

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
Commercial Division

File: No: 500-11-048114-157

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**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

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**FIFTY-THIRD REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

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## INTRODUCTION

1. On January 27, 2015, Bloom Lake General Partner Limited (“**BLGP**”), Quinto Mining Corporation (“**Quinto**”), 8568391 Canada Limited (“**856**”) 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 (“**BLLP**”) and Bloom Lake Railway Company Limited (“**BLRC**” and, together with BLLP, 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 (“**Arnaud**”) and Wabush Lake Railway Company Limited (“**Wabush Railway**” and, collectively with Arnaud and Wabush Mines, 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**”). 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 February 28, 2020.
4. On November 5, 2015, Mr. Justice Hamilton J.S.C. (as he then was) granted an Order (the “**Claims Procedure 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**”).
5. On July 25, 2017, Mr. Justice Hamilton J.S.C. granted an Order (the “**Allocation Methodology Order**”) *inter alia* approving a methodology for the allocation of the proceeds of realizations and the costs of the CCAA Proceedings amongst the CCAA Parties and, to the extent necessary, amongst assets or asset categories (the “**Allocation Methodology**”)<sup>1</sup>.

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<sup>1</sup> The City of Fermont sought and obtained leave to appeal one aspect of the Allocation Methodology Order, which appeal was dismissed by the Québec Court of Appeal on April 9, 2018 (2018 QCA 551). Leave to appeal before the Supreme Court of Canada was denied on January 25, 2019 (#38156).

6. On March 26, 2018, Mr. Justice Hamilton J.S.C. (as he then was) granted an Order (the “**Post-Filing Claims Procedure Order**”) approving a procedure for the submission, evaluation and adjudication of claims against the CCAA Parties or their directors and officers arising since the commencement dates of the CCAA Proceedings (the “**Post-Filing Claims Procedure**”).
7. On June 29, 2018, Mr. Justice Hamilton J.S.C. (as he then was) granted an Order (the “**Sanction Order**”), *inter alia*, sanctioning the amended and restated joint plan of compromise and arrangement of the Participating CCAA Parties dated May 16, 2018 (as amended from time to time, the “**Plan**”).
8. On July 31, 2018, the Monitor issued and filed the Plan Implementation Date Certificate, *inter alia* certifying that:
  - (a) The Monitor had received from each of the Participating CCAA Parties and the Parent, the applicable Conditions Certificate confirming fulfilment or waiver of the conditions precedent to implementation of the Plan as set out in Section 11.3 of the Plan, and in accordance with the Sanction Order, and
  - (b) The Plan Implementation Date had occurred in accordance with the Plan.
9. To date, the Monitor has filed fifty-two reports in respect of various aspects of the CCAA Proceedings. The purpose of this, the Monitor’s Fifty-Third Report (this “**Report**”), is to provide information to the Court with respect to:
  - (a) The CCAA Parties’ motion for leave to file late claims and for authorization to make Plan Modifications dated November 22, 2019 (the “**Wabush Late Claims Motion**”).

## **TERMS OF REFERENCE**

10. 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**").
11. 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.
12. The Monitor has prepared this Report in connection with the Wabush Late Claims Motion, which is scheduled to be heard December 3, 2019, and this Report should not be relied on for other purposes.
13. 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.
14. 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 previous reports of the Monitor or the Plan.

## **EXECUTIVE SUMMARY**

15. In summary, and for the reasons set out in this Report:

- (a) The Monitor is satisfied that the failure to file the Wabush Late Claims was inadvertent and that such claims, had they been filed by the Claims Bar Date in accordance with the Claims Procedure Order, would have been allowed as valid claims;
  - (b) The impact of the proposed Order on Creditors with a Proven Claim in the CQIM Unsecured Creditor Class is *de minimis*, but the positive impact is somewhat more significant for Creditors with a Proven Claim in the Wabush Mines Parties Unsecured Creditor Class, the majority of whom are former employees of Wabush Mines;
  - (c) In the Monitor's view it would be unfair to deprive creditors in the Wabush Mines Unsecured Creditor Class, the majority of which are former employees, of the additional amounts to which they would have been entitled but for the inadvertent failure of WRI, WICL and Wabush Railway to file the BLRC Transaction Claims, especially as such deprivation would be through no fault of their own;
  - (d) The Monitor is satisfied that the proposed Order is the most efficient and cost-effective way to enable the distribution of the BLRC Cash on account of the Wabush Late Claims; and
  - (e) The release of the balance of the Wabush Late Claims provided for in the proposed Order is consistent with the Plan Releases.
16. Accordingly, the Monitor supports the CCAA Parties' request for the Order contemplated by the Wabush Late Claims Motion.

## THE WABUSH LATE CLAIMS MOTION

17. No claims were filed against BLRC pursuant to the Claims Procedure Order. However, in August 2019 while responding to audit requests in respect of certain tax filings, the CCAA Parties discovered that BLRC's tax filing showed a pre-filing liability of \$850,000 owed by BLRC to WRI, WICL and Wabush Railway.
18. After further investigation, it was discovered that the \$850,000 was the amount owing to WRI, WICL and Wabush Railway by BLRC in consideration for the transfer of certain real property held by WRI, WICL and Wabush Railway to BLRC, on or about September 19, 2014, broken down between the Wabush entities as follows (the "**BLRC Transaction Claims**"):
  - (a) \$617,740.16 owing to WRI;
  - (b) \$226,513.17 owing to WICL; and
  - (c) \$5,746.67 owing to Wabush Railway.
19. Those liabilities did not appear on the general ledger of BLRC, nor did the corresponding receivable appear on the general ledgers of WRI, WICL or Wabush Railway. Consequently, no Proofs of Claim were filed in respect of these amounts in the Claims Procedure.
20. Based on the information understood by the CCAA Parties at the time, including the results of the Claims Procedure, BLRC, 8568391 and Wabush Railway were not included in the Plan as Participating CCAA Parties for the following reasons:
  - (a) BLRC had no liabilities to compromise;
  - (b) 8568391 had no assets and had no liabilities to compromise; and
  - (c) Wabush Railway had no assets and no third-party liabilities.

21. BLRC's only known remaining asset is approximately \$584,000 in cash (together with all accrued interest thereon, the "**BLRC Cash**"). It was contemplated that such cash would be transferred to CQIM, BLRC's sole shareholder, as part of BLRC's winding-up and dissolution process authorized by the Sanction Order.
22. Had Proofs of Claim in respect of the BLRC Transaction Claims been filed prior to the Claims Bar Date, provision would have been made in the Plan, or otherwise, for the BLRC Cash to be distributed to WRI, WICL and Wabush Railway on account of those claims.
23. Had such payments been made from the BLRC Cash, the amounts paid to WRI and WICL would have been available for distribution from the Wabush Mines Unsecured Cash Pool to Creditors with Proven Claims in the Wabush Mines Parties Unsecured Creditor Class.
24. The only Proven Claims against Wabush Railway pursuant to the Claims Procedure are claims owing to WRI and WICL. Accordingly, any amount paid to Wabush Railway from the BLRC Cash would also have been available for distribution from the Wabush Mines Unsecured Creditor Cash Pool to Creditors with Proven Claims in the Wabush Mines Parties Unsecured Creditor Class.
25. Therefore, the inadvertent failure of WRI, WICL and Wabush Railway to file the BLRC Transaction Claims has resulted in a deprivation to Creditors with Proven Claims in the Wabush Mines Unsecured Creditor Class through no fault of their own. The majority of such creditors are former employees of Wabush Mines.



26. In order to correct this, it is necessary to allow the late filing of the BLRC Transaction Claims of WRI and WICL and to allow the distribution of the BLRC Cash to the Wabush Mines Parties Unsecured Creditor Cash Pool. However, in order to minimize the administrative costs associated with effecting a distribution of the BLRC Cash to the Wabush Mines Parties Unsecured Creditor Cash Pool, the CCAA Parties are not seeking the Court's authorization to allow the payment of any of the BLRC Cash to Wabush Railway. This will result in all of the BLRC Cash<sup>2</sup> being paid directly into the Wabush Mines Parties Unsecured Creditor Cash Pool, avoiding the need to deal with the unnecessary interim step of paying a small amount to Wabush Railway and Wabush Railway in turn paying that small amount into the Wabush Mines Parties Unsecured Creditor Cash Pool.
27. Accordingly, the CCAA Parties seek leave to allow only the late filing of the claims of WRI and WICL against BLRC in the amounts of \$617,740.16 and \$226,513.17 respectively (the "**Wabush Late Claims**").
28. As the BLRC Transaction Claims were subject to the releases provided by section 10.1 of the Plan (the "**Plan Releases**"), it is also necessary to modify the Plan to exclude the Wabush Late Claims from the Plan Releases.
29. As BLRC is not a Participating CCAA Party under the Plan, there is currently no mechanism authorized for the distribution of the BLRC Cash on account of the Wabush Late Claims.

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<sup>2</sup> Net of costs allocated pursuant to the Allocation Methodology Order.

30. The CCAA Parties, in consultation with the Monitor, have considered various options to affect the payment of the Wabush Late Claims by BLRC, including by way an amendment to the Plan to add BLRC as a Participating CCAA Party under the Plan. However, it was determined that such an amendment would not be effective to achieve the intended objective as the only creditors of BLRC would be WRI and WICL, which would mean that it would not be possible to obtain an affirmative vote in favour of the Plan by a class of BLRC creditors as section 22(3) of the CCAA provides that related party creditors may vote against, but not for, a plan of arrangement.
31. Instead, the CCAA Parties, in consultation with the Monitor, have determined that the most efficient way to effect a distribution of the BLRC Cash to the Wabush Mines Parties Unsecured Creditors Pool is to seek the Court's authorization for such distribution in partial payment of the Wabush Late Claims.
32. As the amount of the BLRC Cash will not be sufficient to repay the Wabush Late Claims in full, the CCAA Parties are also seeking an Order releasing the balance of the Wabush Late Claims against BLRC. This proposed release is consistent with the Plan Releases.
33. In summary, pursuant to the Order sought in the Wabush Late Claims Motion:
  - (a) Leave would be granted to allow the late filing of the Wabush Late Claims;
  - (b) The Wabush Late Claims would be allowed pursuant to the Claims Procedure Order;
  - (c) Section 10.1 of the Plan would be amended *nunc pro tunc* to exclude the Wabush Late Claims from the Plan Releases provided therein;

- (d) The Wabush Late Claims would be paid by BLRC, to the extent of net funds available, and the payment directed to the Wabush Mines Parties Unsecured Creditor Cash Pool; and
- (e) The unpaid balance of the Wabush Late Claims would be released, with such release effective after the partial payment described in paragraph (d) above has been made to the Wabush Mines Parties Unsecured Creditor Cash Pool.

### **THE MONITOR'S COMMENTS AND RECOMMENDATIONS**

- 34. The Monitor has reviewed the matter of the BLRC Transaction Claims and is satisfied that the failure to file such claims was inadvertent and that such claims, had they been filed by the Claims Bar Date in accordance with the Claims Procedure Order, would have been allowed as valid claims.
- 35. The proposed Order would result in the BLRC Cash being distributed to creditors with Claims in the Wabush Mines Unsecured Creditor Class, who would have been the ultimate beneficiaries of the BLRC Cash had the BLRC Transaction Claims been filed in accordance with the Claims Procedure Order.
- 36. The proposed allowance of the Wabush Late Claims would result in the CQIM Unsecured Creditor Cash Pool being reduced by the amount of the BLRC Cash, with a corresponding increase in the Wabush Mines Parties Unsecured Creditor Cash Pool. Based on the mid-point of the estimated distribution ranges set out in the Monitor's Forty-Sixth Report, the Monitor has calculated that the impact of the proposed Order would be a reduction of the distributions to the CQIM Unsecured Creditor Class from 12.39% to 12.31%, a change of only approximately 0.6% of the estimated distribution, and an increase in the distributions to the Wabush Mines Parties Unsecured Creditor Class from 8.33% to 8.68%, a change of approximately 4.2% of the estimated distribution.

37. Accordingly, the impact of the proposed Order on Creditors with a Proven Claim in the CQIM Unsecured Creditor Class is *de minimis*, but the positive impact is somewhat more significant for Creditors with a Proven Claim in the Wabush Mines Parties Unsecured Creditor Class, the majority of whom are former employees of Wabush Mines.
38. Furthermore, in the Monitor's view it would be unfair to deprive creditors in the Wabush Mines Unsecured Creditor Class, the majority of which are former employees, of the additional amounts to which they would have been entitled but for the inadvertent failure of WRI, WICL and Wabush Railway to file the BLRC Transaction Claims. The Monitor also notes that the CCAA Parties have brought the Wabush Late Claims Motion on a timely basis and that WRI, WICL and Wabush Railway do not themselves stand to benefit from the proposed Order.
39. The Monitor is satisfied that the proposed Order is the most efficient and cost-effective way to enable the distribution of the BLRC Cash on account of the Wabush Late Claims.
40. The Plan Releases were approved by the Affected Creditors and sanctioned by the Court. The release of the balance of the Wabush Late Claims after partial payment of the Wabush Late Claims from the BLRC Cash provided for in the proposed Order is consistent with the Plan Releases.
41. Accordingly, the Monitor supports the CCAA Parties' request for the Order contemplated by the Wabush Late Claims Motion.

The Monitor respectfully submits to the Court this, its Fifty-Third Report.

Dated this 22<sup>nd</sup> day of November, 2019.

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



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