Act*, pursuant to (b) and (c) as early as 7 days following the pay date on which they fall due but in any event not later than the date specified in the *Pension Benefits Act*.

4.02 Employer Contributions

The Employer shall have no liability to make any payments to the Pension Fund except as expressly provided in the Plan.

(a) Defined Benefit Provision

(i) The Employer shall contribute to the Pension Fund in respect of the Defined Benefit Provision in such amount, based on the latest actuarial valuation report prepared by the Actuary and filed with the Newfoundland pension regulatory authority and Revenue Canada, as is required to provide for the normal cost of benefits accruing in the current Plan Year, after taking into account the assets of the Pension Fund and all other relevant factors, and to provide for the proper amortization of all unfunded liabilities and solvency deficiencies, if any, in accordance with the *Pension Benefits Act* and subject to subsection 147.2(2) of the *Income Tax Act*.

- (ii) The employer shall not contribute any amount to the Pension Fund which is not permissible pursuant to subsection 147.2(2) of the *Income Tax Act*.

(b) Defined Contribution Provision

The Employer shall contribute each payroll period to the Account of each Member who participates in the Defined Contribution Provision an amount equal to 3% of the Member's Earnings.

(c) Remittance of Contributions

The Employer shall remit its contributions in respect of the Defined Benefit Provision in accordance with the Pension Benefits Act, and shall remit its contributions in respect of the Defined Contribution Provision as soon as practical but not later than the date specified in the Pension Benefits Act.

4.03 Contributions Under Defined Contribution Provision During Approved Leaves of Absence

(a) Member Contributions

- (i) A Member who participates in the Defined Contribution Provision and who is on an Approved Leave of Absence may continue to contribute to the Member's Account pursuant to Section 4.01 (b). Alternatively, the Member may contribute a lesser amount or may cease contributing to the Member's Account. Prior to commencing the Approved Leave of Absence, the Member shall inform the Employer in writing of the amount of the Member's contributions. The contributions shall be made by payroll deduction or, if such method of payment is not possible, by delivering to the Employer post-dated cheques in respect of each month of the Approved Leave of Absence.
- (ii) In lieu of contributing to the Member's Account during an Approved Leave of Absence, the Member may instead elect to contribute to the Member's Account immediately upon returning to work from an Approved Leave of Absence. In such case, the Member may elect to contribute the amount which he would have otherwise contributed pursuant to Section 4.01(b) or a lesser amount, and the Member shall make such contributions within the lesser of the period of time equal to the period of the Approved Leave of Absence or 12 months.

(b) Employer Contributions

The Employer shall contribute to the Pension Fund in respect of the Defined Contribution Provision pursuant to Section 4.02 in respect of a Member who participates in the Defined Contribution Provision and who is on an Approved Leave of Absence; however, if a Member elects to contribute a lesser amount than prescribed pursuant to Section 4.01 (b), the Employer's contributions shall be reduced proportionately. The Employer shall not contribute in respect of a Member who elects to cease contributing to the Member's Account during an Approved Leave of Absence. Depending on the manner in which the Member elects to contribute to the Member's Account pursuant to subparagraph (a)(i) or (a)(ii) above, the Employer shall contribute to the Member's Account accordingly.

4.04 Application of Surplus Assets

In the event there are Surplus Assets in the Pension Fund, the Employer may in its sole discretion apply the Surplus Assets or any portion of the Surplus Assets toward the amount of Employer contributions pursuant to Section 4.02 or Section 4.03.

4.05 Transitional Provision

Any Member who elected to participate in the Defined Contribution Provision pursuant to Section 3.04(a) and who made contributions to the Plan prior to January 1, 1991 shall have such contributions, along with Credited Interest, transferred to his or her Member Account.

4.06 Maximum Contributions Under Defined Contribution Provision

The total of the contributions by a Member to the Pension Fund pursuant to Sections 4.01 and 4.03 above and the Employer's contributions in respect of the Member pursuant to Section 4.02 and Section 4.03 above for a calendar year shall not exceed the money purchase limit for the calendar year as prescribed under the *Income Tax Act*.

Section 5 — Retirement Dates

5.01 Normal Retirement Date

A Member's Normal Retirement Date shall be the first day of the month following the Member's attainment of age 65.

5.02 Early Retirement Date

A Member's Early Retirement Date shall be the date of a Member's retirement from the Employer on the first day of any month prior to the Member's Normal Retirement Date and after the Member has met one or both of the following requirements:

- (a) completion of at least 30 years of Continuous Service; or
- (b) attainment of at least age 55 and completion of at least 15 years of Continuous Service.

5.03 Special Early Retirement Date

A Member's Special Early Retirement Date shall be the date of a Member's retirement from the Employer on the first day of any month prior to the Member's Normal Retirement Date and after the Member has either

- attained at least age 55 and completed at least 15 years of Continuous Service; or
- completed at least 15 years of Continuous Service and the sum of the Member's age and Continuous Service, in years and completed months, equals 80 or more; and

the Member has satisfied one or more of the following requirements:

- (a) the Member's Continuous Service is broken by reason of a permanent shutdown of the operations in which the Member is engaged, or by reason of a layoff or physical disability;
- (b) the Member's Continuous Service is not broken and the Member is absent from work by reason of:
 - (i) a layoff resulting from such permanent shutdown, or
 - (ii) a Disability or layoff other than a layoff resulting from such permanent shutdown and whose return to active employment is declared unlikely by the Employer; or

- (c) the Member considers that it would be in his or her interest to retire and the Employer considers that such retirement would likewise be in its interest and, by applying like rules in a nondiscriminatory manner to like or similar circumstances, approves an application for retirement under mutually satisfactory conditions.

5.04 Special Postponed Retirement Date

A Member may, with the consent of the Company, elect to retire on a Special Postponed Retirement Date, which shall be the first day of any month beyond the Member's Normal Retirement Date, provided, however, that the Member's retirement date for purposes of the Plan shall not be postponed beyond December 1st of the year the Member attains age 69.

5.05 Deferred Vested Termination Date

A Member's Deferred Vested Termination Date under the Defined Benefit Provision shall be the date of a Member's termination of employment with the Employer for any reason other than death, prior to the Normal Retirement Date, Early Retirement Date or Special Early Retirement Date and after completion of at least (a) ten years of Continuous Service, in respect of benefits accrued prior to January 1, 1990, and (b) two years of Continuous Service, in respect of all other benefits.

A Member's deferred Vested Termination Date under the Defined Contribution Provision shall be the date of a Member's termination of employment with the Employer for any reason other than death, prior to the Normal Retirement Date, Early Retirement Date or Special Early Retirement Date and after the Member joins the Plan.

5.06 Eligibility

A Member shall be entitled to receive pension benefits pursuant to only one of Sections 5.01, 5.02, 5.03, 5.04 or 5.05.

Section 6 — Retirement Benefits

6.01 Normal and Special Postponed Retirement Benefits

(a) Members Who Do Not Participate in the Defined Contribution Provision

A Member who does not participate in the Defined Contribution Provision and who retires on the Member's Normal Retirement Date or Special Postponed Retirement Date shall be entitled to receive an annual pension benefit payable in equal monthly instalments commencing on the Normal Retirement Date or Special Postponed Retirement Date, as the case may be, and continuing on the first day of each month thereafter, equal to:

- (i) 1.7% multiplied by the Member's Final Average Earnings multiplied by the Member's years of Credited Service, plus
- (ii) any additional benefits applicable pursuant to Sections 6.01(c) and 6.01(d).

(b) Members Who Participate in the Defined Contribution Provision

A Member who participates in the Defined Contribution Provision and who retires on the Member's Normal Retirement Date or Special Postponed Retirement Date shall be entitled to receive a benefit pursuant to (i) and (ii) below:

(i) *Benefit in Respect of Defined Benefit Provision*

An annual benefit payable in equal monthly instalments commencing on the Normal Retirement Date or Special Postponed Retirement Date, as the case may be, and continuing on the first day of each month thereafter, equal to:

- (A) 1.5% multiplied by the Member's Final Average Earnings up the YMPE multiplied by the Member's years of Credited Service prior to January 1, 1997

plus

1.6% multiplied by the Member's Final Average Earnings in excess of the YMPE multiplied by the Member's years of Credited Service prior to January 1, 1997; plus

- (B) 1.0% multiplied by the Member's Final Average Earnings multiplied by the Member's years of Credited Service on and after January 1, 1997; plus

- (C) any additional benefits applicable pursuant to Sections 6.01(c) and 6.01(d).

(ii) Benefit in Respect of Defined Contribution Provision

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

(c) Minimum Benefit

The annual pension benefit payable under this Section 6.01 in respect of the Defined Benefit Provision shall be at least equal to:

(i) the annual pension benefit which would be payable under Section 6.01 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, if the Member had been a member of that plan instead of this Plan in respect of his Credited Service, plus

(ii) an annual pension benefit, commencing on the Member's Normal Retirement Date and payable for life in accordance with Section 7.01, which is the Actuarial Equivalent of the Member's contributions in respect of the Defined Benefit Provision together with Credited Interest but excluding any amounts transferred to his or her Member Account under Section 4.05.

(d) Make-up Benefit

In the event a Member has transferred to the Plan from 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 "bargaining unit plan") and his Continuous Service is terminated at a time when he has an entitlement to a deferred pension, he shall be eligible for a Make-up Benefit under the Plan, as set out in this Section 6.01(d). A Make-up Benefit shall be determined as a monthly amount determined by multiplying the Member's credited service under the bargaining unit plan by the lifetime benefit formula in effect under the bargaining unit at the time of the termination of Continuous Service under the Plan, less the frozen monthly lifetime benefit amount actually payable to the Member under the bargaining unit plan.

6.02 Early Retirement Benefits

(a) Members Who Do Not Participate in the Defined Contribution Provision

A Member who does not participate in the Defined Contribution Provision and who qualifies for a pension benefit commencing on an Early Retirement Date shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on an Early Retirement Date and continuing on the first day of each month thereafter, calculated pursuant to one of the following:

- (i) If the Member has completed at least 30 years of Continuous Service, a pension benefit equal to the amount calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, without reduction on account of early commencement;
- (ii) If the Member has attained age 55 and completed at least 15 years of Continuous Service, a pension benefit calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, except the Member's pension benefit shall be reduced by ½% for each month by which commencement of the Member's pension precedes his or her Normal Retirement Date. It is further provided that the amount of the reduction to the monthly benefit shall not be less than required pursuant to regulation 8503(3)(c) of the *Income Tax Act* as described in Section 9.08(b).

(b) Members Who Participate in the Defined Contribution Provision

A Member who participates in the Defined Contribution Provision and who qualifies for a pension benefit commencing on an Early Retirement Date shall be entitled to receive a monthly pension benefit pursuant to (i) and (ii) below:

(i) *Benefit in Respect of Defined Benefit Provision*

A benefit payable in equal monthly instalments commencing on an Early Retirement Date and continuing on the first day of each month thereafter, equal to the pension described in (a) above that would be applicable to the Member if the references therein to "Section 6.01(a)" were changed to "Section 6.01(b)(i)".

(ii) *Benefit in Respect of Defined Contribution Provision*

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

6.03 Special Early Retirement Benefits

(a) Members Who Do Not Participate in the Defined Contribution Provision

A Member who does not participate in the Defined Contribution Provision and who qualifies for a pension benefit commencing on a Special Early Retirement Date shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on a Special Early Retirement Date and continuing on the first day of each month thereafter, equal to the pension calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Special Early Retirement Date, without reduction on account of early commencement except as required pursuant to regulation 8503(3)(c) of the *Income Tax Act* as described in Section 9.08(b).

(b) Members Who Participate in the Defined Contribution Provision

A Member who participates in the Defined Contribution Provision and who qualifies for a pension benefit commencing on a Special Early Retirement Date shall be entitled to receive a monthly pension benefit pursuant to (i) and (ii) below:

(i) Benefit in Respect of Defined Benefit Provision

A benefit payable in equal monthly instalments commencing on a Special Early Retirement Date and continuing on the first day of each month thereafter, equal to the benefit described in (a) above that would be applicable to the Member if the reference therein in to "Section 6.01(a)" were changed to "Section 6.01(b)(i)".

(ii) Benefit in Respect of Defined Contribution Provision

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

6.04 Deferred Vested Retirement Benefits

A Member who terminates employment with the Employer on a Deferred Vested Termination Date shall be entitled to receive a monthly pension benefit pursuant to (a) and (b) below or, if the Member has not attained age 55 at the date of transfer, may transfer such benefit out of the Plan pursuant to (c) below. A Member who terminates employment with the Employer prior to a Deferred Vested Termination Date shall be entitled to the refund, if any, pursuant to (d) below.

(a) Benefit in Respect of Defined Benefit Provision

(i) A benefit payable in equal monthly instalments commencing on the Member's Normal Retirement Date and continuing on the first day of each month thereafter, equal to the amount of pension calculated pursuant to Section 6.01(a) or Section 6.01(b)(i), whichever is applicable to the Member. The Member may elect to commence his or her pension prior to the Normal Retirement Date, on the first day of any month after attaining age 55, in which case the amount of pension payable from such earlier Pension Commencement Date shall be reduced by ½% for each month by which commencement of the Member's pension precedes his or her Normal Retirement Date if the Member has 15 or more years of Continuous Service, or else shall be the Actuarial Equivalent of the amount of pension payable upon the Member's Normal Retirement Date, provided that the amount of reduction to the monthly pension shall not be less than required pursuant to regulation 8503(3)(c) of the *Income Tax Act* as described in Section 9.08(b).

(ii) Notwithstanding (i) above, the Member may elect to transfer the Commuted Value of the benefit pursuant to (i) above out of the Plan, pursuant to (c) below.

(b) Benefit in Respect of Defined Contribution Provision

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to (c) below.

(c) Transfer of Benefits Out of the Plan

The Commuted Value of a Member's accrued pension benefit in respect of the Defined Benefit Provision may be transferred out of the Plan and the amount in a Member's Account in respect of the Defined Contribution Provision may be transferred out of the Plan, to one of the retirement savings vehicles described in (i), (ii) and (iii) below, as elected by the Member on the form prescribed by the Employer and filed with the Employer within such time periods as prescribed by applicable provincial pension laws or at such other times as may be acceptable to the Employer:

- (i) a retirement savings plan, locked-in retirement account or life income fund, as prescribed by the *Pension Benefits Act*;
- (ii) the fund of another registered pension plan, if the other pension plan permits such a transfer; or
- (iii) a life insurance company licensed to transact business in Canada for the purpose of purchasing a deferred life annuity.

A transfer pursuant to (i), (ii) or (iii) above shall be made on a locked-in basis and the transferred amount shall be used to provide an annuity which shall not commence payment before the earliest date that the Member would have been entitled to receive a benefit pursuant to the Plan or, if transferred to another pension plan, under that plan.

In the event that a transfer is elected pursuant to this Section 6.04(c), the Member shall have no further rights under the Plan.

(d) Refund on Termination of Employment Prior to Deferred Vested Termination Date

A Member who terminates employment with the Employer prior to the completion of (a) ten years of Continuous Service, in respect of benefits accrued prior to January 1, 1990, and (b) two years of Continuous Service in respect of all other benefits, shall be entitled to

- (A) a benefit equal to the amount in the Member's Account, which may be transferred out of the Plan pursuant to (c) above, plus
- (B) a refund of his or her contributions made pursuant to Section 4.01 (a) and 4.03(a) plus Credited Interest thereon in the form of a lump sum payment.

6.05 Additional Voluntary Contributions

In addition to the benefits pursuant to Sections 6.01, 6.02, 6.03 and 6.04, a Member who participates in the Defined Contribution Provision and who has made additional voluntary contributions pursuant to Section 4.01(c) may be paid such contributions, plus Credited Interest thereon, in a lump sum payment at any time pursuant to the instructions of the Member or, in the alternative, the Member may elect to transfer such contributions plus Credited Interest thereon out of the Plan, pursuant to Section 6.04(c); however, such transfer shall not be on a locked-in basis.

6.06 Temporary Supplementary Benefit

A Member who qualifies for a pension benefit commencing on an Early Retirement Date or a Special Early Retirement Date shall be entitled to receive a temporary supplementary benefit payable in equal monthly instalments commencing on the Member's Early Retirement Date or Special Early Retirement Date, as the case may be, and continuing thereafter on the first day of each month, ending with the earlier of the month in which the Member attains age 65 and the month in which the Member dies, equal to one of the following, whichever is applicable to the Member:

- (i) \$18 multiplied by the Member's years of Credited Service, where the Member retires prior to attaining age 60 and has less than 35 years of Credited Service;
- (ii) \$27 multiplied by the Member's years of Credited Service to a maximum of 40 years, where the Member retires prior to attaining age 60 and has 35 or more years of Credited Service;
- (iii) \$18 multiplied by the Member's years of Credited Service, where the Member retires between ages 60 and 65 and has less than 30 years of Credited Service; or
- (iv) \$27 multiplied by the Member's years of Credited Service to a maximum of 40 years, where the Member retires between ages 60 and 65 and has 30 or more years of Credited Service.

If the Member retires on an Early Retirement Date and receives an annual pension pursuant to Sections 6.02(a)(ii), the amount of the temporary supplementary benefit shall be reduced by the same factors used to reduce the monthly pension payable under said provisions, whichever is applicable to the Member.

6.07 Retirement Benefits for Part-Time Employees

The retirement benefits pursuant to the Defined Benefit Provision calculated pursuant to this section in respect of a Member who is a part-time Employee shall be reduced in an equitable manner to an amount related to the hours worked by the Member in comparison to the hours worked by other Members who are employed as full-time Employees in a similar capacity.

6.08 Re-Employment After Retirement, Termination of Employment or Break In Continuous Service

(a) Re-Employment After Retirement

A Member who has retired and is receiving pension benefit payments pursuant to the Plan shall, upon re-employment with the Employer as an Employee, have such payments suspended. The Member shall retain his or her frozen suspended pension benefit which shall be added to any subsequent pension benefit to which the Member may become entitled in respect of service subsequent to the Member's date of re-employment.

(b) Re-Employment After Termination of Employment But Prior to Retirement

A Member who has terminated employment with the Employer and is entitled to a deferred vested pension pursuant to the Plan and who is re-employed with the Employer as an Employee prior to commencing receipt of pension benefit payments shall retain his or her frozen deferred vested pension benefit, which shall be added to any subsequent pension benefit to which the Member may become entitled in respect of service subsequent to the Member's date of re-employment.

(c) Return to Work After Break in Continuous Service

An Employee who incurs a break in Continuous Service prior to becoming eligible for an immediate or deferred vested pension and who is re-employed by the Employer shall, upon completion of one year of Continuous Service following such re-employment, have such break in Continuous Service removed if the period of Continuous Service accrued prior to the break is in excess of the period between the break and the date of re-employment.

Section 7 — Forms of Pension Payment On Retirement

7.01 Normal Form of Payment

The normal form of payment of the pension benefit pursuant to the Defined Benefit Provision shall be a lifetime pension payable in equal monthly instalments, ceasing with the payment due for the month in which the Member dies.

If upon the death of the Member after his or her retirement pension has commenced, the Member contributions in respect of the Defined Benefit Provision, together with Credited Interest to his or her retirement date but excluding any amounts transferred to his or her Member Account under Section 4.05, exceed the aggregate of his pension payments, such excess, if any, shall be paid to the deceased Member's Beneficiary, or to the deceased Member's estate if there is no such beneficiary.

7.02 Surviving Spouse Benefit

Notwithstanding Section 7.01, if a Member retires on his or her Early Retirement Date or Special Early Retirement Date at or after age 45, on or after March 1, 1990 and has a Spouse as of the Pension Commencement Date, and subsequently dies prior to reaching his or her Normal Retirement Date, the Member's surviving Spouse shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on the first day of the month following the date of the Member's death and continuing on the first day of each month thereafter until the first day of the month in which the Spouse dies, equal to 50% of the amount of the pension benefit accrued by the Member pursuant to Section 6.01(a) or Section 6.01(b)(i), whichever would have been applicable to the Member, or \$140 per month if greater.

7.03 Automatic Form of Payment for a Member With a Spouse

The automatic form of payment of the pension benefit pursuant to the Defined Benefit Provision for a Member with a Spouse as of the Pension Commencement Date shall be a reduced pension payable in equal monthly instalments for the lifetime of the Member, with 60% of the benefit continued after the Member's death to the Spouse for the remaining lifetime of the Spouse, provided that the Spouse survives the Member. Such reduced pension benefit shall be the Actuarial Equivalent of the normal form of payment pursuant to Section 7.01, and shall take into account the Surviving Spouse Benefit payable pursuant to Section 7.02.

7.04 Optional Forms of Payment

In lieu of the form of payment pursuant to Section 7.01 or Section 7.03, a Member with a Spouse as of the Pension Commencement Date may elect to receive

- (a) a reduced pension payable in equal monthly instalments for the lifetime of the Member, with either 50% or 100% of the reduced pension continued after the Member's death for the remaining lifetime of the Member's Spouse, provided that the Spouse survives the Member, or

- (b) a reduced pension payable in equal monthly instalments for the lifetime of the Member, with the provision that in the event the Member dies before receiving 60, 120 or 180 payments, as elected by the Member, such monthly pension will, in any event, be continued to the Member's Beneficiary or his estate, as the case may be, for the remainder of the guarantee period elected by the Member.

Such reduced pension shall be the Actuarial Equivalent of the normal form of pension pursuant to Section 7.01 and shall take into account the Surviving Spouse Benefit payable pursuant to Section 7.02.

7.05 Election

In order to elect the normal form of payment pursuant to Section 7.01 or an optional form of payment pursuant to Section 7.04, a Member and the Member's Spouse, as applicable, shall sign and file the prescribed waiver form with the Employer within the period prescribed by applicable pension legislation.

7.06 Defined Contribution Provision

The form of payment of the pension benefit pursuant to the Defined Contribution Provision shall be the form of payment applicable to the retirement savings vehicle to which the benefit is transferred pursuant to Section 6.04(c), subject to the *Income Tax Act* and the *Pension Benefits Act*.

Section 8 — Pre-Retirement Death Benefits

8.01 Refund of Amount from Defined Contribution Provision

If a Member dies while employed with the Employer or after termination of employment with the Employer but prior to payment of benefits pursuant to Section 6.04(b), the Member's surviving Spouse shall be entitled to receive a benefit equal to the amount in the Member's Account in a single lump sum cash payment, or may direct the Employer to transfer the amount to a Registered Retirement Savings Plan on the Spouse's behalf. If the Member is not survived by a Spouse, said amount shall be paid to the Member's Beneficiary or, if none, to the Member's estate.

8.02 Surviving Spouse Benefit

If a Member dies either

- (a) while employed with the Employer and after completion of at least 15 years of Continuous Service; or
- (b) after termination of employment with the Employer on or after October 15, 1985, after becoming eligible for retirement and an immediate pension pursuant to the Plan but prior to application therefor,

the Member's surviving Spouse shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on the first day of the month following the date of the Member's death and continuing on the first day of each month thereafter until the first day of the month in which the Spouse dies, equal to 50% of the amount of the pension benefit accrued by the Member pursuant to Section 6.01(a) or Section 6.01(b)(i), whichever would have been applicable to the Member, or \$140 per month if greater.

8.03 Optional Pre-Pension Spouse Coverage

A Member who is an Employee and who has a Spouse and who has attained age 55 and completed at least 15 years of Continuous Service may elect Pre-Pension Spouse Coverage, the benefits pursuant to which shall be in addition to any other benefits pursuant to the Plan in the event of the Member's death prior to his or her Pension Commencement Date.

(a) Election

At least two years and 90 days prior to becoming eligible to elect Pre-Pension Spouse Coverage, the Pension Committee shall advise each eligible Member of the opportunity to elect such coverage. The Member may elect to obtain such coverage by filing the prescribed form with the Pension Committee, either at the time the Member is first notified by the Pension Committee or at any time thereafter prior to the Member's Pension Commencement Date. A Member who has attained age 65 and completed at least 10 years of Continuous Service shall be deemed to have elected Pre-Pension Spouse Coverage, unless the Member waives such coverage in writing, and shall be so notified by the Pension Committee at least 90 days prior to satisfying the age and service requirements.

(b) Effective Date

The effective date of Pre-Pension Spouse Coverage for a Member shall be the later of the date the Member satisfies the required age and service criteria and the date that is two years following the date the Member elects the coverage except that, for a Member who is deemed to have elected Pre-Pension Spouse Coverage, the effective date of such coverage shall be the date upon which such Member shall be so deemed to have elected the coverage. If a Member dies as a result of an accident after having satisfied the required age and service criteria and having elected or being deemed to have elected Pre-Pension Spouse Coverage but prior to the date such coverage becomes effective, such coverage shall be deemed to have become effective as of the date such Member elected the coverage or was deemed to have elected the coverage.

(c) Termination

- (i) A Member may terminate Pre-Pension Spouse Coverage at any time by filing the prescribed form with the Pension Committee and the effective date of such termination shall be the date such form is filed with the Pension Committee. The consent of the Member's Spouse to terminate the coverage shall not be required.
- (ii) A Member's Pre-Pension Spouse Coverage shall terminate on the earliest of the date the Member ceases to have a Spouse, the Member's Pension Commencement Date or the date the Member incurs a break in Continuous Service. The Pre-Pension Spouse Coverage of a Member who incurs a break in Continuous Service shall be restored upon the Member's re-employment as an Employee, however, such Member may elect to revoke such coverage effective as of the date of re-employment, within 30 days after such re-employment.

(d) Amount of Pension Payable to Surviving Spouse in the Event of Member's Death While Pre-Pension Spouse Coverage is in Effect

The Pre-Pension Spouse Coverage shall be a pension benefit payable in equal monthly instalments commencing on the first day of the month following the date of the Member's death and continuing on the first day of each month thereafter until the first day of the month in which the Spouse dies, in an amount equal to 50% of the amount of pension accrued by the Member pursuant to Section 6.01(a) or Section 6.01(b)(i), whichever would have been applicable to the Member, as though the Member had attained his or her Normal Retirement Date on the date of death, multiplied by such actuarial factors as adopted from time to time by the Pension Committee based on the ages of the Member and the Member's Spouse as of the date of the Member's death. However, the amount determined pursuant to Section 6.01 shall be reduced by 0.68% multiplied by the number of years (and fractions thereof calculated to the nearest month) that the Pre-Pension Spouse Coverage was in effect for the Member.

(e) Adjustment to Amount of Pension Payable to Member On Retirement, if Pre-Pension Spouse Coverage is Elected

If a Member elects or is deemed to have elected Pre-Pension Spouse Coverage, the amount of the pension benefit payable to the Member upon his or her subsequent retirement pursuant to Section 6.01(a) or Section 6.01(b)(i), whichever would have been applicable to the Member, shall be reduced by 0.68% multiplied by the number of years (and fractions thereof calculated to the nearest month) that the Pre-Pension Spouse Coverage was in effect for the Member.

(f) Evidence

The Member shall provide the Pension Committee with satisfactory proof of spousal status and proof of age of the Member and the Spouse prior to any payment of Pre-Pension Spouse Coverage. In order for Pre-Pension Spouse Coverage to terminate pursuant to Section 8.03(c)(ii), the Member shall provide the Pension Committee with satisfactory proof of loss of spousal status by death, divorce or separation.

(g) Communication

The Pension Committee shall make reasonable efforts to inform eligible Members and their respective Spouses of the availability of the Pre-Pension Spouse Coverage.

8.04 Statutory Minimum Benefits

In no event shall the Commuted Value of the pension benefit payable upon the death of a Member who has completed at least two years of Continuous Service be less than the Commuted Value of the pension benefit accrued by the Member pursuant to Section 6.01, in respect of Credited Service on and after January 1, 1990.

Section 9 — Payment of Benefits

9.01 Application for Benefits

Payment of a pension or other benefit under the Plan shall be granted by the Employer and payment shall be made only upon application therefor in the manner prescribed by the Employer, and upon submission of such relevant information and supporting documentation as the Employer in its discretion may reasonably request.

9.02 Proof of Age and Marital Status

A Member shall be required to inform the Employer of his or her age and marital status and the age of the Member's Spouse (if any) and to file such proof thereof as required by the Employer. Pension benefits shall not commence to be paid until such proof of age and marital status has been received and admitted by the Employer. In the event that payment of pension benefits is delayed pending receipt and admittance of satisfactory proof of age and marital status, retroactive payments shall be made once satisfactory proof has been received.

9.03 Misstatement in Application for Pension Benefit

If a Member either knowingly or unknowingly has submitted any information to the Employer relevant to the amount of benefits he or she is to receive from the Plan which is incorrect, the amount of benefits payable from the Plan may be adjusted either, in the case of underpayment, by making additional payments from the Plan or, in the case of overpayment, by requiring repayment from the Member, whichever is appropriate in the circumstances.

9.04 Method of Payment

All retirement income and other benefits payable under the Plan shall be paid by cheque mailed by ordinary prepaid mail to the last known address of the Member, Spouse or Beneficiary as the case may be, or may be deposited directly into an account as directed by the Member, Spouse or Beneficiary. Posting or deposit of the cheque shall be an effective discharge of the Plan for the amount thereof.

9.05 Evidence of Survival

The Employer shall have the right to require satisfactory evidence that a retired Member or other Beneficiary under the Plan is living on each and every date a pension benefit is due the retired Member or other Beneficiary. In the absence of such evidence when required by the Employer, the benefits otherwise due shall not be paid until the evidence has been received.

9.06 **Payments to Minors or Incompetents**

If the Employer receives evidence satisfactory to it that a person entitled to receive any payment under the Plan is physically or mentally incompetent to receive such payment and to give valid receipt therefor, or is a minor, and another person or an institution is then maintaining or has custody of the person and no guardian, committee or other representative of the person has been duly and legally appointed, the Employer may authorize payment of the benefit to be made to such other person or institution and the release of the other person or institution shall be a valid and complete discharge of the liabilities of the Plan therefor.

9.07 **Beneficiary Designation**

A Member may, by written notice communicated to the Employer during the Member's lifetime, designate a Beneficiary to receive any benefits payable pursuant to the Plan in the event of the Member's death. The Member may revise or revoke any such designation from time to time, subject to the provisions of any annuity, insurance or other contract or law governing designation of beneficiaries which may apply to the Member. A Quebec Member may revoke the designation of a beneficiary only if the designation is stated to be revocable. The written notice shall be in such form and executed in such manner as the Employer in its discretion may specify from time to time. In the event a Member has not validly and effectively designated a Beneficiary or, if having done so, the Beneficiary is not living on the date of the Member's death or if the Member revoked the last designation so made, any amount payable pursuant to the Plan shall be paid in a lump sum amount to the Member's estate.

9.08 **Maximum Limits Under the *Income Tax Act***

The *Income Tax Act* imposes conditions in order for a pension plan to maintain registered status under the *Income Tax Act*. Certain restrictions must be specifically stated in the Plan, even though the regular provisions of the Plan may be more restrictive. In administering the Plan, contributions and benefits are first determined pursuant to the regular provisions of the Plan, then tested against the provisions of this Section 9.08 and modified if necessary.

(a) Maximum Pension

Notwithstanding any other provision of the Plan, and subject to section (b) below, the annual pension payable to a Member under the Defined Benefit Provision on the date of the Member's retirement, termination of employment, or upon termination of the Plan, including any benefits paid to a Spouse pursuant to Section 12.05, shall not exceed the lesser of:

- (i) 2% of the Member's "highest average compensation" multiplied by the Member's years of "pensionable service" with the Employer; and
- (ii) the "defined benefit limit" for such year (currently \$1,722.22) multiplied by the Member's years of "pensionable service" with the Employer.

Pensionable service for a Member shall not exceed 35 years during a Member's period of service prior to 1992.

For the purposes of this subsection, the terms "highest average compensation", "defined benefit limit" and "pensionable service" shall have the meanings as defined in the *Income Tax Act*.

(b) Maximum Early Retirement Pension

The annual early retirement pension payable to a Member under the Defined Benefit Provision, as calculated pursuant to Section 6.02, 6.03 or 6.04 commencing prior to the Member's attainment of age 60, shall not exceed the lesser of the amount payable under the Defined Benefit Provision under Section 6.01 and the maximum amount determined pursuant to section (a) above, except that such maximum amount shall be reduced by 1/4 of 1% for each month by which the Member's Pension Commencement Date precedes the earliest of the first day of the month following:

- (i) the Member's attainment of age 60;
- (ii) the date the Member would have attained 30 years of service had he or she continued in employment with the Employer; or
- (iii) the date the Member would have attained a combined total of 80 years (and fractions of a year) of age and service had he or she continued in employment with the Employer.

(c) Combined Maximum Pension and Temporary Supplemental Benefit

In addition to the maximum pension limit described in paragraph (a) above, and notwithstanding any other provision of the Plan to the contrary, the total annual benefit payable to a Member under the Defined Benefit Provision prior to the Member's attainment of age 65, at the time of the Member's termination of employment, retirement, or termination of the Plan, as the case may be, shall not exceed the sum of:

- (i) the defined benefit limit for such year of termination multiplied by the Member's years of "pensionable service", as defined in the *Income Tax Act*; and
- (ii) 25% of the average of the YMPE for such year of termination and the two preceding calendar years, multiplied by a fraction, the numerator of which is the Member's years of pensionable service as defined in the *Income Tax Act* to a maximum of 35 and the denominator of which is 35.

(d) Maximum Pension Adjustment

A Member's pension adjustment for a calendar year in respect of the Employer and any employer that does not deal at arm's length with the Employer shall not exceed the maximum pension adjustment permitted under the *Income Tax Act*.

9.09 Retirement Benefits From Excess Contributions

- (a) A Member who is eligible to receive benefits under the Defined Benefit Provision shall receive additional monthly retirement income that is the Actuarial Equivalent of the amount, if any, by which his contributions made prior to January 1, 1990, together with Credited Interest but excluding any amounts transferred to his Member Account under Section 4.05, exceed the Commuted Value of any retirement income earned in respect of Credited Service prior to January 1, 1990 under the Defined Benefit Provision.
- (b) A Member who is eligible to receive benefits under the Defined Benefit Provision shall receive additional retirement income that is the Actuarial Equivalent of the amount, if any, by which his contributions made on or after January 1, 1990, together with Credited Interest but excluding any amounts transferred to his Member Account under Section 4.05, exceed 50% of the Commuted Value of any retirement income earned in respect of Credited Service on or after January 1, 1990 under the Defined Benefit Provision.

Section 10 — Pension Fund

10.01 General

- (a) The Employer shall establish and maintain a Pension Fund for the purpose of receiving and investing the contributions and providing the benefits pursuant to the Defined Benefit Provision and the Defined Contribution Provision of the Plan.
- (b) The Pension Fund shall be administered and invested pursuant to the terms of the Funding Agreement, and in compliance with the provisions of the *Pension Benefits Act*, the *Income Tax Act* and other applicable laws.
- (c) The Employer shall have the sole right to appoint the Funding Agency and to determine the form and terms of the Funding Agreement.

10.02 Provision of Benefits

- (a) No part of the Pension Fund shall be used for or diverted to purposes other than for the exclusive benefit of Employees, pensioners, contingent annuitants and surviving spouses prior to satisfaction of all liabilities to such persons pursuant to the Plan and the Funding Agreement. No Employee, prior to retirement under conditions of eligibility for a pension under the Plan, shall have any right or interest in or to any portion of any funds which may be paid into the Pension Fund and an Employee, contingent annuitant or surviving Spouse shall not have any right to any such pension except to the extent provided in the Plan.
- (b) All benefits pursuant to the Plan shall be paid from the Pension Fund; however, the Employer reserves the right to insure or reinsure any part of the benefits with an insurance company licensed to transact such business. If an annuity is purchased to provide pension benefits, such purchase shall operate as a complete discharge of the Employer and the Plan in respect of the amount purchased.
- (c) All payments pursuant to the Plan shall be made in Canadian currency.

10.03 Investment—Defined Benefit Provision

The Employer shall direct the Funding Agency to invest the Pension Fund relating to the Defined Benefit Provision in such manner as the Employer deems appropriate from time to time, subject to the *Pension Benefits Act* and the *Income Tax Act*.

10.04 Investment—Defined Contribution Provision

(a) Investment Option Form

- (i) Subject to the *Pension Benefits Act* and the *Income Tax Act*, a Member shall submit to the Funding Agency an investment option form directing the investment of the amount in the Member's Account in such investment options as may be offered by the Employer and the Funding Agency pursuant to the Funding Agreement.
- (ii) The amount in the Member's Account shall be invested in the investment options in such proportion as directed by the Member based on whole number increments from 1% to 100%.
- (iii) If a Member fails to submit an investment option form, the amount in a Member's Account shall be invested in an interest-bearing investment made available by the Funding Agency from time to time.

(b) Changes to Member Investment Options

A Member may change all or part of the Member's investment options at any time, subject to any conditions as may be required by the Funding Agency. The Member may direct the Funding Agency to transfer assets from one investment option to another and the Member's Account shall be debited or credited, as the case may be, by the value of the investment bought or sold as of the day the Funding Agency completes the change to a Member's investment options.

10.05 Expenses

Subject to the *Pension Benefits Act*, all reasonable charges, fees, taxes and other expenses incurred in the operation of the Plan and Pension Fund including, but not limited to, investment management fees, registration fees, auditor fees, trustee fees, legal fees, consulting fees and actuarial fees shall be paid from the Pension Fund, unless paid directly by the Employer or the Funding Agency.

Section 11 — Administration of the Plan

11.01 Administration of the Plan

(a) The Employer is the administrator of the Plan. The Pension Committee is responsible for the day-to-day operation of the Plan, including the Defined Benefit Provision and the Defined Contribution Provision.

(b) The Pension Committee shall consist of three or more persons resident in Canada, appointed by Cliffs Mining Company, to serve for such times until their respective successors have been appointed in like manner.

11.02 Officers of Pension Committee

The members of the Pension Committee shall elect a member to act as chairman and shall appoint a secretary who may, but need not be, a member of the Pension Committee.

11.03 Powers of Pension Committee

Subject to the *Pension Benefits Act*, the Pension Committee shall have all such powers and duties as Cliffs Mining Company may at any time grant, impose or delegate including, but not limited to, the following:

(a) to award the payment of pension benefits pursuant to the Plan;

(b) to make and enforce such rules and regulations as the Pension Committee deems necessary or appropriate for the efficient administration of the Plan;

(c) to interpret or apply the Plan or any provision thereof; and

(d) to do, or cause to be done, all such acts or things necessary or proper to carry out the rights and privileges granted to or the duties imposed upon it under any provision of the Plan or the Funding Agreement.

Except as otherwise provided in the Plan or the Funding Agreement, any act, interpretation or determination made by the Pension Committee shall be final and binding upon all affected persons.

11.04 Agents of Pension Committee

The Pension Committee may appoint or employ such administrative, medical, actuarial, legal and other agents as the Pension Committee deems necessary or appropriate. The fees and expenses of such agents shall be paid from the Pension Fund, unless paid directly by the Employer.

11.05 Actions of Pension Committee

Any action of the Pension Committee may be taken by the written approval or the affirmative votes of a majority of the members of the Pension Committee. The Pension Committee may delegate to any of its members, officers, or agents such duties and powers, both ministerial and discretionary, as it deems appropriate, excepting only that any dispute shall be settled by the Pension Committee. The Pension Committee may authorize any one or more of its members to sign on its behalf any instructions, certificates, directions or notices of the Pension Committee to the Funding Agent or others, and the Funding Agent or any other person to whom any such writing is directed shall be fully protected in acting thereon.

11.06 Decisions of Pension Committee

The Pension Committee shall make all determinations as to the right of any person to a benefit pursuant to the Plan. Any denial by the Pension Committee of the claim for benefits pursuant to the Plan by a person shall be stated in writing by the Pension Committee and delivered or mailed to such person and shall set forth the specific reasons for the denial. In addition, the Pension Committee shall afford a reasonable opportunity to such person whose claim for benefits has been denied, for a reconsideration of the decision denying the claim.

11.07 Communication With Pension Committee

Any designations, elections or waivers pursuant to the Plan shall be in writing to the Pension Committee and, if valid, shall be considered in force as of the date received by the Pension Committee.

11.08 Allocation of Responsibilities Among the Employer, the Pension Committee and the Funding Agent

(a) The Employer, the Pension Committee and the Funding Agency shall have only those specific powers, duties, responsibilities and obligations as are specifically provided in the Plan and the Funding Agreement. The Employer shall have the sole authority to appoint and remove the Funding Agency and any investment manager which may be provided for pursuant to the Plan or the Funding Agreement. The Funding Agency shall have the sole responsibility for the administration of the Pension Fund, pursuant to the Funding Agreement. The Employer, the Pension Committee and the Funding Agency may rely upon any direction, information or action of each other as being proper pursuant to the Plan and the Funding Agreement and is not required pursuant to inquire into the propriety of any such direction, information or action. It is intended that the Employer, the Pension Committee and the Funding Agency shall be responsible for the proper exercise of their respective own powers, duties, responsibilities and obligations pursuant to the Plan and the Funding Agreement and shall not be responsible for any act or failure to act of each other.

- (b) The rights of any person entitled to receive any payment or benefit pursuant to the Plan shall be limited to the assets of the Pension Fund as such assets exist from time to time. Neither the Plan nor the Funding Agreement shall create any privity between the Employer and any Employee or other person entitled to receive any payment or benefit pursuant to the Plan, and no right or claim of any such person shall be asserted or made against the Employer by reason of the Plan or the Funding Agreement. No right or claim shall be asserted or made by any person against the Funding Agency or the Pension Fund except in respect of a benefit provided pursuant to the Plan or the Funding Agreement and which has become due and payable pursuant to the Plan or the Funding Agreement.
- (c) The obligations of the Employer pursuant to the Plan shall be limited to the payments required to be made by the Employer in any calendar year pursuant to the Plan.

11.09 Records of the Employer

Wherever the records of the Employer or the Pension Committee are used for the purposes of the Plan, such records shall be conclusive of the facts with which they are concerned.

11.10 Communication

(a) Notice of Plan Provisions and Amendments

The Employer shall provide to each Member and each Employee eligible for membership in the Plan a written explanation of:

- (i) the provisions of the Plan and any amendments thereto applicable to the Member or Employee;
- (ii) the rights and duties of the Member or Employee with respect to the benefits available pursuant to the Plan;
- (iii) such other information as may be required under the *Pension Benefits Act* or other applicable provincial or federal laws; and
- (iv) amendments to the Plan, within the time period prescribed by the *Pension Benefits Act*.

(b) Statement of Benefits

A Member who terminates employment with the Employer and who is entitled to a benefit from the Plan shall be provided with a written statement setting out the benefit to which he or she is entitled or may become entitled pursuant to the Plan.

(c) Annual Statement of Benefits

Each year the Employer shall provide each Member who is actively participating in the Plan with a written statement of the Member's benefits pursuant to the Plan and such other information as may be required by the *Pension Benefits Act*.

(d) Inspection of Documents

A Member or a Member's agent so authorized in writing may inspect and make photocopies of the following documents, which shall be available, upon written request in advance, at the head office of the Employer during regular business hours:

- (i) the provisions of the Plan applicable to the Member;
- (ii) the amendments to the Plan applicable to the Member;
- (iii) the annual information return;
- (iv) an abstract of the actuarial valuation report indicating the official name of the Plan, the employer actuarial normal cost under the Plan for future service, the balance of all unfunded liabilities, the annual special contributions required to liquidate such liabilities and the amortization periods, and the Surplus Assets in the Plan, if any;
- (v) the Plan's financial statements; and
- (vi) such other documents as prescribed by the *Pension Benefits Act*.

Section 12 — General Provisions

12.01 Employment Rights

The establishment and implementation of the Plan shall not constitute an enlargement of any rights which a Member may have as an Employee apart from the Plan. Membership in the Plan does not confer a right on a Member to require the Employer to continue the Member in its employment, and if the service of the Member is terminated before the Member's Normal Retirement Date, such Member has only such rights as are provided for under the Plan. The benefits pursuant to the Plan shall not be used to increase damages in respect of the termination of employment of a Member.

12.02 Non-Assignability and Non-Commutability of Benefits

Any benefit payable pursuant to the Plan shall be for the personal use of the person entitled to receive such benefit, and shall not be given as security or be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, surrender or charge, or to attachment or legal process for debts of the person receiving such benefits, except as specifically provided by paragraph 8502(f) of the regulations to the Income Tax Act, by statute and as provided in Section 12.05 below. In no event shall such benefits confer upon any Member, or any other person, any rights or interest therein which is capable of being surrendered or commuted except as specifically provided by the Plan.

12.03 No Duplication of Benefits

There shall be no duplication of the benefits under any one section of the Plan and the benefits under any other section of the Plan, nor of the benefits under the Plan and the benefits under any other Employer-sponsored retirement plan or any other retirement plan sponsored by an affiliate or subsidiary of the Employer with respect to the same period of service.

12.04 Notices and Elections

Any notice or election to be given, made or communicated pursuant to or for any purpose of the Plan shall be given, made or communicated, as the case may be, in such manner as the Employer shall determine from time to time. Without limiting the generality of the foregoing, any person entitled to any benefit under the Plan shall be responsible for notifying the Employer in writing of his or her mailing address and subsequent changes of mailing address.

12.05 Division of Pension Benefits on Marriage Breakdown

In the event the Pension Committee is provided with a certified copy of a court order relating to the entitlement to or payment of a Member's pension benefits upon the marriage breakdown of the Member and the Member's Spouse, or a domestic agreement between the Member and the Member's Spouse which has been certified by a court order relating to the entitlement to or payment of the Member's pension benefits upon the marriage breakdown of the Member and the Member's Spouse, such benefits may be paid or divided pursuant to the terms of such court order or domestic agreement, as the case may be, subject to the *Pension Benefits Act*.

12.06 Applicable Law

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

Section 13 — Future of the Plan

13.01 Continuation of the Plan

The Employer intends to maintain the Plan in force indefinitely; however, the Employer reserves the right to terminate the Plan, either in whole or in part, at any time or times in the event that future conditions warrant such action, subject to the *Pension Benefits Act* and the *Income Tax Act*.

13.02 Amendment of the Plan

The Employer reserves the right to amend the Plan from time to time. No amendment to the Plan or other instrument established or entered into for purposes of holding and administering funds contributed hereunder, shall operate to reduce the benefits accrued by members or by their Spouses, Beneficiaries or estates up to the date of the amendment nor shall any amendment be made which would cause or permit any portion of the Pension Fund to be used for purposes other than as prescribed by the provisions of the Plan and the requirements of the *Pension Benefits Act* and the *Income Tax Act*.

13.03 Termination of the Plan

In the event the Plan is terminated, the assets of the Pension Fund, after provision for administrative expenses (including any expenses incurred in the termination of the Plan), shall first be used to provide pension benefits for Members, their respective Spouses, Beneficiaries and estates in an equitable manner to be determined by the Employer, with the recommendation of the Actuary, subject to the *Pension Benefits Act* and the *Income Tax Act*. The rights of all Members and their Spouses, Beneficiaries and estates to benefits accrued to the date of such termination, to extent then funded, are non-forfeitable.

13.04 Wind-Up or Bankruptcy of the Employer

In the event the Employer is wound up or becomes bankrupt, the Plan, unless continued by another employer, shall be deemed terminated and the provisions of Section 13.03 shall apply, except to the extent that any termination or action required to be made thereunder by the Employer, shall in such event, be made by the liquidator or trustee in bankruptcy, as the case may be.

13.05 Asset Transfer or Merger

- (a) The Employer may transfer or merge the assets of the Plan or the Pension Fund or any part thereof, and the liabilities related to such assets, to or with one or more trusts, pension fund societies or corporations, pension or superannuation plans or funds and which may result in one merged or amalgamated entity with or without termination of the entities merged. Subject to the *Pension Benefits Act* and without limiting the generality of the foregoing, the terms of the transfer or merger may provide for the termination or continuation of all or any part of the entities to be merged, the consolidation of the assets and liabilities of the merged entities, with or without any requirement to maintain a separate accounting in respect thereof, and the application of the assets of the fund or any part thereof to the liabilities related to any new participants or the merged entity, provided that any account maintained in respect of a Member shall continue to be maintained in respect of the Member until such time as the Member terminates employment with no vested benefit remaining to be paid.
- (b) In the event of a merger or consolidation of the Plan with, or transfer in whole or in part of the assets and liabilities of the Pension Fund to, another fund relating to any other plan of deferred compensation maintained or to be established for the benefit of all or some of the Members, the assets of the Pension Fund relating to any transferred Members shall be transferred to the other fund provided that:
 - (i) each Member would be entitled to (if either the Plan or the other plan is then terminated) receive a pension benefit immediately after the merger, consolidation or transfer equal to or greater than the pension benefit he or she would have been entitled to receive pursuant to the Plan immediately prior to the merger, consolidation or transfer;
 - (ii) the Employer, or any new or successor employer of the affected Members authorizes such transfer of assets; and
 - (iii) such other plan and trust agreement are registered with the applicable regulatory authorities.

13.06 Surplus Assets

If, after all accrued benefits pursuant to the Plan to Members and their respective Spouses, Beneficiaries or estates, as the case may be, have been paid and all expenses pursuant to the Plan have been paid, Surplus Assets remain in the Pension Fund, the Employer shall have legal title to such Surplus Assets, subject to the *Pension Benefits Act*, the *Income Tax Act* and other applicable laws.

Section 14 — Special Provisions for Quebec Employees

14.01 Application

This section applies to Employees who report for work in the Province of Quebec and is included in the Plan in order for the Plan to comply with the *Supplemental Pension Plans Act (Quebec)* (the "SPPA") and shall supplement all other provisions of the Plan which are not inconsistent and shall replace any other provisions which are inconsistent.

14.02 Quebec Early Retirement

A Quebec Member may elect to retire on the first day of the month following his or her 55th birthday, or on the first day of any succeeding month prior to his Normal Retirement Date, provided the Member has completed at least two years of Continuous Service, the date of such retirement being hereunder described as his or her "Quebec Early Retirement Date". Such Member shall be entitled, upon such early retirement, to receive a pension determined pursuant to Section 14.03.

14.03 Quebec Early Retirement Pension

A Quebec Member who retires pursuant to Section 14.02 may elect to receive a monthly pension commencing on his or her Quebec Early Retirement Date or at the election of the Quebec Member on the first day of any subsequent month (but not later than his or her Normal Retirement Date), in an amount equal to the Actuarial Equivalent of the pension calculated as in Section 6.01 based on his or her Credited Service to his or her Quebec Early Retirement Date.

14.04 Postponed Retirement

A Quebec Member may postpone his or her retirement beyond his or her Normal Retirement Date.

14.05 Actuarial Adjustment

Upon a Quebec Member's postponed retirement date, which shall be the first day of the month coincident with or next following the date on which the Member retires, the Quebec Member shall be eligible to receive a retirement pension equal to the Actuarial Equivalent of the pension determined pursuant to Section 6.01 based on Credited Service in effect on the Normal Retirement Date. Such Actuarial Equivalent shall be determined as of the date the pension commences and shall be determined on the basis of the method described in Appendix "A" to the Plan entitled "Revalorization of Postponed Retirement Pension".

14.06 Maximum Deferral of Pension

If a Quebec Member who has elected to postpone retirement after Normal Retirement Date has not effectively retired before his or her 69th birthday, the Member's postponed retirement pension shall commence on December 1st of the calendar year the Quebec Member attains age 69.

14.07 Effect of Maximum Benefit Rule

If a Quebec Member who has elected to postpone retirement after Normal Retirement Date shall become entitled to a postponed retirement pension which, after the revalorization described in Section 14.05 above, becomes equal to the maximum pension described in Section 9.08, the Member's postponed retirement pension shall then commence on the first day of the next calendar month.

14.08 Partial Payment of Pension

If the wages, as defined in the SPPA, of a Quebec Member who has elected to postpone retirement after Normal Retirement Date are reduced, the Member may elect to receive a partial payment of his or her retirement pension. Such election may be made at the time the Member's wages are reduced and each January 1st thereafter. The amount of the partial payment shall be equal to, if the amount of the retirement pension so permits, the amount of reduction in such wages. The remaining balance, if any, of his retirement pension shall be payable on the Member's effective retirement and shall be calculated according to Section 14.05 above.

14.09 Early Commencement of Deferred Vested Pension

A Quebec Member who is entitled to a deferred vested pension pursuant to Section 6.04 may, upon proper application therefor, elect to have the deferred vested pension commence prior to his or her Normal Retirement Date, on the first day of any month subsequent to the Member's 55th birthday, in which event the amount of such pension shall be the Actuarial Equivalent of the deferred pension otherwise payable from such Member's Normal Retirement Date.

14.10 Portability of Benefits

A Quebec Member whose employment with the Employer terminates before attaining age 55 and who is entitled to a deferred vested pension pursuant to the provisions of Section 6.04 may, within 180 days following the date of termination, and subsequently every five years, within 180 days from the date of expiry of each fifth year, elect to transfer an amount equal to the value of the deferred pension to a pension plan governed by the SPPA or to a locked in retirement account or annuity contract as prescribed by the SPPA. Any such transfer shall, however, be subject to such conditions and restrictions as may be prescribed by the SPPA, depending upon the solvency status of the Plan from time to time.

In the event that a portability election is completed pursuant to this Section 14.10, the Member shall have no further rights under the Plan.

14.11 Death in Service After Normal Retirement Date

If a Quebec Member dies subsequent to the Normal Retirement Date while in active employment leaving a surviving Spouse, the Member's Spouse shall be entitled to receive a pension the value of which shall be equal to the greater of:

- (a) the value of the death benefit under Section 8, or

- (b) the value of the pension the Spouse would have been entitled to receive under Section 7 if payment of the postponed pension had begun on the day preceding the death of the Quebec Member.

14.12 Commutation of Pension

If the value of a retirement pension or deferred vested pension payable under the Plan is less than 4% of the YMPE in the year that the Quebec Member retires, terminates employment or dies, or such other amount as may be permitted from time to time by the SPPA, a lump sum amount equal to the value of the benefit shall be paid to the person entitled to such benefit in lieu of any other benefits under this Plan.

14.13 Temporary Supplementary Benefit

For the purposes of Section 7.03, if the Member was receiving a temporary supplementary benefit pursuant to Section 6.06, such temporary supplementary benefit shall be subject to an actuarial reduction, and such benefit shall continue to be paid to the Member's Spouse ending with the month in which the Member would have attained age 65.

Appendix A

Revalorization of Postponed Retirement Pension

The retirement pension of a Quebec Member who has elected to postpone retirement after his or her Normal Retirement Date is revalorized as follows:

1. A notional account is set up for the Quebec Member.
2. There shall be credited to that account the monthly retirement pension that the Quebec Member would have received (up to but not including the date the Member actually begins to receive the retirement pension) if the Member had retired on his or her Normal Retirement Date.
3. There shall be credited to such account the interest earned on such monthly retirement pension from each due date thereof assuming a rate of interest for each calendar month corresponding to the average yield on "5-year personal fixed term deposits" (CANSIM series B14045) as published by the Bank of Canada Review.
4. When the postponement of the retirement pension ceases, a monthly postponed retirement pension shall be calculated based on the accumulated balance then existing in such account.
5. The accumulated balance in the account shall be divided by the present value of an annuity of \$1 per month payable for the Quebec Member's lifetime calculated by the Actuary and based on the following assumptions:
 - (i) 1983 Group Annuity Mortality Table, as published by the Society of Actuaries; and
 - (ii) Interest for the first 15 years at an annual rate equal to the yield on "long-term Government of Canada Bonds" (CANSIM series B14013) for the month preceding as published in the Bank of Canada Review, and interest at 6% per annum thereafter.
6. The Quebec Member's postponed retirement pension shall be calculated by adding:
 - (i) The monthly normal retirement pension that the Quebec Member would have been entitled to receive had the Member retired on his or her Normal Retirement Date; and
 - (ii) the pension calculated pursuant to paragraph 5 above.
7. In the event of a partial payment of the retirement pension after the Normal Retirement Date but before actual retirement (i.e. with different parts of the retirement pension being postponed for different periods), the foregoing procedure shall be applied separately to each part.

EXHIBIT "REPS-3"



Form 2
Registered Pension Plan
Annual Information Return
 (Please read the instructions for Annual Information Returns before completing the Return)

Service NL
 Pension Benefit Standards Division
 2nd Floor, West Block, Confederation Bldg
 P. O. Box 8700
 St. John's, NL, A1B 4J6
 Telephone: (709) 729-1039
 Facsimile: (709) 729-3205

1 Title of pension plan and registration number

A. Official name of plan CONTRIBUTORY PENSION PLAN FOR SALARIED EMPLOYEES OF WABUSH MINES, CLIFFS MENDING COMPANY, MANAGEMENT AGENT	
B. Carrier and policy or trust number, if any CIBC MELLON TRUST COMPANY ACCT WHMF100-000 AND SUNLIFE ASSURANCE CO. # 66534 AND # 66535	
C. Provincial registration number 02134-000	D. Canada Revenue Agency registration number 0343558

2 Name and address of plan administrator (see instructions)

A. Name PENSION COMMITTEE		
B. Contact name KURT J. HOLLAND, DIRECTOR - COMPENSATION AND BENEFITS		
C. Address of head office C/O CLIFFS NATURAL RESOURCES INC. 200 B PUBLIK SQUARE, SUITE 3300		
City CLEVELAND	Province STATE: OH	Postal code 44114-2315
D. Mailing address in Canada if other than 2C		
City	Province	Postal code
E. Telephone number US: 216-694-5505, CAN: 418-964-3011	F. Email Address KURT.HOLLAND@CLIFFS.NR.COM	

3 Location of books and records, same as 2C above, or

Address		
City	Province	Postal code

4 End of plan year under review (see instructions)

A. YYYY / MM / DD 2013 / 12 / 31	B. Number of months in the plan year: 12 months <input checked="" type="checkbox"/> Other <input type="checkbox"/> _____ (not to exceed 12 months)
-------------------------------------	---

5 Number of employers in the plan

How many employers participated in the plan at the end of the plan year? 3

6 Changes in the list of participating employers

A. Have there been any changes to the list of employers covered by this pension plan since the last annual information return (or since the application for registration, if this is the first annual information return)?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
B. If "yes", enter, in the appropriate subdivision below, the name and address of each employer and indicate whether it is an "addition" or "deletion".	
(i) Employers associated through ownership	
(ii) Employers associated only through nature of business	

01 02 100 002a_2014 01

7 Plan amendments

A. Were any amendments made to this pension plan or fund during the plan year under review?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
B. If "yes", have the amendments been submitted to the department? (see instructions if pension plan is established by virtue of a collective agreement or decree.)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
C. Have all eligible employees, members and affected former members been informed of plan amendments?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
D. If "no", please explain		

8 Cessation of contributions/benefit accrual

A. Did a cessation of contributions or benefit accrual occur during the plan year?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If "yes", what is:	B. Effective date of cessation Y Y Y Y M M D D	C. Date of final distribution of funds Y Y Y Y M M D D
D. Has the plan membership been affected by the discontinuation or sale of all or part of an employer's business operations?		Yes <input type="checkbox"/> No <input type="checkbox"/>

9 Current service cost (see instructions)

	DC	DB	DC
A. Member contributions accrued	\$ 700,535	E. Employer contributions accrued	\$ 2,060,387 1,401,070
B. Additional voluntary contributions	\$ _____	F. Less: Amounts credited from surplus or forfeitures (explain)	\$ (_____)
C. Member amounts accrued in previous years and remitted in current year	\$ _____	G. Employer amounts accrued in previous years and remitted in current year	\$ _____
D. Member amounts accrued in current year but not remitted by year end	\$ _____	H. Employer amounts accrued in current year but not remitted by year end	\$ _____
I. Remarks: _____			

10 Special payments for defined benefit plans (see instructions)

Amount of special payments paid into the pension plan or fund during the plan year (not applicable to money purchase pension plans)	
A. Unfunded liability payments remitted	\$ 0
B. Solvency deficiency payments remitted	\$ 1,703,743

11 Contribution sufficiency (see instructions)

A. Were the payments shown in sections 9 and 10 above in accordance with the plan terms or the last actuarial report filed with the department?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
B. If "no", please explain		

12 Reconciliation of plan assets (see instructions)

	DB	DC	TOTAL
A. Market value of plan assets at beginning of the plan year	\$ 76,212,036	11,835,143	88,047,179
B. Amount transferred in from other registered plans	\$ -	-	-
C. Total employer contributions remitted (sum of 9E to 9G, less 9H, plus 10A and 10B)	\$ 3,764,130	1,401,070	5,165,200
D. Total member contributions remitted (sum of 9A to 9C, less 9D)	\$ -	700,535	700,535
E. Investment earnings (losses) net of all expenses	\$ 10,533,776	1,591,108	12,124,884
F. Less: Benefits paid directly from the plan	\$ (6,257,752	809,901	(7,067,653)
G. Less: Benefits transferred to other registered plans	\$ (-	1,267,504	(1,267,504)
H. Market value of plan assets at plan year end (sum of A to G)	\$ 84,252,190	13,450,451	97,702,641
I. Book value of plan assets at plan year end	\$ 82,777,352	13,450,451	96,227,803

13 Reconciliation of plan members (see instructions)

A. Number of plan members at previous plan year end	240
B. Add: New entrants, i.e., employees joining the plan during the plan year	0
C. Subtract: Retirements during the plan year	(4)
D. Subtract: Deaths during the plan year	(0)
E. Subtract: Terminations during the plan year	(46)
F. Number of plan members at plan year end (sum of A to E)	190

14 Plan membership by area of employment (see instructions)

Area of employment	Plan members		Number of members from columns (a) and (b) working in "included employment"
	(a) Male	(b) Female	
Newfoundland and Labrador	81	20	101
Prince Edward Island			
Nova Scotia			
New Brunswick			
Québec	70	19	89
Ontario			
Manitoba			
Saskatchewan			
Alberta			
British Columbia			
Yukon			
Northwest Territories			
Nunavut			
Outside Canada			
Total	151	39	190

15 Former members (see instructions)

Number of former members who have ceased membership or retired (excluding persons for whom individual annuities have been purchased)	
A. Pensioners and beneficiaries	320
B. Vested former members entitled to deferred pensions	177

Defined benefit plans – complete questions 16 – 17
All other plans – go to Canada Revenue Agency Schedule

16 Adjustments to pension benefits (see instructions)

Have adjustments been made to pensions in pay or deferred pension benefits during the plan year under review?

A. No

B. Yes - (in accordance with a requirement of the plan for regular adjustment of benefits)

C. Yes - (pursuant to a collective agreement)

D. Yes - (voluntarily by the employer)

E. Yes - other (describe) BILL 102 INDEXATION FOR QC MEMBERS OF THE PLAN

17 Basis for adjustment (see instructions)

A. Full Consumer Price Index (CPI)

B. Partial CPI

C. Based on excess interest earnings

D. Percentage increase _____ % (not based on CPI)

E. Flat dollar increase \$ _____ annually

F. Other method (specify) _____



Canada Revenue Agency / Agence du revenu du Canada

Canada Revenue Agency Schedule

1 How many active members at plan year end were persons connected with the employer? 0

Specified multi-employer plans and multi-employer plans, go to question 5. Other plans, continue with question 2.

2 Did any member of this plan participate:
 in any other Registered Pension Plan (RPP) or Deferred Profit-sharing Plan (DPSP) provided by this plan sponsor? Yes No
 or;
 in an RPP or DPSP of any other sponsor who does not deal at arm's length with this sponsor? Yes No

3 Have any connected persons joined or left the plan in the plan year? Yes No

4 In the plan year, has a person or group acquired control of the corporation that is sponsoring the pension plan? N/A Yes No

5 Actuarial liabilities resulting from plan obligations
 \$ DB: 81,489,283
 \$ DC: 10,620,112

6 Date of actuarial liability assessment

Y	Y	Y	Y	M	M	D	D
2	0	1	1	0	1	0	1

Money purchase plans and specified multi-employer plans, go to "certification". Other plans, continue with question 7.

7 Were any plan members provided with Post-1989 Past-Service Benefits in the plan year? Yes No

8 Have any plan members who are connected persons been provided with Pre-1992 Past-Service Benefits in the plan year? Yes No

Certification

As an authorized officer of the administrator of the pension plan noted above, I hereby certify that to the best of my knowledge and belief,

- (a) the contributions paid to the plan have been at least equal to those required by the applicable pension benefits legislation.
- (b) the plan and fund have been administered in accordance with the terms of the applicable pension benefits legislation.
- (c) the administrator has established a written statement of investment policies and procedures in accordance with Section 39 of the *Pension Benefits Act Regulations*.
- (d) the statement of investment policies and procedures complies with Section 39 of the *Pension Benefits Act Regulations*.
- (e) during the plan year under review, the assets of the pension plan were invested in accordance with Section 39 of the *Pension Benefits Act Regulations*.
- (f) the administrator has reviewed the statement of investment policies and procedures during the plan year under review.
- (g) the details entered on this Annual Information Return are true, correct and complete.
- (h) the plan complies with and is administered in accordance with sections 147.1, 147.2, and 147.3 of the *Income Tax Act (Canada)* and the related Regulations.

Signature: KURT J. HOLLAND Name in Block Letters: _____ Date: _____

Title of Person: DIRECTOR - COMPENSATION AND BENEFITS Company: CLIFFS MENING COMPANY, MANAGING AGENT OF WABUSH MENING

NUMBER OF PLAN MEMBERS *	FEE PAYABLE
0 - 19	\$150.00
20 - 999	\$7.50 PER MEMBER
1,000 AND OVER	\$7,500.00

*"Number of Plan Members" means the total number of plan members employed in any province or territory of Canada, excluding former members.

For Office Use Only

Remittance: \$ _____ Date of Receipt: _____
 Receipt No: _____ Processed By: _____



Form 2
Registered Pension Plan
Annual Information Return
 (Please read the Instructions for Annual Information Returns before completing the Return)

Service NL
 Pension Benefit Standards Division
 2nd Floor, West Block, Confederation Bldg
 P. O. Box 8700
 St. John's, NL, A1B 4J6
 Telephone: (709) 729-1039
 Facsimile: (709) 729-3205

1 Title of pension plan and registration number

A. Official name of plan Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent	
B. Carrier and policy or trust number, if any CIBC Mellon Trust Company Acct WHMF100-000 and Sun Life Assurance Co # 66534 and # 66535	
C. Provincial registration number 021314-000	D. Canada Revenue Agency registration number 0343558

2 Name and address of plan administrator (see instructions)

A. Name Pension Committee		
B. Contact name Kurt J. Holland, Director - Compensation and Benefits		
C. Address of head office c/o Cliffs Natural Resource Inc. 200 Public Square, Suite 3300		
City Cleveland	Province State: OH	Postal code 44114-2544
D. Mailing address in Canada if other than 2C		
City	Province	Postal code
E. Telephone number US: 216-694-5505	F. Email Address Kurt.Holland@CliffsNR.com	

3 Location of books and records, same as 2C above, or

Address		
City	Province	Postal code

4 End of plan year under review (see instructions)

A. YYYY / MM / DD 2014 / 12 / 31	B. Number of months in the plan year: 12 months <input checked="" type="checkbox"/> Other <input type="checkbox"/> (not to exceed 12 months)
-------------------------------------	---

5 Number of employers in the plan

How many employers participated in the plan at the end of the plan year?

6 Changes in the list of participating employers

A. Have there been any changes to the list of employers covered by this pension plan since the last annual information return (or since the application for registration, if this is the first annual information return)?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
B. If "yes", enter, in the appropriate subdivision below, the name and address of each employer and indicate whether it is an "addition" or "deletion".		
(i) Employers associated through ownership		
(ii) Employers associated only through nature of business		

01_02_100_002a_2014_01

A. Were any amendments made to this pension plan or fund during the plan year under review?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
B. If "yes", have the amendments been submitted to the department? (see instructions if pension plan is established by virtue of a collective agreement or decree.)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
C. Have all eligible employees, members and affected former members been informed of plan amendments?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
D. If "no", please explain		

8 Cessation of contributions/benefit accrual

A. Did a cessation of contributions or benefit accrual occur during the plan year?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If "yes", what is:	B. Effective date of cessation Y Y Y Y M M D D	C. Date of final distribution of funds Y Y Y Y M M D D
	/ /	/ /
D. Has the plan membership been affected by the discontinuation or sale of all or part of an employer's business operations?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

9 Current service cost (see instructions)

	DC	DB		DC	DB
A. Member contributions accrued	\$ 399,879	0	E. Employer contributions accrued	\$ 799,757	1,536,131
B. Additional voluntary contributions	\$		F. Less: Amounts credited from surplus or forfeitures (explain)	\$ ()	
C. Member amounts accrued in previous years and remitted in current year	\$		G. Employer amounts accrued in previous years and remitted in current year	\$	
D. Member amounts accrued in current year but not remitted by year end	\$		H. Employer amounts accrued in current year but not remitted by year end	\$	
I. Remarks:					

10 Special payments for defined benefit plans (see instructions)

Amount of special payments paid into the pension plan or fund during the plan year (not applicable to money purchase pension plans)	
A. Unfunded liability payments remitted \$ 644,028	B. Solvency deficiency payments remitted \$ 2,634,595

11 Contribution sufficiency (see instructions)

A. Were the payments shown in sections 9 and 10 above in accordance with the plan terms or the last actuarial report filed with the department?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
B. If "no", please explain		

12 Reconciliation of plan assets (see instructions)

	DB	DC	Total
A. Market value of plan assets at beginning of the plan year	\$ 84,252,190	13,450,451	97,702,641
B. Amount transferred in from other registered plans	\$ -	-	-
C. Total employer contributions remitted (sum of 9E to 9G, less 9H, plus 10A and 10B)	\$ 4,814,754	799,757	5,614,511
D. Total member contributions remitted (sum of 9A to 9C, less 9D)	\$ 0	399,879	399,879
E. Investment earnings (losses) net of all expenses	\$ 8,373,309	1,391,420	9,764,729
F. Less: Benefits paid directly from the plan	\$ (6,701,272)	4,166,004	10,867,276
G. Less: Benefits transferred to other registered plans	\$ ()	1,526,873	1,526,873
H. Market value of plan assets at plan year end (sum of A to G)	\$ 90,738,981	10,348,630	101,087,611
I. Book value of plan assets at plan year end	\$ 86,616,640	10,348,630	96,965,270

13 Reconciliation of plan members (see Instructions)

A. Number of plan members at previous plan year end	190
B. Add: New entrants, i.e., employees joining the plan during the plan year	0
C. Subtract: Retirements during the plan year	(8)
D. Subtract: Deaths during the plan year	(0)
E. Subtract: Terminations during the plan year	(136)
F. Number of plan members at plan year end (sum of A to E)	46

14 Plan membership by area of employment (see Instructions)

Area of employment	Plan members		Number of members from columns (a) and (b) working in "included employment"
	(a) Male	(b) Female	
Newfoundland and Labrador	9	1	
Prince Edward Island			
Nova Scotia			
New Brunswick			
Québec	27	9	
Ontario			
Manitoba			
Saskatchewan			
Alberta			
British Columbia			
Yukon			
Northwest Territories			
Nunavut			
Outside Canada			
Total	36	10	

15 Former members (see Instructions)

Number of former members who have ceased membership or retired (excluding persons for whom individual annuities have been purchased)

A. Pensioners and beneficiaries	326
B. Vested former members entitled to deferred pensions	292

Defined benefit plans – complete questions 16 – 17
All other plans – go to Canada Revenue Agency Schedule

16 Adjustments to pension benefits (see Instructions)

Have adjustments been made to pensions in pay or deferred pension benefits during the plan year under review?

- A. No
- B. Yes - (in accordance with a requirement of the plan for regular adjustment of benefits)
- C. Yes - (pursuant to a collective agreement)
- D. Yes - (voluntarily by the employer)
- E. Yes - other (describe) Bill 102 Indexation for QC Members of the Plan

17 Basis for adjustment (see instructions)

- A. Full Consumer Price Index (CPI)
- B. Partial CPI
- C. Based on excess interest earnings
- D. Percentage increase _____ % (not based on CPI)
- E. Flat dollar increase \$ _____ annually
- F. Other method (specify) _____

Canada Revenue Agency Schedule

1. How many active members at plan year end were persons connected with the employer? _____

Specified multi-employer plans and multi-employer plans, go to question 5. Other plans, continue with question 2.

2. Did any member of this plan participate:
 In any other Registered Pension Plan (RPP) or Deferred Profit-sharing Plan (DPSP) provided by this plan sponsor? Yes No
 or;
 in an RPP or DPSP of any other sponsor who does not deal at arm's length with this sponsor? Yes No

3. Have any connected persons joined or left the plan in the plan year? Yes No

4. In the plan year, has a person or group acquired control of the corporation that is sponsoring the pension plan? N/A Yes No

5. Actuarial liabilities resulting from plan obligations
 DB: 86,130,699
 DC: 13,450,451

6. Date of actuarial liability assessment

Y	Y	Y	Y	M	M	D	D
2	0	1	1	4	0	1	0

Money purchase plans and specified multi-employer plans, go to "certification". Other plans, continue with question 7.

7. Were any plan members provided with Post-1989 Past-Service Benefits in the plan year? Yes No

8. Have any plan members who are connected persons been provided with Pre-1992 Past-Service Benefits in the plan year? Yes No

Certification

As an authorized officer of the administrator of the pension plan noted above, I hereby certify that to the best of my knowledge and belief,

- (a) the contributions paid to the plan have been at least equal to those required by the applicable pension benefits legislation.
- (b) the plan and fund have been administered in accordance with the terms of the applicable pension benefits legislation.
- (c) the administrator has established a written statement of investment policies and procedures in accordance with Section 39 of the *Pension Benefits Act Regulations*.
- (d) the statement of investment policies and procedures complies with Section 39 of the *Pension Benefits Act Regulations*.
- (e) during the plan year under review, the assets of the pension plan were invested in accordance with Section 39 of the *Pension Benefits Act Regulations*.
- (f) the administrator has reviewed the statement of investment policies and procedures during the plan year under review.
- (g) the details entered on this Annual Information Return are true, correct and complete.
- (h) the plan complies with and is administered in accordance with sections 147.1, 147.2, and 147.3 of the *Income Tax Act (Canada)* and the related Regulations.

KJ Holland Signature KURT J. Holland Name in Block Letters 6-25-2015 Date

DIRECTOR, COMPENSATION & BENEFITS Title of Person CLIFFS NATURAL RESOURCES INC Company

NUMBER OF PLAN MEMBERS *	FEE PAYABLE
0 - 19	\$150.00
20 - 999	\$7.50 PER MEMBER
1,000 AND OVER	\$7,500.00

Number of Plan Members means the total number of plan members employed in any province or territory of Canada, excluding former members.

For Office Use Only

Remittance: \$ _____ Date of Receipt: _____

Receipt No: _____ Processed By: _____

EXHIBIT "REPS-4"

CLIFFS NATURAL RESOURCES INC.

**CONTRIBUTORY PENSION PLAN FOR SALARIED EMPLOYEES
OF WABUSH MINES, CLIFFS MINING COMPANY, MANAGING
AGENT**

Actuarial Valuation as at January 1, 2014

September 12, 2014

Registration Numbers:

Newfoundland and Labrador Superintendent of Pensions: 021314
Canada Revenue Agency: 0343558

This document is being filed with the Newfoundland and Labrador Superintendent of Pensions and the Canada Revenue Agency as required by statute and contains confidential financial information regarding the plan, the plan sponsor, and the plan members. Therefore, pursuant to subsection 20(1)(b) of the *Access to Information Act (Canada)*, or a corresponding provision under any comparable federal or provincial legislation, a government institution shall not disclose this document to any party as a result of a request under the *Access to Information Act (Canada)* or other applicable legislation.

TOWERS WATSON



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Introduction

Purpose

This report with respect to the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent has been prepared for Wabush Mines, the plan administrator, and Cliffs Natural Resources Inc., the owner of Wabush Mines, and presents the results of the actuarial valuation of the plan as at January 1, 2014.

The principal purposes of the report are:

- to present information on the financial position of the plan on both going concern and solvency bases;
- to review the hypothetical windup status of the plan;
- to provide the basis for employer contributions; and
- to provide certain additional information required for the administration of the plan.

This report outlines the changes in the plan's financial situation since the previous actuarial valuation at January 1, 2011, provides the information and the actuarial opinion required by the *Pension Benefits Act, 1997 (Newfoundland and Labrador)* and Regulation thereto and provides the information required to maintain plan registration under the *Income Tax Act (Canada)* and Regulations thereto.

This report summarizes the results of the actuarial valuation and contains an actuarial opinion as an integral part of the report. Supporting detailed information on the significant terms of engagement, assets, actuarial basis, membership data and plan provisions is contained in the Appendices.

The information contained in this report was prepared for Cliffs Natural Resources Inc., for its internal use and for filing with the Newfoundland and Labrador Superintendent of Pensions and the Canada Revenue Agency, in connection with the actuarial valuation of the plan prepared by Société Towers Watson Canada inc. ("Towers Watson"). This report is not intended, nor necessarily suitable, for other parties or for other purposes. Further distribution of all or part of this report to other parties (except where such distribution is required by applicable legislation) or other use of this report is expressly prohibited without Towers Watson's prior written consent. Towers Watson is available to provide additional information with respect to this report to the above-mentioned intended users upon request.

The numbers in this report are not rounded. The fact that numbers are not rounded does not imply a greater level of precision than if the numbers had been rounded.

Significant Events Since Previous Actuarial Valuation

Actuarial Basis

Since the previous actuarial valuation, the solvency and hypothetical windup actuarial assumptions have been updated to reflect market conditions at the valuation date. In addition, there have been changes to the going concern actuarial basis, as follows:

- Increase in the liability discount rate from 6.00% to 6.25%;
- Decrease in the rate of escalation of YMPE under Canada/Québec Pension Plan from 4.50% to 3.50%;
- Decrease in the rate of escalation of *Income Tax Act (Canada)* maximum pension limitation from 4.50% to 3.50%; and
- Change in the mortality assumption.

Plan Provisions

This actuarial valuation reflects the plan provisions as at January 1, 2014 and does not make any provision for the possibility that a change or action (retroactive or otherwise) may be imposed by order of a regulatory body or a court as we were not aware of any definitive events that would require such change or action at the time this actuarial valuation was completed.

There have been no changes to the plan provisions since the previous actuarial valuation that affect the actuarial valuation's results.

Legislative and Actuarial Standards Updates

Since the previous actuarial valuation, the *Standards of Practice for Pension Commuted Values* published by the Canadian Institute of Actuaries effective April 1, 2009 provide for, effective February 1, 2011, an update to the mortality assumption. Such update has been reflected for purposes of the solvency and hypothetical windup valuations.

Subsequent Events

We completed this actuarial valuation on August 27, 2014.

Effective February 11, 2014, Cliffs Natural Resources Inc. made the decision to idle the Scully Mine. The idling of the Scully Mine will result in a reduction in active membership.

The financial impact of the event has not been reflected in this report but will, together with other subsequent experience, be reflected in the next actuarial valuation. However, the normal cost contribution rule reflects the expected reduction in membership resulting from the idling. To the best of our knowledge and on the basis of our discussions with Cliffs Natural Resources Inc., no other events

which would have a material financial effect on the actuarial valuation occurred between the actuarial valuation date and the date this actuarial valuation was completed.

Section 1: Going Concern Financial Position

1.1 Statement of Financial Position

	January 1, 2014	January 1, 2011
Going Concern Value of Assets		
Defined benefit provision	\$ 79,802,299	\$ 81,551,580
Defined contribution provision	13,450,451	10,620,112
Total going concern value of assets	<u>\$ 93,252,750</u>	<u>\$ 92,171,692</u>
Actuarial Liability		
<i>Defined Benefit Provision</i>		
Active and disabled members	\$ 17,367,021	\$ 13,810,681
Retired members and beneficiaries	64,954,532	64,992,930
Transferred and terminated vested members	3,809,146	2,615,672
Total	<u>\$ 86,130,699</u>	<u>\$ 81,419,283</u>
<i>Defined Contribution Provision</i>	<u>13,450,451</u>	<u>10,620,112</u>
Total Actuarial Liability	\$ 99,581,150	\$ 92,039,395
Actuarial Surplus (Unfunded Actuarial Liability)	\$ (6,328,400)	\$ 132,297

Comments:

- The financial position of the plan on a going concern basis is determined by comparing the going concern value of assets to the actuarial liability and is a reflection of the assets available for the benefits accrued in respect of credited service prior to the actuarial valuation date assuming the plan continues indefinitely.
- The increase in the defined benefit actuarial liability as at January 1, 2014, which would result from a 1% decrease in the assumed liability discount rate, is \$10,367,078. For purposes of this calculation, no changes were made to any of the other actuarial assumptions or actuarial methods.

1.2 Reconciliation of Financial Position

<hr/>		
Actuarial surplus (unfunded actuarial liability) as at January 1, 2011		\$ 132,297
Net special payments		5,111,229
Expected interest on:		
● Actuarial surplus (unfunded actuarial liability)	\$ 25,271	
● Net amortization payments and transfer deficiency payments	<u>466,843</u>	492,114
Plan experience:		
● Investment gains (losses), net of all expenses	\$ (7,233,535)	
● Salary gains (losses)	90,364	
● Retirement gains (losses)	(609,607)	
● Termination gains (losses)	1,725,927	
● Mortality gains (losses)	(786,201)	
● New entrant gains (losses)	(2,185,605)	
● Data corrections gains (losses)	(192,096)	
● Gains (losses) from miscellaneous sources	<u>239,397</u>	(8,951,356)
Change in actuarial basis:		
● Economic assumptions	\$ 1,453,935	
● Demographic assumptions	(4,566,619)	(3,112,684)
Change in plan provisions		<u>0</u>
Actuarial surplus (unfunded actuarial liability) as at January 1, 2014		\$ (6,328,400)
<hr/>		

Section 2: Solvency and Hypothetical Windup Financial Position

2.1 Statement of Solvency Financial Position

	January 1, 2014	January 1, 2011
Solvency Value of Assets		
<i>Defined Benefit Provision</i>		
Market value of assets	\$ 83,733,274	\$ 77,584,053
Provision for plan windup expenses	<u>(200,000)</u>	<u>(200,000)</u>
Total	\$ 83,533,274	\$ 77,384,053
<i>Defined Contribution Provision</i>	<u>13,450,451</u>	<u>10,620,112</u>
Total Solvency Value of Assets	\$ 96,983,725	\$ 88,004,165
Solvency Liability		
<i>Defined Benefit Provision</i>		
Active and disabled members	\$ 13,082,660	\$ 8,487,081
Retired members and beneficiaries	75,183,832	73,122,162
Transferred and terminated vested members	<u>5,738,114</u>	<u>3,394,035</u>
Total	\$ 94,004,606	\$ 85,003,278
<i>Defined Contribution Provision</i>	<u>13,450,451</u>	<u>10,620,112</u>
Total Solvency Liability	\$ 107,455,057	\$ 95,623,390
Solvency Surplus (Unfunded Solvency Liability)	\$ (10,471,332)	\$ (7,619,225)

Comments:

- The financial position of the plan on a solvency basis is determined by comparing the solvency value of assets to the solvency liability (the actuarial present value of benefits accrued in respect of credited service prior to the actuarial valuation date, calculated as if the plan were wound up on that date).

- The solvency actuarial valuation results presented in this report are determined under a scenario where, following a plan windup, the employer continues its operations and there is no closure of the mine.
- The Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)* permits certain benefits to be excluded from the solvency liability, without requiring the employer to make an election. The plan administrator has directed that consent for the "70/80 special early retirement" provision (described in Appendix D) will not be granted. Consistent with the scenario used for the solvency valuation, the "70/80 special early retirement" provision has been excluded from the solvency liability.
- The increase in the defined benefit solvency liability as at January 1, 2014, which would result from a 1% decrease in the assumed liability discount rate, is \$11,949,638. For purposes of this calculation, no changes were made to any of the other actuarial assumptions or actuarial methods.

2.2 Hypothetical Windup Financial Position

The hypothetical windup valuation results presented in this report are determined under a scenario in which the plan is wound up and the mine is shut down.

If the plan were to be wound up on the actuarial valuation date, the hypothetical windup value of assets would be equal to the solvency value of assets. Consistent with the scenario used for the hypothetical windup valuation, no benefits have been excluded from the hypothetical windup liability. Therefore, the hypothetical windup liability is \$94,251,745 as at January 1, 2014. Consequently, the hypothetical windup surplus (unfunded hypothetical windup liability) as at the actuarial valuation date is (\$10,718,471).

2.3 Solvency Incremental Cost

Defined Benefit Provision

The solvency incremental cost for a given year represents the present value, at the valuation date, of the expected aggregate change in the solvency liability during the year, increased for expected benefit payments during the year. The solvency incremental cost in respect of each year between January 1, 2014 and January 1, 2017, the next valuation date, are derived from the projection of the solvency liability, as follows:

	Year		
	2014	2015	2016
Solvency liability as at beginning of year	\$ 94,004,606	\$ 93,282,267	\$ 92,647,605
Solvency incremental cost for the year ^{1,2}	2,170,560	2,257,372	2,679,545
Interest on projected solvency liability, solvency incremental cost and expected benefit payments	3,433,804	3,388,560	3,342,974
Expected benefit payments during year ²	<u>(6,326,703)</u>	<u>(6,280,594)</u>	<u>(6,145,238)</u>
Projected solvency liability as at end of year ²	\$ 93,282,267	\$ 92,647,605	\$ 92,524,886

Notes:

¹ These amounts are as at the beginning of the year. The solvency incremental cost, adjusted with interest as at January 1, 2014 is \$2,177,032 for 2015 and \$2,492,833 for 2016.

² These amounts do not reflect the estimated membership reduction resulting from the idling of the Scully Mine as at February 11, 2014.

2.4 Determination of the Statutory Solvency Excess (Statutory Solvency Deficiency)

The minimum funding requirements under the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)* are based on the statutory solvency excess (statutory solvency deficiency) as at the actuarial valuation date. In calculating the statutory solvency excess (statutory solvency deficiency), various adjustments can be made to the solvency financial position including:

- recognition of the present value of existing amortization payments, including any going concern amortization payments established at the actuarial valuation date, due to be paid within the periods prescribed by the Regulation.

To the extent that there exists a statutory solvency deficiency, after taking account of these adjustments, additional amortization payments must be made. If there is no statutory solvency deficiency, the statutory solvency excess may be used to reduce the period of any existing solvency amortization payments.

Statutory Solvency Excess (Statutory Solvency Deficiency)

	January 1, 2014	January 1, 2011
Solvency surplus (unfunded solvency liability)	\$ (10,471,332)	\$ (7,619,225)
Adjustments to solvency position:		
• Present value of existing amortization payments	<u>6,221,792</u>	<u>0</u>
Statutory solvency excess (statutory solvency deficiency)	\$ (4,249,540)	\$ (7,619,225)

Comments:

- The present value of existing amortization payments reflects any changes made in this actuarial valuation to going concern amortization schedules.
- Further details on the present value of existing amortization payments at January 1, 2014 are provided below.

Details of Present Value of Existing Amortization Payments

Type of payment	Effective date	Month of last payment recognized in calculation	Annual amortization payment	Present value as at January 1, 2014 (at 3.70% per annum)
Going Concern	Jan 1, 2014	Dec. 2018	\$ 644,028	\$ 2,940,135
Solvency	Jan. 1, 2011	Dec. 2015	<u>1,703,743</u>	<u>3,281,657</u>
Total			\$ <u>2,347,771</u>	\$ <u>6,221,792</u>

Section 3: Contribution Requirements

3.1 Contribution for Current Service (Ensuing Year)

	January 1, 2014	January 1, 2011
Employer Normal Actuarial Cost		
Defined Benefit Provision		
Estimated contribution	\$ 1,524,956 ¹	\$ 1,719,998
Estimated payroll	19,359,779 ¹	22,638,017
% of payroll	7.88%	7.60%
Defined Contribution Provision		
Estimated contribution	\$ 1,161,587 ¹	\$ 1,358,281
Estimated payroll	19,359,779 ¹	22,638,017
% of payroll	6.00%	6.00%
Estimated Member Contributions		
Defined contribution provision	\$ 580,794 ¹	\$ 679,141

Note:

¹ Reflect estimated membership reduction resulting from the idling of the Scully Mine as at February 11, 2014.

Comments:

- The employer defined benefit normal actuarial cost rate changed by 0.22% of payroll due to the change in membership profile and by 0.06% of payroll due to the change in actuarial basis since the previous valuation.
- The increase in the employer defined benefit normal actuarial cost rate between the actuarial valuation date and the next actuarial valuation date, which would result from a 1% decrease in the assumed liability discount rate, is 2.08% of payroll. For purposes of this calculation, no changes were made to any of the other actuarial assumptions or actuarial methods.

3.2 Contributions for Past Service

Going Concern Amortization Payments

The unfunded actuarial liability is \$6,328,400 and must be liquidated by employer amortization payments at least equal to the amounts, payable monthly in arrears, and for the periods set forth below in order to comply with the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*.

Effective date	Month of last payment	Annual amortization payment	Present value as at January 1, 2014 (at 6.25% per annum)
January 1, 2014	Dec. 2028	\$ 644,028	\$ 6,328,400

Solvency Amortization Payments

The statutory solvency deficiency revealed at this actuarial valuation is \$4,249,540. This statutory solvency deficiency together with the remaining statutory solvency deficiency from the previous actuarial valuation must be liquidated by employer amortization payments at least equal to the amounts, payable monthly in arrears, and for the periods set forth below in order to comply with the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*.

Effective date	Month of last payment	Annual amortization payment	Present value as at January 1, 2014 (at 3.70% per annum)
January 1, 2011	Dec. 2015	\$ 1,703,743	\$ 3,281,657
January 1, 2014	Dec. 2018	930,852	4,249,540
Total		\$ 2,634,595	\$ 7,531,197

3.3 Estimated Minimum Employer Contribution (Ensuing Year)

	January 1, 2014	January 1, 2011
Employer Normal Actuarial Cost		
Defined benefit provision	\$ 1,524,956	\$ 1,719,998
Defined contribution provision	<u>1,161,587</u>	<u>1,358,281</u>
Total	\$ 2,686,543	\$ 3,078,279
Amortization Payments		
Going concern	\$ 644,028	\$ 0
Solvency	<u>2,634,595</u>	<u>1,703,743</u>
Total	\$ 3,278,623	\$ 1,703,743
Estimated Minimum Employer Contribution	\$ 5,965,166	\$ 4,782,022

3.4 Estimated Maximum Employer Contribution (Ensuing Year)

	January 1, 2014	January 1, 2011
Employer Normal Actuarial Cost		
Defined benefit provision	\$ 1,524,956	\$ 1,719,998
Defined contribution provision	1,161,587	1,358,281
Total	<u>\$ 2,686,543</u>	<u>\$ 3,078,279</u>
Greater of the Unfunded Actuarial Liability and the Unfunded Hypothetical Windup Liability	<u>10,718,471</u>	<u>7,619,225</u>
Estimated Maximum Employer Contribution	\$ 13,405,014	\$10,697,504

Comment:

- The *Income Tax Act (Canada)* permits the employer to make contributions up to the above amount less the amortization payments made in respect of periods since January 1, 2014, provided that all assumptions made for the purposes of the hypothetical windup valuation remain reasonable at the time each contribution is made. In addition, the maximum employer contribution is to be adjusted with interest for the period between the actuarial valuation date and the date each contribution is made.

3.5 Timing of Contributions

To satisfy the requirements of Newfoundland and Labrador pension legislation, the employer defined benefit normal actuarial cost and amortization payments must be paid quarterly and within 30 days of the month to which they pertain, the employer defined contribution normal actuarial cost and members' contributions must be remitted to the fund monthly and within 30 days of the month to which they pertain.

In addition, within 60 days after this report is filed with the Newfoundland and Labrador Superintendent of Pensions, the employer must make a special contribution equal to the excess, if any, of:

- the amount of employer contributions (employer normal actuarial cost and amortization payments) that should have been paid after January 1, 2014 according to the minimum contribution requirements revealed by this report, over
- the actual amount of employer contributions in respect of periods after January 1, 2014.

Interest must be added to this excess, with such interest determined by reference to the going concern discount rate for payments in respect of employer normal actuarial cost or going concern amortization payments and the solvency discount rate for payments in respect of solvency amortization payments.

To satisfy the requirements of the *Income Tax Act (Canada)*, employer contributions that are remitted to the plan in the taxation year or within 120 days after the end of such taxation year are deductible in such taxation year provided they were made to fund benefits in respect of periods preceding the end of the taxation year.

3.6 Other Statutory Contributions

Additional contributions may be required in respect of the transfer values for members who terminate employment or active plan membership. Where applicable, such additional contributions must be remitted before the related transfer value may be paid in full to the terminated member. Details are provided in Appendix G.

3.7 Future Contribution Levels

Future contribution levels may change as a result of future changes in the actuarial methods and assumptions, the membership data, the plan provisions and the legislative rules, or as a result of future experience gains or losses, none of which has been anticipated at this time. Emerging experience, differing from the assumptions, will result in gains or losses that will be revealed in future actuarial valuations.

Section 4: Actuarial Certification and Opinion

4.1 Actuarial Certification

Based on the results of these actuarial valuations, we hereby certify that, in our opinion, as at January 1, 2014:

- The actuarial surplus (unfunded actuarial liability), determined by comparing the actuarial liability, the measure of obligations of the plan on a going concern basis, to the going concern value of assets, is \$(6,328,400).
- The unfunded actuarial liability is \$6,328,400 and must be liquidated by employer amortization payments at least equal to the amounts and for the periods set forth in Section 3 in order to comply with the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*.
- The solvency surplus (unfunded solvency liability), determined by comparing the solvency liability, as defined in the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*, to the solvency value of assets, is \$(10,471,332).
- The statutory solvency excess (statutory solvency deficiency) revealed at this actuarial valuation is \$(4,249,540). This statutory solvency deficiency together with the remaining statutory solvency deficiency from the previous actuarial valuation must be liquidated by employer amortization payments at least equal to the amounts and for the periods set forth in Section 3 in order to comply with the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*.
- The hypothetical windup surplus (unfunded hypothetical windup liability), determined by comparing the hypothetical windup liability, the measure of the obligations of the plan on a hypothetical windup basis including the value of any potential obligations that may have been excluded for purposes of the solvency valuation, to the hypothetical windup value of assets, is \$(10,718,471).
- The excess actuarial surplus, pursuant to section 147.2(2) of the *Income Tax Act (Canada)*, is \$0.
- The rule for computing the employer defined benefit normal actuarial cost is 7.88% of payroll. Based on the plan membership used for this actuarial valuation, the normal actuarial cost for the next three years is estimated to be:

Defined Benefit Provision

	Year		
	2014	2015 ^{1,2}	2016 ^{1,2}
Estimated employer normal actuarial cost	\$ 1,524,956	\$ 1,169,261	\$ 1,227,724

Notes:

- ¹ Assumes the employer normal actuarial cost increases by 5% each year following the valuation date based on expected payroll increases.
- ² Reflect estimated membership reduction resulting from the idling of the Scully Mine as at February 11, 2014.

The rule for computing the employer defined contribution normal actuarial cost is stipulated in the plan. Based on the plan membership used in this actuarial valuation, the defined contribution requirement for the next three years is estimated to be:

Defined Contribution Provision

	Year		
	2014	2015 ^{1,2}	2016 ^{1,2}
Estimated employer normal actuarial cost^{2,3}	\$ 1,161,587	\$ 823,106	\$ 864,261
Estimated member contributions	\$ 580,794	\$ 411,553	\$ 432,131

Notes:

- ¹ Assumes the employer normal actuarial cost increases by 5% each year following the valuation date based on expected payroll increases.
- ² Reflect estimated membership reduction resulting from the idling of the Scully Mine as at February 11, 2014.
- ³ Prior to any application of non-vested forfeitures.

The employer is required to make normal actuarial cost contributions to the plan in accordance with the above rules until the effective date of the next actuarial opinion.

- The maximum employer contributions permissible under the *Income Tax Act (Canada)* are described in Section 3.
- The solvency ratio, as defined in the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*, is 0.89.
- In accordance with the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*, the next actuarial valuation should be performed with an effective date not later than

January 1, 2017. The basis for employer contributions presented in this report is effective until the next actuarial opinion is filed.

4.2 Actuarial Opinion

In our opinion:

- the membership data on which the actuarial valuations are based are sufficient and reliable for the purposes of the going concern, solvency and hypothetical windup valuations,
- the assumptions are appropriate for the purposes of the going concern, solvency and hypothetical windup valuations, and
- the methods employed in the actuarial valuation are appropriate for the purposes of the going concern, solvency and hypothetical windup valuations.

This report has been prepared, and our opinion has been given, in accordance with accepted actuarial practice in Canada. The actuarial valuations have been conducted in accordance with our understanding of the funding and solvency standards prescribed by the *Pension Benefits Act 1997 (Newfoundland and Labrador)* and Regulation thereto, and in accordance with our understanding of the requirements of the *Income Tax Act (Canada)* and Regulations thereto. This actuarial opinion forms an integral part of the report.

The results presented in this report have been developed using a particular set of actuarial assumptions. Other results could have been developed by selecting different actuarial assumptions. The results presented in this report are reasonable actuarial results based on actuarial assumptions reflecting our expectation of future events.

Société Towers Watson Canada inc.

Julie Simard
Fellow of the Canadian Institute of Actuaries

Pierre Charette
Associate of the Canadian Institute of Actuaries

Montréal, QC
September 12, 2014

Appendix A: Significant Terms of Engagement

For purposes of preparing this actuarial valuation report, the plan administrator has directed that:

- The actuarial valuation is to be prepared as at January 1, 2014.
- For purposes of the going concern valuation, the terms of engagement require the use of the margins for adverse deviations mentioned in Appendix C.
- For purposes of determining the going concern liability discount rate, the target asset class distribution is to be established in accordance with the investment policy dated July 1, 2013 which is the most up to date version.
- For purposes of determining the going concern financial position of the plan, the going concern value of assets is to be determined using the averaging technique described in the Asset Valuation Method section in Appendix C.
- This report is to be prepared on the basis that there will be no retroactive changes to previously filed partial windup reports, if any, and neither the applicable pension regulator nor the plan sponsor will order/declare any partial plan windup with an effective date prior to the actuarial valuation date.
- The hypothetical windup valuation results presented in this report are to be determined under a scenario where the employer continues to operate and certain expenses are paid from the pension fund (consistent with past practice) while the employer pays other plan expenses.
- This report is to be prepared on the basis that the employer is entitled to apply the actuarial surplus, if any, revealed in an actuarial valuation report to meet its contribution requirements under the plan while the plan remains a going concern, to the extent permitted by applicable pension legislation. (This report does not address the disposition of any surplus assets remaining in the event of plan windup.) If an applicable pension regulator or other entity with jurisdiction directs otherwise, certain financial measures contained in this report, including contribution requirements, may be affected.

Should these directions from the plan administrator be amended or withdrawn, Towers Watson reserves the right to amend or withdraw this report.

Appendix B: Assets

Statement of Market Value

	January 1, 2014	January 1, 2011
Defined Benefit Provision		
Invested assets:		
● Pooled funds	\$ 84,252,190	\$ 77,584,053
Net outstanding amounts:		
● Contributions receivable	\$ 0	\$ 0
● Benefits payable	(518,916)	0
● Expenses and other payables	0	0
● Total net outstanding amounts	\$ (518,916)	\$ 0
Total	\$ 83,733,274	\$ 77,584,053
Defined Contribution Provision		
Invested assets	\$ 13,450,451	\$ 10,620,112
Net outstanding amounts	0	0
Total	\$ 13,450,451	\$ 10,620,112
Total Assets	\$ 97,183,725	\$ 88,204,165

Comments:

- The invested assets in respect of the plan's defined benefit provision are held by CIBC Mellon under account WHMF10000002. The invested assets in respect of the plan's defined contribution provision are held by Sun Life Financial under policy 66535.
- The data relating to the invested assets are based on the financial statements issued by CIBC Mellon and Sun Life Financial. The data relating to net outstanding amounts were furnished by Cliffs Natural Resources Inc. All such data has been relied upon by Towers Watson following tests of reasonableness with respect to contributions, benefit payments and investment income. However, Towers Watson has not independently audited or verified this data.

Asset Class Distribution

The following table shows the target asset allocation stipulated by the plan's defined benefit component investment policy in respect of various major asset classes and the actual asset allocation as at January 1, 2014.

	Target asset allocation ¹	Asset allocation as at January 1, 2014 ²
Canadian Equity	30%	31%
Foreign Equity	30%	31%
Fixed Income	30%	27%
Hedge Fund	10%	10%
Cash & Other	0%	1%
Total	100%	100%

Notes:

¹ This information was obtained from the investment policy in effect for the plan as at January 1, 2014.

² This information was obtained from Cliffs Natural Resources Inc. All such data has been relied upon by Towers Watson and compared against the target asset allocation to assess reasonableness. However, Towers Watson has not independently audited or verified this data.

Reconciliation of Invested Assets (Market Value) — Defined Benefit Provision

Assets as at January 1, 2011		\$ 77,584,053
Receipts:		
● Contributions:		
– Employer normal actuarial cost	5,872,563	
– Employer amortization payments	5,111,229	
– Employer transfer deficiency payments	<u>0</u>	\$ 10,983,792
● Investment return, net of investment expenses		15,427,253
● Other receipts		<u>0</u>
● Total receipts		\$ 26,411,045
Disbursements:		
● Benefit payments:		
– Pension payments	\$ 19,081,546	
– Lump sum settlements	661,362	
– Other benefit payments	<u>0</u>	\$ 19,742,908
● Other disbursements		<u>0</u>
● Total disbursements		\$ 19,742,908
Assets as at January 1, 2014		\$ 84,252,190

Comments:

- This reconciliation is based on the financial statements issued by CIBC Mellon. All such data has been relied upon by Towers Watson following tests of reasonableness with respect to contributions, benefit payments and investment income. However, Towers Watson has not independently audited or verified this data.
- The rate of return earned on the market value of assets, net of all expenses, from January 1, 2011 to January 1, 2014 is approximately 6.58% p.a.

Actuarial Value of Assets – Defined Benefit Provision

	2013	2012	2011	2010
Market value of assets, January 1	\$ 76,212,036	\$ 73,769,910	\$ 77,584,053	\$ 75,627,186
Contributions from January 1 to December 31	3,764,130	3,845,662	3,974,000	957,000
Benefit payments from January 1 to December 31	(6,257,752)	(6,654,471)	(6,830,685)	(6,342,870)
Expected net investment earnings at going concern discount rate applicable for the year	<u>4,497,914</u>	<u>4,341,930</u>	<u>4,551,343</u>	<u>4,740,726</u>
Expected market value of assets, December 31	\$ 78,216,328	\$ 75,303,031	\$ 78,678,711	\$ 74,982,042
Actual market value of assets, December 31	<u>84,252,190</u>	<u>76,212,036</u>	<u>73,769,910</u>	<u>77,584,053</u>
(Gain) loss on assets during the year	\$ (6,035,862)	\$ (909,005)	\$ 4,908,801	\$ (2,602,011)
Asset Value Adjustment				
Original Amount of (Gain) Loss	(2,602,011)	(1,561,207)	(502,402)	(502,402)
Year				
2010	4,908,801	1,963,520	981,761	1,963,520
2011	(909,005)	(181,801)	(181,801)	(545,403)
2012	(6,035,862)	0	(1,207,172)	(4,828,690)
2013				(3,930,975)
Total				\$ (3,930,975)
Actual market value of assets, January 1, 2014				84,252,190
Contribution in transit at January 1, 2014				<u>(518,916)</u>
Market value of assets, January 1, 2014 (including contributions in transit)				\$ 83,733,274
Adjustment to market value of assets for (gain) loss to be admitted in future years				<u>(3,930,975)</u>
Actuarial value of assets, January 1, 2014 (including contributions in transit)				\$ 79,802,299

Comments:

- The asset valuation method is described in Appendix C.
- The starting value of each column is the actual market value of invested assets at the indicated date.
- Net cash flow was calculated as contributions less benefit payments on a cash basis during the year.
- The rate of return earned on the going concern value of assets, net of all expenses, from January 1, 2011 to January 1, 2014 is approximately 2.94% p.a.

Appendix C: Actuarial Basis – Going Concern Valuation

Methods

Defined Benefit Provision

Asset Valuation Method

The going concern value of assets was calculated using a five-year average of market values. Under this method, realized and unrealized gains and losses were recognized at 20% in the year of occurrence and an additional 20% in each of the subsequent four years. Gains and losses for a given year are determined relative to expected investment income, calculated using the going concern liability discount rate in effect for that year. Finally, the going concern value of assets was further adjusted for net outstanding amounts.

The objective of the asset valuation method is to produce a smoother pattern of going-concern surplus (deficit) and hence a smoother pattern of contributions, consistent with the long-term nature of a going concern valuation.

Such smoothing is achieved by use of an averaging process which systematically recognizes investment returns different from expectations over a four-year period, with 20% recognized at the actuarial valuation date and the remainder at a rate of 20% per year. This method will be expected to average periods of outperformance with periods of underperformance.

Actuarial Cost Method

The actuarial liability and the normal actuarial cost were calculated using the projected unit credit cost method.

Prospective benefits were calculated for each active and disabled member according to the plan provisions and actuarial assumptions. The actuarial liability was calculated as the actuarial present value of the member's prospective benefits accrued for credited service to date (the benefit accrual method).

The actuarial liability for retired members and beneficiaries and transferred and terminated vested members was calculated as the actuarial present value of their respective benefits.

The normal actuarial cost for each active and disabled member was calculated as the actuarial present value of the member's prospective benefits accruing in respect of credited service in the

ensuing year. The normal actuarial cost rate determined by the projected unit credit cost method will be stable over time if the demographic characteristics of the active and disabled members remain stable from actuarial valuation to actuarial valuation. All other things being equal, a population of active members whose average age increases (decreases) between actuarial valuations will result in an increasing (decreasing) normal actuarial cost rate.

Defined Contribution Provision

For the purposes of the going concern valuation, the determination of the actuarial liability and normal actuarial cost for the defined contribution provision does not involve the use of an actuarial cost method, nor does it involve actuarial assumptions. By definition, the actuarial liability under the defined contribution provision corresponds with the market value of the members' defined contribution accounts at the actuarial valuation date.

The employer normal actuarial cost for each active and disabled member was calculated as the expected employer contribution to be made to the member's defined contribution accounts in the year following the actuarial valuation date. The expected contribution to be made to each member's defined contribution account was determined by increasing the actual contributions made in 2013 by 5.0%, the salary increase assumption on a going concern basis. The expected contribution was further adjusted to reflect the estimated membership reduction resulting from the idling of the Sully Mine as at February 11, 2014.

Actuarial Assumptions — Defined Benefit Provision

	January 1, 2014	January 1, 2011
Economic Assumptions (per annum)		
Liability discount rate	6.25%	6.00%
Rate of salary increase	5.00% (nil for disabled members)	5.00% (nil for disabled members)
Escalation of YMPE under Canada/Québec Pension Plan ¹	3.50%	4.50%
Escalation of <i>Income Tax Act (Canada)</i> maximum pension limitation ²	3.50%	4.50%
Rate of inflation	2.50%	2.50%
Pre-retirement indexation ³	1.25%	1.25%
Demographic Assumptions		
Mortality	2014 Canadian Pensioners' Mortality Table, projected generationally using Scale B	1994 Uninsured Pensioner Mortality Table, projected generationally using Scale AA
Withdrawal	Service-related rates (refer to Table 1) for Newfoundland members; nil for Quebec members	Service-related rates (refer to Table 1) for Newfoundland members; nil for Quebec members
Disability incidence/recovery	Nil	Nil
Retirement from active membership	Age-related rates (see Table 2)	Age-related rates (see Table 2)
Pension commencement after termination of employment	Age 65	Age 65
Other		
Percentage of members with eligible spouses at pension commencement and electing joint and survivor pension form	85%	85%
Years male spouse older than female spouse	3	3
Provision for non-investment expenses	None; return on plan assets is net of all expenses	None; return on plan assets is net of all expenses

Notes:

- ¹ The YMPE of \$52,500 for 2014 is the starting value for the YMPE projection as at the current actuarial valuation and is indexed starting in 2015.
- ² The *Income Tax Act (Canada)* maximum pension limit of \$2,770.00 per year of service in 2014 is the starting value for maximum pension limit projection as at the current valuation and is indexed starting in 2015.
- ³ Applied only for post-2000 service related benefits for Québec members in respect of indexation from date of termination to age 55.

Table 1 — Non-disabled Withdrawals for 1,000 Participants

Completed Years of Service	Male	Completed Years of Service	Male
0	198	15	44
1	181	16	39
2	165	17	35
3	150	18	32
4	136	19	28
5	123	20	25
6	112	21	23
7	101	22	20
8	91	23	18
9	82	24	16
10	74	25	14
11	67	26	13
12	60	27	11
13	54	28	10
14	49	29	9
		30+	0

Table 2 — Assumed Retirement Pattern

- Assumed Retirement Age
- 75% retire as soon as eligible for an unreduced pension, but not earlier than age 60.
 - 25% retire as soon as eligible for an unreduced pension, but not earlier than age 52.

Rationale for Actuarial Assumptions

The rationale for the material actuarial assumptions used in the going concern valuation is summarized below.

The going concern assumptions do not include margins for adverse deviations, except as noted below.

Liability discount rate

The assumption is an estimate of the expected long-term return on plan assets, net of a provision for non-investment expenses expected to be paid from the plan of 0.18% of invested assets, less a 0.50% margin for adverse deviations. The expected long-term return is based on returns for each major asset class in which the plan is expected to be invested (net of investment expenses), the plan's investment policy with consideration of the effects of diversification and periodic rebalancing to maintain the target mix of the plan's investment policy. We have assumed that additional returns associated with employing an active investment management strategy would equal the additional expenses associated with employing such strategy. Consequently, we have disregarded any potential additional returns.

In carrying out the plan's investment policy, the plan administrator has opted to invest the plan's assets in a diversified portfolio, which includes certain asset classes subject to risk that provide potential for higher return. The expected long-term return for asset classes subject to risk includes an estimated risk premium. Based on historical experience, assets invested in instruments subject to risk are normally expected to yield higher returns in the long-run than assets invested in low-risk investments, but these returns may fluctuate significantly from year to year and not necessarily in line with changes in the plan's liabilities over long periods of time. As a result, investing in riskier asset classes will generally increase the potential for future asset-liability mismatch, which could lead to greater volatility in the plan's financial position and minimum contribution requirements.

Rate of salary increase

The assumption reflects an assumed rate of inflation of 2.50% per annum, plus an allowance of 1.0% per annum for the effect of real economic growth and productivity gains in the economy. In addition, an allowance of 1.5% per annum has been made to reflect the average expected increase as a result of individual employee merit and promotion. The merit/promotion assumption is based on discussions with Cliffs Natural Resources Inc. management concerning their future expectations.

Escalation of YMPE under Canada/Québec Pension Plan

The YMPE is indexed annually based on increases in the Industrial Aggregate Wage index for Canada. The assumption reflects an assumed rate of inflation of 2.50% per annum, plus an allowance of 1.0% per annum for the effect of real economic growth and productivity gains in the economy.

Escalation of Income Tax Act (Canada) maximum pension limitation

The maximum pension limitation under the *Income Tax Act (Canada)* is scheduled to be indexed annually based on assumed increases in the Industrial Aggregate Wage index. The assumption reflects an assumed rate of inflation of 2.50% per annum, plus an allowance of 1.0% per annum for the effect of real economic growth and productivity gains in the economy.

Rate of inflation

The assumption reflects an estimate of future rates of inflation considering economic and financial market conditions at the actuarial valuation date.

Pre-retirement indexation

The pre-retirement indexation assumption represents 50% of the inflation assumption, up to a maximum of 2% per annum.

Mortality

The 2014 Canadian Pensioners' Mortality Table (CPM2014) is based on a mortality experience study for calendar years 1999 to 2008 conducted by the Canadian Institute of Actuaries on a sample of Canadian registered pension plans. The CPM2014 table includes potential adjustments to the mortality rates based on pension size and/or industry classification. Improvement Scale B (CPM-B) is a two-dimensional scale developed by the Canadian Institute of Actuaries based primarily on the mortality experience of pensioners under the Canada Pension Plan (CPP) and the Québec Pension Plan (QPP) up to 2007 as well as the assumptions used in the 26th CPP Actuarial Report.

Base mortality rates from the CPM2014 table are considered reasonable for the actuarial valuation of the plan given that the mortality experience of the plan membership is insufficient to assess plan-specific experience, and there is no reason to expect the mortality experience of the plan to differ significantly from that of other pension plans covering membership groups with similar characteristics. Applying improvement scale CPM-B generationally provides allowance for improvements in mortality after 2014 and is considered reasonable for projecting mortality experience into the future.

No allowance has been made for mortality prior to retirement with respect to terminated vested members in order to approximate the value of pre-retirement death benefits.

At the previous actuarial valuation, the 1994 Uninsured Pensioner Mortality Table projected generationally using Scale AA was used.

Withdrawal

Withdrawal rates are typically developed taking into account the past experience of the plan. However, based on discussions with management, recent withdrawal experience is not considered appropriate for assessing the future incidence of withdrawal. Accordingly, the rates of withdrawal are based on the Society of Actuaries 2003 Pension Plan Termination and Retirement Study (using the table for small plans – 1,000 lives or less – with turnover by service), following discussions with management concerning their future expectations and our experience with other similar plans.

Disability incidence/recovery

There are no disability benefits under the plan other than the accrual of retirement income (earnings remain constant) during disability. Consequently, the assumption of no incidence of disability or recovery therefrom makes an appropriate allowance, in combination with the other assumptions, for such continued accruals.

Retirement from active membership

Retirement rates are typically developed taking into account the past experience of the plan. However, based on discussions with Cliffs Natural Resources Inc. management, recent retirement experience is not considered appropriate for predicting the future incidence of retirement. Accordingly, rates of retirement were developed based on discussions with Cliffs Natural Resources Inc. management concerning their future expectations, the plan provisions and our experience with other similar plans. All members are assumed to commence their pension at retirement date.

Pension commencement after termination of employment

All transferred and terminated members are assumed to commence their pension at the normal retirement age of 65, as the plan's termination benefit provides for either an actuarially reduced benefit or a 6% per year reduction upon pension commencement prior to normal retirement age.

Percentage of members with eligible spouses at pension commencement and electing joint and survivor pension form

When provided, the actual data on the spouse and form of payment were used for retired members. For other members, the assumed percentage of members with a spouse is based on the percentages for the general population. All members with eligible spouses were assumed to elect a joint and survivor pension form

Years male spouse older than female spouse

When provided, the actual data on the spouse were used for retired members. For other members, the assumption is based on surveys of the age difference in the general population and an assessment of future expectations for members of the plan.

Provision for non-investment expenses

The liability discount rate is net of all expenses (with the exception of any fees associated with employing an active investment management strategy). The assumed level of expenses reflected in the liability discount rate is based on recent experience of the plan and an assessment of future expectations.

Appendix D: Actuarial Basis – Solvency and Hypothetical Windup Valuations

Methods

Defined Benefit Provision

Asset Valuation Method

The market value of assets, adjusted for net outstanding amounts, has been used for the solvency and hypothetical windup valuations. The resulting value has been reduced by a provision for plan windup expenses.

Liability Calculation Method

The solvency and hypothetical windup liabilities for active and disabled members were calculated as the actuarial present value of all benefits accrued up to the actuarial valuation date (treating all members as if vested).

The solvency and hypothetical windup liabilities for retired members and beneficiaries and transferred and terminated vested members were calculated as the actuarial present value of their respective benefits.

Other Considerations

The solvency and hypothetical windup valuations have been prepared on a hypothetical basis. In the event of an actual plan windup, the plan assets may have to be allocated between various classes of plan members or beneficiaries as required by applicable pension legislation. Such potential allocation has not been performed as part of these solvency and hypothetical windup valuations.

Defined Contribution Provision

For the purposes of the solvency and hypothetical windup valuations, the determination of the liability for the defined contribution provision does not involve the use of a liability calculation method, nor does it involve actuarial assumptions. By definition, the solvency and hypothetical windup liability under the defined contribution provision corresponds with the market value of the members' defined contribution accounts at the actuarial valuation date.

Solvency Incremental Cost Actuarial Method

Defined Benefit Provision

The solvency incremental cost for a given year represents the present value, at the actuarial valuation date, of the expected aggregate change in the defined benefit solvency liability during the year, increased for expected benefit payments during the year.

The solvency incremental cost reflects expected decrements and related changes in membership status, accrual of service, any expected changes in benefits, entitlements, pension formula or increases in the maximum pension limits, and projected pensionable earnings during the year.

The solvency incremental cost has been calculated for each year until the next actuarial valuation date as the projected solvency liability at the end of the year, minus the solvency liability at the beginning of the year, increased for expected benefit payments during the year. Each of these amounts is discounted to the actuarial valuation date using the projected solvency liability discount rate.

The method used to calculate the projected solvency liability at the end of the year is the same as used in the solvency valuation.

Actuarial Assumptions — Defined Benefit Provision

	January 1, 2014	January 1, 2011
Economic Assumptions (per annum)		
Liability discount rate		
● Annuity purchase	3.80%	4.50%
● Commuted value transfers	3.10% for 10 years, 4.60% thereafter	3.70% for 10 years, 5.00% thereafter
● Commuted value transfers (for benefits subject to pre-retirement indexation) ¹	2.40% for 10 years, 3.50% thereafter	2.80% for 10 years, 3.70% thereafter
Discount rate for determining amortization payments ²	3.70%	4.42%
Escalation of <i>Income Tax Act (Canada)</i> maximum pension limitation ³	Nil	Nil
Rate of inflation		
● Commuted value transfers	1.36% for 10 years, 2.12% thereafter	1.76% for 10 years, 2.50% thereafter
Demographic Assumptions		
Mortality	1994 Uninsured Pensioner Mortality Table, projected generationally using Scale AA	1994 Uninsured Pensioner Mortality Table, projected to 2020 using Scale AA
Withdrawal	N/A	N/A
Disability incidence/recovery	N/A	N/A
Retirement/pension commencement	Described in detail on page D-7	Described in detail on page D-7
Other		
Percentage of members with eligible spouses at pension commencement and electing joint and survivor pension form	85%	85%
Years male spouse older than female spouse	3	3

	January 1, 2014	January 1, 2011
Percentage of members receiving settlement by commuted value transfer ⁴		
● Retired members and beneficiaries	0%	0%
● Active members (eligible for immediate retirement; not in Quebec)	0%	0%
● Other members	100%	100%
Provision for expenses		
● Solvency	\$200,000	\$200,000
● Hypothetical windup	\$200,000	\$200,000

Notes:

- ¹ Applied only to post-2000 service related benefits for Québec members.
- ² Equal to the liability-weighted average of the liability discount rates for settlements by commuted value transfer (rate in effect for the first 10 years) and annuity purchase.
- ³ The *Income Tax Act (Canada)* maximum pension limit is \$2,770.00 per year of service as at January 1, 2014.
- ⁴ The balance are assumed to receive settlement by annuity purchase.

Rationale for Actuarial Assumptions

The rationale for the material actuarial assumptions used in the solvency and hypothetical windup valuations is summarized below.

The actuarial assumptions used in the solvency and hypothetical windup valuations do not include margins for adverse deviations.

Liability discount rate

In the event of a plan windup, it is expected that a portion of the liabilities will be settled by a group annuity purchase and the balance of the liabilities will be settled by commuted value transfers.

For the calculation of the portion of the solvency and hypothetical windup liabilities relating to the benefits that are expected to be settled by a group annuity purchase, the liability discount rate corresponds to an approximation of the annuity purchase rates as at the actuarial valuation date following application of the relevant guidance on assumptions for solvency and hypothetical windup valuations issued by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting. Effective June 30, 2013, the guidance was revised to reflect the duration of the liabilities for non-indexed benefits assumed to be settled by group annuity purchase in the approximation of the annuity purchase rate. The duration of the liabilities assumed to be settled through the purchase of non-indexed annuities is 9.4.

For the calculation of the portion of the solvency and hypothetical windup liabilities relating to the benefits that are expected to be settled by commuted value transfers, the liability discount rates have been determined in accordance with the *Standards of Practice for Pension Commuted Values* published by the Canadian Institute of Actuaries effective April 1, 2009 and revised effective February 1, 2011. For this actuarial valuation, the January 2014 rates have been used.

For the calculation of the portion of the solvency and hypothetical windup liability relating to benefits subject to pre-retirement indexation that are expected to be settled by commuted value transfers, the liability discount rates have been determined as the interest rate for pensions indexed at 50% of the increases in the Consumer Price Index (maximum of 2% per annum) in accordance with the Canadian Institute of Actuaries' *Standards of Practice for Pension Commuted Values*.

Escalation of Income Tax Act (Canada) maximum pension limitation

The *Income Tax Act (Canada)* maximum pension limitation specified in the Act as at the actuarial valuation date is applied without consideration for future scheduled increases, as pension entitlements are determined as at the actuarial valuation date.

Rate of inflation

For benefits that are expected to be settled by commuted value transfers, the assumption has been determined in accordance with the Canadian Institute of Actuaries' *Standards of Practice for Pension Commuted Values*.

Mortality

For benefits that are expected to be settled by commuted value transfers, the assumption has been determined in accordance with the *Standards of Practice for Pension Commuted Values* published by the Canadian Institute of Actuaries effective April 1, 2009 and revised effective February 1, 2011. For the benefits that are expected to be settled by a group annuity purchase, the assumption has been set following application of the relevant guidance on assumptions for solvency and hypothetical windup valuations issued by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting. No pre-retirement mortality has been assumed in order to approximate the value of pre-retirement death benefits.

Retirement/pension commencement

- Members eligible to retire: pension commences at the age that produces the highest value (among the retirement age options for which the member qualifies upon termination of employment).
- Other members: pension commences at age 65.

For benefits that are expected to be settled by commuted value transfers, this assumption is in accordance with the Canadian Institute of Actuaries' *Standards of Practice for Pension Commuted Values*. For the benefits that are expected to be settled by a group annuity purchase, this is consistent with the expected assumption that will be used by insurers to price the group annuity.

Following is a summary of the plan's early retirement provisions, and how they are reflected in the solvency valuation.

<i>Plan Provision</i>	<i>Treatment of Plan Provision, for Solvency Valuation</i>
<ul style="list-style-type: none"> ● "30 and out" early retirement <ul style="list-style-type: none"> - 30+ years of continuous service - unreduced benefit 	<ul style="list-style-type: none"> ● Included in solvency valuation.
<ul style="list-style-type: none"> ● "55 and 15" early retirement <ul style="list-style-type: none"> - age 55+ with 15+ years of continuous service - 6% reduction per annum pre-65 applied 	<ul style="list-style-type: none"> ● Included in solvency valuation.
<ul style="list-style-type: none"> ● "70/80" special early retirement <ul style="list-style-type: none"> - age 55+ with 15+ years of continuous service, <u>or</u> - 80+ age/service points with 15+ years of continuous service - upon shutdown or permanent disability or with company consent: unreduced benefit 	<ul style="list-style-type: none"> ● Company has never granted consent in the past, in individual situations. ● Company has used the provision in the past, for targeted downsizings in 1981, 1987, 1991, and 2002. ● Management indicated consent would not be granted if the pension plan were to be terminated. ● Statutory solvency funding rules focus on pension plan termination, not shutdown of the mine. ● Scenario for solvency valuation assumes that the employer continues its operations and there is no closure of the mine. ● Conditions for including this provision in the solvency valuation are therefore not met; excluded from solvency valuation, in accordance with directions from the plan administrator.
<ul style="list-style-type: none"> ● Statutory early retirement <ul style="list-style-type: none"> - age 55+ with 2+ years of continuous service (no service requirement for Quebec employees) - actuarial reduction applied 	<ul style="list-style-type: none"> ● Included in solvency valuation.
<ul style="list-style-type: none"> ● Deferred vested early retirement <ul style="list-style-type: none"> - termination of service prior to retirement eligibility - with 15+ years of continuous service: 6% reduction per annum pre-65 applied - less than 15 years of continuous service: actuarial reduction applied 	<ul style="list-style-type: none"> ● Included in solvency valuation.

Percentage of members with eligible spouses at pension commencement and electing joint and survivor pension form

See rationale for going concern assumptions in Appendix C.

Years male spouse older than female spouse

See rationale for going concern assumptions in Appendix C.

Percentage of members receiving settlement by commuted value transfer

This assumption has been determined by considering the benefit provisions of the plan, legislative requirements to offer specific settlement options to various classes of members, and, in particular, the options to be provided to members upon plan windup.

The assumption also reflects the expectation that members further from retirement are more likely to elect to settle their pension benefit by a commuted value transfer, while members closer to retirement are more likely to elect to settle their pension benefit through a group annuity purchase where this option is available.

Provision for expenses

Allowance was made for normal administrative, actuarial, legal and other costs which would be incurred if the plan were to be wound up (excluding costs relating to the resolution of surplus or deficit issues). The actuarial valuation is premised on a scenario in which the employer continues to operate after the windup date. In establishing the allowance for plan windup costs, certain administrative costs were assumed to be paid from the pension fund (consistent with past practice) while other costs were assumed to be borne directly by the employer.

Solvency Incremental Cost Actuarial Assumptions

Demographic and Benefit Projection Actuarial Assumptions

Except as noted below, the projected population and benefits valued in the solvency liability projection are based on the demographic and benefit projection assumptions used for the going concern valuation described in Appendix C.

New entrants

No allowance has been made for new entrants between the current actuarial valuation date and next actuarial valuation date in the demographic projections on the basis that the plan is closed to new entrants.

Solvency Liability Projection Actuarial Assumptions

The solvency liability projections for purposes of calculating the solvency incremental cost are based on the assumptions used for the solvency valuation described previously.

Appendix E: Membership Data

Summary of Membership Data

Active and disabled members

	January 1, 2014	January 1, 2011
Defined Benefit Provision		
● Number	188	186
● Average age	45.2	44.4
● Average credited service	6.9	7.7
● Annual payroll	\$ 25,654,389	\$ 22,638,017
● Average salary	\$ 136,460	\$ 121,710
Defined Contribution Provision		
● Number	259	229

The following distribution relates to active and disabled members under the defined benefit provision.
The following meanings have been assigned to age and credited service:

- Age Age as at January 1, 2014
- Credited Service Credited service as at January 1, 2014

Age	Credited Service								Total
	0 - 4	5 - 9	10 - 14	15 - 19	20 - 24	25 - 29	30 - 34	35 +	
< 25	2								2
25 - 29	12	2							14
30 - 34	9	5							14
35 - 39	12	10							22
40 - 44	18	7	6	4			1		36
45 - 49	17	13	9	2	2				43
50 - 54	15	4	2	3	3	1			28
55 - 59	7	5	3	2					17
60 - 64	5		3	1				2	11
65 +		1							1
Total	97	47	23	12	5	2			188

Retired members and beneficiaries

	January 1, 2014	January 1, 2011
● Number	324	314
● Average age	72.1	70.2
● Total annual lifetime pension	\$ 5,907,882	\$ 5,880,593
● Total annual temporary pension to age 65	\$ 336,435	\$ 272,110
● Average annual pension (lifetime plus temporary)	\$ 18,234	\$ 19,595

Transferred and terminated vested members

	January 1, 2014	January 1, 2011
● Number	183	132
● Average age	49.1	49.4
● Total annual pension	\$ 708,349	\$ 504,185
● Average annual pension	\$ 3,871	\$ 3,820

Review of Membership Data

The membership data with respect to the defined benefit provision were supplied by Cliffs Natural Resources Inc. as at January 1, 2014. The membership data with respect to the defined contribution provision were supplied by Sun Life Financial as at January 1, 2014.

The membership data have been relied upon by Towers Watson following tests for reasonableness and found to be sufficient and reliable for the purposes of the actuarial valuation. Elements of the data review included the following:

- ensuring that the data were intelligible (i.e., that an appropriate number of records was obtained, that the appropriate data fields were provided and that the data fields contained valid information);
- preparation and review of membership reconciliations to ascertain whether the complete membership of the plan appeared to be accounted for;
- review of consistency of individual data items and statistical summaries between the current actuarial valuation and the previous actuarial valuation;
- review of reasonableness of individual data items, statistical summaries and changes in such information since the previous actuarial valuation date; and
- comparison of the membership data and the plan's financial statements for consistency.

However, the tests conducted as part of the membership data review may not have captured certain deficiencies in the data. We have also relied on the certification of the plan administrator as to the quality of the data.

Membership Reconciliation

	Active and disabled members	Retired members and beneficiaries	Transferred and terminated vested members
As at January 1, 2011	186	314	132
• New entrants (including re-employed)	107		
• Non-vested termination	(23)		
• Vested termination	(63)		63
• Settlement	(4)		(5)
• Transfer			
• Retirement	(14)	21	(7)
• New beneficiaries		6	
• Deceased (with beneficiary)		(6)	
• Deceased (without beneficiary)		(15)	
• Deceased (settlement)	(1)		
• Data correction	—	4	
• Net change	2	10	51
As at January 1, 2014	188	324	183

Appendix F: Summary of Plan Provisions

The following is an outline of the principal features of the plan which are of financial significance to valuing the plan benefits. For a detailed description of the benefits, please refer to the plan document.

Plan Effective Date

The Plan was restated effective January 1, 1997. Predecessor arrangements date back to July 1, 1963.

Date of Last Amendment

November 26, 2010 (update to defined contribution default investment option). The plan will be further amended to reflect regulatory updates since the last restatement of the text and the closing of the plan to new members, effective January 1, 2013.

Definitions

Credited Service

Service while a member of the Plan.

Pensionable Earnings

Basic remuneration, including overtime (for periods prior to June 23, 2008), shift premiums and cash bonuses. Excludes stock options, severance payments and all other non-cash benefits.

Plan Participation

All employees who are not within the bargaining unit are required to join the Plan on their date of employment.

Normal Retirement

Eligibility

Age 65.

Effective January 1, 1997 existing plan members were offered a one-time choice between two pension options, Option A or B. All future new hires from January 1, 1997 onward must enrol under Option B. As at January 1, 2011, there are no remaining members in active status, with coverage under Option A.

Option B offers a combination of Defined Benefit coverage (for past service and future service) and Defined Contribution coverage (for future service, from January 1, 1997 onward), as follows:

Basic Annual Pension, Defined Benefit

The annual pension benefit payable on normal retirement is the sum of (i) and (ii):

- (i) the sum of 1.5% of highest 5-year average earnings up to the YMPE plus 1.6% of highest 5-year average earnings over the YMPE, for each year of credited service prior to January 1, 1997;
- (ii) 1.0% of highest 5-year average earnings for each year of credited service after December 31, 1996.

However, the pension payable on normal retirement will not be less than the amount that would be payable, if the member had been a member of Option B of the Bargaining Unit plan sponsored by the company instead of this salaried employees plan, plus the amount of pension which could be purchased with the employee's required contributions with interest.

In addition, a "make-up benefit" is payable to salaried employees who have a frozen monthly lifetime benefit under the Bargaining Unit plan (in respect of a period of Bargaining Unit credited service prior to becoming a salaried employee). The make-up benefit is based on the difference between the Bargaining Unit plan's current lifetime benefit rates under Option B and the benefit rates that were in effect at the time of the employee's transfer to salaried status.

Member Contributions

Prior to January 1, 1997, 1.2% of earnings up to the YMPE and 3.0% of earnings above the YMPE.

Effective January 1, 1997, employees covered under Option B ceased contributing toward the Defined Benefit component of the plan; from 1997 onward, employees covered under Option B contribute 2% of earnings per annum to a Defined Contribution component of the Plan, and are entitled to a contribution made by the Company of 3% of earnings per annum. Effective May 1, 2007, contributions to the Defined Contribution component of the Plan were increased to 3% of earnings from the employees and 6% of earnings from the Company.

The Defined Contribution account balance, including investment earnings thereon, will be used at retirement to provide additional pension income.

Early Retirement

Please refer to the summary in Appendix D.

In addition to lifetime retirement benefits, employees who retire early from active status will receive a monthly supplement, payable to age 65, of \$18.00 per year of service (to a maximum of 40 years of service). The \$18.00 multiplier is increased to \$27.00, for employees who retire from active status at age 60 or later with 30 or more years of credited service, or at any age with 35 or more years of credited service.

Postponed Retirement

Eligibility

Up to age 71 if continued employment with the Company.

Benefit

Continued accrual of benefits for non-Quebec members. Revalorized pension determined for Quebec members.

Termination of Employment

Eligibility

All active plan members in Newfoundland are vested (in respect of their Defined Benefit entitlements) after two years of plan membership. All active plan members in Quebec are vested immediately (in accordance with Bill 102).

Defined Contribution entitlements are immediately vested, regardless of the number of years of service.

Benefit

Defined Benefit pension at normal retirement date, based on service at termination. Upon earlier retirement, the pension is actuarially reduced (or is subject to a 6% reduction per annum pre-65, with 15 or more years of continuous service). Effective January 1, 2001, for terminating active Quebec

members, the pension for post-2000 credited service is subject to adjustment, in accordance with Quebec Bill 102. In lieu of the monthly benefit, the participant may transfer the commuted value of the benefit to a locked-in RRSP or other registered vehicle.

Defined Contribution account balances may be transferred to a locked-in RRSP or other registered vehicle.

Death While Active – Surviving Spouse Coverage

Eligibility

15 years of service, with spouse.

Benefit

Benefit payable is 50% (before any reduction) of the accrued monthly Defined Benefit or \$140 if greater, and is payable during the spouse's remaining lifetime.

Death While Active – Optional Pre-Pension Spouse Coverage

Eligibility

Age 55 and 15 years of service, with spouse, and member has elected coverage.

Benefit

Benefit payable is 50% (before any reduction) of the accrued monthly Defined Benefit, and is payable during the spouse's remaining lifetime. If the member subsequently survives to retirement, his retirement benefit will be reduced by 0.68% for each year this coverage was in effect.

Minimum Death Benefit

Eligibility

Two or more years of plan membership.

Benefit

The commuted value of the Defined Benefit earned after January 1, 1990 to the date of death is payable to the spouse or, if applicable, designated beneficiary. If the spouse is the recipient, the spouse will have the option of taking the commuted value in the form of a monthly pension.

If less than two years of plan membership, refund of Defined Benefit member contributions with interest. Effective January 1, 2001, immediate vesting is provided upon the death of active Quebec members, in accordance with Bill 102.

In addition, the full Defined Contribution account balance, with investment earnings, will be vested, regardless of the number of years of service.

Forms of Payment

Normal Form

Annuity for life, with 50% of the lifetime benefit continuing to the spouse if the retired employee dies before age 65; refund of any contributions with interest in excess of benefits paid out.

Optional Forms

For married participants, the automatic option is a reduced 60% joint and survivor pension, actuarially equivalent to the normal form. Other options are also available on an actuarially equivalent basis.

Disability Benefit

While benefits are payable from the LTD plan, pension benefits continue to accrue under the Defined Benefit provisions based on the earnings rate at the time of disability. Company contributions continue under the Defined Contribution provisions, if the member elects to contribute.

Special Provisions on Mine Shut-Down

The special benefits payable on shut-down of the mine are described in Appendix D.

Appendix G: Solvency Ratio

Solvency Ratio

	January 1, 2014
Solvency value of assets	\$ 83,533,274
Solvency liability	\$ 94,004,606
Solvency ratio	89%

Comments:

- The solvency value of assets reflects net outstanding amounts.
- For purposes of calculating the solvency ratio, the solvency value of assets and the solvency liability exclude assets under the defined contribution provision.
- As the degree of solvency is less than 1.00, transfer deficiencies must be paid over a maximum period of five years unless the cumulative transfer deficiencies are within the limits prescribed by the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)* or the employer remits additional contributions in respect of the transfer deficiencies. Pursuant to Regulations 15(4) or 15(5) to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*, approval of the Superintendent will be required to make commuted value transfers if there has been a significant decline in the solvency ratio after the valuation date.

Appendix H: Certificate of the Plan Administrator

I hereby certify that to the best of my knowledge and belief:

- the significant terms of engagement contained in Appendix A of this report are accurate and reflect the plan administrator's judgement of the plan provisions and/or an appropriate basis for the actuarial valuation of the plan;
- the information on plan assets forwarded to Société Towers Watson Canada inc. and summarized in Appendix B of this report is complete and accurate;
- the data forwarded to Société Towers Watson Canada inc. and summarized in Appendix E of this report are a complete and accurate description of all persons who are members of the plan, including beneficiaries who are in receipt of a retirement income, in respect of service up to the date of the actuarial valuation;
- the summary of plan provisions contained in Appendix F of this report is accurate; and
- except as noted in the Introduction of the report, there have been no events which occurred between the actuarial valuation date and the date this actuarial valuation was completed that may have a material financial effect on the actuarial valuation.

Signature

Date

Name

Title

Appendix I: Actuarial Information Summary

EXHIBIT "REPS-5"

August 14, 2015

Via E-Mail

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Blake, Cassels & Graydon LLP
600 de Maisonneuve Blvd. W, Suite 2200
Montreal, QC H3A 3J2

Attention: Bernard Boucher (Montreal)
Milly Chow (Toronto)
Steven Weisz (Toronto)

Dear Counsel:

Re: Wabush Mines (CCAA), Québec Court File No. 500-11-048114-157
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining
Company, Managing Agent Arnaud Railway Company and Wabush Lake Railway
Company, Limited Newfoundland Registration Number 021314-000 (the "Salaried
Plan")
Our File No. 15/1359

We are the court-appointed Representative Counsel to all non-union employees and retirees of Wabush Mines in its CCAA proceedings. These individuals are also members of the Salaried Plan.

As you are aware, the company reported that as at January 1, 2015, the Salaried Plan is underfunded on a wind up basis by approximately \$18.2 million.

Further, the company has reported that it owes amounts to the Salaried Plan referred to as "Monthly Amortization Payments" in the amount of \$273,218.58 per month, and a "Yearly Catch-Up Amortization Payment" of approximately \$5.5 million (for both the Salaried and Union Plans) which was due for payment in July, 2015.

In the decision of Mr. Justice Hamilton dated June 26, 2015, the court approved the company's request to not make the Monthly Amortization Payments nor the Yearly Catch-Up Amortization Payment going forward.

Accordingly, the amount of the Monthly Amortization Payments and the proportionate share of the Yearly Catch-Up Amortization Payment attributable to the Salaried Plan are therefore owing to the Salaried Plan and have not been paid by the company.

Statutory deemed trust priorities for members of the Salaried Plan

The Salaried Plan is registered in Newfoundland and thus subject to the Newfoundland *Pension Benefits Act*, 1997, SNL 1996 c.P-4.01 s.1 (“PBA”). It is also our understanding that certain members of the Salaried Plan may be subject to federal jurisdiction making the federal *Pension Benefits Standards Act*, 1985 (R.S.C., 1985, c.32 (2nd Supp.)) (“PBSA”) also applicable.

Both the PBA and the PBSA contain statutory protections for members of underfunded pension plans.

The PBA states:

Amounts to be held in trust

32. (1) An employer ... shall ensure, with respect to a pension plan, that

...

(b) an amount equal to the aggregate of

(i) the normal actuarial cost, and

(ii) any special payments prescribed by the regulations, that have accrued to date; and

(c) all

...

(ii) other amounts due under the plan from the employer that have not been remitted to the pension fund

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.*

(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.*

(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).* [emphasis added]

The PBSA states:

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:*

...

(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:

...

(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).

...

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*; [emphasis added]

As the Monthly Amortization Payments and the proportionate share of the Yearly Catch-Up Amortization Payments have not been paid by Wabush, those amounts are now subject to the deemed trust priorities pursuant to both section 32 of the PBA and section 8 of the PBSA in favour of the Salaried Plan members.

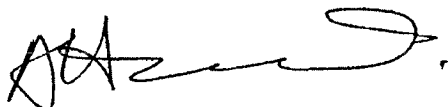
Furthermore, in the event the Salaried Plan is wound up, which we expect to be highly likely in the company's current circumstances, the amount the company owes to the Salaried Plan in respect of the wind up liability is also subject to the PBA deemed trust priority in favour of the plan members.

We are writing to confirm that the above-noted priorities will be asserted on behalf of the Salaried Plan members in respect of the amounts owing by the company to the Salaried Plan and are to be paid from the company's assets ahead of the claims of other creditors (after payment of the court-ordered CCAA charges). As a trust claim, the amounts owing to the Salaried Plan that are subject to the PBA and PBSA deemed trusts have priority over any secured claim that may be claimed by another creditor. Please bear that in mind should any bidder in the current sales process applicable to Wabush seek to assert a "credit bid" predicated on its assertion that it is a first priority secured creditor of Wabush.

Should you have any questions with respect to the above, please do not hesitate to contact the undersigned. Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:vdI

- cc. Nigel Meakin, Steven Bissell, *FTI Consulting* (Monitor)
- Sylvain Rigaud, Chrystal Ashby, *Norton Rose Fulbright LLP* (Counsel for the Monitor)
- Matthew Gottlieb, *Lax O'Sullivan LLP* (Independent Counsel for the Board of Directors of the Petitioners)
- Louis Dumont, *Dentons LLP*, Counsel to Cliffs Mining Company (the DIP Lender)
- Grant Moffat, *Thornton Grout Finnigan LLP*, Counsel for Cliffs Mining Company (the DIP Lender)
- Pierre Lecavalier, *Department of Justice, Attorney General of Canada* (Counsel to OSFI)
- Doug Mitchell, Leslie-Anne Wood, *Irving Mitchell Kalichman* (Counsel to Superintendent of Pensions, Newfoundland and Labrador)
- Jean-Francois Beaudry, *Philon Leblanc Beaudry*, (Counsel to Syndicat des Metallos, Section Locale 6285)
- Gerry Apostolatos, Langlois Kronstrom Desjardins, (Creditors Quebec North Shore and Labrador Railway Company Inc., Air Inuit Ltd., Metso Shared Services Ltd., Iron Ore Company of Canada, and WSP Canada)

Inc.)
Nicholas Scheib, *Scheib Legal*
Ari Kaplan, *Koskie Minsky LLP*
Service List

EXHIBIT "REPS-6"

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.

Mr. K. Holland
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

EXHIBIT "REPS-7"

Mines Wabush
C.P. 25
Bureau Chef
Saint-Bruno de Montarville, Qc J3V 4P8

January 26, 2016

Mr. Michael Keeper



Subject: Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited (Newfoundland Registration No. 021314 and CRA Registration NO. 0343558) (The "Plan")

Notice of Plan termination as of December 16, 2015

Dear Mr. Keeper:

Wabush Iron Co. Limited, Wabush Resources Inc. and certain of their affiliates, including Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited, filed for restructuring proceedings under the Companies' Creditors Arrangement Act (CCAA) in May 2015. As part of the CCAA proceeding, special payments towards the deficits of the Plan have been suspended since May 2015, affecting the financial position of the Plan. In addition, Wabush Mines has ceased its operation, with essentially all of its employees laid-off or terminated and it appears unlikely that the Plan can continue as a going concern under a new sponsor.

As a result, the Newfoundland Superintendent of Pensions (the "Regulator") has ordered the termination of the Plan effective as of December 16, 2015.

About the termination

As required by the pension legislation, Wabush Mines will arrange for a Termination Report that reviews the financial position of the Plan as of December 16, 2015. That report will be filed with the Regulator for approval.

All participants will eventually receive a personalized statement setting out their entitlements under the Plan and their options as a result of the termination. Please note that until the Termination Report is approved by the Regulator, no benefits (except for regular monthly pension payments for participants currently receiving payments) may be paid from the Plan. If you are eligible to retire immediately and would like to start your pension, you may contact Marthe Brodeur using the contact information below.

You will find enclosed a *Frequently Asked Questions* (FAQs) document that should answer most of your questions until further information is available. If you have any additional questions, please contact the undersigned.

Please read question 4 of the enclosed FAQ as your monthly pension benefit will be adjusted as early as March 1, 2016 as requested by Provincial regulators.

Wabush Mines

CONTRIBUTORY PENSION PLAN FOR SALARIED EMPLOYEES OF WABUSH MINES, CLIFFS MINING COMPANY, MANAGING AGENT, ARNAUD RAILWAY COMPANY AND WABUSH LAKE RAILWAY COMPANY, LIMITED (Newfoundland Registration No. 021314 and CRA Registration NO. 0343558) (The "Plan")

Frequently Asked Questions (FAQs) – Current recipients

1. *What is a pension plan termination?*

A pension plan termination causes the plan to cease to exist for all members, former members and retirees. All benefits will be settled either through a lump-sum payment or through the purchase of an annuity from a life insurance company. The Newfoundland Superintendent of Pensions (the "Regulator"), has oversight of the termination and must approve the *Termination Report* before benefits are paid out.

2. *When will the Plan be terminated?*

The Plan termination date is December 16, 2015.

3. *Will I receive more information?*

All participants or person entitled to a benefit will eventually receive a personalized statement setting out their entitlements under the Plan and their options as a result of the termination.

4. *Will I be affected?*

You will continue to receive a monthly payment but such payment will be adjusted ("Adjusted Pension Benefit") to reflect the financial position of the Plan as will be stipulated in the *Termination Report*. As requested by Provincial regulators, a preliminary reduction of 25% will be applied to your total gross monthly pension benefit you currently receive starting on March 1, 2016. The reduction could potentially change and your monthly pension be readjusted once the *Termination Report* is filed with the Regulators. We will make sure to keep you informed if this is the case.

Once the termination process is completed, the payments will be paid from a life insurance company instead of from the Plan. The pension option you chose at retirement (for example, a survivor pension option), remains in effect. For example, if you elected a Joint & Surviving Spouse option upon retirement and you die before your spouse, your spouse will receive a percentage of your *adjusted* amount upon your death, in accordance with the provisions of the plan.

As a current recipient, you do not have anything to do. Once the Regulators have approved the *Termination Report*, Wabush Mines will proceed with the annuity purchase

5. *When will my pension statement be ready?*

Wabush Mines will send individual pension statements approximately 30 days following the approval of the *Termination Report* by the Regulator.

6. *What is an annuity?*

An annuity is a financial contract with a life insurance company that provides a continuing payment with a monthly amount payable for your lifetime, just like a pension.

7. *Is my pension guaranteed after the annuity is purchased?*

The purchase of the annuity will not affect your *Adjusted Pension Benefit*. Once the annuity is purchased, your *Adjusted Pension Benefit* is protected by Assuris against the unlikely event that the life insurance company selected to pay your monthly pension is ever declared insolvent. Assuris is a not-for-profit organization of Canadian insurers whose role is to provide additional protection to policyholders against loss of benefits and it covers pension annuities up to a maximum of \$2,000 per month, or 85% of your monthly pension if greater.

8. *When will the annuity purchases happen?*

The annuity purchase can only happen after the plan *Termination Report* has been approved by the Regulator. This may take up to 12 months or more from the *termination date*.

9. *When will I be notified about the purchase of my annuity?*

Once an annuity has been purchased for you, you will receive a notice from Wabush Mines, which will include the name of the life insurance company who will provide the annuity and the date you will receive your first annuity payment from the insurance company. You will also receive a welcome letter from the insurance company.

10. *How will the insurance company know where to send my payments?*

Wabush Mines will arrange to provide certain personal information including banking information for direct deposits, as well as the name and age of your spouse (for survivor benefits, if applicable) and beneficiary information. The welcome letter from the insurance company will ask you to review and confirm the accuracy of your personal information.

11. *Will my payments continue to be received on exactly the same schedule?*

We know you count on receiving your payments on schedule and may have automatic banking transactions in place based on these dates. Wabush Mines and the insurance company who will provide your annuity will work together to ensure that there is no disruption to your pension.

Contact information

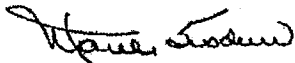
Mailing address: Wabush Mines
C.P. 25
Succ. Bureau Chef
St-Bruno de Montarville, Qc
J3V 4P8

Phone: 450-441-9564 or
1-844-954-6534 (toll free)

Email: marthe.brodeur@cliffsnr.com.

Please make sure to keep Wabush Mines informed of any change of address that you may incur.

Sincerely,



Marthe Brodeur
Manager, Compensation and Benefits ECIO

12. Will I miss any of my monthly payments as a result of the annuity purchase

There will be no disruption in your monthly pension payments as a result of the annuity purchase. You will continue to receive your *Adjusted Pension Benefit* payments from the Plan up to the first payment from the life insurance company, at which time the payments will then be paid by the insurance company.

13. Where can I get more information?

Should you have any questions, please contact Marthe Brodeur using the contact information included in the notice.

While every effort has been made to be accurate, the official Plan document and the full Termination Report will govern in the event of any conflict between this Frequently Asked Questions document and one or both of those documents.

EXHIBIT "REPS-8"

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-048114-157

SUPERIOR COURT
(Commercial Division)

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

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

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

Petitioners

-and-

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

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON

OBJECTING PARTIES-Mises-en-cause

-and-

UNITED STEELWORKERS, LOCAL 6254,
UNITED STEELWORKERS, LOCAL 6285

Mises-en-cause

-and-

MORNEAU SHEPELL
Mise-en-cause

**NOTICE OF OBJECTION BY THE REPRESENTATIVES OF THE SALARIED
EMPLOYEES AND RETIREES TO THE MOTION BY THE MONITOR FOR
DIRECTIONS WITH RESPECT TO PENSION CLAIMS**
(Sections 11 and 23(k) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

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

The court-appointed Representatives to the non-union employees and retirees (the "**Salaried Members**") of the Wabush CCAA Parties object to the Motion by the Monitor for Directions with respect to Pension Claims dated September 20, 2016 ("**Motion for Directions**") on the following basis:

Background

1. The Wabush CCAA Entities are under CCAA protection but are not restructuring. The Wabush CCAA Entities have shut down operations, terminated the vast majority of the employees, and are selling their assets in a sales process in the CCAA proceedings. The shutdown of Wabush Mines is part of the disengagement by Cliffs Natural Resources based in Cleveland, Ohio, the parent company of Wabush Mines (and Bloom Lake), from its mining operations in Eastern Canada.
2. The Wabush Salaried Plan (and Union plans) are registered in Newfoundland and regulated under the Newfoundland *Pension Benefits Act*, S.N.L. 1996 c. P-4.01 ("**Newfoundland PBA**"). The Plans are significantly underfunded. They are in the process of being wound up by Morneau Shepell who was appointed as the replacement pension plan administrator by the Newfoundland Superintendent of Pensions.
3. As a result of the underfunding of the pension plans, the monthly pension benefits of the Salaried Members have been significantly reduced by 25%. Coupled with the loss of their earned health and life insurance benefits that occurred in June, 2015 at the

commencement of the Wabush CCAA proceedings, the Salaried Members are suffering significant financial losses and hardship in the course of this CCAA proceeding. The Salaried Members are a very significant creditor group.

The Newfoundland PBA deemed trust priority for pension plan beneficiaries

4. On August 14, 2015, Representative Counsel wrote to the company and other parties asserting that the deemed trust priority provisions in the Newfoundland PBA (the "**Newfoundland PBA Deemed Trust**") apply as a priority claim in favour of the beneficiaries of the Wabush Salaried Plan. A copy of the letter is communicated herewith as **Exhibit OP-1**.
5. On November 16, 2015, at the hearing of the motion by the Monitor for approval of the Claims Procedure Order, Representative Counsel advised the Monitor and this Honourable Court that it is the Representatives' position that any issue(s) regarding the interpretation of the Newfoundland PBA Deemed Trust should be referred to the Supreme Court of Newfoundland and Labrador for adjudication.
6. Despite the previously communicated position of Representative Counsel, the Motion for Directions seeks to have such questions put before by this Court. Further, Representative Counsel does not agree with the relevance and/or the formulation of certain of the Monitor's proposed questions in its Motion for Directions.
7. In the event of dispute on the issue of transferring the Newfoundland PBA Deemed Trust question to the Newfoundland Court, that issue should be addressed first and scheduled for a hearing. There are a number of reasons that support such a transfer, including, but not limited to, the following:
 - a) The Wabush pension plans are registered in Newfoundland and Labrador and have been funded, administered and regulated in accordance with the Newfoundland PBA since their inception. The pension plans have been,

and continue to be, regulated by the Newfoundland Superintendent of Pensions pursuant to the provisions of Newfoundland PBA;

- b) The Québec Superior Court is a court of civil jurisdiction. The Newfoundland court is a court of common law jurisdiction. The Newfoundland PBA is a statute of a common law jurisdiction. It is respectfully submitted that it is more appropriate for a common law court to interpret a common law statute than a civil court interpreting a common law statute;
- c) It is more efficient and cost-effective for the Newfoundland Court to interpret the Newfoundland PBA Deemed Trust rather than the Québec CCAA court. Respectfully, this court does not have expertise in interpreting the Newfoundland PBA Deemed Trust. The adjudication of the Newfoundland PBA Deemed Trust will therefore require expert evidence to be adduced before the Québec court. That process involves the identification, retainer, and payment of suitable expert(s) by the adversarial parties who will be required to prepare expert affidavits on the interpretation of the Newfoundland PBA. The process to retain such expert(s) is time-consuming and costly and will contribute to delay and costs to the estate. Such delay and costs can be avoided by transferring the issue to a Newfoundland court which, as a court of competent jurisdiction to interpret Newfoundland statute law, does not require expert evidence;
- d) There is precedent authority directly on point supporting the transfer of a pension issue to the jurisdiction where the pension plan is registered and has been administered, where that jurisdiction is different from the jurisdiction of the court where the company filed for CCAA protection. For example, in the CCAA proceeding of *Timminco*, the company obtained CCAA protection in the Ontario Superior Court of Justice (Commercial List). An issue arose in the course of that proceeding on the

interpretation of the deemed trust priority provisions in the Québec *Supplemental Pension Plan Act*, chapter R-15.1 ("SPPA") which regulated one of the Timminco pension plans. The CCAA judge supervising Timminco ordered adjudication of those issues to be transferred to the Québec Superior Court. The monitor of Timminco (FTI Consulting), and counsel to the company (Blakes LLP) did not oppose the transfer in that case. A decision was ultimately released by Mr. Justice Mongeon of the Quebec court interpreting the provisions of the deemed trust provisions of the Quebec SPPA to the Québec Timminco Plan. A copy of the order of Mr. Justice Morawetz dated October 18, 2012 ordering the transfer is communicated herewith as **Exhibit OP-2**;

- e) Section 17 of the CCAA contemplates the possibility of a transfer of an issue that arises in a CCAA proceeding to another Canadian court from the CCAA court to "act in aid of and be auxiliary to each other". Accordingly, the transfer of the Newfoundland PBA Deemed Trust to the Newfoundland court is readily permissible by the CCAA;
 - f) The Monitor states in its Motion for Directions that it believes another issue on which it needs direction is whether the proceeds derived from the sale of assets located in Quebec could be used toward the payment of a valid Newfoundland PBA Deemed Trust claim, should the court hold that the Newfoundland PBA Deemed Trust priority is valid. As a Québec *property* issue, that is not a factor to consider in transferring the Newfoundland PBA Deemed Trust *priority* issue to the Newfoundland court. The issue of whether Quebec property laws apply in the manner suggested by the Monitor may only arise, if at all, if the Newfoundland PBA Deemed Trust priority applies in favour of the pension plan beneficiaries. The Québec property issue may not arise at all.
8. The process to determine disputed claims in the Claims Process was extensively negotiated by Representative Counsel and USW and other affected parties and

culminated in the Claims Procedure Order of November 5, 2015. The Motion for Directions proposes an alternate process – a motion for directions – without prior consultation or agreement of Representative Counsel (nor other parties). Moreover, the Motion for Directions is in substance largely an advocacy piece and not a neutral document. Representative Counsel requests the opportunity to consult with the Monitor as to the appropriateness of a motion for directions instead of the Claims Process and on the questions to be proposed to the applicable court prior to the Motion for Directions proceeding further.

9. Representative Counsel agrees with the Objection of Morneau Shepell, concurrently filed herein.

Disagreement as to substance of questions and arguments in the Motion for Directions and reservation of rights

10. The Representatives disagree with the position adopted by the Monitor.
11. At the appropriate time, Representative Counsel will submit substantive arguments to such effect that all of the deficits in the Salaried Pension Plan should benefit from the priority deemed trust provisions set out in the Newfoundland PBA, in priority to all other claims against the Wabush CCAA Parties (other than the CCAA-ordered charges).
12. Representative Counsel reserve their rights to raise all other grounds for opposition of the matters raised in the Motion for Directions.
13. This Notice of Objection is well founded in fact and in law.

FOR THESE REASONS THE OBJECTING PARTIES-MISES-EN-CAUSE ASKS THAT THIS HONOURABLE COURT:

- [A] GRANT the present Notice of Objection;
- [B] DISMISS the Motion for Directions in respect of the Pension Claims;

- [C] **REQUIRE:** (1) the Monitor to consult with the affected parties and make best efforts to reach agreement on a procedure for the adjudication of the Newfoundland PBA Deemed Trust claims, including: the issues to be adjudicated, the appropriate forum for adjudication, the evidence on which the issues are to be adjudicated or the manner in which such evidence is to be tendered, and an appropriate timeline for adjudication; and (2) a motion be brought to amend the Amended Claims Procedure Order;

IN THE ALTERNATIVE:

- [D] **RESERVE** the rights of the Representatives to file a further Notice of Objection as to the specific issues raised in the Motion for Directions in respect of the Pension Claims no later than ten (10) business days after final adjudication of their present Notice of Objection;

IN THE FURTHER ALTERNATIVE

- [E] **DECLARE** the deemed trusts provided in section 52 of the Newfoundland PBA is applicable to the entirety of the deficits in the Wabush Salaried Plan in favour of the pension plan beneficiaries.

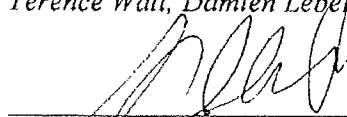
THE WHOLE WITHOUT COSTS, EXCEPT IN THE CASE OF CONTESTATION.

Toronto, October 7, 2016



KOSKIE MINSKY LLP

*Court-appointed Representative Counsel for the
OBJECTING PARTIES-Mises-en-cause Michael Keeper,
Terence Watt, Damien Lebel and Neil Johnson*



NICHOLAS SCHEIB

*Court-appointed Representative Counsel for the
OBJECTING PARTIES-Mises-en-cause Michael Keeper,
Terence Watt, Damien Lebel and Neil Johnson*

NOTICE OF PRESENTATION

IN SUPPORT OF NOTICE OF OBJECTION BY THE REPRESENTATIVES OF THE SALARIED EMPLOYEES AND RETIREES TO THE MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO PENSION CLAIMS

TO: Me Bernard Boucher (bernard.boucher@blakes.com)
Me Sébastien Guy (sebastien.guy@blakes.com)
BLAKE, CASSELS & GRAYDON LLP
600 de Maisonneuve West, Suite 2200
Montreal, Quebec H3A 3J2
Counsel for the Petitioners and the Mises-en-cause (i.e., Wabush CCAA Parties)

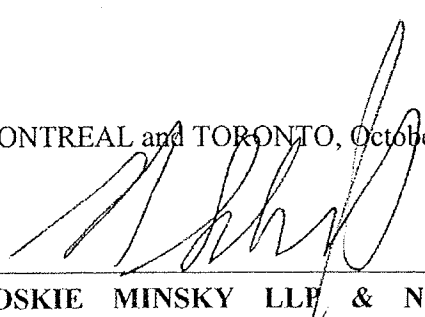
AND TO: Me Sylvain Rigaud (sylvain.rigaud@nortonrosefulbright.com)
NORTON ROSE FULBRIGHT CANADA LLP
1 Place Ville Marie, Suite #2500
Montreal, Quebec H3B 1R1
Counsel for the Monitor

AND TO: SERVICE LIST

TAKE NOTICE that the present *Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims* will be presented for adjudication before The Honourable Mr. Justice Stephen W. Hamilton, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montreal, at the Montreal Courthouse located at 1 Notre-Dame Street East, Montreal, Québec, on **October 12, 2016** at a room and at a time to be determined (or such other date to be determined by the Court for hearing of the *Motion by the Monitor for Directions with Respect to Pension Claims*).

GOVERN YOURSELF ACCORDINGLY.

MONTREAL and TORONTO, October 7, 2016


KOSKIE MINSKY LLP & NICHOLAS SCHEIB

Attorneys for the OBJECTING PARTIES-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

No.: 500-11-048114-157

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

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

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

Petitioners

-and-

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

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL AND NEIL JOHNSON

OBJECTING PARTIES-Mises-en-cause

-and-

UNITED STEELWORKERS, LOCAL 6254,
UNITED STEELWORKERS, LOCAL 6285

Mises-en-cause

-and-

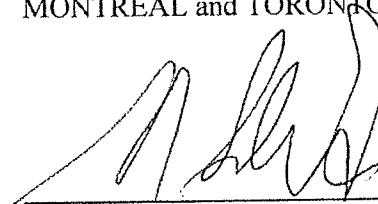
MORNEAU SHEPELL
Mise-en-cause

LIST OF EXHIBITS

(In support of the *Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims*)

Exhibit OP-1	Letter dated August 24, 2015 from Representative Counsel to counsel for the Wabush CCAA Parties
Exhibit OP-2	Copy of the Order (Approval of Priority Claim Adjudication Protocol) of Mr Justice Morawetz, J.S.C., of the Ontario Superior Court of Justice (Commercial List) dated October 18, 2015 in The Matter of the Plan of Compromise or Arrangement of Timminco Limited <i>et al</i>

MONTREAL and TORONTO, October 7, 2016



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

Exhibit OP-1

August 14, 2015

Via E-Mail

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Blake, Cassels & Graydon LLP
600 de Maisonneuve Blvd. W, Suite 2200
Montreal, QC H3A 3J2

Attention: Bernard Boucher (Montreal)
Milly Chow (Toronto)
Steven Weisz (Toronto)

Dear Counsel:

Re: Wabush Mines (CCAA), Québec Court File No. 500-11-048114-157
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining
Company, Managing Agent Arnaud Railway Company and Wabush Lake Railway
Company, Limited Newfoundland Registration Number 021314-000 (the "Salaried
Plan")
Our File No. 15/1359

We are the court-appointed Representative Counsel to all non-union employees and retirees of Wabush Mines in its CCAA proceedings. These individuals are also members of the Salaried Plan.

As you are aware, the company reported that as at January 1, 2015, the Salaried Plan is underfunded on a wind up basis by approximately \$18.2 million.

Further, the company has reported that it owes amounts to the Salaried Plan referred to as "Monthly Amortization Payments" in the amount of \$273,218.58 per month, and a "Yearly Catch-Up Amortization Payment" of approximately \$5.5 million (for both the Salaried and Union Plans) which was due for payment in July, 2015.

In the decision of Mr. Justice Hamilton dated June 26, 2015, the court approved the company's request to not make the Monthly Amortization Payments nor the Yearly Catch-Up Amortization Payment going forward.

Accordingly, the amount of the Monthly Amortization Payments and the proportionate share of the Yearly Catch-Up Amortization Payment attributable to the Salaried Plan are therefore owing to the Salaried Plan and have not been paid by the company.

Statutory deemed trust priorities for members of the Salaried Plan

The Salaried Plan is registered in Newfoundland and thus subject to the Newfoundland *Pension Benefits Act*, 1997, SNL 1996 c.P-4.01 s.1 (“PBA”). It is also our understanding that certain members of the Salaried Plan may be subject to federal jurisdiction making the federal *Pension Benefits Standards Act*, 1985 (R.S.C., 1985, c.32 (2nd Supp.)) (“PBSA”) also applicable.

Both the PBA and the PBSA contain statutory protections for members of underfunded pension plans.

The PBA states:

Amounts to be held in trust

32. (1) An employer ... shall ensure, with respect to a pension plan, that

...

(b) an amount equal to the aggregate of

(i) the normal actuarial cost, and

(ii) any special payments prescribed by the regulations, that have accrued to date; and

(c) all

...

(ii) other amounts due under the plan from the employer that have not been remitted to the pension fund

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.*

(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.*

(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).* [emphasis added]

The PBSA states:

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:*

...

(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:

...

(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).

...

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*; [emphasis added]

As the Monthly Amortization Payments and the proportionate share of the Yearly Catch-Up Amortization Payments have not been paid by Wabush, those amounts are now subject to the deemed trust priorities pursuant to both section 32 of the PBA and section 8 of the PBSA in favour of the Salaried Plan members.

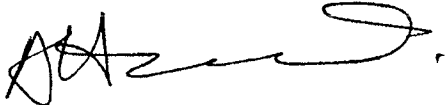
Furthermore, in the event the Salaried Plan is wound up, which we expect to be highly likely in the company's current circumstances, the amount the company owes to the Salaried Plan in respect of the wind up liability is also subject to the PBA deemed trust priority in favour of the plan members.

We are writing to confirm that the above-noted priorities will be asserted on behalf of the Salaried Plan members in respect of the amounts owing by the company to the Salaried Plan and are to be paid from the company's assets ahead of the claims of other creditors (after payment of the court-ordered CCAA charges). As a trust claim, the amounts owing to the Salaried Plan that are subject to the PBA and PBSA deemed trusts have priority over any secured claim that may be claimed by another creditor. Please bear that in mind should any bidder in the current sales process applicable to Wabush seek to assert a "credit bid" predicated on its assertion that it is a first priority secured creditor of Wabush.

Should you have any questions with respect to the above, please do not hesitate to contact the undersigned. Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:vdI

cc. Nigel Meakin, Steven Bissell, *FTI Consulting* (Monitor)
Sylvain Rigaud, Chrystal Ashby, *Norton Rose Fulbright LLP* (Counsel for the Monitor)
Matthew Gottlieb, *Lax O'Sullivan LLP* (Independent Counsel for the Board of Directors of the Petitioners)
Louis Dumont, *Dentons LLP*, Counsel to Cliffs Mining Company (the DIP Lender)
Grant Moffat, *Thornton Grout Finnigan LLP*, Counsel for Cliffs Mining Company (the DIP Lender)
Pierre Lecavalier, *Department of Justice, Attorney General of Canada* (Counsel to OSFI)
Doug Mitchell, Leslie-Anne Wood, *Irving Mitchell Kalichman* (Counsel to Superintendent of Pensions, Newfoundland and Labrador)
Jean-Francois Beaudry, *Phillion Leblanc Beaudry*, (Counsel to Syndicat des Metallos, Section Locale 6285)
Gerry Apostolatos, Langlois Kronstrom Desjardins, (Creditors Quebec North Shore and Labrador Railway Company Inc., Air Inuit Ltd., Metso Shared Services Ltd., Iron Ore Company of Canada, and WSP Canada)

Inc.)
Nicholas Scheib, *Scheib Legal*
Ari Kaplan, *Koskie Minsky LLP*
Service List

Exhibit OP-2

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

THE HONOURABLE)
)
JUSTICE MORAWETZ)

THURSDAY *12th*
~~WEDNESDAY~~, THE 10th DAY OF
OCTOBER 2012



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

ORDER
(Approval of Priority Claim Adjudication Protocol)

This Motion, made by Investissement Québec for an order approving the Priority Claim Adjudication Protocol and referring the adjudication of the BSI Pension Reimbursement Claims to the Superior Court of Québec (Commercial Division) was heard this day at 330 University Avenue, Toronto, ON.

On the consent of counsel for Timminco Limited and Bécancour Silicon Inc., FTI Consulting Canada Inc., in its capacity as court-appointed Monitor of the Timminco entities, Investissement Québec, Mercer Canada, the administrator of the Haley Pension Plan, The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW") and BSI Union and Non-Union employee Pension Committees:

1. **THIS COURT ORDERS** that the Priority Claim Adjudication Protocol, attached hereto as Schedule "A", be and the same is hereby authorized and approved.
2. **THIS COURT ORDERS** that the adjudication of whether the BSI Pension Reimbursement Claims are Priority Claims, all as defined in the attached Priority Claim Adjudication Protocol, be and the same is hereby referred exclusively to the Superior Court of Québec (Commercial Division) to be determined in accordance with the Priority Claim Adjudication Protocol.
3. **THIS COURT HEREBY REQUESTS** the aid and recognition of the Superior Court of Québec (Commercial Division) to give effect to this order and to adjudicate whether the BSI Pension Reimbursement Claims constitute Priority Claims in accordance with the terms of the Priority Claims Adjudication Protocol.

ENTERED AP / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

[Handwritten Signature]

[Handwritten Mark] OCT 19 2012
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SCHEDULE "A"

Court File No. CV-12-9539-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

PRIORITY CLAIM ADJUDICATION PROTOCOL

A. OVERVIEW

1. In accordance with the Reimbursement Agreement (the "**Reimbursement Agreement**") among Investissement Québec ("**IQ**"), FTI Consulting Canada Inc., as court-appointed Monitor, and Bécancour Silicon Inc., dated August 28, 2012 and the August 28, 2012 Interim Distribution Order (the "**Interim Distribution Order**")¹, two (2) sets of claims have been designated as Reimbursement Claims, namely:

- (i) a claim on behalf of Mercer Canada ("**Mercer**"), as administrator of the Haley Pension Plan, and on behalf of the beneficiaries of that plan (the "**Mercer Reimbursement Claim**"), which claim is supported by The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("**USW**"); and
- (ii) a claim by Le Comité de retraite du Régime de rentes pour les employés non-syndiqués de Silicium Bécancour Inc. and a claim by Le Comité de retraite du Régime de rentes pour les employés syndiqués de Silicium Bécancour Inc. (collectively the "**BSI Pension Committees**") (the "**BSI Pension Reimbursement Claims**").

2. IQ disputes that the above Reimbursement Claims have priority over the IQ Security and the parties do not anticipate the dispute will be resolved through the consented resolution process

¹ Unless otherwise indicated, any capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Reimbursement Agreement and the Interim Distribution Order.

provided for in the Interim Distribution Order. Accordingly, an adjudication is required to determine whether such Reimbursement Claims constitute Priority Claims.

The following is the protocol for the adjudication of whether the Reimbursement Claims constitute Priority Claims.

B. THE MERCER REIMBURSEMENT CLAIM

1. The Mercer Reimbursement Claim shall be adjudicated by way of a motion before this Court wherein Mercer and USW will be the moving parties and IQ will be the respondent. If at any time Mercer shall cease the prosecution of the Mercer Reimbursement Claim, the USW shall be entitled to prosecute the Mercer Reimbursement Claim in the place and stead of Mercer.

As issues to be adjudicated regarding the Mercer Reimbursement Claim (such as, by way of example, substantive consolidation) may impact on other stakeholders of BSI or Timminco, the motion material hereafter described shall be served on the service list herein. Any creditor of the Timminco Entities or the Monitor, or the Timminco Entities themselves ("**Interested Stakeholders**") shall have the right to file material and participate in the motion proceedings in accordance with the following timetable:

- (i) Mercer and USW, if so advised, will deliver moving party motion material by October 29, 2012;
- (ii) IQ and Interested Stakeholders, if any, shall deliver responding material by November 30, 2012;
- (iii) Mercer and USW will deliver reply material, if so advised, by December 17, 2012;
- (iv) cross-examinations on filed affidavits, if required, will be conducted during the week of January 13, 2012. During this period, the examination of Peter Kalins, (a former officer and director of Timminco and BSI) as a witness to the motion, shall be conducted if consented to by Peter Kalins or if an appropriate court order has been obtained;
- (v) Mercer and USW, if so advised, will deliver moving party's facts by January 25, 2013;
- (vi) IQ and any Interested Stakeholders will deliver responding facts by February 13, 2013;
- (vii) Mercer and USW will deliver reply facts by February 20, 2013, if so advised; and
- (viii) the hearing of the motion will take place during the week of February 25, 2013;

2. In determining whether the Mercer Reimbursement Claim constitutes a Priority Claim, the determination of the quantum of such Priority Claim shall be postponed until after the determination of the nature of the claim and will be determined in accordance with the Claims Procedure Order or further order of the Court.

C. THE BSI PENSION REIMBURSEMENT CLAIMS

1. The adjudication of whether the BSI Reimbursement Claims constitute Priority Claims shall be referred exclusively to the Superior Court of Québec (Commercial Division) wherein the BSI Pension Committees will be the moving parties and IQ will be the respondent in accordance with the following timetable:

- (i) the BSI Pension Committees shall deliver their motion to institute proceedings within 60 days after the Order is made referring this matter to the Superior Court of Québec (Commercial Division);
- (ii) IQ and any Interested Stakeholders shall deliver their Statement of Defence within 30 days after receipt of the motion to institute proceedings;
- (iii) the BSI Pension Committees shall have up to 30 days after receipt of the IQ defence to deliver their response, if any;
- (iv) examinations, if necessary, are to be conducted by January 11, 2013;
- (v) written arguments and joint books of procedure and exhibits shall be delivered at least 2 weeks before the hearing of the motion; and
- (vi) the hearing of the motion is to be scheduled between February 18, 2013 and March 15, 2013 based upon a 1-2 day hearing.

For greater certainty, any appeal from an order of the Superior Court of Québec (Commercial Division) herein shall be to the Court of Appeal of Québec.

2. In determining whether the BSI Reimbursement Claims constitute Priority Claims, the determination of the quantum of such Priority Claims shall be postponed until after the determination of the nature of the claim and will be determined in accordance with the Claims Procedure Order or further order of the Court.

D. MONITOR'S REPORT

1. The Monitor, if it deems it necessary and appropriate to do so, may file a report with the court in connection with adjudication of either Reimbursement Claim.

In the matter of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36, As Amended

And in the Matter of a Plan of Compromise or Arrangement
of Timminco Limited and Bécancour Silicon Inc.

Applicants

Court File No. CV-12-9539-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

Proceedings commenced at
TORONTO

ORDER

(Approval of Priority Claim Adjudication Protocol)

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CITATION: Timminco Limited (Re), 2012 ONSC 5959
COURT FILE NO.: CV-12-9539-00CL
DATE: 20121018

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

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

RE: IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC., Applicants

BEFORE: MORAWETZ J.

COUNSEL: S. J. Weisz, for FTI Consulting Canada Inc., in its capacity as court-
appointed Monitor of the Timminco Entities


HEARD: OCTOBER 18, 2012

ENDORSEMENT

[1] On consent of Timminco Limited and Bécancour Silicon Inc., FIT Consulting Canada Inc., in its capacity as court-appointed Monitor of the Timminco Entities, Investissement Québec, Mercer Canada, the Administrator of the Haley Pension Plan, The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW") and BSI Union and Non-Union Employee Pension Committees, the Priority Claim Adjudication Protocol is approved. The adjudication of whether the BSI Pension Reimbursement Claims are Priority Claims is referred to the Superior Court of Québec (Commercial Division) to be determined in accordance with the terms of the Priority Claims Adjudication Protocol.

[2] This determination has been made pursuant to s. 17 of the CCAA, and I express my thanks, in advance, to the Superior Court of Québec.

[3] To the extent leave is required to proceed, such leave is granted.


MORAWETZ J.

Date: October 18, 2012

N° / No.: 500-11-048114-157

SUPERIOR COURT
(COMMERCIAL DIVISION)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:
BLOOM LAKE GENERAL PARTNER LIMITED, QUINTO MINING CORPORATION, 8568391 CANADA LIMITED, CLIFFS QUÉBEC
IRON MINING ULC, WABUSH IRON CO. LIMITED, WABUSH RESOURCES INC.,

Petitioners

- and -

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

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

Monitor

- and -

MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL & NEIL JOHNSON

OBJECTING PARTIES-Mises-en-cause

- and -

UNITED STEELWORKERS, LOCAL 6254, UNITED STEELWORKERS, LOCAL 6285

Mises-en-cause

- and -

MORNEAU SHEPELL

Mise-en-cause

*“Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for
Directions with Respect to Pension Claims”, Notice of Presentation, List of Exhibits and Exhibits OP-1 and OP-2*

M^{ES} NICHOLAS SCHEIB, ANDREW HATNAY AND BARBARA WALANCIK

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ORIGINAL

TAB 11

**EXHIBIT R-25
SALARIED DB PLAN
WIND-UP REPORT**



**The Contributory Pension Plan for Salaried
Employees of Wabush Mines, Cliffs Mining
Company, Managing Agent, Arnaud Railway
Company and Wabush Lake Railway Company,
Limited**

Wind-Up Actuarial Valuation as at December 16, 2015

December 2016

Registration numbers: Newfoundland and Labrador: 021314

Canada Revenue Agency: 0343558

Business. Needs. People.

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Executive Summary

Purposes of Report

This report presents the results of the actuarial valuation of the wind-up of 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 "Plan") as at December 16, 2015.

This report was prepared for the following purposes:

- to summarize the members' wind up entitlements under the Plan and to value the Plan's wind-up liabilities as at December 16, 2015 (the "Wind Up Date");
- to establish the value of assets available to provide the entitlements to the Plan members as at the Wind-Up Date;
- to determine the funded position (the wind up deficiency and the wind up funded ratio of the Plan) as at the Wind-Up Date;
- to document the methodology for dealing with any shortfall or surplus in respect of the Plan members; and
- to provide the information and the actuarial opinion required by the Newfoundland and Labrador *Pension Benefits Act, 1997* ("NL PBA"), the Federal Pensions Benefits Standards Act, 1985 ("Federal PBSA") and the *Income Tax Act* (Canada).

The information contained in this report was prepared for filing with Canada Revenue Agency, the Newfoundland and Labrador Superintendent of Pensions' Office and the Office of the Superintendent of Financial Institutions.

The report also provides an update of the financial position to September 30, 2016 (the "Cut-Off Date"). The Cut-Off Date is the date up to which subsequent events have been recognized in this report. September 30, 2016 was selected as the Cut-Off Date as it is reasonably close to the filing date of this report while still allowing time for the calculation of the Plan's liabilities as at that date. Results are presented at the Cut-Off Date as well as the Wind-Up Date as required under the Canadian Institute of Actuaries' Standards of Practice.

Summary of Recent Events

Wabush Iron Co. Limited, Wabush Resources Inc. and certain of their affiliates, including Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (the "Wabush Group"), filed for restructuring proceedings under the Companies' Creditors Arrangement Act (CCAA) in May 2015. As part of the CCAA proceeding, special payments towards the deficit of the Plan have been suspended since May 2015. In addition, Wabush Mines has ceased its operation, with essentially all of its employees laid-off or terminated and the Plan will not continue as a going concern under a new sponsor.

As a result, the Newfoundland and Labrador Superintendent of Pensions (the "Regulator") ordered the termination of the Plan effective as of December 16, 2015.

Wabush Mines ("the Prior Plan Administrator") provided formal notice of the termination of the Plan to all persons affected by the plan termination. These notices were mailed to the last known addresses of all affected members in January 2016.

On March 1, 2016, the Wabush Group (through their legal counsel) requested, in writing, the appointment of a replacement administrator of the Plan. In their communication, and subsequent correspondence dated March 23, 2016, it was stated that Wabush Mines no longer has the resources to act as administrator of the Plan. Based on this request, the Regulator, in their letter dated March 30, 2016 appointment Morneau Shepell ("the Plan Administrator") as the administrator of the Plan.

The settlement date will be determined once the regulatory approval for the termination report has been received. The valuation results are sensitive to the plan's investment policy and to market conditions between the Wind-Up Date and the settlement date. Therefore, the funded status at settlement may differ from that reported in this report.

As instructed by the provincial regulators (Newfoundland and Labrador and Quebec), for retired members and beneficiaries governed by the Newfoundland and Labrador Pension Benefits Act, 1997 ("the NL PBA") and the Quebec Supplemental Pension Plans Act ("the Quebec SPPA"), a preliminary reduction of 25% was applied starting March 1, 2016 to their total monthly pension benefit. The reduction will further be adjusted based on the financial position of the Plan and the Regulator's decisions. At the time of instruction, no members were understood to be governed by the Federal Pension Benefits Standards Act, 1985 ("the Federal PBSA") and, as such, all retired members' and beneficiaries pension benefits were reduced.

The calculations presented herein are based on 100% of the monthly pension benefits payable to retired members and beneficiaries as at the Wind-Up Date.

After the wind-up of the Plan was ordered, Morneau Shepell became aware that some members of the Plan worked in a material capacity on the railway operations of Wabush Mines and should be governed by federal jurisdiction. After discussion with the Company and Regulators, a review was undertaken to look at all employees whom were actively employed on or after June 1, 2013 (the approximate time when the issue of federal jurisdiction first arose as well as when the Pointe Noir Pellet Plan shut down) to determine the nature of their job during their last 12 months of employment. If the nature of their job during this period was materially based on railway operations, they were deemed to be governed by federal jurisdiction. If the nature of their job was not materially based on railway operations then they were deemed to be governed by provincial jurisdiction based on their province of employment. This review identified fourteen federal jurisdiction Plan members.

Although the Plan was never formally registered with OSFI, we are providing OSFI with a copy of the wind-up report for information purposes given that a number of Plan members are now deemed to be governed by federal jurisdiction.

Morneau Shepell requested illustrative annuity quotations from five companies licensed to sell annuities in Canada, three of which responded. The plan members included in the quote were those assumed to be fully or partially settled via annuity purchase. Based on the results collected from the quote, an adjustment factor of 102% has been applied to the annuity purchase windup liabilities (calculated in

accordance with the relevant guidance on assumptions for solvency and hypothetical windup valuations issued by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting ("CIA Annuity Purchase Guidance").

Subsection 6.01(c)(i) of the Salaried Plan text, which provides for a minimum benefit when a member has transferred from the Bargaining Unit Plan to the Plan, was interpreted by the Prior Plan Administrator to provide 100% of any bridging benefits payable in respect of combined credited service to impacted members from the Plan. Our interpretation differs and we have made a correction to the bridge benefits being paid from both the Bargaining Unit Plan and the Plan. All figures shown in this report are based on our interpretation. Further information on this issue is available in Appendix G.

A summary of the Plan provisions is provided in Appendix D.

Wind-Up Funded Position

The following table shows the wind-up funded position of the assets and liabilities, as at December 16, 2015:

Wind-Up Financial Position as at December 16, 2015 – Defined Benefit component

		\$
Total Wind-Up Assets (after expense allowance)		82,428,000
Wind-Up Liabilities		109,878,000
Wind-Up Surplus (Shortfall)		(27,450,000)
Wind-Up Funded Percentage		75.0 %

Assets and liabilities in respect of the Defined Contribution component of the Plan were \$3,847,000 as at December 16, 2015.

Taking into consideration investment returns, benefit payments, expenses, survivorship, and changes in interest rates since December 16, 2015, the financial position as at September 30, 2016, is estimated to be as follows:

Wind-Up Financial Position as at September 30, 2016 – Defined Benefit component

		\$
Total Wind-Up Assets (after expense allowance)		86,004,000
Wind-Up Liabilities		110,987,000
Wind-Up Surplus (Shortfall)		(24,983,000)
Wind-Up Funded Percentage		77.5%

Based on the above, the Plan's assets will not be sufficient to cover the Plan's wind-up liabilities at the time of the final distribution.

Subsequent Events

On March 1, 2016, pensions in pay to retirees and survivors were reduced to the estimated funded ratio of 75%.

Between the Wind-Up Date and the Cut-Off Date, the Defined Benefit component of the Plan's assets has returned 8.7% (net of expenses). The annuity proxy rate based on the guidance provided by the Canadian Institute of Actuaries has decreased 0.37% (which increases the obligations to be settled by an annuity purchase). The net impact is a 2.5% increase in the funded percentage of the Defined Benefit component of the Plan as can be seen in the Wind-Up Financial Position as at September 30, 2016, shown above.

The invested assets for the Defined Benefit component of the Plan are held by CIBC Mellon and were managed by SEI as at the Wind-Up Date. Leading up to the wind-up the majority of the funds were invested in fixed income with a small portion left invested in hedge funds. As at the date of this report, the assets were in the process of being moved to TD Asset Management to establish a liability duration matched investment portfolio to protect the Plan's funded position from future changes in interest rates.

To the best of our knowledge there have been no other events subsequent to the Cut-Off Date which, in our opinion, would have a material impact on the results of this valuation.

Section 1 – Wind-Up Financial Position

Wind-Up Financial Position

The wind-up financial position of the Plan as at December 16, 2015 is as follows:

Financial Position as at December 16, 2015 – Defined Benefit component

	Newfoundland and Labrador	Quebec	Federal	Total Plan
	\$	\$	\$	\$
Assets (before Wind-Up Expense)	41,930,000	40,580,000	568,000	83,078,000
Estimated Wind-Up Expenses	(329,000)	(317,000)	(4,000)	(650,000)
Total Wind-Up Assets	41,601,000	40,263,000	564,000	82,428,000
Wind-Up Liabilities				
Pending Death Benefits	-	35,000	-	35,000
Deferred Members	10,546,000	10,593,000	751,000	21,890,000
Retired Members and Beneficiaries	44,911,000	43,042,000	-	87,953,000
Total Wind-Up Liability	55,457,000	53,670,000	751,000	109,878,000
Wind-Up Surplus (Shortfall)	(13,587,000)	(13,407,000)	(187,000)	(27,450,000)
Wind-Up Funded Percentage	75.0%	75.0%	75.0%	75.0%

Figures may not add due to rounding.

Assets and liabilities in respect of the Defined Contribution component of the Plan were \$3,847,000 as at December 16, 2015.

There are no members who potentially qualify for consent benefits as a result of the wind-up.

Taking into consideration investment returns, changes in annuity purchase interest rates, survivorship, and cash flow since December 16, 2015, the financial position as at September 30, 2016 is estimated as follows:

Wind-Up Financial Position as at September 30, 2016 – Defined Benefit component

	Newfoundland and Labrador	Quebec	Federal	Total Plan
	\$	\$		\$
Assets (before Wind-Up Expense)	43,694,000	42,068,000	617,000	86,379,000
In-transits ¹	77,000	1,000	-	78,000
Estimated Wind-Up Expenses	(229,000)	(221,000)	(3,000)	(453,000)
Total Wind-Up Assets	43,542,000	41,848,000	614,000	86,004,000
Wind-Up Liabilities				
Pending Death Benefits	-	35,000	-	35,000
Deferred Members	11,022,000	10,726,000	778,000	22,526,000
Retired Members and Beneficiaries	45,377,000	43,049,000	-	88,426,000
Total Wind-Up Liability	56,399,000	53,810,000	778,000	110,987,000
Wind-Up Surplus (Shortfall)	(12,857,000)	(11,962,000)	(164,000)	(24,983,000)
Wind-Up Funded Percentage	77.2%	77.8%	78.9%	77.5%

Figures may not add due to rounding.

- 1 The in-transits shown in the above table relates to a correction of bridge benefits being paid to retired Plan members. More information can be found in Appendix G.

Reconciliation of Financial Position

The Plan had a wind-up shortfall of \$10,719,000 as at January 1, 2014 (based on the January 1, 2014 valuation report prepared by Towers Watson) versus a wind-up shortfall of \$27,450,000 as at the Wind-Up Date. The table below reconciles, on an approximate basis, the change in financial position of the Plan since January 1, 2014.

Reconciliation of Financial Position – Defined Benefit component

	\$	\$
Wind-Up Surplus (Shortfall) as at January 1, 2014		(10,719,000)
Interest (3.70% per annum) on Shortfall	(790,000)	
Special Payments with Interest	4,538,000	
Expected Wind-Up Surplus (Shortfall) as at December 16, 2015		(6,971,000)
Plan Experience		
Net Investment Experience	1,122,000	
Liability Gains / (Losses)	(1,313,000)	
Due to difference in solvency incremental cost and Normal Cost	(819,000)	
Total Plan Experience		(1,010,000)
Assumption and Data Changes		
Change in Expense Assumption	(450,000)	
Change in Commuted Value & Annuity Purchase Bases	(17,977,000)	
Data Changes	430,000	
Addition of 2% Annuity Purchase Load	(1,946,000)	
Benefits for Deferred Members beyond Normal Retirement Age	(280,000)	
Reallocation of Bridge Benefits between Bargaining and Salaried Plans	754,000	
Total Assumption and Data Changes		(19,469,000)
Wind-Up Surplus (Shortfall) as at December 16, 2015		(27,450,000)

Section 2 – Treatment of Shortfall and Methods of Allocating and Distributing Assets

Defined Benefit component of the Plan

Treatment of Shortfall

Based on the financial position of the Plan as at the Wind-up Date, the Plan's assets will not be sufficient to cover the Plan's wind-up liabilities at the time of the final distribution. While the Plan Administrator will be submitting a claim for the full amount of the wind-up shortfall in the CCAA proceedings, for purposes of the valuation, we have assumed that no further amounts will be deposited into the Plan.

Plan member benefits will be settled at the wind-up funded percentage applicable to them at the time of settlement based on their jurisdiction. The actual funded status at settlement may differ from that contained in this report.

Factors That Will Impact Shortfall

The ultimate surplus or shortfall will not be known with certainty until all Plan member benefits are settled. Many factors may affect the ultimate surplus or shortfall including:

- > Cost to purchase annuities from an insurance company to settle benefits;
- > Investment return on assets;
- > Member's pension entitlement elections (lump sum transfer versus annuity purchase);
- > Data corrections;
- > Member experience; and
- > Actual costs to administer wind-up.

Methods of Allocating and Distributing Assets

The Plan assets are distributed between the jurisdictions as at the wind-up date in proportion to the wind-up liability applicable to each jurisdiction. When determining the wind-up liability for this purpose, the pension and bridging benefits included in the calculation are those provided for by the Plan terms, the NL PBA, the Quebec SPPA and the Federal PBSA. We note that no Plan member is entitled to additional pension or bridging benefits as a result of applying section 17 of the Federal PBSA.

Defined Contribution component of the Plan

The liability for the Defined Contribution component of the Plan is equal to the total of all Defined Contribution account balances. As such, no shortfall or surplus will exist at the wind-up date or at the time of settlement. Members are entitled to their Defined Contribution account balance.

Section 3 – Member Options

The following summarizes the options Plan members have with regard to the method of settlement of benefits under the Wind-Up.

In accordance with pension legislation, no payments (other than ongoing pensions and other payments approved through request under Section 62(2) of the NL PBA) will be made to members until approval is received from the Newfoundland and Labrador Superintendent of Pensions.

Defined Benefit component of the Plan

Non-Retired Members (Newfoundland and Labrador and Federal)

Members not in receipt of a monthly pension on December 16, 2015 and who were employed in Newfoundland and Labrador will have the option of:

- > An immediate (if eligible) or a deferred annuity (under the same terms as the Plan) purchased from an insurance company; or
- > A commuted value transfer (on a locked-in basis, subject to ITA 8517 limits) to one of the following retirement arrangements:
 - A RPP;
 - A LIRA;
 - A LIF; or
 - The purchase an annuity from an insurance company.

If the "small benefit rule" applies to a member, the member will have the value of their benefit paid in cash, less withholding taxes.

Non-Retired Members (Quebec)

Members not in receipt of a monthly pension on December 16, 2015 and who were employed in Quebec will receive a commuted value transfer (on a locked-in basis, subject to ITA 8517 limits) to one of the following retirement arrangements:

- A RPP;
- A LIRA;
- A LIF;
- Locked-in portion of a VRSP; or
- The purchase an annuity from an insurance company.

If the "small benefit rule" applies to a member, the member will have the option of transferring their benefit to a non-locked-in RRSP or the non-locked-in portion of a VRSP, or to be paid in cash, less withholding taxes.

Retired Members (Newfoundland and Labrador and Federal)

Members in receipt of a monthly pension on December 16, 2015, will have an annuity (under the same terms as the Plan) purchased from an insurance company on the date of settlement. The annuity purchased will be in proportion to the funded percentage of the Plan at the time of settlement, adjusted for any over or under payments received since the Wind-Up Date.

Retired Members (Quebec)

Members in receipt of a monthly pension on December 16, 2015, will have the option of, an annuity (under the same terms as the Plan) purchased from an insurance company on the date of settlement, or transferring their entitlement to the Retraite Quebec. The annuity purchased will be in proportion to the funded percentage of the Plan at the time of settlement, adjusted for any over or under payments received since the Wind-Up Date.

Interest on Commuted Value Settlements

Members whose benefits are settled through a commuted value will have their commuted value adjusted with interest from the Wind-Up Date to the first day of the month in which payment is made. The rate of interest applied will be consistent with the interest rate used in the determination of their commuted value. For Quebec and Federal Plan members, this interest rate will be 2.10%. For Newfoundland and Labrador Plan members, this rate will be either 2.10% or 2.86%, depending on whether the commuted value or annuity purchase basis with interest produces the highest value at the settlement date.

Defined Contribution component of the Plan

Members are required to transfer their Defined Contribution account balance out of the Plan.

Future Steps

Within 60 days of the approval of this report by the Newfoundland and Labrador Superintendent of Pensions election statements will be issued to all non-retired members and Quebec retired members providing the settlement options listed above. Members must return their election forms within 90 days. Transfers and annuity purchases will be processed as soon as possible thereafter.

We will provide an update after the transfers and annuity purchases are complete.

Section 4 – Actuarial Opinion

With respect to 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 "Plan"), the valuation thereof was performed as at December 16, 2015, in accordance with the Newfoundland and Labrador *Pension Benefits Act, 1997* and based on the Plan provisions and data as at that date. There are no modifications nor any extraordinary changes to the membership other than those listed in this report which would materially affect the results of this actuarial valuation.

We hereby certify that, in our opinion, as at December 16, 2015:

- > In respect of the Defined Benefit component of the Plan, on the Wind-Up Date, the total wind-up liabilities (\$109,878,000) exceed the market value of Plan assets (\$82,428,000 after wind-up expenses).
- > In respect of the Defined Benefit component of the Plan, after allowing for estimated wind-up expenses, the wind-up funded percentage as of the Wind-Up Date is 75.0%. At the Cut-Off Date (September 30, 2016), the funded percentage is estimated to be 77.5%.
- > In respect of the Defined Contribution component of the Plan, on the Wind-Up Date, the total wind-up liability (\$3,847,000) equals the market value of Plan assets (\$3,847,000).

In our opinion:

- The membership data on which the valuation is based are sufficient and reliable for the purposes of the valuation.
- The assumptions are appropriate for the purposes of the valuation.
- The methods employed in the valuation are appropriate for the purposes of the valuation.

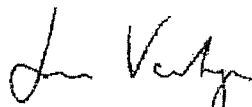
This report has been prepared, and our opinions given, in accordance with accepted actuarial practice in Canada.

The recommendations and opinions are given exclusively from a financial viewpoint. This valuation report does not constitute a legal opinion on the rights or duties of the Plan Administrator, the employer or the members over the pension funds.

Actuarial valuations are performed based on assumptions and methods that are in accordance with sound actuarial principles. Emerging experience differing from these assumptions may result in gains or losses, which may affect future funding percentages.



Paul Chang, FCIA
Partner



Jessica Vandorpe, FCIA
Actuarial Consultant

Morneau Shepell
December 2016

Appendix A – Wind-Up Actuarial Basis

Asset Valuation Method

Total assets are equal to the market value adjusted for estimated wind-up expenses.

Please refer to Appendix B for further details related to the market value of assets.

Actuarial Cost Method

In respect of the Defined Benefit component of the Plan, the wind-up liability is determined using the Accrued Benefit (or Unit Credit) Actuarial Cost Method and is equal to the actuarial present value of all benefits earned by members for service prior to the valuation date understanding that the Plan is wound up on the valuation date.

In respect of the Defined Contribution component of the Plan, the wind-up liability is equal to the Defined Contribution account balances.

All members are treated as fully vested.

Actuarial Assumptions – Defined Benefit Component

The wind-up liability represents the value of the Members' benefits assuming they were fully settled on the valuation date. We have made assumptions regarding which members would elect to have the value of their benefits transferred from the Plan based on commuted value standards and which members would elect to have annuities purchased directly from an insurance company.

On wind-up, all members are considered fully vested in their accrued pension benefits.

The primary actuarial assumptions employed for the wind-up actuarial valuation are summarized in the following table. All rates and percentages are annualized unless otherwise noted.

The assumptions used are best estimates as at the date of valuation.

Wind-Up Actuarial Assumptions

	December 16, 2015
Discount rates for members assumed to elect a transfer value	2.10% for the next 10 years and 3.70% per annum thereafter
Discount rates for members assumed to elect an annuity purchase	2.86% per annum
Member Elections ¹	Federal and Newfoundland and Labrador Deferred Members as at December 16, 2015: Under age 55: 100% commuted value Age 55 and over: 100% annuity purchase Quebec Deferred members as at December 16, 2015: 100% commuted value Retired members and beneficiaries as at December 16, 2015: 100% annuity purchase
Salary increases	None
Maximum pension per year of service	\$2,818.89 for all years
Mortality (post-retirement only)	CPM2014 (no size adjustment) with generational projection using Improvement scale CPM-B Quebec and Newfoundland and Labrador Members: Sex distinct Federal Members: 97.2% male/2.8% female
Adjustment Factor ²	1.02
Termination of employment	N/A
Disability	N/A
Retirement age	Age that maximizes the value of the pension.
Provision for Adverse Deviations	None
Wind-Up Expense Assumption	\$650,000

1 The liability for each Newfoundland and Labrador Deferred Member assumed to elect a commuted value was valued by taking the maximum of the liability calculation using the discount rate for transfer values and the liability calculation using the discount rate for annuity purchases.

2 Morneau Shepell conducted an annuity survey in July 2016 for the members assumed to elect an annuity purchase in July 2016. Based on the results of this survey, annuity purchase premiums are expected to be 2% higher than the liabilities determined using the Canadian Institute of Actuaries annuity purchase proxy.

Assumptions at September 30, 2016 that vary from the Assumptions Provided Above are as Follows:

	September 30, 2016
Discount rates for members assumed to elect an annuity purchase	2.49%
Wind-Up Expense Assumption ¹	\$453,000

1 The Wind-Up Expense Assumption has been adjusted for expenses paid between the Wind-Up Date and the Cut-Off Date.

We have calculated the transfer values effective December 16, 2015 using discount rates determined in accordance with Section 3500 of the Standards of Practice of the Canadian Institute of Actuaries.

For the purchase of annuities, the discount rate as of December 16, 2015 was based on the Canadian Institute of Actuaries' ("CIA") Educational Note Supplement: Guidance for Assumptions for Hypothetical Wind-Up and Solvency Valuations Update -- Effective September 30, 2015 and Applicable to Valuations with Effective Dates between September 30, 2015, and December 30, 2015 and equals the long term Government of Canada bonds' yield (series V39062) plus 83 basis points. This results in a discount rate of 2.86% per annum (2.03% + 0.83%).

The annuity proxy discount rate as of September 30, 2016 was based on Educational Note Supplement: Guidance for Assumptions for Hypothetical Wind-Up and Solvency Valuations with Effective Dates between September 30, 2016 and December 30, 2016 and results in a discount rate of 2.49% per annum for September 30, 2016 (1.55% plus 94 basis points).

Based on an annuity quote requested in July 2016 for this Plan, actual annuity purchase costs will be 2% higher than the basis described in the CIA Educational Note Supplement. As such, we have adjusted all liabilities (as determined based on the CIA Educational Note Supplement) for members assumed to be settled by an annuity purchase by a factor of 1.02.

Appendix B – Assets

Description of Plan Assets

The invested assets for the Defined Benefit component of the Plan are held by CIBC Mellon and were managed by SEI as at the Wind-Up Date. Leading up to the wind-up the majority of the funds were invested in fixed income with a small portion left invested in hedge funds. As at the date of this report, the assets were in the process of being moved to TD Asset Management to establish a liability duration matched investment portfolio to protect the Plan's funded position from future changes in interest rates.

The invested assets for the Defined Contribution component of the Plan are held by Sunlife. The assets are invested based on individual Member instruction for their account.

We have relied upon the information provided to us by CIBC Mellon, SEI and Sunlife, following tests of reasonableness with respect to contributions, benefit payments and investment income.

Statement of Market Value

In respect of the Defined Benefit component of the plan, the assets held in the pension fund, on a market value basis, as at December 16, 2015 were \$83,078,318. Assets as at that date were invested as follows:

Table B.1 - Assets at Market Value – Defined Benefit component

	16-Dec-15
Invested assets	
> Cash and short-term	-
> Bonds	74,866,827
> Equities	-
> Hedge Funds	8,211,490
Total Invested assets	83,078,317
Net receivables and payable (excluding accrued investment income)	-
Total market value of assets	83,078,317

* Figures may not add up exactly due to rounding.

In respect of the Defined Contribution component of the plan, the assets held in the pension fund, on a market value basis, as at December 16, 2015 were \$3,847,000. Assets as at that date were invested based on individual Member instruction for their account.

Changes To Plan Assets – Defined Benefit component

The following table shows changes to the Defined benefit component of the Plan assets since the last filed valuation, based on market values. The reconciliation is based on the statements issued by CIBC Mellon and information provided by SEI.

Table B.2 - Asset Reconciliation

	January 1, 2015 to December 16, 2015	January 1, 2014 to December 31, 2014
Market Value of Assets at beginning of period	90,738,980	84,252,190
Receipts:		
> Employee contributions	-	-
> Employer normal cost contributions	361,264	1,536,141
> Employer special contributions	1,092,871	3,278,613
> Investment income and change in market value	(823,137)	8,778,328
Total receipts	630,998	13,593,082
Disbursements:		
> Pensions paid	6,282,141	6,220,831
> Commuted value and cash payments	1,675,721	480,442
> Plan expenses	333,799	405,019
Total disbursements	8,291,661	7,106,292
Market Value of Assets at end of period	83,078,317	90,738,980

* Figures may not add up exactly due to rounding.

Appendix C – Membership Data

Description of Membership Data

Our valuation of the Plan is based on data provided to us by the Company, updated to take into account known data changes.

We have taken the following steps to review the data to ensure its completeness, accuracy and consistency with the data used in the previous valuation:

- > the pensions being paid as shown in the financial statements were compared with the values provided in the data;
- > a reconciliation was prepared in order to account for the active members, retirees and vested members who were included in the last valuation;
- > basic data checks were performed to ensure that age, salary and service data were reasonable for the purposes of the valuation.

Further, we have distributed individual data confirmation statements to members who were requested to report back any errors. We are in the process of compiling the member responses and will make any necessary corrections prior to settling member benefits.

Summary of Membership Data

The following table summarizes the data.

Summary of Membership Data – as at December 16, 2015

Pending Death Benefit Payout	Number		1
	Pending Death Benefit		\$34,606
Deferred Members	Number		325
	Average age		48.2
	Average annual pension ¹		\$5,973
Retirees and Beneficiaries	Number with lifetime pension		330
	Average age		72.8
	Average annual lifetime pension		\$18,183
	Average annual temporary pension		\$354
Total Membership			656

¹ The average annual pension shown does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

As at the wind-up date, 77 Members also have an entitlement under the Defined Contribution component of the Plan.

The following table reconciles the changes in Plan membership since the last actuarial valuation.

Changes in Plan Membership

	Active Members	Deferred Members	Pending Benefits	Retirees and Beneficiaries	Total
Members at January 1, 2014	188	183	0	324	695
Data corrections ¹		(7)		(1)	(8)
New members					0
Deaths	(1)		1	(23)	(23)
Survivors/Beneficiaries				11	11
Retirements	(13)	(5)		18	0
Terminations:					
Deferred pensions or pending	(152)	152			0
Non-vested or lump sums	(22)	(5)			(27)
Data Adjustments at Jan. 1, 2014 ²		7		1	8
Members at December 16, 2015	0	325	1	330	656

¹ The January 1, 2014 valuation data included 8 members that should not have been valued as they no longer had an entitlement under the Plan.

² Seven members in the previous valuation had deferred and active benefits and one retired member had a retirement and beneficiary benefit. Each benefit is now counted separately.

A detailed listing showing the individual membership and their entitlements is included in Appendix E.

Appendix D – Summary of Plan Provisions

The following is an outline of the principal features of the Plan which are of financial significance to valuing the plan benefits. This summary is based on the amended and restated Plan document as of January 1, 1997 and Plan amendments no. 1, 2, 3, and 4. The Plan amendments were received by the Newfoundland and Labrador Superintendent of Pensions on July 30, 2015. Given the fact that the amendments were submitted shortly before the wind-up of the Plan, these amendments have not yet been individually registered by the Newfoundland and Labrador Superintendent of Pensions. This valuation report assumes that the contents of the amendments, to the extent that they impact the benefits provided by the Plan, are acceptable to the regulators and the results herein reflect the benefits provided by the amendments. For a detailed description of the benefits, please refer to the plan document.

Plan Effective Date

The Plan was restated effective January 1, 1997. Predecessor arrangements date back to July 1, 1963.

Definitions

Credited Service

Service while a member of the Plan.

Pensionable Earnings

Basic remuneration, including overtime (for periods prior to June 23, 2008), shift premiums and cash bonuses. Excludes stock options, severance payments and all other non-cash benefits.

Plan Participation

All employees who are not within the Bargaining Unit are required to join the Plan on their date of employment.

Normal Retirement

Eligibility

Age 65.

Effective January 1, 1997 existing plan members were offered a one-time choice between two pension options, Option A or B. All future new hires from January 1, 1997 onward must enrol under Option B. As at January 1, 2011, there are no remaining members in active status, with coverage under Option A.

Option B offers a combination of Defined Benefit coverage (for past service and future service) and Defined Contribution coverage (for future service, from January 1, 1997 onward), as follows:

Basic Annual Pension, Defined Benefit

The annual pension benefit payable on normal retirement is the sum of (i) and (ii):

- (i) the sum of 1.5% of highest 5-year average earnings up to the YMPE plus 1.6% of highest 5-year average earnings over the YMPE, for each year of credited service prior to January 1, 1997;
- (ii) 1.0% of highest 5-year average earnings for each year of credited service after December 31, 1996.

However, the pension payable on normal retirement will not be less than the amount that would be payable, if the member had been a member of Option B of the Bargaining Unit plan sponsored by the company instead of the Plan, plus the amount of pension which could be purchased with the employee's required contributions with interest.

In addition, a "make-up benefit" is payable to salaried employees who have a frozen monthly lifetime benefit under the Bargaining Unit plan (in respect of a period of Bargaining Unit credited service prior to becoming a salaried employee). The make-up benefit is based on the difference between the Bargaining Unit plan's current lifetime benefit rates under Option B and the benefit rates that were in effect at the time of the employee's transfer to salaried status.

Member Contributions

Prior to January 1, 1997, 1.2% of earnings up to the YMPE and 3.0% of earnings above the YMPE.

Effective January 1, 1997, employees covered under Option B ceased contributing toward the Defined Benefit component of the plan; from 1997 onward, employees covered under Option B contribute 2% of earnings per annum to a Defined Contribution component of the Plan, and are entitled to a contribution made by the Company of 3% of earnings per annum. Effective May 1, 2007, contributions to the Defined Contribution component of the Plan were increased to 3% of earnings from the employees and 6% of earnings from the Company.

The Defined Contribution account balance, including investment earnings thereon, will be used at retirement to provide additional pension income.

Early Retirement

Members are eligible to retire at the earliest of the following dates:

- > "30 and out" early retirement
 - 30+ years of continuous service
 - Unreduced benefit
- > "55 and 15" early retirement
 - Age 55 with 15+ years of continuous service
 - 6% reduction per annum pre-65 applied (but no more than actuarial equivalent reduction)
- > "70/80" special early retirement
 - Age 55 with 15+ years of continuous service, or
 - 80+ age/service points with 15+ years of continuous service
 - Upon permanent shutdown of operations, permanent disability or with company consent: unreduced benefit (Note: Any employee who left employment on or after November 1, 2014 potentially qualifies under the permanent shutdown provision).
- > Statutory early retirement
 - Age 55 with 2+ years of continuous service (no service requirement for Quebec employees)
 - Actuarial reduction applied

In addition to lifetime retirement benefits, employees who retire early from active status will receive a monthly supplement, payable to age 65, of \$18.00 per year of service (to a maximum of 40 years of service). The \$18.00 multiplier is increased to \$27.00, for employees who retire from active status at age 60 or later with 30 or more years of credited service, or at any age with 35 or more years of credited service.

Postponed Retirement

Eligibility

Up to age 71 if continued employment with the Company.

Benefit

Continued accrual of benefits for non-Quebec members. Revalorized pension determined for Quebec members.

Termination of Employment

Eligibility

All active plan members in Newfoundland are vested (in respect of their Defined Benefit entitlements) after two years of plan membership. All active plan members in Quebec are vested immediately (in accordance with Bill 102). In addition, on wind-up, all members are considered fully vested in their accrued pension benefits.

Defined Contribution entitlements are immediately vested, regardless of the number of years of service.

Benefit

Defined Benefit pension at normal retirement date, based on service at termination. Upon earlier retirement, the pension is actuarially reduced (or, if it produces a higher pension, is subject to a 6% reduction per annum pre-65, with 15 or more years of continuous service). Effective January 1, 2001, for terminating active Quebec members, the pension for post-2000 credited service is subject to adjustment, in accordance with Quebec Bill 102. In lieu of the monthly benefit, the participant may transfer the commuted value of the benefit to a locked-in RRSP or other registered vehicle.

Defined Contribution account balances may be transferred to a locked-in RRSP or other registered vehicle.

Death While Active - Surviving Spouse Coverage

Eligibility

15 years of service, with spouse.

Benefit

Benefit payable is 50% (before any reduction) of the accrued monthly Defined Benefit or \$140 if greater, and is payable during the spouse's remaining lifetime.

Minimum Death Benefit

Eligibility

Two or more years of plan membership.

Benefit

The commuted value of the Defined Benefit earned after January 1, 1990 to the date of death is payable to the spouse or, if applicable, designated beneficiary. If the spouse is the recipient, the spouse will have the option of taking the commuted value in the form of a monthly pension.

If less than two years of plan membership, refund of Defined Benefit member contributions with interest. Effective January 1, 2001, immediate vesting is provided upon the death of active Quebec members, in accordance with Bill 102.

In addition, the full Defined Contribution account balance, with investment earnings, will be vested, regardless of the number of years of service.

Forms of Payment

Normal Form

Annuity for life, with 50% of the lifetime benefit continuing to the spouse if the retired employee dies before age 65; refund of any contributions with interest in excess of benefits paid out.

Optional Forms

For married participants, the automatic option is a reduced 60% joint and survivor pension, actuarially equivalent to the normal form. Other options are also available on an actuarially equivalent basis.

Disability Benefit

While benefits are payable from the LTD plan, pension benefits continue to accrue under the Defined Benefit provisions based on the earnings rate at the time of disability. Company contributions continue under the Defined Contribution provisions, if the member elects to contribute.

Plan Interpretation

Subsection 6.01(c)(i) of the Salaried Plan text, which provides for a minimum benefit when a member has transferred from the Bargaining Unit Plan to the Plan, was interpreted by the Prior Plan Administrator to provide 100% of any bridging benefits payable in respect of combined credited service to impacted members from the Plan. Our interpretation differs and we have made a correction to the bridge benefits being paid from both the Bargaining Unit Plan and the Plan. Further information on this issue is available in Appendix G.

Appendix E – Member Summary – Defined Benefit Component

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV001	Deferred	NL	60.9	26	\$ 2,523	\$ -	\$ -	\$ -	\$ 36,847
DV002	Deferred	NL	55.3	40	\$ 3,523	\$ -	\$ -	\$ -	\$ 44,390
DV003	Deferred	NL	53.5	41	\$ 4,078	\$ -	\$ -	\$ -	\$ 49,046
DV004	Deferred	FED	58.6	30	\$ 2,754	\$ -	\$ -	\$ -	\$ 37,996
DV005	Deferred	NL	46.6	85	\$ 11,285	\$ -	\$ -	\$ -	\$ 110,609
DV006	Deferred	NL	45.0	101	\$ 11,940	\$ -	\$ -	\$ -	\$ 112,157
DV007	Deferred	NL	45.0	107	\$ 9,165	\$ -	\$ -	\$ -	\$ 87,938
DV008	Deferred	NL	45.8	31	\$ 2,866	\$ -	\$ -	\$ -	\$ 28,064
DV009	Deferred	NL	43.0	57	\$ 5,269	\$ -	\$ -	\$ -	\$ 48,056
DV010	Deferred	NL	44.0	28	\$ 2,944	\$ -	\$ -	\$ -	\$ 27,500
DV011	Deferred	NL	51.0	66	\$ 6,998	\$ -	\$ -	\$ -	\$ 76,675
DV012	Deferred	NL	42.6	21	\$ 2,235	\$ -	\$ -	\$ -	\$ 20,109
DV013	Deferred	NL	40.9	67	\$ 6,531	\$ -	\$ -	\$ -	\$ 54,806
DV014	Deferred	NL	54.6	20	\$ 1,980	\$ -	\$ -	\$ -	\$ 24,526
DV015	Deferred	NL	38.1	30	\$ 3,034	\$ -	\$ -	\$ -	\$ 24,168
DV016	Deferred	NL	50.0	73	\$ 6,701	\$ -	\$ -	\$ -	\$ 72,606
DV017	Deferred	QC	50.7	82	\$ 8,950	\$ -	\$ -	\$ -	\$ 92,742
DV018	Deferred	QC	40.2	20	\$ 1,550	\$ -	\$ -	\$ -	\$ 12,513
DV019	Deferred	QC	40.2	38	\$ 3,387	\$ -	\$ -	\$ -	\$ 26,595
DV020	Deferred	QC	46.8	37	\$ 3,431	\$ -	\$ -	\$ -	\$ 32,363
DV021	Deferred	QC	49.0	56	\$ 4,465	\$ -	\$ -	\$ -	\$ 45,344
DV022	Deferred	QC	48.8	60	\$ 4,848	\$ -	\$ -	\$ -	\$ 48,426
DV023	Deferred	QC	49.6	84	\$ 7,979	\$ -	\$ -	\$ -	\$ 81,577
DV024	Deferred	QC	38.1	89	\$ 9,853	\$ -	\$ -	\$ -	\$ 73,820
DV025	Deferred	NL	49.6	177	\$ 20,731	\$ -	\$ -	\$ -	\$ 224,758
DV026	Deferred	NL	48.4	151	\$ 14,470	\$ -	\$ -	\$ -	\$ 152,021
DV027	Deferred	NL	56.2	129	\$ 9,288	\$ -	\$ -	\$ -	\$ 128,596

1 The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV028	Deferred	NL	49.7	294	\$ 41,672	\$ -	\$ -	\$ -	\$ 452,738
DV029	Deferred	NL	55.2	197	\$ 21,174	\$ -	\$ -	\$ -	\$ 266,259
DV030	Deferred	NL	58.6	204	\$ 17,123	\$ 3,662	\$ -	\$ -	\$ 235,876
DV031	Deferred	NL	43.7	184	\$ 23,606	\$ -	\$ -	\$ -	\$ 218,648
DV032	Deferred	NL	61.1	188	\$ 15,262	\$ 3,387	\$ -	\$ -	\$ 224,181
DV033	Deferred	NL	57.8	190	\$ 34,403	\$ 3,437	\$ -	\$ -	\$ 703,848
DV034	Deferred	NL	60.4	168	\$ 15,391	\$ -	\$ -	\$ -	\$ 221,536
DV035	Deferred	NL	46.4	153	\$ 17,531	\$ -	\$ -	\$ -	\$ 186,228
DV036	Deferred	NL	49.6	119	\$ 13,624	\$ -	\$ -	\$ -	\$ 147,789
DV037	Deferred	NL	54.5	114	\$ 8,881	\$ -	\$ -	\$ -	\$ 117,256
DV038	Deferred	NL	50.4	108	\$ 10,752	\$ -	\$ -	\$ -	\$ 119,224
DV039	Deferred	NL	50.0	107	\$ 11,196	\$ -	\$ -	\$ -	\$ 122,593
DV040	Deferred	NL	50.3	159	\$ 19,214	\$ -	\$ -	\$ -	\$ 210,916
DV041	Deferred	NL	51.5	182	\$ 19,399	\$ -	\$ -	\$ -	\$ 221,366
DV042	Deferred	NL	49.0	166	\$ 22,768	\$ -	\$ -	\$ -	\$ 242,219
DV043	Deferred	NL	43.5	103	\$ 10,147	\$ -	\$ -	\$ -	\$ 98,806
DV044	Deferred	NL	35.1	108	\$ 12,304	\$ -	\$ -	\$ -	\$ 90,656
DV045	Deferred	QC	53.4	321	\$ 46,417	\$ 5,764	\$ -	\$ -	\$ 1,047,978
DV046	Deferred	QC	50.2	316	\$ 45,930	\$ -	\$ -	\$ -	\$ 502,883
DV047	Deferred	QC	54.2	290	\$ 29,309	\$ -	\$ -	\$ -	\$ 348,359
DV048	Deferred	QC	55.2	227	\$ 24,222	\$ -	\$ -	\$ -	\$ 297,028
DV049	Deferred	QC	44.1	205	\$ 18,109	\$ -	\$ -	\$ -	\$ 156,276
DV050	Deferred	QC	46.2	212	\$ 28,490	\$ -	\$ -	\$ -	\$ 262,611
DV051	Deferred	QC	43.6	176	\$ 19,552	\$ -	\$ -	\$ -	\$ 168,595
DV052	Deferred	QC	48.8	168	\$ 18,262	\$ -	\$ -	\$ -	\$ 184,140
DV053	Deferred	FED	50.9	171	\$ 30,236	\$ -	\$ -	\$ -	\$ 318,427
DV054	Deferred	QC	57.9	121	\$ 11,024	\$ -	\$ -	\$ -	\$ 147,315
DV055	Deferred	QC	60.0	127	\$ 11,550	\$ -	\$ -	\$ -	\$ 164,314
DV056	Deferred	QC	35.6	119	\$ 11,770	\$ -	\$ -	\$ -	\$ 87,355
DV057	Deferred	QC	47.1	129	\$ 8,453	\$ -	\$ -	\$ -	\$ 84,899
DV058	Deferred	QC	47.0	176	\$ 16,890	\$ -	\$ -	\$ -	\$ 160,045
DV059	Deferred	QC	46.6	140	\$ 14,472	\$ -	\$ -	\$ -	\$ 136,092
DV060	Deferred	QC	48.3	195	\$ 27,479	\$ -	\$ -	\$ -	\$ 270,324

1 The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV061	Deferred	QC	53.2	168	\$ 19,886	\$ -	\$ -	\$ -	\$ 228,236
DV062	Deferred	NL	63.8	40	\$ 3,958	\$ -	\$ -	\$ -	\$ 62,506
DV063	Deferred	NL	47.7	78	\$ 4,445	\$ -	\$ -	\$ -	\$ 48,850
DV064	Deferred	NL	47.3	96	\$ 8,560	\$ -	\$ -	\$ -	\$ 87,122
DV065	Deferred	NL	39.5	83	\$ 6,394	\$ -	\$ -	\$ -	\$ 52,952
DV066	Deferred	NL	37.9	80	\$ 6,721	\$ -	\$ -	\$ -	\$ 53,384
DV067	Deferred	NL	60.8	79	\$ 7,877	\$ -	\$ -	\$ -	\$ 114,766
DV068	Deferred	NL	45.5	82	\$ 8,203	\$ -	\$ -	\$ -	\$ 79,585
DV069	Deferred	QC	38.7	91	\$ 7,396	\$ -	\$ -	\$ -	\$ 59,230
DV070	Deferred	QC	40.1	114	\$ 8,545	\$ -	\$ -	\$ -	\$ 70,672
DV071	Deferred	QC	54.3	95	\$ 8,141	\$ -	\$ -	\$ -	\$ 98,029
DV072	Deferred	NL	49.8	32	\$ 3,121	\$ -	\$ -	\$ -	\$ 33,992
DV073	Deferred	NL	44.9	69	\$ 6,489	\$ -	\$ -	\$ -	\$ 61,720
DV074	Deferred	QC	42.1	55	\$ 5,169	\$ -	\$ -	\$ -	\$ 42,764
DV075	Deferred	NL	45.9	75	\$ 4,502	\$ -	\$ -	\$ -	\$ 47,268
DV076	Deferred	NL	30.7	72	\$ 6,053	\$ -	\$ -	\$ -	\$ 39,625
DV077	Deferred	NL	44.5	84	\$ 8,365	\$ -	\$ -	\$ -	\$ 79,148
DV078	Deferred	NL	47.7	71	\$ 6,967	\$ -	\$ -	\$ -	\$ 71,791
DV079	Deferred	NL	44.1	43	\$ 3,980	\$ -	\$ -	\$ -	\$ 37,270
DV080	Deferred	NL	33.3	68	\$ 6,536	\$ -	\$ -	\$ -	\$ 45,939
DV081	Deferred	NL	47.4	67	\$ 5,760	\$ -	\$ -	\$ -	\$ 58,742
DV082	Deferred	NL	61.9	67	\$ 6,750	\$ -	\$ -	\$ -	\$ 101,600
DV083	Deferred	NL	37.0	64	\$ 5,124	\$ -	\$ -	\$ -	\$ 42,225
DV084	Deferred	NL	32.8	59	\$ 5,032	\$ -	\$ -	\$ -	\$ 34,933
DV085	Deferred	NL	38.0	46	\$ 3,763	\$ -	\$ -	\$ -	\$ 29,940
DV086	Deferred	NL	43.5	62	\$ 4,717	\$ -	\$ -	\$ -	\$ 46,326
DV087	Deferred	QC	56.2	44	\$ 6,105	\$ -	\$ -	\$ -	\$ 77,668
DV088	Deferred	QC	50.2	79	\$ 6,516	\$ -	\$ -	\$ -	\$ 69,269
DV089	Deferred	QC	59.8	79	\$ 7,041	\$ -	\$ -	\$ -	\$ 99,847
DV090	Deferred	QC	45.2	79	\$ 7,499	\$ -	\$ -	\$ -	\$ 67,834
DV091	Deferred	QC	36.0	76	\$ 6,894	\$ -	\$ -	\$ -	\$ 49,268
DV092	Deferred	QC	41.0	84	\$ 7,341	\$ -	\$ -	\$ -	\$ 58,944
DV093	Deferred	QC	34.5	81	\$ 7,355	\$ -	\$ -	\$ -	\$ 49,867

¹ The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

² The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV094	Deferred	QC	29.9	70	\$ 4,958	\$ -	\$ -	\$ -	\$ 31,746
DV095	Deferred	QC	47.3	77	\$ 4,569	\$ -	\$ -	\$ -	\$ 46,788
DV096	Deferred	QC	40.9	89	\$ 5,927	\$ -	\$ -	\$ -	\$ 50,207
DV097	Deferred	QC	56.4	78	\$ 6,535	\$ -	\$ -	\$ -	\$ 83,082
DV098	Deferred	QC	48.1	76	\$ 4,929	\$ -	\$ -	\$ -	\$ 51,598
DV099	Deferred	QC	39.5	77	\$ 9,725	\$ -	\$ -	\$ -	\$ 74,962
DV100	Deferred	QC	42.2	67	\$ 5,659	\$ -	\$ -	\$ -	\$ 47,282
DV101	Deferred	QC	37.7	53	\$ 7,773	\$ -	\$ -	\$ -	\$ 57,591
DV102	Deferred	FED	55.2	55	\$ 5,150	\$ -	\$ -	\$ -	\$ 65,075
DV103	Deferred	FED	31.3	56	\$ 5,678	\$ -	\$ -	\$ -	\$ 30,020
DV104	Deferred	QC	62.7	47	\$ 3,812	\$ -	\$ -	\$ -	\$ 58,521
DV105	Deferred	QC	52.5	50	\$ 4,425	\$ -	\$ -	\$ -	\$ 50,440
DV106	Deferred	NL	62.3	55	\$ 5,176	\$ -	\$ -	\$ -	\$ 78,622
DV107	Deferred	QC	46.2	59	\$ 5,234	\$ -	\$ -	\$ -	\$ 51,353
DV108	Deferred	QC	57.3	60	\$ 5,695	\$ -	\$ -	\$ -	\$ 74,298
DV109	Deferred	QC	46.3	58	\$ 5,788	\$ -	\$ -	\$ -	\$ 54,174
DV110	Deferred	NL	33.3	17	\$ 1,704	\$ -	\$ -	\$ -	\$ 11,929
DV111	Deferred	NL	47.8	34	\$ 3,431	\$ -	\$ -	\$ -	\$ 35,443
DV112	Deferred	NL	39.3	32	\$ 3,108	\$ -	\$ -	\$ -	\$ 27,311
DV113	Deferred	QC	28.3	30	\$ 2,172	\$ -	\$ -	\$ -	\$ 12,583
DV114	Deferred	QC	50.9	38	\$ 3,148	\$ -	\$ -	\$ -	\$ 34,025
DV115	Deferred	QC	33.7	32	\$ 2,670	\$ -	\$ -	\$ -	\$ 17,778
DV116	Deferred	NL	49.2	16	\$ 1,628	\$ -	\$ -	\$ -	\$ 17,451
DV117	Deferred	QC	33.7	27	\$ 2,739	\$ -	\$ -	\$ -	\$ 18,411
DV118	Deferred	NL	54.4	37	\$ 3,716	\$ -	\$ -	\$ -	\$ 48,991
DV119	Deferred	NL	33.1	24	\$ 1,839	\$ -	\$ -	\$ -	\$ 13,632
DV120	Deferred	NL	28.4	32	\$ 2,187	\$ -	\$ -	\$ -	\$ 14,309
DV121	Deferred	NL	28.4	40	\$ 2,806	\$ -	\$ -	\$ -	\$ 18,350
DV122	Deferred	NL	41.6	39	\$ 6,394	\$ -	\$ -	\$ -	\$ 55,991
DV123	Deferred	NL	28.3	33	\$ 2,607	\$ -	\$ -	\$ -	\$ 15,980
DV124	Deferred	NL	50.3	33	\$ 2,697	\$ -	\$ -	\$ -	\$ 31,764
DV125	Deferred	NL	55.2	31	\$ 3,096	\$ -	\$ -	\$ -	\$ 38,921
DV126	Deferred	NL	39.9	28	\$ 2,812	\$ -	\$ -	\$ -	\$ 23,593

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- 2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV127	Deferred	NL	56.9	29	\$ 2,852	\$ -	\$ -	\$ -	\$ 37,583
DV128	Deferred	NL	51.4	35	\$ 4,350	\$ -	\$ -	\$ -	\$ 52,714
DV129	Deferred	NL	29.6	34	\$ 2,611	\$ -	\$ -	\$ -	\$ 16,587
DV130	Deferred	NL	30.3	27	\$ 2,122	\$ -	\$ -	\$ -	\$ 14,578
DV131	Deferred	NL	27.6	27	\$ 1,915	\$ -	\$ -	\$ -	\$ 11,528
DV132	Deferred	FED	42.3	46	\$ 2,562	\$ -	\$ -	\$ -	\$ 19,991
DV133	Deferred	QC	50.9	38	\$ 3,319	\$ -	\$ -	\$ -	\$ 37,969
DV134	Deferred	QC	49.8	40	\$ 5,567	\$ -	\$ -	\$ -	\$ 61,437
DV135	Deferred	QC	36.6	30	\$ 2,924	\$ -	\$ -	\$ -	\$ 22,475
DV136	Deferred	QC	48.0	30	\$ 3,636	\$ -	\$ -	\$ -	\$ 35,777
DV137	Deferred	QC	47.6	38	\$ 3,768	\$ -	\$ -	\$ -	\$ 36,461
DV138	Deferred	QC	28.6	22	\$ 1,529	\$ -	\$ -	\$ -	\$ 9,500
DV139	Deferred	QC	29.9	33	\$ 2,591	\$ -	\$ -	\$ -	\$ 15,616
DV140	Deferred	FED	53.8	32	\$ 3,056	\$ -	\$ -	\$ -	\$ 35,634
DV141	Deferred	QC	42.9	31	\$ 2,883	\$ -	\$ -	\$ -	\$ 24,525
DV142	Deferred	QC	38.6	31	\$ 2,303	\$ -	\$ -	\$ -	\$ 17,484
DV143	Deferred	QC	34.9	29	\$ 2,306	\$ -	\$ -	\$ -	\$ 15,841
DV144	Deferred	FED	36.7	23	\$ 1,957	\$ -	\$ -	\$ -	\$ 12,505
DV145	Deferred	QC	48.2	31	\$ 3,152	\$ -	\$ -	\$ -	\$ 31,191
DV146	Deferred	FED	61.8	31	\$ 3,390	\$ -	\$ -	\$ -	\$ 50,981
DV147	Deferred	QC	26.7	30	\$ 2,079	\$ -	\$ -	\$ -	\$ 12,170
DV148	Deferred	QC	35.5	23	\$ 2,245	\$ -	\$ -	\$ -	\$ 15,778
DV149	Deferred	QC	26.0	39	\$ 3,027	\$ -	\$ -	\$ -	\$ 17,222
DV150	Deferred	FED	56.2	29	\$ 3,148	\$ -	\$ -	\$ -	\$ 40,697
DV151	Deferred	FED	45.6	17	\$ 1,743	\$ -	\$ -	\$ -	\$ 15,239
DV152	Deferred	FED	43.5	28	\$ 2,788	\$ -	\$ -	\$ -	\$ 22,641
DV153	Deferred	FED	50.6	20	\$ 2,122	\$ -	\$ -	\$ -	\$ 22,151
DV154	Deferred	NL	56.8	61	\$ 6,391	\$ -	\$ -	\$ -	\$ 83,810
DV155	Deferred	NL	44.1	41	\$ 2,993	\$ -	\$ -	\$ -	\$ 26,306
DV156	Deferred	NL	45.8	37	\$ 4,136	\$ -	\$ -	\$ -	\$ 38,323
DV157	Deferred	NL	35.3	21	\$ 1,581	\$ -	\$ -	\$ -	\$ 11,467
DV158	Deferred	QC	38.9	62	\$ 5,203	\$ -	\$ -	\$ -	\$ 40,039
DV159	Deferred	QC	39.4	67	\$ 5,457	\$ -	\$ -	\$ -	\$ 42,730

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Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV160	Deferred	QC	60.9	29	\$ 1,841	\$ -	\$ -	\$ -	\$ 25,762
DV161	Deferred	NL	51.5	101	\$ 7,397	\$ -	\$ -	\$ -	\$ 84,507
DV162	Deferred	NL	51.5	23	\$ 2,390	\$ -	\$ -	\$ -	\$ 27,307
DV163	Deferred	NL	50.0	114	\$ 6,982	\$ -	\$ -	\$ -	\$ 76,446
DV164	Deferred	NL	54.6	99	\$ 7,857	\$ -	\$ -	\$ -	\$ 97,308
DV165	Deferred	NL	44.9	115	\$ 7,363	\$ -	\$ -	\$ -	\$ 75,228
DV166	Deferred	NL	48.1	85	\$ 7,420	\$ -	\$ -	\$ -	\$ 77,256
DV167	Deferred	NL	45.6	62	\$ 4,650	\$ -	\$ -	\$ -	\$ 45,326
DV168	Deferred	NL	62.7	100	\$ 5,919	\$ -	\$ -	\$ -	\$ 90,990
DV169	Deferred	NL	41.1	33	\$ 2,049	\$ -	\$ -	\$ -	\$ 17,693
DV170	Deferred	NL	45.2	76	\$ 6,708	\$ -	\$ -	\$ -	\$ 64,787
DV171	Deferred	NL	57.1	45	\$ 3,200	\$ -	\$ -	\$ -	\$ 42,462
DV172	Deferred	NL	54.1	35	\$ 2,738	\$ -	\$ -	\$ -	\$ 33,441
DV173	Deferred	NL	66.3	31	\$ 2,486	\$ -	\$ -	\$ -	\$ 42,250
DV174	Deferred	NL	62.3	44	\$ 3,053	\$ -	\$ -	\$ -	\$ 46,371
DV175	Deferred	NL	34.7	25	\$ 1,486	\$ -	\$ -	\$ -	\$ 10,850
DV176	Deferred	NL	35.0	26	\$ 1,559	\$ -	\$ -	\$ -	\$ 11,453
DV177	Deferred	NL	58.0	93	\$ 11,027	\$ -	\$ -	\$ -	\$ 149,874
DV178	Deferred	NL	45.5	55	\$ 4,887	\$ -	\$ -	\$ -	\$ 45,989
DV179	Deferred	NL	47.3	26	\$ 2,207	\$ -	\$ -	\$ -	\$ 21,579
DV180	Deferred	NL	46.0	34	\$ 2,466	\$ -	\$ -	\$ -	\$ 24,234
DV181	Deferred	QC	45.1	155	\$ 8,839	\$ -	\$ -	\$ -	\$ 79,798
DV182	Deferred	QC	48.4	213	\$ 19,304	\$ -	\$ -	\$ -	\$ 191,149
DV183	Deferred	QC	53.0	164	\$ 13,762	\$ -	\$ -	\$ -	\$ 160,726
DV184	Deferred	QC	54.7	124	\$ 8,591	\$ -	\$ -	\$ -	\$ 107,706
DV185	Deferred	QC	64.6	131	\$ 7,019	\$ -	\$ -	\$ -	\$ 113,433
DV186	Deferred	QC	46.5	181	\$ 22,505	\$ -	\$ -	\$ -	\$ 211,776
DV187	Deferred	QC	53.6	95	\$ 7,287	\$ -	\$ -	\$ -	\$ 89,626
DV188	Deferred	QC	40.1	103	\$ 3,801	\$ -	\$ -	\$ -	\$ 32,834
DV189	Deferred	QC	54.9	112	\$ 8,742	\$ -	\$ -	\$ -	\$ 110,619
DV190	Deferred	QC	39.0	89	\$ 5,069	\$ -	\$ -	\$ -	\$ 40,702
DV191	Deferred	QC	46.2	100	\$ 6,537	\$ -	\$ -	\$ -	\$ 67,035
DV192	Deferred	QC	62.7	77	\$ 6,349	\$ -	\$ -	\$ -	\$ 97,537

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Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV193	Deferred	QC	44.4	102	\$ 6,803	\$ -	\$ -	\$ -	\$ 62,157
DV194	Deferred	QC	46.8	69	\$ 3,892	\$ -	\$ -	\$ -	\$ 39,474
DV195	Deferred	FED	41.3	98	\$ 8,727	\$ -	\$ -	\$ -	\$ 65,448
DV196	Deferred	QC	53.3	10	\$ 611	\$ -	\$ -	\$ -	\$ 7,733
DV197	Deferred	QC	53.3	21	\$ 1,357	\$ -	\$ -	\$ -	\$ 16,845
DV198	Deferred	QC	56.3	59	\$ 3,685	\$ -	\$ -	\$ -	\$ 48,834
DV199	Deferred	QC	37.2	48	\$ 2,965	\$ -	\$ -	\$ -	\$ 22,924
DV200	Deferred	QC	37.2	14	\$ 1,065	\$ -	\$ -	\$ -	\$ 8,012
DV201	Deferred	QC	60.6	24	\$ 1,492	\$ -	\$ -	\$ -	\$ 22,330
DV202	Deferred	QC	54.4	56	\$ 3,190	\$ -	\$ -	\$ -	\$ 40,021
DV203	Deferred	QC	54.4	28	\$ 2,129	\$ -	\$ -	\$ -	\$ 26,056
DV204	Deferred	QC	56.3	21	\$ 1,555	\$ -	\$ -	\$ -	\$ 21,045
DV205	Deferred	QC	37.9	86	\$ 7,495	\$ -	\$ -	\$ -	\$ 56,838
DV206	Deferred	QC	65.4	14	\$ 1,549	\$ -	\$ -	\$ 646	\$ 25,738
DV207	Deferred	QC	52.5	40	\$ 2,794	\$ -	\$ -	\$ -	\$ 33,018
DV208	Deferred	QC	44.2	89	\$ 7,579	\$ -	\$ -	\$ -	\$ 69,094
DV209	Deferred	QC	40.4	104	\$ 9,597	\$ -	\$ -	\$ -	\$ 75,855
DV210	Deferred	QC	46.3	75	\$ 5,858	\$ -	\$ -	\$ -	\$ 56,692
DV211	Deferred	NL	66.8	110	\$ 2,374	\$ -	\$ -	\$ 2,898	\$ 27,303
DV212	Deferred	NL	63.7	25	\$ 483	\$ -	\$ -	\$ -	\$ 4,178
DV213	Deferred	NL	64.7	26	\$ 973	\$ -	\$ -	\$ -	\$ 9,528
DV214	Deferred	NL	60.3	62	\$ 1,142	\$ -	\$ -	\$ -	\$ 12,779
DV215	Deferred	QC	78.9	50	\$ 126	\$ -	\$ -	\$ 1,757	\$ 2,926
DV216	Deferred	QC	67.9	65	\$ 1,573	\$ -	\$ -	\$ 3,504	\$ 21,540
DV217	Deferred	QC	63.9	79	\$ 1,428	\$ -	\$ -	\$ -	\$ 19,209
DV218	Deferred	QC	66.4	60	\$ 1,015	\$ -	\$ -	\$ 999	\$ 12,082
DV219	Deferred	NL	45.6	22	\$ 1,376	\$ -	\$ -	\$ -	\$ 13,463
DV220	Deferred	NL	45.6	49	\$ 4,674	\$ -	\$ -	\$ -	\$ 45,716
DV221	Deferred	QC	53.4	49	\$ 3,268	\$ -	\$ -	\$ -	\$ 41,297
DV222	Deferred	NL	73.5	134	\$ 3,532	\$ -	\$ -	\$ 30,313	\$ 72,510
DV223	Deferred	NL	71.0	126	\$ 2,109	\$ -	\$ -	\$ 12,617	\$ 40,495
DV224	Deferred	NL	68.5	154	\$ 1,942	\$ -	\$ -	\$ 6,797	\$ 35,106
DV225	Deferred	NL	64.9	173	\$ 15,824	\$ -	\$ -	\$ -	\$ 256,233

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Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV226	Deferred	NL	56.9	169	\$ 19,161	\$ -	\$ -	\$ -	\$ 270,346
DV227	Deferred	NL	55.7	44	\$ 2,929	\$ -	\$ -	\$ -	\$ 37,477
DV228	Deferred	NL	51.2	167	\$ 13,116	\$ -	\$ -	\$ -	\$ 148,685
DV229	Deferred	NL	51.1	41	\$ 1,749	\$ -	\$ -	\$ -	\$ 19,728
DV230	Deferred	NL	48.3	32	\$ 5,391	\$ -	\$ -	\$ -	\$ 56,571
DV231	Deferred	NL	55.1	119	\$ 9,069	\$ -	\$ -	\$ -	\$ 114,090
DV232	Deferred	NL	58.1	94	\$ 6,783	\$ -	\$ -	\$ -	\$ 92,179
DV233	Deferred	NL	45.6	51	\$ 2,252	\$ -	\$ -	\$ -	\$ 23,481
DV234	Deferred	NL	46.7	61	\$ 3,144	\$ -	\$ -	\$ -	\$ 31,656
DV235	Deferred	NL	45.5	29	\$ 1,500	\$ -	\$ -	\$ -	\$ 14,606
DV236	Deferred	NL	55.5	92	\$ 6,690	\$ -	\$ -	\$ -	\$ 84,865
DV237	Deferred	NL	38.0	41	\$ 2,231	\$ -	\$ -	\$ -	\$ 17,748
DV238	Deferred	NL	46.5	51	\$ 2,300	\$ -	\$ -	\$ -	\$ 22,966
DV239	Deferred	NL	45.3	57	\$ 3,024	\$ -	\$ -	\$ -	\$ 29,181
DV240	Deferred	NL	49.2	41	\$ 2,221	\$ -	\$ -	\$ -	\$ 25,396
DV241	Deferred	NL	54.8	57	\$ 3,671	\$ -	\$ -	\$ -	\$ 45,650
DV242	Deferred	NL	66.8	57	\$ 3,894	\$ -	\$ -	\$ 6,814	\$ 66,974
DV243	Deferred	NL	42.8	67	\$ 4,171	\$ -	\$ -	\$ -	\$ 37,703
DV244	Deferred	NL	48.0	55	\$ 4,020	\$ -	\$ -	\$ -	\$ 41,731
DV245	Deferred	NL	54.4	51	\$ 3,513	\$ -	\$ -	\$ -	\$ 43,330
DV246	Deferred	NL	51.5	45	\$ 2,935	\$ -	\$ -	\$ -	\$ 35,791
DV247	Deferred	NL	55.5	32	\$ 2,176	\$ -	\$ -	\$ -	\$ 27,644
DV248	Deferred	QC	81.8	153	\$ 1,368	\$ -	\$ -	\$ 22,922	\$ 33,543
DV249	Deferred	QC	69.7	154	\$ 378	\$ -	\$ -	\$ 1,762	\$ 7,099
DV250	Deferred	QC	68.4	258	\$ 17,880	\$ -	\$ -	\$ 61,090	\$ 324,742
DV251	Deferred	QC	76.6	132	\$ 2,458	\$ -	\$ -	\$ 28,675	\$ 54,415
DV252	Deferred	QC	63.0	136	\$ 3,954	\$ -	\$ -	\$ -	\$ 61,145
DV253	Deferred	QC	76.1	240	\$ 8,653	\$ -	\$ -	\$ 96,627	\$ 189,331
DV254	Deferred	QC	68.4	56	\$ 5,571	\$ -	\$ -	\$ 19,036	\$ 101,245
DV255	Deferred	QC	56.8	47	\$ 2,483	\$ -	\$ -	\$ -	\$ 33,407
DV256	Deferred	QC	56.2	57	\$ 3,650	\$ -	\$ -	\$ -	\$ 49,804
DV257	Deferred	QC	46.8	39	\$ 1,911	\$ -	\$ -	\$ -	\$ 20,884
DV258	Deferred	QC	43.0	31	\$ 1,928	\$ -	\$ -	\$ -	\$ 18,022

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Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV259	Deferred	QC	51.0	23	\$ 1,381	\$ -	\$ -	\$ -	\$ 16,528
DV260	Deferred	QC	39.4	20	\$ 1,830	\$ -	\$ -	\$ -	\$ 14,657
DV261	Deferred	NL	60.2	92	\$ 8,792	\$ -	\$ -	\$ -	\$ 126,425
DV262	Deferred	NL	47.4	74	\$ 6,733	\$ -	\$ -	\$ -	\$ 68,862
DV263	Deferred	NL	38.9	52	\$ 2,908	\$ -	\$ -	\$ -	\$ 25,280
DV264	Deferred	NL	36.6	33	\$ 2,475	\$ -	\$ -	\$ -	\$ 18,954
DV265	Deferred	NL	61.2	29	\$ 5,325	\$ -	\$ -	\$ -	\$ 78,575
DV266	Deferred	QC	49.9	30	\$ 2,162	\$ -	\$ -	\$ -	\$ 23,746
DV267	Deferred	QC	44.4	35	\$ 2,198	\$ -	\$ -	\$ -	\$ 20,292
DV268	Deferred	QC	59.3	25	\$ 1,890	\$ -	\$ -	\$ -	\$ 27,034
DV269	Deferred	QC	34.1	15	\$ 868	\$ -	\$ -	\$ -	\$ 6,174
DV270	Deferred	QC	66.1	21	\$ 1,609	\$ -	\$ -	\$ 1,743	\$ 27,240
DV271	Deferred	QC	39.0	31	\$ 1,815	\$ -	\$ -	\$ -	\$ 15,373
DV272	Deferred	QC	56.4	9	\$ 569	\$ -	\$ -	\$ -	\$ 7,583
DV273	Deferred	QC	52.6	35	\$ 2,628	\$ -	\$ -	\$ -	\$ 31,029
DV274	Deferred	QC	52.3	55	\$ 6,578	\$ -	\$ -	\$ -	\$ 75,441
DV275	Deferred	QC	57.3	13	\$ 912	\$ -	\$ -	\$ -	\$ 12,344
DV276	Deferred	QC	42.2	41	\$ 2,906	\$ -	\$ -	\$ -	\$ 25,171
DV277	Deferred	QC	35.6	19	\$ 1,039	\$ -	\$ -	\$ -	\$ 7,732
DV278	Deferred	QC	46.8	21	\$ 1,154	\$ -	\$ -	\$ -	\$ 12,349
DV279	Deferred	NL	47.3	32	\$ 3,189	\$ -	\$ -	\$ -	\$ 32,564
DV280	Deferred	NL	42.5	37	\$ 3,175	\$ -	\$ -	\$ -	\$ 28,510
DV281	Deferred	NL	52.2	28	\$ 2,749	\$ -	\$ -	\$ -	\$ 32,010
DV282	Deferred	NL	59.5	29	\$ 2,892	\$ -	\$ -	\$ -	\$ 40,811
DV283	Deferred	QC	33.5	38	\$ 2,649	\$ -	\$ -	\$ -	\$ 19,100
DV284	Deferred	QC	46.9	64	\$ 4,762	\$ -	\$ -	\$ -	\$ 45,821
DV285	Deferred	QC	64.5	11	\$ 593	\$ -	\$ -	\$ -	\$ 9,572
DV286	Deferred	QC	64.5	30	\$ 2,328	\$ -	\$ -	\$ -	\$ 37,577
DV287	Deferred	QC	39.9	70	\$ 5,114	\$ -	\$ -	\$ -	\$ 42,739
DV288	Deferred	QC	37.9	42	\$ 3,526	\$ -	\$ -	\$ -	\$ 26,987
DV289	Deferred	QC	34.1	30	\$ 1,778	\$ -	\$ -	\$ -	\$ 12,196
DV290	Deferred	QC	42.1	15	\$ 994	\$ -	\$ -	\$ -	\$ 8,527
DV291	Deferred	QC	44.6	35	\$ 1,809	\$ -	\$ -	\$ -	\$ 17,194

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Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV292	Deferred	QC	45.1	39	\$ 2,533	\$ -	\$ -	\$ -	\$ 23,012
DV293	Deferred	QC	31.5	24	\$ 1,595	\$ -	\$ -	\$ -	\$ 10,233
DV294	Deferred	QC	41.3	35	\$ 2,895	\$ -	\$ -	\$ -	\$ 23,765
DV295	Deferred	QC	60.1	23	\$ 1,603	\$ -	\$ -	\$ -	\$ 22,862
DV296	Deferred	QC	41.3	35	\$ 2,508	\$ -	\$ -	\$ -	\$ 20,663
DV297	Deferred	QC	44.6	38	\$ 4,562	\$ -	\$ -	\$ -	\$ 40,657
DV298	Deferred	QC	52.2	8	\$ 387	\$ -	\$ -	\$ -	\$ 4,472
DV299	Deferred	QC	30.7	38	\$ 2,966	\$ -	\$ -	\$ -	\$ 18,353
DV300	Deferred	QC	44.1	16	\$ 1,259	\$ -	\$ -	\$ -	\$ 11,263
DV301	Deferred	QC	29.2	35	\$ 1,276	\$ -	\$ -	\$ -	\$ 8,216
DV302	Deferred	QC	35.0	14	\$ 1,071	\$ -	\$ -	\$ -	\$ 7,524
DV303	Deferred	NL	59.1	31	\$ 3,283	\$ -	\$ -	\$ -	\$ 45,884
DV304	Deferred	QC	68.3	7	\$ 431	\$ -	\$ -	\$ 1,436	\$ 7,815
DV305	Deferred	QC	38.7	6	\$ 296	\$ -	\$ -	\$ -	\$ 2,492
DV306	Deferred	QC	43.2	3	\$ 121	\$ -	\$ -	\$ -	\$ 1,144
DV307	Deferred	QC	35.8	6	\$ 490	\$ -	\$ -	\$ -	\$ 3,593
DV308	Deferred	QC	52.9	3	\$ 228	\$ -	\$ -	\$ -	\$ 2,717
DV309	Deferred	QC	37.2	7	\$ 670	\$ -	\$ -	\$ -	\$ 4,940
DV310	Deferred	QC	41.4	6	\$ 501	\$ -	\$ -	\$ -	\$ 4,173
DV311	Deferred	QC	48.7	29	\$ 2,092	\$ -	\$ -	\$ -	\$ 22,405
DV312	Deferred	QC	45.7	20	\$ 2,202	\$ -	\$ -	\$ -	\$ 20,463
DV313	Deferred	QC	52.3	24	\$ 1,792	\$ -	\$ -	\$ -	\$ 20,302
DV314	Deferred	QC	45.7	20	\$ 1,694	\$ -	\$ -	\$ -	\$ 15,726
DV315	Deferred	QC	36.1	25	\$ 2,006	\$ -	\$ -	\$ -	\$ 14,345
DV316	Deferred	QC	39.9	16	\$ 2,150	\$ -	\$ -	\$ -	\$ 17,012
DV317	Deferred	QC	60.8	24	\$ 2,268	\$ -	\$ -	\$ -	\$ 32,978
DV318	Deferred	FED	35.3	21	\$ 2,324	\$ -	\$ -	\$ -	\$ 14,131
DV319	Deferred	QC	57.6	21	\$ 2,501	\$ -	\$ -	\$ -	\$ 33,146
DV320	Deferred	QC	30.6	12	\$ 947	\$ -	\$ -	\$ -	\$ 5,875
DV321	Deferred	QC	33.5	12	\$ 1,189	\$ -	\$ -	\$ -	\$ 7,960
DV322	Deferred	QC	41.2	12	\$ 1,022	\$ -	\$ -	\$ -	\$ 8,374
DV323	Deferred	QC	57.2	11	\$ 869	\$ -	\$ -	\$ -	\$ 11,358
DV324	Deferred	QC	47.3	8	\$ 742	\$ -	\$ -	\$ -	\$ 7,225

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Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV325	Deferred	QC	30.6	22	\$ 1,489	\$ -	\$ -	\$ -	\$ 9,229
DEFERRED TOTALS		325			\$ 1,941,323	\$ 16,250	\$ -	\$ 302,949	\$ 21,890,287
P001		QC					\$ 34,606		\$ 34,606
PENDING TOTALS		1			\$ -	\$ -	\$ 34,606	\$ -	\$ 34,606
RET001	Retired	NL	67.9		\$ 221	\$ -	\$ -	\$ -	\$ 3,616
RET002	Retired	NL	55.3		\$ 3,796	\$ 818	\$ -	\$ -	\$ 106,011
RET003	Retired	NL	53.4		\$ 3,621	\$ 2,098	\$ -	\$ -	\$ 103,303
RET004	Retired	QC	66.5		\$ 182	\$ -	\$ -	\$ -	\$ 3,269
RET005	Retired	QC	65.2		\$ 183	\$ -	\$ -	\$ -	\$ 3,530
RET006	Retired	NL	63.7		\$ 38,489	\$ 7,020	\$ -	\$ -	\$ 729,928
RET007	Retired	NL	65.4		\$ 22,978	\$ -	\$ -	\$ -	\$ 372,885
RET008	Retired	NL	66.9		\$ 14,632	\$ -	\$ -	\$ -	\$ 254,653
RET009	Retired	NL	69.2		\$ 41,504	\$ -	\$ -	\$ -	\$ 813,834
RET010	Retired	NL	61.1		\$ 40,550	\$ 6,257	\$ -	\$ -	\$ 901,490
RET011	Retired	NL	63.9		\$ 27,399	\$ 6,480	\$ -	\$ -	\$ 468,815
RET012	Retired	NL	66.8		\$ 29,375	\$ -	\$ -	\$ -	\$ 535,476
RET013	Retired	NL	63.5		\$ 31,183	\$ 5,815	\$ -	\$ -	\$ 671,045
RET014	Retired	NL	57.6		\$ 37,311	\$ 6,551	\$ -	\$ -	\$ 773,472
RET015	Retired	NL	68.3		\$ 29,639	\$ -	\$ -	\$ -	\$ 477,668
RET016	Retired	NL	73.5		\$ 15,517	\$ -	\$ -	\$ -	\$ 238,328
RET017	Retired	NL	72.9		\$ 13,297	\$ -	\$ -	\$ -	\$ 207,411
RET018	Retired	NL	62.1		\$ 11,394	\$ 2,181	\$ -	\$ -	\$ 225,639
RET019	Retired	NL	68.9		\$ 12,481	\$ -	\$ -	\$ -	\$ 205,225
RET020	Retired	NL	71.8		\$ 13,665	\$ -	\$ -	\$ -	\$ 216,585
RET021	Retired	NL	73.3		\$ 2,514	\$ -	\$ -	\$ -	\$ 31,464
RET022	Retired	NL	69.8		\$ 4,360	\$ -	\$ -	\$ -	\$ 60,821
RET023	Retired	NL	57.9		\$ 3,228	\$ -	\$ -	\$ -	\$ 66,618
RET024	Retired	NL	59.8		\$ 1,461	\$ 278	\$ -	\$ -	\$ 32,040
RET025	Retired	NL	58.4		\$ 7,982	\$ 3,029	\$ -	\$ -	\$ 200,007
RET026	Retired	NL	60.4		\$ 7,621	\$ 2,458	\$ -	\$ -	\$ 174,170
RET027	Retired	NL	53.3		\$ 10,201	\$ 3,701	\$ -	\$ -	\$ 283,113

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- ² The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET028	Retired	NL	53.5		\$ 10,161	\$ 4,474	\$ -	\$ -	\$ 293,995
RET029	Retired	NL	54.1		\$ 13,073	\$ 3,361	\$ -	\$ -	\$ 311,041
RET030	Retired	QC	64.6		\$ 62,802	\$ 6,497	\$ -	\$ -	\$ 1,099,437
RET031	Retired	QC	63.1		\$ 39,826	\$ 6,517	\$ -	\$ -	\$ 774,094
RET032	Retired	QC	59.2		\$ 36,945	\$ 6,497	\$ -	\$ -	\$ 732,743
RET033	Retired	QC	70.9		\$ 76,512	\$ -	\$ -	\$ -	\$ 1,242,006
RET034	Retired	QC	72.7		\$ 46,020	\$ -	\$ -	\$ -	\$ 681,499
RET035	Retired	QC	70.7		\$ 38,290	\$ -	\$ -	\$ -	\$ 622,267
RET036	Retired	QC	69.8		\$ 17,841	\$ -	\$ -	\$ -	\$ 298,190
RET037	Retired	QC	65.8		\$ 12,517	\$ -	\$ -	\$ -	\$ 235,604
RET038	Retired	QC	62.8		\$ 27,290	\$ 4,987	\$ -	\$ -	\$ 547,035
RET039	Retired	QC	67.7		\$ 12,328	\$ -	\$ -	\$ -	\$ 224,091
RET040	Retired	QC	63.9		\$ 10,925	\$ -	\$ -	\$ -	\$ 184,366
RET041	Retired	QC	71.0		\$ 9,748	\$ -	\$ -	\$ -	\$ 129,445
RET042	Retired	QC	64.8		\$ 3,793	\$ -	\$ -	\$ -	\$ 62,270
RET043	Retired	QC	66.0		\$ 3,475	\$ -	\$ -	\$ -	\$ 55,116
RET044	Retired	NL	80.4		\$ 32,944	\$ -	\$ -	\$ -	\$ 273,717
RET045	Retired	NL	76.2		\$ 12,472	\$ -	\$ -	\$ -	\$ 147,383
RET046	Retired	NL	84.8		\$ 28,753	\$ -	\$ -	\$ -	\$ 178,886
RET047	Retired	NL	87.7		\$ 13,502	\$ -	\$ -	\$ -	\$ 68,004
RET048	Retired	NL	77.6		\$ 20,195	\$ -	\$ -	\$ -	\$ 237,229
RET049	Retired	NL	74.2		\$ 34,356	\$ -	\$ -	\$ -	\$ 398,606
RET050	Retired	NL	77.3		\$ 21,630	\$ -	\$ -	\$ -	\$ 256,588
RET051	Retired	NL	72.4		\$ 29,151	\$ -	\$ -	\$ -	\$ 436,435
RET052	Retired	NL	71.6		\$ 50,920	\$ -	\$ -	\$ -	\$ 752,056
RET053	Retired	NL	71.1		\$ 24,008	\$ -	\$ -	\$ -	\$ 386,390
RET054	Retired	NL	76.2		\$ 16,809	\$ -	\$ -	\$ -	\$ 228,236
RET055	Retired	NL	85.3		\$ 4,996	\$ -	\$ -	\$ -	\$ 35,557
RET056	Retired	NL	94.1		\$ 2,244	\$ -	\$ -	\$ -	\$ 8,115
RET057	Retired	NL	72.1		\$ 29,903	\$ -	\$ -	\$ -	\$ 418,218
RET058	Retired	NL	79.5		\$ 22,169	\$ -	\$ -	\$ -	\$ 261,690
RET059	Retired	NL	74.3		\$ 18,552	\$ -	\$ -	\$ -	\$ 238,126
RET060	Retired	NL	69.8		\$ 39,731	\$ -	\$ -	\$ -	\$ 660,724

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Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET061	Retired	NL	71.8		\$ 48,811	\$ -	\$ -	\$ -	\$ 725,924
RET062	Retired	NL	72.3		\$ 43,216	\$ -	\$ -	\$ -	\$ 628,770
RET063	Retired	NL	68.5		\$ 35,214	\$ -	\$ -	\$ -	\$ 607,208
RET064	Retired	NL	82.7		\$ 10,808	\$ -	\$ -	\$ -	\$ 90,821
RET065	Retired	NL	70.5		\$ 36,217	\$ -	\$ -	\$ -	\$ 659,267
RET066	Retired	NL	72.7		\$ 45,727	\$ -	\$ -	\$ -	\$ 660,054
RET067	Retired	NL	70.5		\$ 37,162	\$ -	\$ -	\$ -	\$ 643,528
RET068	Retired	NL	71.4		\$ 43,823	\$ -	\$ -	\$ -	\$ 735,433
RET069	Retired	NL	72.2		\$ 33,138	\$ -	\$ -	\$ -	\$ 419,736
RET070	Retired	NL	70.7		\$ 46,547	\$ -	\$ -	\$ -	\$ 732,909
RET071	Retired	NL	68.7		\$ 33,984	\$ -	\$ -	\$ -	\$ 603,226
RET072	Retired	NL	75.9		\$ 18,444	\$ -	\$ -	\$ -	\$ 243,940
RET073	Retired	NL	70.4		\$ 17,766	\$ -	\$ -	\$ -	\$ 321,681
RET074	Retired	NL	70.2		\$ 32,342	\$ -	\$ -	\$ -	\$ 539,135
RET075	Retired	NL	65.6		\$ 31,142	\$ -	\$ -	\$ -	\$ 573,688
RET076	Retired	NL	67.3		\$ 35,061	\$ -	\$ -	\$ -	\$ 685,124
RET077	Retired	NL	82.7		\$ 34,311	\$ -	\$ -	\$ -	\$ 311,278
RET078	Retired	NL	65.3		\$ 28,499	\$ -	\$ -	\$ -	\$ 510,123
RET079	Retired	NL	75.7		\$ 37,878	\$ -	\$ -	\$ -	\$ 408,707
RET080	Retired	NL	61.4		\$ 35,891	\$ 6,480			\$ 807,809
RET081	Retired	NL	71.4		\$ 31,181	\$ -	\$ -	\$ -	\$ 406,983
RET082	Retired	NL	71.9		\$ 24,734	\$ -	\$ -	\$ -	\$ 395,730
RET083	Retired	NL	69.3		\$ 33,184	\$ -	\$ -	\$ -	\$ 600,438
RET084	Retired	NL	72.2		\$ 35,153	\$ -	\$ -	\$ -	\$ 524,304
RET085	Retired	NL	70.9		\$ 28,612	\$ -	\$ -	\$ -	\$ 436,438
RET086	Retired	NL	73.1		\$ 38,878	\$ -	\$ -	\$ -	\$ 472,080
RET087	Retired	NL	66.0		\$ 41,044	\$ -	\$ -	\$ -	\$ 699,186
RET088	Retired	NL	74.8		\$ 15,174	\$ -	\$ -	\$ -	\$ 191,455
RET089	Retired	NL	69.1		\$ 35,631	\$ -	\$ -	\$ -	\$ 586,403
RET090	Retired	NL	73.2		\$ 16,967	\$ -	\$ -	\$ -	\$ 228,106
RET091	Retired	NL	72.1		\$ 33,130	\$ -	\$ -	\$ -	\$ 420,399
RET092	Retired	NL	70.4		\$ 32,182	\$ -	\$ -	\$ -	\$ 580,766
RET093	Retired	NL	76.2		\$ 10,843	\$ -	\$ -	\$ -	\$ 134,986

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Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET094	Retired	NL	67.5		\$ 20,850	\$ -	\$ -	\$ -	\$ 361,373
RET095	Retired	NL	69.7		\$ 26,376	\$ -	\$ -	\$ -	\$ 419,742
RET096	Retired	NL	68.1		\$ 28,638	\$ -	\$ -	\$ -	\$ 422,295
RET097	Retired	NL	66.1		\$ 34,339	\$ -	\$ -	\$ -	\$ 607,663
RET098	Retired	NL	65.5		\$ 34,475	\$ -	\$ -	\$ -	\$ 553,782
RET099	Retired	NL	71.9		\$ 11,965	\$ -	\$ -	\$ -	\$ 169,163
RET100	Retired	NL	81.4		\$ 10,984	\$ -	\$ -	\$ -	\$ 117,205
RET101	Retired	NL	71.7		\$ 30,472	\$ -	\$ -	\$ -	\$ 477,008
RET102	Retired	NL	71.5		\$ 29,970	\$ -	\$ -	\$ -	\$ 441,501
RET103	Retired	NL	67.7		\$ 32,653	\$ -	\$ -	\$ -	\$ 563,722
RET104	Retired	NL	79.7		\$ 12,200	\$ -	\$ -	\$ -	\$ 106,061
RET105	Retired	NL	65.2		\$ 25,114	\$ -	\$ -	\$ -	\$ 448,625
RET106	Retired	NL	65.3		\$ 29,454	\$ -	\$ -	\$ -	\$ 568,593
RET107	Retired	NL	65.2		\$ 24,368	\$ -	\$ -	\$ -	\$ 486,868
RET108	Retired	NL	78.5		\$ 28,270	\$ -	\$ -	\$ -	\$ 262,884
RET109	Retired	NL	65.2		\$ 27,028	\$ -	\$ -	\$ -	\$ 437,142
RET110	Retired	NL	68.6		\$ 12,256	\$ -	\$ -	\$ -	\$ 193,466
RET111	Retired	NL	73.0		\$ 20,720	\$ -	\$ -	\$ -	\$ 267,927
RET112	Retired	NL	82.3		\$ 18,322	\$ -	\$ -	\$ -	\$ 83,613
RET113	Retired	NL	61.8		\$ 3,548	\$ 1,026	\$ -	\$ -	\$ 66,216
RET114	Retired	QC	78.0		\$ 30,470	\$ -	\$ -	\$ -	\$ 290,593
RET115	Retired	QC	78.7		\$ 26,742	\$ -	\$ -	\$ -	\$ 246,587
RET116	Retired	QC	74.4		\$ 22,539	\$ -	\$ -	\$ -	\$ 304,264
RET117	Retired	QC	89.4		\$ 15,856	\$ -	\$ -	\$ -	\$ 90,783
RET118	Retired	QC	75.6		\$ 23,580	\$ -	\$ -	\$ -	\$ 256,179
RET119	Retired	QC	71.3		\$ 59,406	\$ -	\$ -	\$ -	\$ 779,613
RET120	Retired	QC	88.9		\$ 9,694	\$ -	\$ -	\$ -	\$ 53,339
RET121	Retired	QC	83.7		\$ 18,106	\$ -	\$ -	\$ -	\$ 154,020
RET122	Retired	QC	75.0		\$ 31,362	\$ -	\$ -	\$ -	\$ 348,833
RET123	Retired	QC	79.9		\$ 31,715	\$ -	\$ -	\$ -	\$ 373,865
RET124	Retired	QC	83.7		\$ 19,276	\$ -	\$ -	\$ -	\$ 129,699
RET125	Retired	QC	78.7		\$ 45,688	\$ -	\$ -	\$ -	\$ 421,288
RET126	Retired	QC	85.1		\$ 12,057	\$ -	\$ -	\$ -	\$ 73,159

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Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET127	Retired	QC	83.2		\$ 19,852	\$ -	\$ -	\$ -	\$ 188,724
RET128	Retired	QC	74.4		\$ 35,653	\$ -	\$ -	\$ -	\$ 410,027
RET129	Retired	QC	74.1		\$ 8,570	\$ -	\$ -	\$ -	\$ 110,862
RET130	Retired	QC	70.6		\$ 28,207	\$ -	\$ -	\$ -	\$ 416,852
RET131	Retired	QC	80.2		\$ 21,118	\$ -	\$ -	\$ -	\$ 256,217
RET132	Retired	QC	80.9		\$ 12,034	\$ -	\$ -	\$ -	\$ 97,470
RET133	Retired	QC	77.9		\$ 22,610	\$ -	\$ -	\$ -	\$ 217,861
RET134	Retired	QC	82.1		\$ 17,049	\$ -	\$ -	\$ -	\$ 127,112
RET135	Retired	QC	76.6		\$ 18,084	\$ -	\$ -	\$ -	\$ 229,281
RET136	Retired	QC	67.3		\$ 39,388	\$ -	\$ -	\$ -	\$ 693,583
RET137	Retired	QC	89.7		\$ 9,882	\$ -	\$ -	\$ -	\$ 42,238
RET138	Retired	QC	75.7		\$ 37,693	\$ -	\$ -	\$ -	\$ 407,012
RET139	Retired	QC	79.6		\$ 27,851	\$ -	\$ -	\$ -	\$ 244,167
RET140	Retired	QC	78.9		\$ 21,070	\$ -	\$ -	\$ -	\$ 245,057
RET141	Retired	QC	79.1		\$ 13,305	\$ -	\$ -	\$ -	\$ 113,306
RET142	Retired	QC	76.2		\$ 20,904	\$ -	\$ -	\$ -	\$ 257,206
RET143	Retired	QC	87.6		\$ 13,500	\$ -	\$ -	\$ -	\$ 68,117
RET144	Retired	QC	93.0		\$ 3,820	\$ -	\$ -	\$ -	\$ 15,179
RET145	Retired	QC	72.5		\$ 48,417	\$ -	\$ -	\$ -	\$ 696,357
RET146	Retired	QC	83.8		\$ 9,228	\$ -	\$ -	\$ -	\$ 61,523
RET147	Retired	QC	78.7		\$ 28,426	\$ -	\$ -	\$ -	\$ 262,560
RET148	Retired	QC	91.6		\$ 12,056	\$ -	\$ -	\$ -	\$ 53,723
RET149	Retired	QC	71.4		\$ 41,564	\$ -	\$ -	\$ -	\$ 620,581
RET150	Retired	QC	77.9		\$ 28,905	\$ -	\$ -	\$ -	\$ 366,284
RET151	Retired	QC	73.0		\$ 45,650	\$ -	\$ -	\$ -	\$ 711,843
RET152	Retired	QC	74.6		\$ 30,465	\$ -	\$ -	\$ -	\$ 346,878
RET153	Retired	QC	71.7		\$ 59,270	\$ -	\$ -	\$ -	\$ 767,299
RET154	Retired	QC	73.8		\$ 28,081	\$ -	\$ -	\$ -	\$ 453,875
RET155	Retired	QC	72.7		\$ 46,773	\$ -	\$ -	\$ -	\$ 690,458
RET156	Retired	QC	72.8		\$ 36,622	\$ -	\$ -	\$ -	\$ 452,054
RET157	Retired	QC	87.0		\$ 5,246	\$ -	\$ -	\$ -	\$ 33,107
RET158	Retired	QC	75.3		\$ 31,436	\$ -	\$ -	\$ -	\$ 416,135
RET159	Retired	QC	87.7		\$ 17,377	\$ -	\$ -	\$ -	\$ 86,998

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Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET160	Retired	QC	85.1		\$ 17,882	\$ -	\$ -	\$ -	\$ 108,788
RET161	Retired	QC	68.7		\$ 41,539	\$ -	\$ -	\$ -	\$ 701,656
RET162	Retired	QC	67.3		\$ 36,650	\$ -	\$ -	\$ -	\$ 618,414
RET163	Retired	QC	72.7		\$ 32,910	\$ -	\$ -	\$ -	\$ 407,891
RET164	Retired	QC	66.0		\$ 43,944	\$ -	\$ -	\$ -	\$ 756,407
RET165	Retired	QC	76.8		\$ 22,996	\$ -	\$ -	\$ -	\$ 337,111
RET166	Retired	QC	74.2		\$ 30,502	\$ -	\$ -	\$ -	\$ 411,963
RET167	Retired	QC	72.8		\$ 37,480	\$ -	\$ -	\$ -	\$ 619,731
RET168	Retired	QC	72.6		\$ 34,615	\$ -	\$ -	\$ -	\$ 527,973
RET169	Retired	QC	76.0		\$ 30,831	\$ -	\$ -	\$ -	\$ 405,559
RET170	Retired	QC	69.4		\$ 26,418	\$ -	\$ -	\$ -	\$ 442,681
RET171	Retired	QC	73.8		\$ 38,277	\$ -	\$ -	\$ -	\$ 452,800
RET172	Retired	QC	78.1		\$ 16,442	\$ -	\$ -	\$ -	\$ 218,396
RET173	Retired	QC	73.4		\$ 34,441	\$ -	\$ -	\$ -	\$ 414,218
RET174	Retired	QC	73.6		\$ 23,535	\$ -	\$ -	\$ -	\$ 333,138
RET175	Retired	QC	72.7		\$ 39,686	\$ -	\$ -	\$ -	\$ 492,443
RET176	Retired	QC	79.2		\$ 19,752	\$ -	\$ -	\$ -	\$ 176,392
RET177	Retired	QC	68.1		\$ 38,251	\$ -	\$ -	\$ -	\$ 700,951
RET178	Retired	QC	70.9		\$ 34,209	\$ -	\$ -	\$ -	\$ 536,224
RET179	Retired	QC	65.3		\$ 37,716	\$ -	\$ -	\$ -	\$ 609,696
RET180	Retired	QC	70.8		\$ 38,763	\$ -	\$ -	\$ -	\$ 519,814
RET181	Retired	QC	71.4		\$ 14,592	\$ -	\$ -	\$ -	\$ 228,009
RET182	Retired	QC	72.9		\$ 39,787	\$ -	\$ -	\$ -	\$ 546,077
RET183	Retired	QC	76.0		\$ 20,017	\$ -	\$ -	\$ -	\$ 212,398
RET184	Retired	QC	75.1		\$ 21,450	\$ -	\$ -	\$ -	\$ 237,948
RET185	Retired	QC	71.7		\$ 43,769	\$ -	\$ -	\$ -	\$ 566,059
RET186	Retired	QC	65.9		\$ 38,670	\$ -	\$ -	\$ -	\$ 713,580
RET187	Retired	QC	71.0		\$ 36,011	\$ -	\$ -	\$ -	\$ 478,133
RET188	Retired	QC	79.3		\$ 12,591	\$ -	\$ -	\$ -	\$ 160,251
RET189	Retired	QC	76.8		\$ 23,810	\$ -	\$ -	\$ -	\$ 326,521
RET190	Retired	QC	76.7		\$ 23,951	\$ -	\$ -	\$ -	\$ 298,864
RET191	Retired	QC	66.6		\$ 36,704	\$ -	\$ -	\$ -	\$ 668,355
RET192	Retired	QC	70.3		\$ 29,655	\$ -	\$ -	\$ -	\$ 502,878

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Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET193	Retired	QC	70.2		\$ 15,048	\$ -	\$ -	\$ -	\$ 246,768
RET194	Retired	QC	76.5		\$ 34,749	\$ -	\$ -	\$ -	\$ 360,219
RET195	Retired	QC	84.7		\$ 13,819	\$ -	\$ -	\$ -	\$ 86,766
RET196	Retired	QC	79.7		\$ 20,957	\$ -	\$ -	\$ -	\$ 240,306
RET197	Retired	QC	80.8		\$ 25,668	\$ -	\$ -	\$ -	\$ 209,644
RET198	Retired	QC	80.5		\$ 22,766	\$ -	\$ -	\$ -	\$ 188,144
RET199	Retired	NL	76.1		\$ 188	\$ -	\$ -	\$ -	\$ 2,867
RET200	Retired	QC	80.2		\$ 246	\$ -	\$ -	\$ -	\$ 2,070
RET201	Retired	QC	65.1		\$ 79	\$ -	\$ -	\$ -	\$ 1,596
RET202	Retired	NL	76.6		\$ 2,299	\$ -	\$ -	\$ -	\$ 23,762
RET203	Retired	NL	73.7		\$ 1,252	\$ -	\$ -	\$ -	\$ 19,237
RET204	Retired	NL	77.5		\$ 1,543	\$ -	\$ -	\$ -	\$ 15,210
RET205	Retired	NL	71.3		\$ 1,932	\$ -	\$ -	\$ -	\$ 32,503
RET206	Retired	NL	76.2		\$ 487	\$ -	\$ -	\$ -	\$ 5,129
RET207	Retired	NL	71.0		\$ 1,625	\$ -	\$ -	\$ -	\$ 26,760
RET208	Retired	NL	69.2		\$ 796	\$ -	\$ -	\$ -	\$ 14,613
RET209	Retired	NL	71.0		\$ 12,777	\$ -	\$ -	\$ -	\$ 191,496
RET210	Retired	NL	71.8		\$ 5,670	\$ -	\$ -	\$ -	\$ 90,403
RET211	Retired	NL	73.6		\$ 813	\$ -	\$ -	\$ -	\$ 12,815
RET212	Retired	NL	75.5		\$ 1,024	\$ -	\$ -	\$ -	\$ 14,059
RET213	Retired	NL	71.1		\$ 2,257	\$ -	\$ -	\$ -	\$ 32,756
RET214	Retired	NL	76.8		\$ 5,043	\$ -	\$ -	\$ -	\$ 58,221
RET215	Retired	NL	68.1		\$ 15,644	\$ -	\$ -	\$ -	\$ 250,476
RET216	Retired	NL	78.1		\$ 1,610	\$ -	\$ -	\$ -	\$ 23,224
RET217	Retired	NL	66.0		\$ 2,240	\$ -	\$ -	\$ -	\$ 40,425
RET218	Retired	NL	66.1		\$ 444	\$ -	\$ -	\$ -	\$ 8,133
RET219	Retired	NL	77.2		\$ 1,592	\$ -	\$ -	\$ -	\$ 15,919
RET220	Retired	NL	74.6		\$ 500	\$ -	\$ -	\$ -	\$ 8,381
RET221	Retired	NL	71.5		\$ 589	\$ -	\$ -	\$ -	\$ 7,682
RET222	Retired	QC	75.3		\$ 2,646	\$ -	\$ -	\$ -	\$ 32,645
RET223	Retired	QC	66.4		\$ 35,319	\$ -	\$ -	\$ -	\$ 551,344
RET224	Retired	QC	83.0		\$ 3,588	\$ -	\$ -	\$ -	\$ 37,817
RET225	Retired	QC	71.9		\$ 4,593	\$ -	\$ -	\$ -	\$ 76,048

1 The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET226	Retired	QC	77.4		\$ 4,896	\$ -	\$ -	\$ -	\$ 48,533
RET227	Retired	QC	82.0		\$ 606	\$ -	\$ -	\$ -	\$ 5,346
RET228	Retired	QC	81.2		\$ 4,510	\$ -	\$ -	\$ -	\$ 41,321
RET229	Retired	QC	72.3		\$ 292	\$ -	\$ -	\$ -	\$ 6,078
RET230	Retired	QC	71.6		\$ 73	\$ -	\$ -	\$ -	\$ 948
RET231	Retired	QC	71.3		\$ 1,582	\$ -	\$ -	\$ -	\$ 26,254
RET232	Retired	QC	73.8		\$ 686	\$ -	\$ -	\$ -	\$ 8,114
RET233	Retired	QC	79.8		\$ 1,659	\$ -	\$ -	\$ -	\$ 23,075
RET234	Retired	QC	71.2		\$ 1,934	\$ -	\$ -	\$ -	\$ 25,444
RET235	Retired	QC	70.9		\$ 903	\$ -	\$ -	\$ -	\$ 18,897
RET236	Retired	QC	67.5		\$ 1,375	\$ -	\$ -	\$ -	\$ 24,006
RET237	Retired	NL	76.0		\$ 3,881	\$ -	\$ -	\$ -	\$ 48,867
RET238	Retired	NL	79.6		\$ 20,996	\$ -	\$ -	\$ -	\$ 210,769
RET239	Retired	NL	80.2		\$ 6,062	\$ -	\$ -	\$ -	\$ 58,631
RET240	Retired	NL	84.5		\$ 3,180	\$ -	\$ -	\$ -	\$ 20,268
RET241	Retired	NL	80.9		\$ 1,945	\$ -	\$ -	\$ -	\$ 18,208
RET242	Retired	NL	75.4		\$ 2,240	\$ -	\$ -	\$ -	\$ 35,763
RET243	Retired	NL	81.5		\$ 1,500	\$ -	\$ -	\$ -	\$ 13,548
RET244	Retired	NL	72.0		\$ 2,322	\$ -	\$ -	\$ -	\$ 29,543
RET245	Retired	NL	81.4		\$ 5,093	\$ -	\$ -	\$ -	\$ 46,260
RET246	Retired	NL	86.2		\$ 3,814	\$ -	\$ -	\$ -	\$ 21,467
RET247	Retired	NL	81.9		\$ 1,093	\$ -	\$ -	\$ -	\$ 9,664
RET248	Retired	NL	76.3		\$ 5,042	\$ -	\$ -	\$ -	\$ 52,798
RET249	Retired	NL	86.0		\$ 4,114	\$ -	\$ -	\$ -	\$ 27,749
RET250	Retired	NL	78.7		\$ 1,597	\$ -	\$ -	\$ -	\$ 18,563
RET251	Retired	NL	76.4		\$ 6,872	\$ -	\$ -	\$ -	\$ 138,253
RET252	Retired	NL	72.4		\$ 4,172	\$ -	\$ -	\$ -	\$ 63,712
RET253	Retired	NL	72.2		\$ 2,680	\$ -	\$ -	\$ -	\$ 39,069
RET254	Retired	NL	68.9		\$ 4,429	\$ -	\$ -	\$ -	\$ 74,390
RET255	Retired	NL	74.9		\$ 1,185	\$ -	\$ -	\$ -	\$ 13,307
RET256	Retired	NL	85.4		\$ 3,289	\$ -	\$ -	\$ -	\$ 19,602
RET257	Retired	NL	73.9		\$ 4,252	\$ -	\$ -	\$ -	\$ 55,733
RET258	Retired	NL	75.4		\$ 3,042	\$ -	\$ -	\$ -	\$ 37,271

1 The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET259	Retired	NL	72.2		\$ 3,394	\$ -	\$ -	\$ -	\$ 51,922
RET260	Retired	NL	73.3		\$ 2,072	\$ -	\$ -	\$ -	\$ 25,285
RET261	Retired	NL	75.2		\$ 3,688	\$ -	\$ -	\$ -	\$ 40,802
RET262	Retired	NL	77.1		\$ 5,090	\$ -	\$ -	\$ -	\$ 57,782
RET263	Retired	NL	68.8		\$ 1,865	\$ -	\$ -	\$ -	\$ 2,797
RET264	Retired	NL	68.8		\$ 1,314	\$ -	\$ -	\$ -	\$ 20,626
RET265	Retired	NL	75.7		\$ 3,719	\$ -	\$ -	\$ -	\$ 45,076
RET266	Retired	NL	71.7		\$ 17,666	\$ -	\$ -	\$ -	\$ 228,520
RET267	Retired	NL	72.9		\$ 1,331	\$ -	\$ -	\$ -	\$ 16,389
RET268	Retired	NL	60.8		\$ 6,867	\$ -	\$ -	\$ -	\$ 125,059
RET269	Retired	NL	65.8		\$ 7,884	\$ -	\$ -	\$ -	\$ 145,292
RET270	Retired	NL	42.0		\$ 1,324	\$ -	\$ -	\$ -	\$ 33,254
RET271	Retired	NL	88.4		\$ 3,210	\$ -	\$ -	\$ -	\$ 18,335
RET272	Retired	QC	89.4		\$ 1,767	\$ -	\$ -	\$ -	\$ 9,364
RET273	Retired	QC	80.8		\$ 4,675	\$ -	\$ -	\$ -	\$ 43,980
RET274	Retired	QC	95.6		\$ 6,504	\$ -	\$ -	\$ -	\$ 20,738
RET275	Retired	QC	83.7		\$ 2,332	\$ -	\$ -	\$ -	\$ 20,371
RET276	Retired	QC	83.6		\$ 3,180	\$ -	\$ -	\$ -	\$ 25,294
RET277	Retired	QC	83.1		\$ 2,833	\$ -	\$ -	\$ -	\$ 19,838
RET278	Retired	QC	75.7		\$ 7,791	\$ -	\$ -	\$ -	\$ 94,505
RET279	Retired	QC	71.2		\$ 1,980	\$ -	\$ -	\$ -	\$ 26,289
RET280	Retired	QC	78.9		\$ 7,716	\$ -	\$ -	\$ -	\$ 80,150
RET281	Retired	QC	75.3		\$ 2,682	\$ -	\$ -	\$ -	\$ 46,510
RET282	Retired	QC	83.4		\$ 4,667	\$ -	\$ -	\$ -	\$ 32,026
RET283	Retired	QC	82.4		\$ 5,895	\$ -	\$ -	\$ -	\$ 50,237
RET284	Retired	QC	82.5		\$ 4,740	\$ -	\$ -	\$ -	\$ 34,646
RET285	Retired	QC	73.7		\$ 2,036	\$ -	\$ -	\$ -	\$ 24,190
RET286	Retired	QC	73.1		\$ 7,343	\$ -	\$ -	\$ -	\$ 89,153
RET287	Retired	QC	67.9		\$ 48,042	\$ -	\$ -	\$ -	\$ 686,414
RET288	Retired	QC	68.5		\$ 2,596	\$ -	\$ -	\$ -	\$ 37,881
RET289	Retired	QC	73.4		\$ 1,321	\$ -	\$ -	\$ -	\$ 15,903
RET290	Retired	QC	65.6		\$ 3,075	\$ -	\$ -	\$ -	\$ 49,213
RET291	Retired	QC	87.1		\$ 12,666	\$ -	\$ -	\$ -	\$ 66,249

1 The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET292	Retired	QC	71.0		\$ 2,107	\$ -	\$ -	\$ -	\$ 34,063
RET293	Retired	QC	70.9		\$ 4,818	\$ -	\$ -	\$ -	\$ 83,345
RET294	Retired	QC	66.7		\$ 1,552	\$ -	\$ -	\$ -	\$ 25,959
RET295	Retired	QC	86.3		\$ 5,919	\$ -	\$ -	\$ -	\$ 60,143
RET296	Retired	QC	74.1		\$ 2,677	\$ -	\$ -	\$ -	\$ 41,455
RET297	Retired	QC	60.4		\$ 10,339	\$ -	\$ -	\$ -	\$ 202,190
RET298	Retired	QC	69.9		\$ 6,759	\$ -	\$ -	\$ -	\$ 93,674
RET299	Retired	QC	66.4		\$ 9,819	\$ -	\$ -	\$ -	\$ 155,675
RET300	Retired	QC	60.4		\$ 3,943	\$ -	\$ -	\$ -	\$ 88,011
RET301	Retired	NL	67.7		\$ 10,648	\$ -	\$ -	\$ -	\$ 172,998
RET302	Retired	NL	71.2		\$ 18,608	\$ -	\$ -	\$ -	\$ 269,236
RET303	Retired	NL	76.5		\$ 8,240	\$ -	\$ -	\$ -	\$ 96,290
RET304	Retired	NL	84.5		\$ 4,853	\$ -	\$ -	\$ -	\$ 36,509
RET305	Retired	NL	59.1		\$ 6,726	\$ -	\$ -	\$ -	\$ 135,359
RET306	Retired	NL	74.3		\$ 3,881	\$ -	\$ -	\$ -	\$ 45,944
RET307	Retired	QC	82.3		\$ 3,553	\$ -	\$ -	\$ -	\$ 30,579
RET308	Retired	QC	89.2		\$ 10,614	\$ -	\$ -	\$ -	\$ 56,864
RET309	Retired	NL	66.2		\$ 2,297	\$ -	\$ -	\$ -	\$ 41,154
RET310	Retired	NL	62.5		\$ 69,913	\$ 11,520	\$ -	\$ -	\$ 1,336,529
RET311	Retired	NL	57.0		\$ 21,160	\$ 3,764	\$ -	\$ -	\$ 509,357
RET312	Retired	NL	56.1		\$ 24,702	\$ 4,300	\$ -	\$ -	\$ 604,388
RET313	Retired	NL	66.8		\$ 14,363	\$ -	\$ -	\$ -	\$ 322,416
RET314	Retired	NL	64.3		\$ 11,003	\$ -	\$ -	\$ -	\$ 216,994
RET315	Retired	NL	65.1		\$ 12,066	\$ -	\$ -	\$ -	\$ 233,264
RET316	Retired	NL	69.8		\$ 10,320	\$ -	\$ -	\$ -	\$ 162,311
RET317	Retired	QC	54.0		\$ 48,828	\$ 5,749	\$ -	\$ -	\$ 1,179,970
RET318	Retired	QC	56.7		\$ 29,534	\$ 5,068	\$ -	\$ -	\$ 744,472
RET319	Retired	QC	65.2		\$ 19,352	\$ -	\$ -	\$ -	\$ 313,455
RET320	Retired	NL	58.2		\$ 5,768	\$ -	\$ -	\$ -	\$ 129,642
RET321	Retired	NL	63.2		\$ 1,407	\$ -	\$ -	\$ -	\$ 27,252
RET322	Retired	QC	80.7		\$ 8,160	\$ -	\$ -	\$ -	\$ 77,116
RET323	Retired	QC	76.1		\$ 11,622	\$ -	\$ -	\$ -	\$ 137,957
RET324	Retired	NL	84.4		\$ 2,708	\$ -	\$ -	\$ -	\$ 20,434
RET325	Retired	QC	67.7		\$ 18,736	\$ -	\$ -	\$ -	\$ 304,553

- ¹ The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.
- ² The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET326	Retired	QC	58.5		\$ 8,642	\$ -	\$ -	\$ -	\$ 136,664
RET327	Retired	NL	69.4		\$ 16,515	\$ -	\$ -	\$ -	\$ 254,004
RET328	Retired	QC	70.2		\$ 13,949	\$ -	\$ -	\$ -	\$ 209,113
RET329	Retired	NL	65.8		\$ 2,698	\$ -	\$ -	\$ -	\$ 46,250
RET330	Retired	QC	50.3		\$ 11,511	\$ -	\$ -	\$ -	\$ 18,202
PENDING TOTALS		390			\$ 6,000,506	\$ 116,926	\$ -	\$ -	\$ 87,953,316
GRAND TOTALS		656			\$ 7,941,329	\$ 133,175	\$ 34,606	\$ 302,949	\$ 109,878,209

- 1 The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.
- 2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

Appendix F – Defined Contribution Wind-Up Report

Appendix G – Regulator Correspondence



**MORNEAU
SHEPELL** 

MENTAL HEALTH PARTNER

Morneau Shepell is the only human resources consulting and technology company that takes an integrative approach to employee assistance, health, benefits, and retirement needs. The Company is the leading provider of employee and family assistance programs, the largest administrator of retirement and benefits plans and the largest provider of integrated absence management solutions in Canada. Through health and productivity, administrative, and retirement solutions, Morneau Shepell helps clients reduce costs, increase employee productivity and improve their competitive position. Established in 1966, Morneau Shepell serves approximately 20,000 clients, ranging from small businesses to some of the largest corporations and associations in North America. With almost 4,000 employees, Morneau Shepell provides services to organizations across Canada, in the United States, and around the globe. Morneau Shepell is a publicly-traded company on the Toronto Stock Exchange (TSX: MSI). For more information, visit morneaushepell.com.

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TERMINATION REPORT

FOR

Contributory Pension Plan for Salaried Employees

of Wabush Mines, Cliffs Mining Company,

Managing Agent, Arnaud Railway Company and

Wabush Lake Railway Company Limited

Newfoundland and Labrador Registration Number: 0021314

Canada Revenue Agency Registration Number: 0343558

Sun Life's Plan Reference Id: C09Z503

Terminated Effective: December 16, 2015

Date this report was completed: June 30, 2016

Date this revised report was completed: November 7, 2016

Completed By: Sarah Wamil 

Telephone Number: (519) 888-3900 Ext 341-3088

Address: Sun Life Financial Inc.
Group Retirement Services
PO Box 2025 STN Waterloo
Waterloo ON N2J 0B4

INDEX

1. Plan Termination Details
2. Member Benefits at Plan Termination
3. Member Option
4. Member Statement

PLAN TERMINATION DETAILS

- Contributions under this policy were discontinued effective December 16, 2015
- Plan Assets at December 16, 2015 were \$3,847,084.39
- The account was paid in full as of the date that contributions were discontinued, and there were no amounts outstanding. The final contributions were processed as of December 10, 2015 for the period November 30, 2015 to December 13, 2015 in the amount of \$4,605.14
- The Amendment indicating all contributions have ceased, the Plan is being wound-up, and the effective date of the wind-up is being handled by Momeau Shepell.
- The affected members of this pension plan were notified effective January 26, 2016. This notification was handled by Wabush Mines
- The reason for this full plan wind up is that the Newfoundland and Labrador Superintendent of Pensions ordered a plan wind up effective December 16, 2015.
- All members are entitled to 100% vesting, and the locking-in requirements of the Contract and the Pension Benefits Act, 1997 and the Federal Pension Benefits standards Act, 1985 have been met.
- The credit of \$0.00 available upon the Plan's discontinuance,
 - Will be used to pay outstanding termination invoice in the amount
 - Remaining amount will be re-allocated to the Plan members on an equal basis.
- All members will be provided with Option Statements which will provide the option of purchasing guaranteed annuity benefits, cash refunds (where available), transfers to other Registered Pension Plans, or transfers to Registered Retirement Savings Plans, Locked In Registered Retirement Savings Plan, Life Income Fund, Registered Retirement Income Fund.
- The asset values shown under the 'Member Benefits at Plan termination' schedule have been calculated as follows:
 - Each member's assets held under market funds is valued based on the unit value of the applicable fund(s) as at December 16, 2015
 - Each member's assets held under guaranteed Interest Account(s) is valued as market or book value, based on the Interest rates existing as of December 16, 2015. Market value adjustments, if any, are in accordance with this Plan's funding Contract.
 - There are 3 members who hold assets in Member Locked In Transfer
 - There are no members who hold assets in Member Voluntary and/or Voluntary Non Locked Transfer in
- Momeau Shepell is aware of the Final AIR required for the period of January 1, 2015 to December 16, 2015 and have submitted it.
- Canada Revenue Agency will be informed and provided with a copy of this Report as soon as we receive an approval from both, the Newfoundland Pension Benefits Division and The Office of the Superintendent of Financial Institutions.



Sun Life Assurance Company of Canada
Group Retirement Services
PO Box 11001 STN Centre-Ville
Montreal QC H3C 3P3

Member Name
Member Address Line 1
Member Address Line 2

RE: Windup of your Employer Sponsored Group Plan. Your actions required regarding your Pension Plan for Salaried employees of Wabush Mines (GA 12200) Group Plan

Client ID: 925 03

Dear Plan Member:

We have received notification that your group plan is being wound up effective December 16, 2015. You have full ownership of both the employer contributions made to the plan and your own contributions. As your group plan is in the process of winding up, you'll need to transfer your assets out of your current employer-sponsored group plan into your own individual account.

At Sun Life Financial, we are here to help make some of the decisions easier for you.

This Settlement Option package provides you with current information about your account and a list of the options available to you as you transition out of your group plan. More details about each option are provided on the enclosed Information Reference Page. Please complete the Settlement Option form(s) and return to us in the self-addressed envelope.

You may keep your funds with Sun Life Financial by transferring to the Group Choices Plan or choose from the options listed on the enclosed Settlement Option Form(s). There is an option form for each of the retirement savings products you currently hold.

Our Group Choices Plan is a fast and easy way to transition from your group plan and to continue to receive many of the same benefits. More details on the Group Choices Plan are included in this package. Here are some of the benefits of joining the Group Choices Plan:

- **Low Cost** - Continue to benefit from no loads and lower investment management fees that are typically not available to individual retail investors and avoid transfer/withdrawal fees that could be applicable to your plan. (To review the fees you pay, sign into mysunlife.ca, (our Plan Member Services website), using your access ID and password, select your retirement account on the **Home** page followed by **Account Fees** under the **Accounts** drop-down menu.)
- **Continued contributions** - Continue making monthly contributions by pre-authorized debit from your bank account through our automatic cheque plan or making lump sum contributions at any time.
- **Investment Choice** - Continue to enjoy many of the same or similar funds as you did in your group plan.

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www.sunlife.ca

- **24/7 Access** - Internet access and Call Centre servicing will continue. Obtain information or process transactions when it's convenient for you.

Please make an election within 90 days. If you fail to choose an option, your assets may be moved to a separate Sun Life Financial account. Note, fees may be charged to you directly to hold assets in this account.

Whatever your decision may be, our Client Solutions Centre is here to help you during the transition from your plan.

To enrol in the Group Choices Plan, sign into mysunlife.ca using your access ID and password and select Leaving the plan under the Requests drop-down menu.

OR

Call our Client Solutions Centre at 1-877-893-9893.

OR

Complete the enclosed Settlement Option Form and return it by fax or in the enclosed envelope.

We look forward to hearing from you soon.

Thank you,

Group Retirement Services
Sun Life Financial

Encl: Settlement Option Form(s)
Group Choices Plan brochure
Group Choices Plan (National Accounts) Investment Options
Defined Contribution Pension Plan (DCPP) information
Return Envelope

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www.sunlife.ca

TAB 12

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

File: No: 500-11-048114-157

**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

**THIRTY-EIGHTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. On January 27, 2015, Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC (“**CQIM**”) (collectively, the “**Bloom Lake Petitioners**”) sought and obtained an initial order (as amended, restated or rectified from time to time, the “**Bloom Lake Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) from the Superior Court of Québec (the “**Court**”), providing for, *inter alia*, a stay of proceedings against the Bloom Lake Petitioners until February 26, 2015, (the “**Bloom Lake Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor (the “**Monitor**”). The relief granted in the Bloom Lake Initial Order was also extended to The Bloom Lake Iron Ore Mine Limited Partnership (“**Bloom Lake LP**”) and Bloom Lake Railway Company Limited (together with Bloom Lake LP, the “**Bloom Lake Mises-en-Cause**” and together with the Bloom Lake Petitioners, the “**Bloom Lake CCAA Parties**”). The proceedings commenced under the CCAA by the Bloom Lake CCAA Parties will be referred to herein as the “**CCAA Proceedings**”.

2. On May 20, 2015, the CCAA Proceedings were extended to include Wabush Iron Co. Limited (“**WICL**”), Wabush Resources Inc. (“**WRI**” and together with WICL, the “**Wabush Petitioners**”), Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the “**Wabush Mises-en-Cause**” and together with the Wabush Petitioners, the “**Wabush CCAA Parties**”) pursuant to an initial order (as amended, restated or rectified from time to time, the “**Wabush Initial Order**”) providing for, *inter alia*, a stay of proceedings against the Wabush CCAA Parties until June 19, 2015, (the “**Wabush Stay Period**”) and approving an interim financing term sheet dated May 19, 2015, providing an interim facility of up to US\$10 million. The Bloom Lake CCAA Parties and the Wabush CCAA Parties will be referred to collectively herein as the “**CCAA Parties**”.
3. The Bloom Lake Stay Period and the Wabush Stay Period (together, the “**Stay Period**”) have been extended from time to time and currently expire on June 30, 2017.
4. On June 22, 2015, Mr. Justice Hamilton J.S.C. granted an Order (the “**June 22 Rep Order**”) *inter alia*:
 - (a) Appointing Michael Keeper, Terence Watt, Damin Lebel and Neil Johnson as representatives (the “**Representatives**”) of the Salaried Members (as defined in the June 22 Rep Order); and
 - (b) Appointing Koskie Minsky LLP and Nicholas Scheib (collectively “**Representative Counsel**”) as legal counsel to the Representatives.
5. On November 5, 2015, Mr. Justice Hamilton J.S.C. granted an Order approving a procedure for the submission, evaluation and adjudication of claims against the CCAA Parties and their current and former directors and officers (as amended, the “**Claims Procedure Order**”).

6. To date, the Monitor has filed thirty-seven reports in respect of various aspects of the CCAA Proceedings. The purpose of this, the Monitor's Thirty-Eighth Report (this "**Report**"), is to provide information to the Court with respect to:
 - (a) The CCAA Parties current cash balances;
 - (b) The CCAA Parties' cash flow forecast for the period July 1 to December 1, 2017 (the "**June 20 Forecast**");
 - (c) The current status of the realization of the assets of the CCAA Parties;
 - (d) The CRA ITA Audit, as defined in the Monitor's Thirty-Fourth Report;
 - (e) The progress of the Claims Procedure;
 - (f) The Newfoundland Reference;
 - (g) The 2014 Reorganization;
 - (h) The Allocation Motion;
 - (i) The current estimates of potential distributions to creditors;
 - (j) The MFC Minimum Royalty Litigation;
 - (k) The MFC Lift Stay Motion;
 - (l) The CCAA Parties' request for an extension of the Stay Period to November 30, 2017, and the Monitor's recommendation thereon;

- (m) The motion filed May 29, 2017, by The Kami Mine Limited Partnership (“**Kami LP**”) and Alderon Iron Ore Corp. (“**AIOC**” and together with Kami LP, “**Alderon**”) seeking an Order of the Court compelling the Wabush CCAA Parties to use their best efforts to obtain from the government of Newfoundland and Labrador (the “**Government**”) copies of a report entitled “Wabush Mines Viability Analysis, 2016” by Rance and Associates (the “**2016 Viability Analysis**”) and a report entitled “Wabush Mines, 2016” by Strathcona Minerals (the “**Strathcona 2016 Report**” and together with the 2016 Viability Analysis, the “**Government Reports**”) and to communicate the Government Reports to Alderon, the Monitor and the Court (the “**Alderon Motion**”); and
- (n) The motion filed June 16, 2017, by Representative Counsel seeking an Order providing *inter alia* for the payment by the Wabush CCAA Parties of legal costs of Representative Counsel of up to \$40,000 per month for the period July 1 to November 30, 2017, to a maximum of \$200,000 in the aggregate upon the rendering of sufficiently detailed accounts (subject to reasonable redaction due to solicitor-client privilege) to the Wabush CCAA Parties and subject to such invoices being approved by the Monitor (the “**Rep Counsel Fee Motion**”).

TERMS OF REFERENCE

- 7. In preparing this Report, the Monitor has relied upon unaudited financial information of the CCAA Parties, the CCAA Parties’ books and records, certain financial information prepared by the CCAA Parties and discussions with various parties (the “**Information**”).
- 8. Except as described in this Report:

- (a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
- 9. The Monitor has prepared this Report in connection with the CCAA Parties' motion for an extension of the Stay Period, the Alderon Motion and the Rep Counsel Fee Motion, all scheduled to be heard June 26, 2017, and should not be relied on for other purposes.
- 10. Future oriented financial information reported or relied on in preparing this Report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
- 11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the Bloom Lake Initial Order, the Wabush Initial Order or previous reports of the Monitor.

CURRENT CASH BALANCES

12. As previously reported, at the request of the CCAA Parties, the Monitor has been assisting with the administration of receipts and disbursements in order to streamline administration and reporting. All of the CCAA Parties' accounts have now been closed and all transactions are being processed through the Monitor's accounts on behalf of the CCAA Parties. Total cash balances as at June 16, 2017¹, are summarized below:

	Bloom Lake CCAA Parties	Wabush CCAA Parties	Total
	\$000	\$000	\$000
Held by Monitor			
Sale Proceeds Accounts	7,659	6,612	14,271
Operating Accounts	2,249	2,755	5,004
Minimum Royalty Deposits	0	5,714	5,714
GIC Investments	73,000	60,000	133,000
Total Held by Monitor	82,908	75,081	157,989

*In addition, the Monitor holds a deposit of \$750,000 in respect of the Scully Mine Transaction

THE JUNE 20 FORECAST

13. The June 20 Forecast is attached hereto as **Appendix A**. The June 20 Forecast excludes proceeds of asset realizations and is summarized below:

¹ The Monitor has not provided a variance analysis of actual cash flow versus the April 24 Forecast to June 16, 2017, as the April 24 Forecast included actual receipts and disbursements to June 9, 2016.

	Bloom Lake CCAA Parties	Wabush CCAA Parties
	\$000	\$000
Receipts	402	330
Disbursements:		
Payroll & Employee Benefits		(1,051)
Contractors		(480)
Utilities		(29)
Other Operating Disbursements		(824)
Operating Cash Flows	402	(2,054)
Restructuring Professional Fees	(2,230)	(3,883)
Projected Net Cash Flow	(1,828)	(5,937)

14. The only items in the Bloom Lake CCAA Parties forecast are interest earned and legal and professional fees. Accordingly, and consistent with the April 24 Forecast, the forecast has not been presented on a weekly basis as such presentation would provide no relevant information.
15. The forecast for the Wabush CCAA Parties has been prepared assuming that Scully Mine Transaction does not close and the Wabush Mine is abandoned effective July 28, 2017. The forecast includes the payment of accrued vacation pay and severance and termination payments for the remaining employees and has been presented on a weekly basis until July 28, 2017. Consistent with the presentation of the Bloom Lake forecast, the Wabush forecast has not been presented on a weekly basis thereafter as such presentation would provide no relevant information.
16. Of the approximately \$6.1 million of restructuring professional fees included in the June 20 Forecast, an estimated amount of approximately \$3.4 million relates to amounts already incurred.

CURRENT STATUS OF ASSETS REALIZATIONS

SEPT-ILES HOUSES

17. As previously reported, certain amounts from the proceeds of sale of the eight employee houses located in Sept-Iles were held in escrow in respect of potential withholding tax liabilities. Since the date of the Monitor's Thirty-First Report, final assessments of federal and provincial withholding tax liabilities have been received by the Wabush CCAA Parties and the amounts owing have been paid. Compliance certificates have been issued by the relevant taxation authorities.
18. All remaining amounts held in escrow in connection with withholding taxes have now been released.

CONDITIONAL SALE EMPLOYEE HOMES

19. Since the date of the Thirty-Fourth Report, two sales of Conditional Sale Employee Homes have closed. Two further sales are pending closing. Eight Conditional Sale Employee Homes remain occupied pursuant to the terms of the respective conditional sale agreements and the Wabush CCAA Parties continue to collect the amounts payable under those agreements.

THE MONT-WRIGHT CAMP TRANSACTION

20. Outstanding post-filing amounts owing to ArcelorMittal in respect of the Mont-Wright Camp were paid pursuant to a mutual release agreement between, *inter alios*, CQIM and ArcelorMittal dated as of May 5, 2017, that released all remaining claims and the Mont-Wright Camp Transaction closed on May 16, 2017.

THE WABUSH MINE

21. The Sale Approval Motion in respect of the Scully Mine Transaction is scheduled to be heard on June 26, 2017. Details of the Scully Mine Transaction and the Monitor's recommendation in respect of the Sale Approval Motion are set out in the Monitor's Thirty-Seventh Report.
22. The Replacement Financial Assurance Condition Date of the Scully Mine APA is now June 25, 2017. While at the date of this Report the Purchaser's RFA Condition has not been satisfied or waived, the Purchaser has informed the Monitor that it currently anticipates that it will shortly be in position to satisfy or waive the Purchaser's RFA Condition.

POTENTIAL TAX REFUNDS

23. As previously reported, the CCAA Parties have been seeking refunds in respect of Québec taxes and mining duties. A refund of approximately \$7.2 million was received on behalf of Bloom Lake LP on May 1, 2017. Based on the assessments received and the claims filed by Revenu Québec in the Claims Procedure, the Monitor estimates that further refunds totalling approximately \$7.9 million are due relating to pre-filing periods. Revenu Québec has a number of claims in the Claims Procedure which could give rise to potential set-off against the refunds.

INSURANCE CLAIM PROCEEDS

24. As set out in the Monitor's Thirty-Fourth Report, certain of the CCAA Parties executed an Insurance Settlement relating to a spill that occurred at the Pointe-Noire Facility prior to September 1, 2013. The proceeds of the Insurance Settlement were received on April 28, 2017.

THE CRA ITA AUDIT

25. In the Monitor's Thirty-Fourth Report, the Monitor reported that on April 18, 2017, counsel to the CCAA Parties informed the Monitor that the CCAA Parties, with the assistance of their counsel, had been dealing with the CRA ITA Audit and various requests for information by CRA in connection therewith. The Monitor further reported that it had requested copies of the correspondence from CRA and of the responses provided to CRA.
26. Counsel to the CCAA Parties has now provided electronic copies of correspondence from CRA and the CCAA Parties' responses thereto. The Monitor has requested further details regarding any requests by the CRA for which responses have not yet been provided by the CCAA Parties and any follow up requests by CRA.
27. The Monitor has requested that it be consulted on future activities regarding the CRA ITA Audit.

THE CLAIMS PROCEDURE

CLAIMS

28. The current status of the Claims Procedure is summarized below:

	Allowed/To Be Allowed		In Progress		In Dispute		To be Disallowed / Dispute Period Not Expired		Disallowance Final	
	#	\$000	#	\$000	#	\$000	#	\$000	#	\$000
Secured										
CQIM	1	139	2	69,559					8	102,816
Bloom Lake LP	19	32,274	3	143,781	3	3,737	1	567	14	118,233
Bloom Lake GP	1	1,001	1	26,415					5	1,483
Quinto Mining										
8568391 Canada									1	161
Bloom Lake Railway										
Wabush Mines	1	839	4	55,203					1	25,774
WICL			2	9,101						
WRI			2	13,646						
Arnaud Railway			3	55,569						
Wabush Lake Railway			2	54,937						
Total Secured	22	34,253	19	428,211	3	3,737	1	567	29	248,467
Unsecured										
CQIM	59	706,271	14	1,184,269			1	6,541	18	37,287
Bloom Lake LP	189	689,755	12	673,020	1	100	1	6,338	75	56,212
Bloom Lake GP	5	590,830							13	27,041
Quinto Mining			5	16,952					11	100
8568391 Canada									9	25
Bloom Lake Railway									10	-
Wabush Mines	99	57,077	1,101	1,829,088	5	2,341			188	24,881
WICL	6	57,802	11	386,399	3	193			14	11,342
WRI	3	49,778	15	727,289	3	193			13	16,314
Arnaud Railway	5	4,255	455	61,134	3	193			21	1,766
Wabush Lake Railway	2	1,811	394	90,724	3	193			12	984
Total Unsecured	368	2,157,579	2,007	4,968,875	18	3,213	2	12,879	384	175,952
Total	390	2,191,832	2,026	5,397,086	21	6,950	3	13,446	413	424,419

29. The claims in progress are summarized as follows:

- (a) Eight claims by three creditors are municipal tax claims in the aggregate amount of approximately \$64.4 million. As previously reported, the CCAA Parties have identified and are pursuing a number of potential opportunities for municipal tax contestation that, based on current estimates, could result in reductions of approximately \$17 million in pre-filing claims if successful;

- (b) 1,932 claims in the aggregate amount of approximately \$293.4 million² are claims of former employees in respect of OPEBs and other employment related amounts, of which 843 claims in the aggregate amount of approximately \$126 million are filed on a joint and several basis against two of the CCAA Parties;
- (c) Six claims in the aggregate amount of approximately \$164.8³ million are claims related to the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan, with claims of approximately \$54.9 million in the aggregate being filed on a joint and several basis against three of the Wabush CCAA Parties;
- (d) 75 claims in the aggregate amount of approximately \$4.7 billion are Related Party Claims⁴; and
- (e) Five claims by two creditors in the aggregate amount of approximately \$161.2 million are pending further review by the Monitor, which review has been deferred pending the outcome of efforts to sell the Wabush Mine. Of this amount, \$149.2 million relates to three claims of one creditor, each in the amount of approximately \$49.7 million, related to environmental claims in respect of the Wabush Mine, which claims were filed on a joint and several basis against three of the Wabush CCAA Parties.

² Since the previous report, it has been clarified that 843 claims in the aggregate amount of approximately \$126 million are being advanced not just against Wabush Mines but also on a joint and several basis against Arnaud Railway or Wabush Lake Railway, thereby increasing the overall number and value of claims reported.

³ Updated to reflect the amounts shown in the wind-up reports.

⁴ Excluding the Related Party Claim relating to subordinated Note Y discussed in the Monitor's Twenty-Fourth Report.

Related Party Claims

30. As previously reported, the Monitor is in the process of preparing a separate report on the current status of the review of the Related Party Claims and its findings to date. While the Monitor had hoped to be able to file that report prior to the expiry of the Stay Period on June 30, 2017, the completion of the report has been delayed because of the efforts to negotiate the Scully Mine APA and file the Sale Approval Motion. The Monitor will endeavour to file that report in July.

Secured Claims

31. As previously reported, Secured Claims include:

- (a) A Related Party Claim for advances made by Cliffs Mining Company (“**CMC**”) to the Wabush CCAA Parties prior to the CCAA Proceedings (the “**CMC Secured Claim**” and the related security being the “**CMC Security**”);
- (b) Claims relating to the Key Bank Facility (the “**Key Bank Claims**” and the related security being the “**Key Bank Security**”);
- (c) Claims of CNR as guarantor under the Key Bank Facility and assignee and/or subrogor of the Key Bank Claims (the “**CNR Key Bank Claims**” and the related security being the “**CNR Key Bank Security**”);
- (d) Claims of creditors holding a registered legal hypothec for construction (the “**Construction Hypothec Claims**”);
- (e) Claims filed by the pension administrators in respect of the Wabush Hourly Pension Plan and the Wabush Salaried Pension Plan;
- (f) Claims filed in respect of environmental obligations; and
- (g) Claims filed in respect of unpaid property taxes.

32. Previous reports of the Monitor have included details of the independent opinions on the validity and enforceability of the CMC Security, the Key Bank Security and the CNR Key Bank Security. The determination of the value of the security for these Claims is pending the approval of the Allocation Motion.

33. The quantum of all except one Construction Hypothec Claim, as noted below, has been finally determined in accordance with the provisions of the Claims Procedure Order. The status of the adjudication of the validity of the security of the Construction Hypothec Claims, in each case subject to the allocation of proceeds and costs of realization as discussed elsewhere in this Report, is as follows:
 - (a) Sixteen Construction Hypothec Claims in the aggregate amount of approximately \$32.6 million have been allowed as secured claims;
 - (b) Three Construction Hypothec Claims in the aggregate amount of approximately \$0.9 million have been allowed as unsecured claims as the Monitor issued Notices of Revision or Disallowance in respect of the validity of the security, which notices were not disputed;
 - (c) Three Construction Hypothec Claims in the aggregate amount of approximately \$4 million are in dispute as to the validity of security as the claimants filed Notices of Dispute in response to the Notices of Revision or Disallowance in respect of the validity of the security issued by the Monitor;
 - (d) One Construction Hypothec Claim in the amount of approximately \$0.2 million is in dispute as to quantum and the validity of security as the claimant filed a Notice of Dispute in response to the Notices of Revision or Disallowance in respect of both aspects of the Construction Hypothec Claim; and

- (e) The determination of three Construction Hypothec Claims in the aggregate amount of approximately \$1.1 million remain under review in respect of the validity of the security.

Pension Claims

- 34. As reported in the Monitor's Thirty-First Report, Morneau Shepell, the replacement administrator of the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan (the "**Pension Administrator**") filed wind-up reports quantifying the wind-up deficits of the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan as at December 16, 2016 as \$27,450,000 and \$27,486,548 respectively. As at the date of this Report, the wind-up reports have not yet been approved by the relevant regulators. No timeline for such approval has been provided to the Monitor.
- 35. Also as reported in the Monitor's Thirty-First Report, on September 21, 2016, the Monitor filed a motion for advice and directions with respect to the potential priority of the various aspects of the pension plan claims (the "**Pension Priority Motion**"). The Court heard representations in respect of jurisdictional matters, including the request by certain parties that aspects of the Pension Priority Motion be transferred to the Newfoundland court and determined that no aspect of the Pension Priority Motion was to be transferred to the Newfoundland court. The Pension Priority Motion is now scheduled to be heard on June 28 and 29, 2017.

OPEB Claims

- 36. The Monitor continues to work with Representative Counsel, the USW and their actuary to determine the appropriate basis of the calculation of the OPEB claims. The calculation methodology will be applied consistently across the group of claimants.

37. Following its review of the methodology and underlying assumptions used by Representative Counsel, the USW and their actuary in their calculation of the OPEB claims, the Monitor requested that the calculations be run with amendments to some assumptions. The Monitor is awaiting the output of those calculations from the actuary of the Representative Counsel and the USW in order to formulate its preliminary adjudication of the OPEB claims. It is expected that the actuary will be able to provide the revised calculations by June 30, 2017.

THE NEWFOUNDLAND REFERENCE

38. The Newfoundland Reference refers the following questions (the “**Reference Questions**”) to the Newfoundland and Labrador Court of Appeal (the “**Newfoundland COA**”), as set out in Order in Council 2017-013 issued on March 27, 2017:

- (a) 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*, RSC 1985 c. C-36. What is the scope of section 32 of the *Pension Benefits Act*, 1997, SNL 1996, cP-4.01 deemed trusts in respect of:
- (i) Unpaid current service costs;
 - (ii) Unpaid special payments; and,
 - (iii) Unpaid wind-up liability?
- (b) The Salaried Plan is registered in Newfoundland and Labrador and regulated by the *Pension Benefits Act*, 1997.

- (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?
 - (iii) 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?
 - (iv) If yes, is there a conflict with the *Pension Benefits Act, 1997* and the Quebec *Supplemental Pensions Plan Act*? If so, how is the conflict resolved?
 - (v) Do the Quebec *Supplemental Pension Plans Act* deemed trusts also apply to Quebec Salaried Plan members?
- (c) 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?

39. As previously reported, on May 15, 2017, the Monitor filed a Notice of Intention to Intervene in the Newfoundland Reference, together with an application with the Newfoundland COA (the “**Monitor’s Reference Application**”) for an order granting the following relief:

- (a) That, pursuant to Rule 31 (2) of the Civil Appeal Rules, the May 5 Reference Order be reheard by a panel of the Newfoundland COA;
and

- (b) That paragraph 5 of the May 5 Reference Order⁵ be stayed until full argument can be heard with respect to the timing and scope of the Newfoundland Reference.

40. During the latest Court hearing held on May 31, 2017, Mr. Justice Hamilton stated:

“I also have problem with the Newfoundland Reference. The Newfoundland reference is as it currently stands is very broad and clearly infringes upon my jurisdiction. It's not up to me to tell the Newfoundland Court that but the Newfoundland Court current reference in my view is far too broad and the result of that is going to be that after I hear the parties in June, I have a choice. I can either render my judgment without waiting for Newfoundland to render its judgment or I can wait for the Newfoundland judgment. And if the Newfoundland judgment is going to deal with issues that are within my jurisdiction, I have absolutely no interest in waiting for their judgment because then I'm going to be told that Newfoundland has already decided these issues and if there's going to be a contradiction between the two judgments, I just assume that their judgment be the contradictory one, not mine.

So the result of all of that is that unless the Newfoundland Court narrows its focus to what in my view would be appropriate focus, I have absolutely no interest in waiting for their judgment and therefore I'm not sure what, I'm not sure on what basis I would be authorizing a broader mandate for the employees to participate in the process

⁵ Paragraph 5 of the May 5 Reference Order provides for the publication of newspaper notices.

which isn't going to have much use to anybody because they'll render a judgment that will come after mine and that will be of no assistance to me and that will have no effect with respect to these proceedings.”

41. The Monitor’s Reference Application was heard as part of the status hearing in respect of the Newfoundland Reference that took place on June 9, 2017 (the “**Reference Status Hearing**”).
42. The Newfoundland COA issued a ruling, a copy of which is attached hereto as **Appendix B**, following the Reference Status Hearing holding that, *inter alia*:
 - (a) The Newfoundland COA did not yet consider itself in a position to determine the extent to which, if at all, it should decline to answer one or more of the Reference Questions:
 - (b) Generally speaking, the questions posed on a reference should not be directed at determining parties’ rights and that the CCAA Court will determine those rights;
 - (c) In determining the parties’ rights, the CCAA Court may or may not advert to or apply the opinion of the Newfoundland COA provided in the Newfoundland Reference; and
 - (d) The parties may make submissions as to whether the Newfoundland COA should decline to answer a question, or any part thereof, or narrow the scope of a question as part of submissions made at the hearing of the Newfoundland Reference.
43. The Newfoundland COA also issued an amended timetable for perfection of the Newfoundland Reference at the Reference Status Hearing as follows:

- (a) June 30, 2017 - Filing of record and Notice of Constitutional Questions by any participant to be filed and delivered;
 - (b) July 26, 2017 – Factum of Superintendent of Pensions Newfoundland and Labrador to be filed;
 - (c) August 2, 2017 – Factum of Representative Counsel to be filed;
 - (d) August 23, 2017 – Facta of Attornies General of Canada and Québec and of other intervenors to be filed;
 - (e) September 8, 2017 – Factum of Attorney General of Newfoundland and Labrador to be filed; and
 - (f) September 21 and 22, 2017 – Hearing of Newfoundland Reference.
44. Given the comments of Mr. Justice Hamilton and the acknowledgment of the Newfoundland COA that the CCAA Court has jurisdiction to determine the Pension Priority Motion, there is arguably no benefit from the estate funds being expended on the continued participation of the Monitor or the Wabush CCAA Parties in the Newfoundland Reference.
45. Representative Counsel has informed the Monitor that it will be seeking funding from the Government for participation in the Newfoundland Reference and that it will not be seeking funding from the Wabush CCAA Parties for the purposes of continuing to participate in the Newfoundland Reference.
46. Pursuant to paragraph 5 of the Rep Counsel Order, the appointment of the Representatives is “for the purpose of representing the Salaried Members in these CCAA proceedings and in particular with respect to proving, settling or compromising the rights and claims of the Salaried Members in these CCAA proceedings” (emphasis added).

47. Pursuant to paragraph 6 of the Rep Counsel Order, the appointment of Representative Counsel is with the mandate “to provide assistance to the Salaried Members so that the Salaried Members are able to participate in the CCAA proceedings and the restructuring process in a more efficient manner” (emphasis added).
48. The Newfoundland Reference is not part of the CCAA Proceeding nor part of the restructuring process. Accordingly, it is not clear to the Monitor under what mandate or on what authority the Representatives and Representative Counsel purport to represent the Salaried Members for the purposes of the Newfoundland Reference.
49. The Monitor does have some concern that the Newfoundland COA may not be given a balanced view of the facts and circumstances if Representative Counsel participates in the Newfoundland Reference and the Monitor, or the Wabush CCAA Parties, do not. Accordingly, the Monitor continues to assess the whether it and/or the Wabush CCAA Parties should continue to participate in the Newfoundland Reference.

THE 2014 REORGANIZATION

50. As noted in the Monitor’s Thirty-Fourth Report, the Monitor has commenced “without prejudice” discussions with legal counsel to CNR and its non-filed affiliates (“**CNR Counsel**”) with respect to the 2014 Reorganization and its effect on the CQIM estate and its creditors with a view to agreeing the factual matrix of the 2014 Reorganization and any potential claim arising therefrom, identifying any areas of dispute and determining the process for bringing any claim or proposed settlement forward for consideration by the stakeholders and the Court.

51. Since the date of the Monitor's Thirty-Fourth Report, such discussions have continued. CNR Counsel has provided a summary of calculations, prepared by or for CNR, of the value at various dates of the Australian subsidiaries transferred from CQIM as part of the 2014 Reorganization and the Monitor is now commencing the process of undertaking due diligence on those calculations.
52. Subject to Court approval, CNR and the Monitor have entered into a "tolling agreement" with respect to any statutory limitation periods related to any claims or actions that may arise from the 2014 Reorganization or from any other transactions involving the non-filed related parties and the CCAA Parties in order that there is no concern that any statutory limitation periods may expire while the Monitor's investigations and discussions with CNR Counsel continue. A copy of the tolling agreement dated June 21, 2017 (the "**2014 Reorg Tolling Agreement**"), is attached hereto as **Appendix C**.
53. The Monitor intends to file a motion for approval of the 2014 Reorg Tolling Agreement, returnable as soon as possible.

THE ALLOCATION MOTION

54. The Allocation Motion is described in the Monitor's Thirty-Sixth Report and was originally returnable on May 31, 2017.
55. Notices of objection in respect of the Allocation Motion were filed by the following parties (the "**Objecting Parties**"):
 - (a) The USW;
 - (b) The Representatives;
 - (c) The Office of the Superintendent of Financial Institutions;
 - (d) The Superintendent of Pensions of Newfoundland and Labrador;

- (e) The Pension Administrator; and
 - (f) The City of Fermont.
56. As a result of the filing of the notices of objection, the Allocation Motion was adjourned to June 26, 2017.
57. Each of the Objecting Parties other than the City of Fermont has now confirmed to the Monitor that it has withdrawn its objection.

ESTIMATED RANGES OF POTENTIAL DISTRIBUTIONS

58. At paragraph 69 of its Thirty-Fourth Report, the Monitor provided a summary of its estimate of the ranges of potential distributions to unsecured creditors from the estates of each of the CCAA Parties based on the information available at that time.
59. The Monitor has now updated its estimates based on the information currently available with respect to costs and realizations to date, the current status of claims and assumptions regarding potential future realizations. No amounts have been included in the estimates for any amounts that might be recoverable in respect of the 2014 Reorganization. The estimate utilizes the allocation methodology set out in the Allocation Motion. The current estimate of the ranges of potential distributions to unsecured creditors from the estates of each of the CCAA Parties, assuming that the Related Party Claims other than Note Y (which by its terms is subordinated) are valid as filed, are summarized below:

	Low	High
Bloom Lake LP	1.82%	2.03%
Bloom Lake GP	0.00%	0.00%
CQIM	2.38%	2.76%
Quinto Mining	54.78%	61.08%
Arnaud Railway	0.00%	20.07%
WICL	0.00%	1.07%
Wabush Lake Railway	0.00%	1.00%
Wabush Mines ¹	0.00%	0.00%
WRI	0.00%	2.60%

¹Wabush Mines is an unincorporated joint venture, accordingly it has no assets or liabilities of its own and distributions would be through the joint venturers, WICL and WRI

THE MFC LITIGATION

THE MFC ROYALTY LITIGATION

60. Pursuant to the December 4 Order, the Wabush CCAA Parties have made deposits of \$812,250 with the Monitor in December 2015, January 2016, April 2016, July 2016, October 2016, January 2017 and April 2017 for amounts potentially payable in respect of the Minimum Royalty Payment.

61. The MFC Royalty Litigation is scheduled to be heard on July 19, 20 and 21, 2017.

THE MFC LIFT STAY MOTION

62. The MFC Lift Stay Motion seeks the lifting of the stay of proceedings in order for MFC to terminate the MFC Sub-Lease. The MFC Lift Stay Motion is scheduled to be heard on June 26, 2017.

63. As described in the Monitor's Thirty-Seventh Report, the Vendors have filed the Sale Approval Motion, returnable June 26, 2017, seeking approval of the Scully Mine Transaction, including the assignment of the MFC Sub-Lease. As set out in the Monitor's Thirty-Seventh Report, the Monitor is of the view that the approval of the Scully Mine Transaction is in the best interests of the creditors of the Vendors and of the Vendors' stakeholders generally and the Monitor supports the Vendors' request for approval of the Scully Mine Transaction.
64. If the Purchaser's RFA Condition is satisfied and the Scully Mine Transaction is approved by the Court, as requested by the Vendors and recommended by the Monitor, it is the Monitor's view that the MFC Lift Stay Motion must necessarily be denied as the assignment of the MFC Sub-Lease is a condition precedent to the Scully Mine Transaction.
65. The Monitor will provide its position with respect to the MFC Lift Stay Motion in the circumstance where the Purchaser's RFA Condition is not satisfied or the Scully Mine Transaction is not approved by the Court if such circumstance arises.

REQUEST FOR AN EXTENSION OF THE STAY PERIOD

66. The Stay Period currently expires on June 30, 2017. Additional time is required for the CCAA Parties and the Monitor to complete the CCAA Proceedings, including the following activities:
 - (a) Closing the Scully Mine Transaction, if the conditions to closing are satisfied and the Scully Mine Transaction is approved by the Court;
 - (b) If the Scully Mine Transaction does not close and is terminated, disclaiming the MFC Sub-Lease and abandoning the balance of the assets associated with the Scully Mine;
 - (c) Continuing to address, to the extent necessary and appropriate, the CRA ITA Audit;

- (d) Resolving the MFC Litigation by way of agreement among the parties or, if not so resolved, to proceed with the hearing currently scheduled for July 19, 20 and 21, 2017;
 - (e) Participating, to the extent necessary and appropriate, in the Newfoundland Reference; and
 - (f) Completing the investigation of the 2014 Reorganization and the effect thereof and determining what, if any, action should be taken with respect thereto;
 - (g) Completing the Claims Procedure;
 - (h) Determining, subject to Court approval, an appropriate mechanism to effect distributions to creditors, whether by way of plan of arrangement, distribution order or otherwise;
 - (i) Completing the other activities described in this Report; and
 - (j) Undertaking the other activities necessary to complete the CCAA Proceedings.
67. The continuation of the stay of proceedings is necessary to provide the stability needed to complete the foregoing activities. Accordingly, the CCAA Parties now seek an extension of the Stay Period to November 30, 2017.
68. The June 20 Forecast demonstrates that, subject to the underlying assumptions thereof, the CCAA Parties have sufficient liquidity to fund the CCAA Parties' operations and the CCAA Proceedings during the requested extension of the Stay Period.

69. The CCAA Proceedings are complex and various aspects of the CCAA Parties are intertwined. The co-ordination of the various estates is, in the Monitor's view, critical to maximize efficiency and effectiveness. It is also the Monitor's view that a continuation of the CCAA Proceedings is, at the current time, the most efficient and effective way that such co-ordination can be achieved and that the proceedings can be completed for the benefit of all stakeholders. The Monitor will continue to work with the CCAA Parties to endeavour to ensure that cost efficiency is maximized during any extension of the Stay Period.
70. Based on the information currently available, the Monitor believes that creditors of the CCAA Parties would not be materially prejudiced by an extension of the Stay Period to November 30, 2017.
71. The Monitor also believes that the CCAA Parties have acted, and are acting, in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.
72. The Monitor therefore respectfully recommends that this Honourable Court grant the CCAA Parties' request for an extension of the Stay Period to November 30, 2017. The Monitor intends to provide a status report on the progress of matters mid-way through the extension of the Stay Period, if the request for the extension is granted.

THE ALDERON MOTION

73. As noted earlier in this Report, the Alderon Motion seeks an Order of the Court compelling the Wabush CCAA Parties to use their best efforts to obtain from the Government the Government Reports and to communicate the Government Reports to Alderon, the Monitor and the Court.

74. Alderon attempted to obtain the Government Reports through a request (the “AITPP Request”) pursuant to the *Access to Information and Privacy Protection Act*. The Government declined to provide the Government Reports. It is the Monitor’s understanding that the denial of the AITPP Request was not appealed.
75. As described in Confidential Appendix D to the Monitor’s Thirty-Third Report, the Monitor informed the Court that on March 17, 2017, counsel to Alderon wrote to counsel for the Monitor asking whether the Monitor was aware of certain economic viability studies in respect of the Wabush Mine that Alderon believed the Government had obtained, including the Government Reports.
76. On March 21, 2017, counsel to the Monitor responded to counsel to Alderon and advised, *inter alia*, that:
- (a) The Monitor and the Wabush CCAA Parties were not aware of the alleged Government Reports, and
 - (b) The Monitor did not believe that there was any need to obtain the Government Reports for the purposes of the Wabush Mine Sale Procedure.
77. Alderon is neither a creditor of any of the CCAA Parties nor a stakeholder in the CCAA Proceedings. To the best of the Monitor’s knowledge, Alderon’s only connection to the CCAA Proceedings is as an unsuccessful bidder in the Wabush Mine Sale Procedure⁶. Accordingly, it is unclear what standing Alderon has to bring the Alderon Motion.

⁶ The deposit submitted in the Wabush Mine Sale Procedure in respect of the Kami Proposal has been returned.

78. Regardless, the Monitor remains of the view that the Government Reports have no relevance to the Wabush Mine Sale Procedure or to the CCAA Proceedings generally. The Monitor is also of the view that there is no apparent circumstance where the Government Reports be of any assistance to the CCAA Parties, the Monitor or the Court.
79. Accordingly, the Monitor recommends that the Alderon Motion be dismissed.

THE REP COUNSEL FEE MOTION

80. As noted earlier in this Report, the Rep Counsel Fee Motion seeks an Order providing *inter alia* for the payment by the Wabush CCAA Parties of legal costs of Representative Counsel of up to \$40,000 per month for the period July 1 to November 30, 2017, to a maximum of \$200,000 in the aggregate upon the rendering of sufficiently detailed accounts (subject to reasonable redaction due to solicitor-client privilege) to the Wabush CCAA Parties and subject to such invoices being approved by the Monitor.
81. The Rep Counsel Order appointed Koskie Minsky LLP (“**KM**”) and Nicholas Scheib together as Representative Counsel. It is the Monitor’s understanding that the inclusion of Mr. Scheib as part of Representative Counsel was to ensure that Representative Counsel had the necessary Québec law expertise and French language skills, neither of which KM could provide.
82. The Monitor has been informed by Mr. Scheib that he intends to take steps to terminate his appointment under the Rep Counsel Order. The Monitor has concerns about the loss of Québec law expertise and French language skills to Representative Counsel, which concerns it has discussed with KM. KM has informed the Monitor that it is seeking alternative Québec based counsel to replace Mr. Scheib.

83. The Monitor continues to be of the view that the involvement of Representative Counsel is beneficial. The Monitor has no objection to the cap on legal fees proposed in the Rep Counsel Fee and Scope Motion, noting that actual costs must be validly incurred in accordance with the June 22 Rep Order.
84. The Monitor does not consider that the continued participation of Representative Counsel in the Newfoundland Reference is necessary for it to fulfil its mandate under the Rep Counsel Order and does not consider it appropriate for the Wabush CCAA Parties to fund any costs of Representative Counsel in respect of the Newfoundland Reference.
85. As noted earlier in this Report, Representative Counsel has informed the Monitor that it will not seek funding by the Wabush CCAA Parties of any costs in respect of the Newfoundland Reference. The Monitor recommends that if the Court grants the Rep Counsel Fee Motion, the resultant order should specifically exclude any funding of legal fees, disbursements and taxes of Representative Counsel related to the Newfoundland Reference or any other proceedings outside the CCAA Court, unless specifically approved by further Order of the Court.

The Monitor respectfully submits to the Court this, its Thirty-Eighth Report.

Dated this 21st day of June, 2017.

FTI Consulting Canada Inc.

In its capacity as Monitor of

Bloom Lake General Partner Limited, Quinto Mining Corporation,

8568391 Canada Limited, Cliffs Québec Iron Mining ULC,

Wabush Iron Co. Limited, Wabush Resources Inc.,

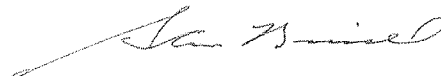
The Bloom Lake Iron Ore Mine Limited Partnership,

Bloom Lake Railway Company Limited, Wabush Mines,

Arnaud Railway Company and Wabush Lake Railway Company Limited



Nigel D. Meakin
Senior Managing Director



Steven Bissell
Managing Director

Appendix A

June 20 Forecast

CCAA Parties' Cash Flow Projection

Amounts in CAD in thousands (\$000s)

Week Ending Friday Forecast Week	Wabush		Wabush		Wabush		Wabush		Bloom Lake		Combined	
	16-Jun-17	23-Jun-17	30-Jun-17	7-Jul-17	14-Jul-17	21-Jul-17	28-Jul-17	4-Aug-17	11-Aug-17	18-Aug-17	25-Aug-17	Total
	1	2	3	4	5	6	7	8	9	10 to 25	1 to 25	Total
Cash Flow from Operations												
Receipts	-	-	-	-	-	-	-	-	-	-	330	732
Payroll & Employee Benefits	(20)	(25)	(149)	(25)	(12)	(149)	(976)	(148)	(9)	-	(1,051)	(1,051)
Contractors	(3)	(8)	-	(9)	(4)	(812)	(4)	-	-	-	(480)	(480)
Utilities	-	-	(4)	(25)	(18)	(837)	(153)	(157)	-	-	(824)	(824)
Other Operating Disbursements	(23)	(35)	(153)	(25)	(18)	(43)	(855)	(755)	(462)	-	(2,054)	(1,652)
Operating Cash Flows	(244)	(1,861)	(493)	(27)	(18)	(171)	(171)	(109)	(305)	(637)	(3,883)	(6,113)
Restructuring Professional Fees	(267)	(1,896)	(646)	(52)	(52)	(324)	(324)	(755)	(462)	(637)	(5,937)	(7,765)
Projected Net Cash Flow												

Wabush CCAA Parties - Notes:

- [1] The purpose of this cash flow projection is to determine the liquidity requirements of the Wabush CCAA Parties during the forecast period.
- [2] Forecasted Receipts relate to interest on GIC investments.
- [3] Forecast Payroll & Employee Benefits disbursements are forecast based on current staffing levels and recent payroll amounts. On the abandonment of Scully Mine in July, the 4 remaining employees are assumed to be paid severance and termination, and their outstanding vacation.
- [4] Forecast disbursements in respect of Contractors consist primarily of environmental monitoring and containment activities related to the Scully mine, and are assumed to be paid in when incurred. The forecast does not include any amounts for the ordering of dust control supplies as it is assumed that the Scully Mine would be abandoned before the summer dust control program would have to be implemented.
- [5] Forecast Utilities disbursements consist primarily of hydro costs to maintain the Scully Mine facilities and reflect current payment terms, rates and estimated consumption over the forecast period.
- [6] Forecast Other Operating Disbursements reflect costs of on-going monitoring and maintenance of the Scully Mine facilities not reflected in other line items. The timing of Other Operating Disbursements is assumed to be cash on delivery.
- [7] Forecast Restructuring Professional Fees consist of legal and financial advisor fees associated with the CCAA proceedings.

Bloom Lake CCAA Parties - Notes

- [1] The purpose of this cash flow projection is to determine the liquidity requirements of the Bloom Lake CCAA Parties during the forecast period.
- [2] Forecasted Receipts relate to interest on GIC investments.
- [3] Forecast Payroll & Employee Benefits disbursements are nil as there are no employees remaining following the closing of the sale of the Bloom Lake business and assets.
- [4] Forecast Restructuring Professional Fees consist of legal and financial advisor fees associated with the CCAA proceedings based on estimates obtained from legal and professional advisors.

Appendix B

June 9 Reference Ruling



File No. 2017 01H 0029

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

IN THE MATTER OF Section 13 of
Part 1 of the *Judicature Act*, RSNL
1990, c. J.-4

AND

IN THE MATTER OF Section 32 of
the *Pension Benefits Act*, 1997, SNL
1996, c. P-4.01

AND

IN THE MATTER OF a Reference
of The Lieutenant-Governor in
Council to the Court of Appeal for its
hearing, consideration and opinion on
the interpretation of the scope of s. 32
of the *Pension Benefits Act*, 1997

**RULING ON APPLICATION FOR DIRECTIONS
JUNE 9, 2017**

A handwritten signature in black ink, appearing to be "J.B.", with a checkmark below it.

Filed	June 13/17	JB
-------	------------	----

By the Court:

[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 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.

**COURT
OFFICER**

REGISTRAR

Appendix C

Tolling Agreement

TOLLING AGREEMENT

This Agreement is made as of June 21, 2017 (the "Effective Date") between on the first part Cliffs Natural Resources Inc. ("CNR") including, for the purposes of this Agreement, any subsidiary body corporate and any affiliated body corporate of CNR (collectively the "Cliffs Parties"), as these terms are defined in the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the "CBCA"), as well as any predecessor of CNR including for greater certainty Cleveland-Cliffs International Holding Company, Cliffs (Gibraltar) Limited, Cliffs (Gibraltar) Holdings Limited, Cliffs (Gibraltar) Holdings Limited Luxembourg SCS, Cliffs Natural Resources Luxembourg S.à r.l., Cliffs Finance Lux SCS, Cliffs International Luxembourg I Sarl, Cliffs Subscription LLC and Cliffs Canada Finance ULC, but excluding the Bloom Lake CCAA Parties (as hereinafter defined) and the Wabush CCAA Parties (as hereinafter defined), and on the second part FTI Consulting Canada Inc. in its capacity as court-appointed monitor (as described below):

WITNESSETH:

WHEREAS on January 27, 2015 an order (as amended from time to time, the "Bloom Lake Initial Order") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") was rendered with regards to Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Quebec Iron Mining ULC ("CQIM"), The Bloom Lake Iron Ore Mine Limited Partnership, and Bloom Lake Railway Company Limited (collectively, the "Bloom Lake CCAA Parties") by the Québec Superior Court for the District of Montréal (the "Court");

WHEREAS on May 20, 2015 an order (as amended from time to time, the "Wabush Initial Order") under the CCAA was rendered with regards to Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company, and Wabush Lake Railway Company Limited (collectively, the "Wabush CCAA Parties") by the Court;

WHEREAS pursuant to the Bloom Lake Initial Order and the Wabush Initial Order, FTI Consulting Canada Inc. has been appointed as the monitor of the Bloom Lake CCAA Parties and the Wabush CCAA Parties (the "Monitor");

WHEREAS in December 2014, a multi-stage corporate reorganization was implemented to which CQIM and certain Cliffs Parties were parties (the "2014 Reorganization");

WHEREAS the Monitor has commenced "without prejudice" discussions with legal counsel to the Cliffs Parties with respect to the 2014 Reorganization and its effect on the CQIM estate and its creditors with a view to agreeing the factual matrix of the 2014 Reorganization and discussing any potential claims arising therefrom or from other transactions involving the Cliffs Parties and the Bloom Lake CCAA Parties or the Wabush CCAA Parties (the "Potential Claims");

WHEREAS the Cliffs Parties and the Monitor have mutually agreed to defer initiating legal proceedings or, in the case of the Monitor, taking any steps necessary to authorize or provide the required legal capacity to commence such proceedings with regards to the Potential Claims while settlement discussions are continuing; and

WHEREAS the Cliffs Parties and the Monitor (on its own behalf and on behalf of any trustee in bankruptcy that may be appointed over any of the Bloom Lake CCAA Parties and for any other person on whose behalf the Monitor may be authorized by the Court to commence a proceeding or pursue a claim) wish to suspend the running of any unexpired limitation periods existing in respect of the Potential Claims and all defences, counterclaims and cross-claims connected with or that otherwise might be pleaded in any action related to any of the Potential Claims;

NOW, THEREFORE, the Cliffs Parties and the Monitor intending to be legally bound, and in consideration of their mutual covenants herein, agree as follows:

1. Nothing herein shall be construed as an admission of liability by the Cliffs Parties.
2. Cliffs Parties hereby renounce and waive the benefit of any time limitation period or delay defence, whether established by law, statute, regulation, at common law, in equity or otherwise, which is applicable to any of the Potential Claims and which has, may have begun to run or which may begin to run at a future date and which has not elapsed as of the Effective Date but only for the period that commences six months prior to the Effective Date and ends on the Effective Date (the "**Renunciation Period**"). Cliffs Parties further agree that in defending any suit or suits that may be filed by any holder of a Potential Claim (including, without limitation, the Monitor, on its own behalf or on behalf of any other person as may be authorized by the Court, or any trustee in bankruptcy that may be appointed over any of the Bloom Lake CCAA Parties, or any creditor of the Bloom Lake CCAA Parties) with respect to the Potential Claims, they will not plead, assert or raise in any manner whatsoever any time-related defence based, in whole or in part, upon any time limitation period or part thereof that includes the renunciation of the Renunciation Period.
3. The entering into of this Agreement by the Cliffs Parties is not an acknowledgement or admission that there is or could be any merit to any of the Potential Claims. Cliffs Parties shall not be deemed by this Agreement to have waived, and this Agreement shall be without prejudice to, any defences, counterclaims and cross-claims to any and all claims that may be asserted by any holder of a Potential Claim (including, without limitation, the Monitor, on its own behalf or on behalf of any other person as may be authorized by the Court, or any trustee in bankruptcy that may be appointed over any of the Bloom Lake CCAA Parties, or any creditor of the Bloom Lake CCAA Parties) other than those time-related defences waived pursuant to this Agreement, or to have waived any claim or defence of any nature other than those time-related defences waived pursuant to this Agreement in respect of any person or entity that is not a party to this Agreement with respect to the Potential Claims.
4. Nothing herein shall be construed as preventing any holder of a Potential Claim, (including, without limitation, the Monitor, on its own behalf or on behalf of any other person as may be authorized by the Court, or any trustee in bankruptcy that may be appointed over any of the Bloom Lake CCAA Parties, or any creditor of the Bloom Lake CCAA Parties) from commencing or permitting or causing to commence, at any time whatsoever and in its sole discretion, directly or indirectly, alone or in concert with others, any action, suit or proceeding of any kind against Cliffs Parties.

5. Any party to this Tolling Agreement may terminate its participation in this Tolling Agreement on twenty-one (21) days' notice by providing written notice of its intention to terminate its participation in this Tolling Agreement to the other parties.
6. This Agreement binds the parties, their successors and assigns and any subsidiary or affiliated corporation or body corporate, as those terms are defined in the CBCA, excluding the Bloom Lake CCAA Parties and the Wabush CCAA Parties.
7. This Agreement shall be construed and enforced according to the laws of the Province of Québec and the laws of Canada in force in the Province of Québec.
8. Each of the parties hereto expressly and irrevocably submits to the exclusive jurisdiction of the Courts of the Province of Québec sitting in the judicial district of Montréal solely with respect to this Agreement but without prejudice to the right of any party to this agreement or any holder of a Potential Claim to argue jurisdictional issues in respect of a Potential Claim.
9. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument. Any such counterpart may be delivered by facsimile, telecopier, email in PDF format or similar transmission and if so delivered shall be deemed to be an original document.
10. Each Party represents and warrants to the other that it has all requisite power and authority to enter into this Agreement to perform its obligations and that this Agreement has been duly authorized, executed and delivered by it and constitutes a valid and binding obligation, enforceable against it in accordance with its terms.
11. CNR is signing this Agreement on behalf of all of its subsidiaries.
12. The Monitor intends to seek authority to sign this Agreement and approval of this Agreement from the Court as soon as possible on a *nunc pro tunc* basis. The CNR Parties agree that they will consent to any such Order of the Court, including any portion of such Order that confirms the benefits of this Agreement extend to any holder of a Potential Claim, (including, without limitation, the Monitor, on its own behalf or on behalf of any other person as may be authorized by the Court, or any trustee in bankruptcy that may be appointed over any of the Bloom Lake CCAA Parties, or any creditor of the Bloom Lake CCAA Parties).
13. The creditors, any trustee in bankruptcy and the stakeholders of the Bloom Lake CCAA Parties or any party on whose behalf the Monitor may be authorized by the Court to commence a proceeding in respect of a Potential Claim are the intended third party beneficiaries of this Agreement.
14. The parties hereto acknowledge that they have requested that this Agreement be drawn up in the English language. *Les parties aux présentes reconnaissent avoir requis que la présente entente soit rédigée en anglais.*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the date first mentioned above.

Signed this 21st day of June, 2017
in the City of Toronto, Ontario

FTI CONSULTING CANADA INC., in its
capacity as court-appointed Monitor of the
Bloom Lake CCAA Parties and the Wabush
CCAA Parties and not in its personal or
corporate capacity



Per: Nigel D. MacLure
Senior Managing Director

Per:

Signed this 21st day of June, 2017
in the City of Cleveland, Ohio

CLIFFS NATURAL RESOURCES INC.



Per: James D. Graham
Executive Vice President,
Chief Legal Officer & Secretary



Per: Timothy K. Annagan
EVP - CFO

TAB 13

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

File: No: 500-11-048114-157

**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

**THIRTY-FOURTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. On January 27, 2015, Bloom Lake General Partner Limited (“**Bloom Lake GP**”), Quinto Mining Corporation (“**Quinto**”), 8568391 Canada Limited and Cliffs Québec Iron Mining ULC (“**CQIM**”) (collectively, the “**Bloom Lake Petitioners**”) sought and obtained an initial order (as amended, restated or rectified from time to time, the “**Bloom Lake Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) from the Superior Court of Québec (the “**Court**”), providing for, *inter alia*, a stay of proceedings against the Bloom Lake Petitioners until February 26, 2015, (the “**Bloom Lake Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor (the “**Monitor**”). The relief granted in the Bloom Lake Initial Order was also extended to The Bloom Lake Iron Ore Mine Limited Partnership (“**Bloom Lake LP**”) and Bloom Lake Railway Company Limited (together with Bloom Lake LP, the “**Bloom Lake Mises-en-Cause**” and together with the Bloom Lake Petitioners, the “**Bloom Lake CCAA Parties**”). The proceedings commenced under the CCAA by the Bloom Lake CCAA Parties will be referred to herein as the “**CCAA Proceedings**”.

2. On May 20, 2015, the CCAA Proceedings were extended to include Wabush Iron Co. Limited (“**WICL**”), Wabush Resources Inc. (“**WRI**” and together with WICL, the “**Wabush Petitioners**”), Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the “**Wabush Mises-en-Cause**” and together with the Wabush Petitioners, the “**Wabush CCAA Parties**”) pursuant to an initial order (as amended, restated or rectified from time to time, the “**Wabush Initial Order**”) providing for, *inter alia*, a stay of proceedings against the Wabush CCAA Parties until June 19, 2015, (the “**Wabush Stay Period**”) and approving an interim financing term sheet dated May 19, 2015 (as amended, the “**Interim Financing Term Sheet**”), providing an interim facility of up to US\$10 million (the “**Interim Financing**”). The Bloom Lake CCAA Parties and the Wabush CCAA Parties will be referred to collectively herein as the “**CCAA Parties**”.
3. The Bloom Lake Stay Period and the Wabush Stay Period (together, the “**Stay Period**”) have been extended from time to time and currently expires on June 30, 2017.
4. On April 17, 2015, Mr. Justice Hamilton J.S.C. granted an Order (the “**SISP Order**”) approving, as it relates to the Bloom Lake CCAA Parties, a sale and investor solicitation process (as may be amended from time to time, the “**SISP**”) involving the business and assets of the Bloom Lake CCAA Parties. The SISP was subsequently amended and restated to reflect the inclusion of the Wabush CCAA Parties in the CCAA Proceedings and was approved *nunc pro tunc* as it relates to the Wabush CCAA Parties pursuant to an Order granted June 9, 2015 (together with the April 17, 2015 Order, the “**SISP Order**”).
5. On June 22, 2015, Mr. Justice Hamilton J.S.C. granted an Order (the “**June 22 Rep Order**”) *inter alia*:

- (a) Appointing Michael Keeper, Terence Watt, Damin Lebel and Neil Johnson as representatives (the “**Representatives**”) of the Salaried Members (as defined in the June 22 Rep Order); and
 - (b) Appointing Koskie Minsky LLP and Nicholas Scheib (collectively “**Representative Counsel**”) as legal counsel to the Representatives.
6. On November 5, 2015, Mr. Justice Hamilton J.S.C. granted an Order approving a procedure for the submission, evaluation and adjudication of claims against the CCAA Parties and their current and former directors and officers (as amended, the “**Claims Procedure Order**”).
7. To date, the Monitor has filed thirty-three reports in respect of various aspects of the CCAA Proceedings. The purpose of this, the Monitor’s Thirty-Fourth Report (this “**Report**”), is to provide information to the Court with respect to:
- (a) The receipts and disbursements of the CCAA Parties for the period January 14, 2017, to April 14, 2017;
 - (b) The CCAA Parties’ revised and extended cash flow forecast for the period April 15 to June 30, 2017 (the “**April 24 Forecast**”);
 - (c) The current status of the realization of the assets of the CCAA Parties;
 - (d) An audit being carried out by the Canada Revenue Agency (“**CRA**”) in respect of income tax filings by the CCAA Parties for the tax years 2010 to 2015 (the “**CRA ITA Audit**”);
 - (e) The progress of the Claims Procedure;
 - (f) The current status of litigation matters;
 - (g) The 2014 Reorganization;

- (h) Allocation issues with respect to proceeds of realization and the costs of the CCAA Proceedings; and
- (i) The current estimates of potential distributions to creditors.

TERMS OF REFERENCE

8. In preparing this Report, the Monitor has relied upon unaudited financial information of the CCAA Parties, the CCAA Parties' books and records, certain financial information prepared by the CCAA Parties and discussions with various parties (the "**Information**").
9. Except as described in this Report:
 - (a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
10. The Monitor has prepared this Report to provide a status update to the Court, including in respect of progress towards a transaction for the sale of the Wabush Mine, as instructed by Mr. Justice Hamilton J.S.C. and should not be relied on for other purposes.
11. Future oriented financial information reported or relied on in preparing this Report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the Bloom Lake Initial Order, the Wabush Initial Order or previous reports of the Monitor.

RECEIPTS & DISBURSEMENTS FOR THE PERIOD TO APRIL 14, 2017

THE BLOOM LAKE CCAA PARTIES

13. The Bloom Lake CCAA Parties' actual cash flow on a consolidated basis for the period from January 14, 2017, to April 14, 2017, excluding proceeds of major asset realizations, was approximately \$1.4 million better than the January 20 Forecast, as summarized below:

	Forecast	Actual	Variance
	\$000	\$000	\$000
Receipts	275	320	45
Disbursements:			
Payroll & Employee Benefits	0	0	0
Termination & Severance	0	0	0
Utilities	0	0	0
Other Operating Disbursements	(725)	(29)	696
Operating Cash Flows	(450)	291	741
Restructuring Professional Fees	(2,838)	(2,209)	629
Net Cash Flow	(3,288)	(1,918)	1,370
Asset realizations	0	1,458	1,458
Cash Flow after Asset Realizations	(3,288)	(460)	2,828

14. Explanations for the key variances in actual receipts and disbursements as compared to the January 20 Forecast are as follows:
- (a) The favourable variance of approximately \$0.7 million in other operating disbursements is primarily a timing variance arising in respect of an anticipated settlement payment in full and final satisfaction of all amounts owing in respect of the Mont-Wright Camp; and

- (b) The favourable variance of approximately \$0.6 million in aggregate restructuring professional fees is comprised of favourable timing variances of approximately \$1.0 million offset by unfavourable permanent variances of approximately \$0.4 million. Those variances arise as follows:
 - (i) Favourable variances of approximately \$0.5 million in the aggregate for the costs of the Monitor and its counsel, of which approximately \$0.3 million is a favourable permanent variance and approximately \$0.2 million is a timing variance; and
 - (ii) A favourable variance of approximately \$0.1 million in the aggregate for the costs of the Bloom Lake CCAA Parties' counsel, of which approximately \$0.8 million is a favourable timing variance resulting from delays in invoicing, offset by a permanent unfavourable variance of approximately \$0.7 million as fees in the period were higher than forecast. Based on the information available to the Monitor, it appears that the significant majority of the permanent unfavourable variance relates to legal fees expended in connection with the CRA ITA Audit, discussed later in this Report.
15. The Bloom Lake Initial Order permits inter-company funding between the Bloom Lake CCAA Parties. Inter-company funding in the amount of approximately \$4.1 million had been advanced by Bloom Lake LP to CQIM in the period since the start of the CCAA Proceedings to January 13, 2017. There was no additional inter-company funding advanced in the period January 13, 2017, to April 14, 2017.

THE WABUSH CCAA PARTIES

16. The Wabush CCAA Parties' actual cash flow on a consolidated basis for the period from January 14, 2017, to April 14, 2017, excluding proceeds of major asset realizations, was approximately \$1.8 million better than the January 20 Forecast, as summarized below:

	Forecast	Actual	Variance
	\$000	\$000	\$000
Receipts	263	948	685
Disbursements:			
Payroll & Employee Benefits	(309)	(302)	7
Contractors	(277)	(167)	110
Utilities	(90)	(26)	64
Other Operating Disbursements	(861)	(859)	2
Operating Cash Flows	(1,274)	(406)	868
Restructuring Professional Fees	(2,240)	(1,340)	900
Net Cash Flow	(3,514)	(1,746)	1,768
Asset realizations	0	420	420
Cash Flow after Asset Realizations	(3,514)	(1,326)	2,188

17. Explanations for the key variances in actual receipts and disbursements as compared to the January 20 Forecast are as follows:
- (a) The favourable variance of approximately \$0.7 million in receipts is a permanent variance arising from the receipt of sales tax refunds that had not been forecast;
 - (b) The favourable variance of approximately \$0.1 million in contractors is a timing variance that is expected to reverse in future periods; and

- (c) The favourable variance of approximately \$0.9 million in restructuring professional fees is believed to be comprised of favourable timing variances of approximately \$1.3 million that are expected to reverse in future periods combined with unfavourable permanent variances of approximately \$0.4 million. Those variances arise as follows:
- (i) Favourable timing variances of approximately \$0.2 million in the aggregate for the costs of the Monitor and its counsel;
 - (ii) A favourable variance of approximately \$0.5 million in the aggregate for the costs of the Wabush CCAA Parties' counsel, of which approximately \$0.9 million is a favourable timing variance resulting from delays in invoicing, offset by a permanent unfavourable variance of approximately \$0.4 million as fees in the period were higher than forecast; and
 - (iii) A favourable timing variance of approximately \$0.2 million in the costs of Representative Counsel.

THE APRIL 24 FORECAST

18. The Monitor has been assisting the CCAA Parties in the preparation of the April 24 Forecast. Completion of the April 24 Forecast has been delayed pending counsel to the CCAA Parties finalizing its forecast of legal costs for the period. The April 24 Forecast will be filed with the Court once it is completed.

CURRENT CASH BALANCES

19. As previously reported, at the request of the CCAA Parties, the Monitor has been assisting with the administration of receipts and disbursements in order to streamline administration and reporting. All of the CCAA Parties' accounts have now been closed and all transactions are being processed through the Monitor's accounts on behalf of the CCAA Parties. Total cash balances as at April 14, 2017, are summarized below:

	Bloom Lake CCAA Parties	Wabush CCAA Parties	Total
	\$000	\$000	\$000
Held by Monitor			
Sale Proceeds Accounts	168	1,735	1,903
Operating Accounts	3,544	3,600	7,144
Minimum Royalty Deposits	0	4,896	4,896
GIC Investments	73,000	60,000	133,000
Total Held by Monitor	76,712	70,231	146,943

*In addition, the Monitor holds deposits submitted by interested parties in the Wabush Mine Sale Procedure

CURRENT STATUS OF ASSETS REALIZATIONS

SEPT-ILES HOUSES

20. As previously reported, certain amounts from the proceeds of sale of the eight employee houses located in Sept-Iles were held in escrow in respect of potential withholding tax liabilities. Since the date of the Monitor's Thirty-First Report, final assessments of federal and provincial withholding tax liabilities have been received by the Wabush CCAA Parties and the amounts owing have been paid. Compliance certificates have been issued by the relevant taxation authorities.

21. Approximately \$550,000 has been released to the Monitor in respect of amounts held in escrow in connection with federal withholding taxes. Approximately \$330,000 is expected to be released shortly to the Monitor in respect of amounts held in escrow in connection with provincial withholding taxes.

EMPLOYEE HOMES

22. In its Thirty-First Report, the Monitor reported that all of the single-family homes that were vacant at the commencement of the CCAA Proceedings had been sold other than one property for which the sale had been agreed but had not yet been completed and the property on which there was an oil spill prior to the CCAA Proceedings. The foregoing pending sale and the sale of the property on which there was an oil spill prior to the commencement of the CCAA Proceedings have now been completed.
23. At the date of the Thirty-First Report, the status of the remaining employee homes was as follows:
 - (a) Sales of fifteen Conditional Sale Employee Homes had been agreed and were in progress;
 - (b) The sale of one Conditional Sale Employee Home was being negotiated;
 - (c) Offers for the purchase of the three Vacant Conditional Sale Homes had been accepted, subject to completion of definitive documentation;
 - (d) Ten Conditional Sale Employee Homes whose occupants had not accepted an offer for the early completion of the conditional sale agreements remained occupied pursuant to the terms of the respective conditional sale agreements.

24. Since the date of the Thirty-First Report, a further seventeen sales have closed and four further sales are pending closing. Eight Conditional Sale Employee Homes remain occupied pursuant to the terms of the respective conditional sale agreements and the Wabush CCAA Parties continue to collect the amounts payable under those agreements.

THE MONT-WRIGHT CAMP TRANSACTION

25. Paragraph 35 and 36 of the Monitor's Thirty-First Report stated:

“35. In the absence of any other prospect for the sale of the Mont-Wright Camp, the Bloom Lake CCAA Parties, in consultation with the Monitor, took steps to close down the camp and to terminate ongoing obligations with respect thereto. In that regard, the Bloom Lake CCAA Parties:

(a) Engaged a third-party contractor to winterize and close the camp, with the work being completed in the first week of December 2016; and

(b) On November 30, 2016, issued a notice of disclaimer in respect of the Mont-Wright Camp services agreement with ArcelorMittal Mining Canada G.P. (“**ArcelorMittal**”) pursuant to section 32 of the CCAA, which disclaimer became effective on December 30, 2016.

36. The Bloom Lake CCAA Parties, in consultation with the Monitor, are in discussions with ArcelorMittal in respect of the final resolution of amounts owing and other matters in respect of the Mont-Wright Camp.”

26. Subsequent to the date of the Monitor's Thirty-First Report, the Bloom Lake CCAA Parties received a renewed expression of interest from a party that had previously expressed interest in the Mont-Wright Camp. A draft agreement of purchase and sale was provided to the interested party on March 8, 2017 (the "**Draft Mont-Wright APA**").
27. Preliminary comments and clarification questions on the Draft Mont-Wright APA were provided by counsel to the interested party in a letter dated April 11, 2017. Counsel to the interested party also confirmed that it holds funds necessary for the payment of the proposed purchase price in trust. Responses to the preliminary comments and clarification questions were provided by counsel to the CCAA Parties, in consultation with the Monitor, on April 19, 2017. A discussion between counsel to the CCAA Parties, counsel to the interested party, the Monitor and its counsel took place on April 24, 2017, to seek to resolve outstanding issues.
28. The CCAA Parties, in consultation with the Monitor, have been in discussion with ArcelorMittal regarding the amounts owing to ArcelorMittal in respect of the Mont-Wright Camp. While the post-filing amount to December 30, 2016, has been agreed, certain other matters raised by ArcelorMittal in respect of the Mont-Wright Camp remain outstanding at this time. It is anticipated that the sale of the Mont-Wright Camp may resolve the other matters raised by ArcelorMittal.

TOWN OF WABUSH VACANT LAND

29. As previously reported, the Wabush CCAA Parties own some small parcels of vacant land in the Town of Wabush. Two parties have expressed interest in the vacant land and have been provided information related thereto.

THE WABUSH MINE

30. Updates with respect to the potential sale of the Wabush Mine were provided in the Monitor's Thirty-Second Report and the Monitor's Thirty-Third Report.

31. Since the date of the Monitor's Thirty-Third Report, the Wabush CCAA Parties have received responses to their requests for clarification and additional information from various interested parties. The Wabush CCAA Parties, in consultation with the Monitor, are in the process of endeavouring to negotiate a mutually acceptable agreement of purchase and sale.
32. The Monitor's understanding of the current state of affairs with Interested Party One is set out in **Confidential Appendix A**.
33. The Monitor's understanding of the current state of affairs with Interested Party Two is set out in **Confidential Appendix B**.
34. The Monitor's understanding of the current state of affairs with MFC is set out in **Confidential Appendix C**.
35. The Monitor's understanding of the current state of affairs with Interested Party Four is set out in **Confidential Appendix D**.
36. While the Monitor is hopeful that the ongoing efforts to sell the Wabush Mine will be successful, there is no certainty that such efforts will lead to a binding agreement for the acquisition of the Wabush Mine.

OTHER WABUSH MOVABLE ASSETS

37. Since the date of the Monitor's Thirty-First Report, no further action has been taken with respect to the other movable assets located at the Wabush Mine as discussions have continued with potential purchasers interested in acquiring the Wabush Mine, as described earlier in this Report.

POTENTIAL TAX REFUNDS

38. Also as previously reported, the CCAA Parties are seeking refunds in respect of Québec taxes and mining duties. The Monitor has been informed that the relevant assessments are now complete. Based on the assessments received and the claims filed by Revenu Québec in the Claims Procedure, the Monitor estimates that refunds totalling approximately \$20.7 million are due relating to pre-filing periods. Revenu Québec has a number of claims in the Claims Procedure which could give rise to potential set-off against the refunds.

INSURANCE CLAIM PROCEEDS

39. The CCAA Parties, in consultation with the Monitor, have executed a settlement agreement with respect to the remaining amount recoverable from insurance in respect of an environmental spill that occurred at the Pointe-Noire Facility prior to September 1, 2013 (the “**Insurance Settlement**”). The Insurance Settlement contains confidentiality provisions that restrict the CCAA Parties from disclosing the amount recoverable at this time.

THE CRA ITA AUDIT

40. On April 18, 2017, counsel to the CCAA Parties informed the Monitor that the CCAA Parties, with the assistance of their counsel, had been dealing with the CRA ITA Audit and various requests for information by CRA in connection therewith.
41. The Monitor had not been previously informed of the CRA ITA Audit. The Monitor therefor requested a briefing call to obtain an explanation of the matter. That call took place on April 20, 2017, and the following explanation was provided:

- (a) In early 2016 CRA requested substantial amounts of information in respect of the income tax returns of the CCAA Parties for the tax years 2010 to 2015;
 - (b) On January 23, 2017, CRA issued formal “requirement in respect of the prior information requests” with a deadline of February 27, 2017 for compliance;
 - (c) Notwithstanding the stay of proceedings provided by the Bloom Lake Initial Order and the Wabush Initial Order, the CCAA Parties were concerned about the potential implications of a failure to comply, including for their directors and officers, and began to prepare responses with the assistance of counsel to the CCAA Parties;
 - (d) In February 2017, counsel to the CCAA Parties requested that the deadline to comply with the requirements be extended to March 31, 2017 on the basis that all items would be substantially complete by that date;
 - (e) While CRA did not formally grant an extension, they did not refuse the request, no further requirements have been received and no notification of legal action has been received from CRA; and
 - (f) Approximately 90% of the information requested has now been provided.
42. On the call on April 20, 2017, the Monitor requested copies of the correspondence from CRA and of the responses provided to CRA. To date, those documents have not been provided to the Monitor.

THE CLAIMS PROCEDURE

CLAIMS

43. The current status of the Claims Procedure is summarized below:

	Allowed/To Be Allowed		In Progress		In Dispute		To be Disallowed / Dispute Period Not Expired		Disallowance Final	
	#	\$000	#	\$000	#	\$000	#	\$000	#	\$000
Secured										
CQIM	1	139	2	69,559					8	102,816
Bloom Lake LP	19	32,274	3	143,781	3	3,737	1	567	14	118,233
Bloom Lake GP	1	1,001	1	26,415					5	1,483
Quinto Mining										
8568391 Canada									1	161
Bloom Lake Railway										
Wabush Mines	1	839	4	55,203					1	25,774
WICL			2	9,101						
WRI			2	13,646						
Arnaud Railway			3	55,569						
Wabush Lake Railway			2	54,937						
Total Secured	22	34,253	19	428,211	3	3,737	1	567	29	248,467
Unsecured										
CQIM	59	706,271	14	1,184,269			1	6,541	18	37,287
Bloom Lake LP	189	689,755	12	673,020	1	100	1	6,338	75	56,212
Bloom Lake GP	5	590,830							13	27,041
Quinto Mining			5	16,952					11	100
8568391 Canada									9	25
Bloom Lake Railway									10	-
Wabush Mines	87	55,723	1,101	1,830,498	5	1,802	1	540	187	23,844
WICL	6	57,802	11	386,399	3	193			14	11,342
WRI	3	49,778	15	727,289	3	193			13	16,314
Arnaud Railway	5	4,255	5	24,255	3	193			11	3
Wabush Lake Railway	2	1,811	1	1,562	3	193			11	3
Total Unsecured	356	2,156,225	1,164	4,844,244	18	2,674	3	13,419	372	172,171
Total	378	2,190,478	1,183	5,272,455	21	6,411	4	13,986	401	420,638

44. The 1,183 claims in progress are summarized as follows:

- (a) Eight claims by three creditors are municipal tax claims in the aggregate amount of approximately \$64.4 million. As previously reported, the CCAA Parties have identified and are pursuing a number of potential opportunities for municipal tax contestation that, based on current estimates, could result in reductions of approximately \$17 million in pre-filing claims if successful;
- (b) 1,089 claims in the aggregate amount of approximately \$168.8 million are claims of former employees in respect of OPEBs and other employment related amounts;
- (c) Six claims in the aggregate amount of approximately \$164.8¹ million are claims related to the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan, with claims of approximately \$54.9 million in the aggregate being filed on a joint and several basis against three of the Wabush CCAA Parties;
- (d) 75 claims in the aggregate amount of approximately \$4.7 billion are Related Party Claims²; and
- (e) Five claims by two creditors in the aggregate amount of approximately \$161.2 million are pending further review by the Monitor. Of this amount, \$149.2 million relates to three claims of one creditor related to environmental claims in respect of the Wabush Mine, which claims were filed on a joint and several basis against three of the Wabush CCAA Parties. The review of these claims has been deferred pending the outcome of efforts to sell the Wabush Mine.

¹ Updated to reflect the amounts shown in the wind-up reports.

² Excluding the Related Party Claim relating to subordinated Note Y discussed in the Monitor's Twenty-Fourth Report.

Related Party Claims

45. The Monitor is in the process of preparing a separate report on the current status of the review of the Related Party Claims and its findings to date and expects to file that report in the near future.

Secured Claims

46. As previously reported, Secured Claims include:
- (a) A Related Party Claim for advances made by Cliffs Mining Company (“**CMC**”) to the Wabush CCAA Parties prior to the CCAA Proceedings (the “**CMC Secured Claim**” and the related security being the “**CMC Security**”);
 - (b) Claims relating to the Key Bank Facility (the “**Key Bank Claims**” and the related security being the “**Key Bank Security**”);
 - (c) Claims of CNR as guarantor under the Key Bank Facility and assignee and/or subrogor of the Key Bank Claims (the “**CNR Key Bank Claims**” and the related security being the “**CNR Key Bank Security**”);
 - (d) Claims of creditors holding a registered legal hypothec for construction (the “**Construction Hypothec Claims**” and the related security being the “**Construction Hypothecs**”);
 - (e) Claims filed by the pension administrators in respect of the Wabush Hourly Pension Plan and the Wabush Salaried Pension Plan;
 - (f) Claims filed in respect of environmental obligations; and
 - (g) Claims filed in respect of unpaid property taxes.

47. Previous reports of the Monitor have included details of the independent opinions on the validity and enforceability of the CMC Security, the Key Bank Security and the CNR Key Bank Security. The determination of the value of the security for these Claims is pending the allocation of proceeds and costs of realization as discussed elsewhere in this Report.

48. The quantum of all except one Construction Hypothec Claim, as noted below, has been finally determined in accordance with the provisions of the Claims Procedure Order. The status of the adjudication of the validity of the security of the Construction Hypothec Claims, in each case subject to the allocation of proceeds and costs of realization as discussed elsewhere in this Report, is as follows:
 - (a) Sixteen Construction Hypothec Claims in the aggregate amount of approximately \$32.6 million have been allowed as secured claims;

 - (b) Three Construction Hypothec Claims in the aggregate amount of approximately \$0.9 million have been allowed as unsecured claims as the Monitor issued Notices of Revision or Disallowance in respect of the validity of the security, which notices were not disputed;

 - (c) Three Construction Hypothec Claims in the aggregate amount of approximately \$4 million are in dispute as to the validity of security as the claimants filed Notices of Dispute in response to the Notices of Revision or Disallowance in respect of the validity of the security issued by the Monitor;

 - (d) One Construction Hypothec Claim in the amount of approximately \$0.2 million is in dispute as to quantum and the validity of security as the claimant filed a Notice of Dispute in response to the Notices of Revision or Disallowance in respect of both aspects of the Construction Hypothec Claim; and

- (e) The determination of three Construction Hypothec Claims in the aggregate amount of approximately \$1.1 million remain under review in respect of the validity of the security.

Pension Claims

- 49. As reported in the Monitor's Thirty-First Report, Morneau Shepell, the replacement administrator of the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan (the "**Pension Administrator**") filed wind-up reports quantifying the wind-up deficits of the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan as at December 16, 2016 as \$27,450,000 and \$27,486,548 respectively.
- 50. Also as reported in the Monitor's Thirty-First Report, on September 21, 2016, the Monitor filed a motion for advice and directions with respect to the potential priority of the various aspects of the pension plan claims (the "**Pension Priority Motion**"). The Court heard representations in respect of jurisdictional matters, including the request by certain parties that aspects of the Pension Priority Motion be transferred to the Newfoundland court and determined that no aspect of the Pension Priority Motion was to be transferred to the Newfoundland court. The Pension Priority Motion is now scheduled to be heard on June 28 and 29, 2017.
- 51. As previously reported to the Court, on March 27, 2017, the Committee of the Executive Council of Newfoundland & Labrador issued an Order in Council³ directing that a reference be brought before the Newfoundland & Labrador Court of Appeal stating the following questions (the "**Reference**"):
 - (a) What is the scope of section 32 of the *Pension Benefits Act, 1997*, *SNL1996 cP-4.01* deemed trusts in respect of:
 - (i) Unpaid current service costs;

³OC2017-137

- (ii) Unpaid special payments; and
 - (iii) Unpaid wind-up deficits?
- (b)
- (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 between the *Pension Benefits Act, 1997* and *Pension Benefits Standards Act*?
 - (iii) If so, how is the conflict resolved?
- (c)
- (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*?
 - (iii) If so, how is the conflict resolved?
- (d) Do the *Quebec Supplemental Pension Plans Act* deemed trusts also apply to Quebec Salaried Plan members?
- (e)
- (i) 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?
 - (ii) If yes, what amounts does this secured claim encompass?
52. An additional Order in Council was issued on April 20, 2017⁴, authorizing the Court of Appeal to take such evidence as it may require to properly determine the Reference.

⁴ OC2017-137

53. The Monitor has been informed that counsel for the Government of Newfoundland & Labrador (the “**Government**”) first met with the Chief Justice of Newfoundland & Labrador on April 3, 2017, at which time the Chief Justice instructed counsel for the Government to present an application on an *ex parte* basis to formally initiate the Reference before the Newfoundland & Labrador Court of Appeal and to deal with procedural, evidentiary and timing issues. The Monitor understands that the application may be presented in the week ended April 29, 2017.
54. The Monitor has been informed that it is possible that a hearing on the Reference could take place before the Newfoundland & Labrador Court of Appeal in mid- to late-September 2017.

OPEB Claims

55. The Monitor continues to work with Representative Counsel, the USW and their actuary to determine the appropriate basis of the calculation of the OPEB claims. The calculation methodology will be applied consistently across the group of claimants.
56. A number of meetings and discussions have taken place with regard to the methodology and underlying assumptions used by Representative Counsel, the USW and their actuary in their calculation of the OPEB claims and information has been provided to the Monitor. The Monitor is still awaiting responses to requests for certain information and support before it can complete its review and make an adjudication of the claims.

LITIGATION UPDATE

THE MFC ROYALTY LITIGATION

57. Pursuant to the December 4 Order, the Wabush CCAA Parties have made deposits of \$812,250 with the Monitor in December 2015, January 2016, April 2016, July 2016, October 2016, January 2017 and April 2017 for amounts potentially payable in respect of the Minimum Royalty Payment.
58. The MFC Royalty Litigation is scheduled to be heard on June 5, 6 and 7, 2017.

THE MFC LIFT STAY MOTION

59. Following discussions with the CCAA Parties and the Monitor on December 7, 2016, MFC agreed to adjourn the MFC Lift Stay Motion and the parties agreed that the MFC Lift Stay Motion would be heard at the same time as the MFC Royalty Litigation. Accordingly, the MFC Lift Stay Motion is also scheduled to be heard on June 5, 6 and 7, 2017.
60. The MFC Lift Stay Motion included a request for an Order requiring the Monitor to provide to MFC with copies of all proofs of claim filed against the Wabush CCAA Parties by CNR and its related parties. As noted in the Monitor's Thirty-First Report, the CCAA Parties agreed that arrangements could be made to provide MFC's representatives access to review such proofs of claim electronically at MFC's expense.
61. On January 20, 2017, counsel to the Monitor requested confirmation from counsel to MFC that MFC would pay the costs of making the related party proofs of claim available electronically. No response has yet been provided by MFC.

THE 2014 REORGANIZATION

62. The Monitor has commenced “without prejudice” discussions with legal counsel to CNR and its non-filed affiliates (“**CNR Counsel**”) with respect to the 2014 Reorganization and its effect on the CQIM estate and its creditors with a view to agreeing the factual matrix of the 2014 Reorganization and any potential claim arising therefrom, identifying any areas of dispute and determining the process for bringing any claim or proposed settlement forward for consideration by the stakeholders and the Court.
63. CNR Counsel and the Monitor are planning to meet in the week commencing May 1, 2017, to determine the next steps to address the 2014 Reorganization.

ALLOCATION ISSUES

64. As the Court is aware, various approval and vesting orders issued in the CCAA Proceedings specifically provide that the transactions were approved without prejudice to the rights of creditors to object to the allocation of proceeds. Accordingly, prior to any distribution to creditors it will be necessary to obtain a final determination of the appropriate allocation of the proceeds of realizations among each of the CCAA Parties and amongst various asset classes.
65. Furthermore, it will be necessary for an appropriate allocation of the costs of the CCAA Proceedings among each of the CCAA Parties and amongst various asset classes to be determined.
66. As noted in its Thirty-First Report, the Monitor provided its recommendation for a proposed allocation methodology to the CCAA Parties and that recommendation was under consideration by the CCAA Parties.

67. The Monitor has been encouraging the CCAA Parties to bring a motion for approval of an allocation methodology in order to minimize interest accruing on unpaid secured property tax claims owing by CQIM. Counsel to the CCAA Parties have informed the Monitor that they are considering the recommended allocation methodology with a view to agreeing a proposed methodology with the Monitor and bringing a motion for its approval. Counsel to the CCAA Parties has further informed the Monitor that they hope to be able to provide feedback to the Monitor in the week commencing May 1, 2017.

ESTIMATED RANGES OF POTENTIAL DISTRIBUTIONS

68. At paragraph 174 of its Twenty-Fourth Report, the Monitor provided a summary of its estimate of the ranges of potential distributions to unsecured creditors from the estates of each of the CCAA Parties based on the information available at that time.
69. The Monitor has now updated its estimates based on the information currently available with respect to costs and realizations to date, the current status of claims and assumptions regarding potential future realizations. No amounts have been included in the estimates for any amounts that might be recoverable in respect of the 2014 Reorganization. The estimate utilizes the proposed allocation methodology recommended by the Monitor to the CCAA Parties. The current estimate of the ranges of potential distributions to unsecured creditors from the estates of each of the CCAA Parties, assuming that the Related Party Claims other than Note Y (which by its terms is subordinated) are valid as filed, are summarized below:

	Low	High
Bloom Lake LP	1.48%	2.55%
Bloom Lake GP	0.00%	0.00%
CQIM	2.18%	2.79%
Quinto Mining	52.08%	57.86%
Arnaud Railway	0.00%	29.75%
WICL	0.00%	0.98%
Wabush Lake Railway	0.00%	0.02%
Wabush Mines ¹	0.00%	0.00%
WRI	0.00%	2.42%

¹Wabush Mines is an unincorporated joint venture, accordingly it has no assets or liabilities of its own and distributions would be through the joint venturers, WICL and WRI

The Monitor respectfully submits to the Court this, its Thirty-Fourth Report.

Dated this 26th day of April, 2017.

FTI Consulting Canada Inc.

In its capacity as Monitor of

Bloom Lake General Partner Limited, Quinto Mining Corporation,

8568391 Canada Limited, Cliffs Québec 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 and Wabush Lake Railway Company Limited



Nigel D. Meakin
Senior Managing Director



Steven Bissell
Managing Director

Confidential Appendix A

State of Affairs with Interested Party One

Confidential Appendix B

State of Affairs with Interested Party Two

Confidential Appendix C

State of Affairs with MFC

Confidential Appendix D

State of Affairs with Interested Party Four

TAB 14

Executive
Council



Newfoundland
and Labrador

*Certified to be a true copy of a Minute of a Meeting
of the Committee of the Executive Council of Newfoundland and
Labrador approved by His Honour the Lieutenant-Governor on*

2017/03/27

OC2017-103

JPS/DM
Asst Sec/SPC
SNL/DM
FIN/DM
TB/Secretary
AG
Deputy Clerk
File

MC2017-0088. JPS2017-006. SPC2017-013.

Under the authority of section 13 of the *Judicature Act*, the Lieutenant-Governor in Council hereby refers the following to the Newfoundland and Labrador Court of Appeal:

In *Arrangement relatif à Bloom Lake*, 2017 QCCS 284 (CanLII), the Quebec Superior Court stated at paragraph 89: "If the Government of Newfoundland and Labrador wishes to obtain a judgment from the courts of the province on the interpretation of the *Pension Benefits Act, 1997*, SNL1996 cP-4.01, it can refer a matter to the Court of Appeal of Newfoundland and Labrador". In that context, the following questions stated at paragraph 25 of that decision are referred:

- 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

Executive
Council



Newfoundland
and Labrador

*Certified to be a true copy of a Minute of a Meeting
of the Committee of the Executive Council of Newfoundland and
Labrador approved by His Honour the Lieutenant-Governor on*

2017/03/27

- 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?
- (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?


Clerk of the Executive Council