

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

**FORTIETH 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**”). 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 November 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. 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**”) ¹.
7. To date, the Monitor has filed thirty-nine reports in respect of various aspects of the CCAA Proceedings. The purpose of this, the Monitor’s Fortieth Report (this “**Report**”), is to provide information to the Court with respect to:

¹ The City of Fermont objected to one specific element of the allocation of proceeds of realization from certain real property of the Bloom Lake CCAA Parties. The Allocation Methodology Order was granted over their objection. The deadline for any motion by the City of Fermont for leave to appeal was extended to September 5, 2017. City of Fermont filed its Declaration in Appeal and Motion for Leave to Appeal on September 6, 2017. The City of Fermont has indicated its intention to file and present to the Court of Appeal a Motion pursuant to section 363 C.C.P. to be heard simultaneously with its Motion for Leave to Appeal on November 6, 2017.

- (a) The receipts and disbursements of the CCAA Parties for the period June 10 to September 30, 2017;
- (b) The CCAA Parties' current cash balances;
- (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 Pension Priority Motion and the Newfoundland Reference;
- (g) The 2014 Reorganization;
- (h) Matters involving MFC; and
- (i) Current estimates of potential distributions to unsecured 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 in accordance with representations made to Mr. Justice Hamilton J.S.C. on June 26, 2017, 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 SEPTEMBER 30, 2017

THE BLOOM LAKE CCAA PARTIES

- 13. The Bloom Lake CCAA Parties' actual cash flow on a consolidated basis for the period from June 10 to September 30, 2017, excluding proceeds of major asset realizations, was in line with the June 20 Forecast, as summarized below:

	Forecast	Actual	Variance
	\$000	\$000	\$000
Receipts	402	528	126
Disbursements:			
Payroll & Employee Benefits	0	0	0
Termination & Severance	0	0	0
Utilities	0	0	0
Other Operating Disbursements	0	(30)	(30)
Operating Cash Flows	402	498	96
Restructuring Professional Fees	(1,982)	(2,014)	(32)
Net Cash Flow	(1,580)	(1,516)	64

14. Explanations for the key variances in actual receipts and disbursements as compared to the June 20 Forecast are as follows:

- (a) The favourable variance in receipts results from interest earned on funds being higher than forecast;
- (b) The unfavourable variance in other operating disbursements relates to records storage and professional fees for tax filings that had not been forecast; and
- (c) The unfavourable variance in aggregate restructuring professional fees is believed to be comprised of favourable timing variances of approximately \$0.6 million offset by unfavourable permanent variances of approximately \$0.6 million. Those variances arise as follows:
 - (i) Unfavourable permanent variances of approximately \$0.2 million in the aggregate for the costs of the Monitor and its counsel; and

- (ii) A favourable variance of approximately \$0.2 million in the aggregate for the costs of the Bloom Lake CCAA Parties' counsel comprising a favourable timing variance of approximately \$0.6 million offset by an unfavourable permanent variance of approximately \$0.4 million.

THE WABUSH CCAA PARTIES

15. The Wabush CCAA Parties' actual cash flow on a consolidated basis for the period from June 10 to September 30, 2017, excluding proceeds of major asset realizations, was approximately \$1.1 million better than the June 20 Forecast, as summarized below:

	Forecast	Actual	Variance
	\$000	\$000	\$000
Receipts	330	538	208
Disbursements:			
Payroll & Employee Benefits	(1,051)	(1,020)	31
Contractors	(480)	(140)	340
Utilities	(29)	(46)	(17)
Other Operating Disbursements	(824)	(862)	(38)
Operating Cash Flows	(2,054)	(1,530)	524
Restructuring Professional Fees	(3,538)	(2,965)	573
Net Cash Flow	(5,592)	(4,495)	1,097

16. Explanations for the key variances in actual receipts and disbursements as compared to the June 20 Forecast are as follows:
- (a) The favourable variance of approximately \$0.2 million in receipts is a permanent variance arising from the receipt of tax refunds that had not been forecast and higher than forecast interest earned on funds held;

- (b) The favourable variance of approximately \$0.3 million in contractors is a permanent variance as projected work was unnecessary due to the sale of the Scully Mine; and
- (c) The favourable variance of approximately \$0.6 million in restructuring professional fees is believed to be comprised of favourable timing variances of approximately \$0.9 million offset by unfavourable permanent variances of approximately \$0.3 million. Those variances arise as follows:
 - (i) Unfavourable permanent variances of approximately \$0.1 million in the aggregate for the costs of the Monitor and its counsel; and
 - (ii) A favourable variance of approximately \$0.7 million in the aggregate for the fees and disbursements of the Wabush CCAA Parties' counsel, of which approximately \$0.9 million is a favourable timing variance, offset by a permanent unfavourable variance of approximately \$0.2 million.

CURRENT CASH BALANCES

17. 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 September 30, 2017, are summarized below:

	Bloom Lake CCAA Parties	Wabush CCAA Parties	Total
	\$000	\$000	\$000
Held by Monitor			
Sale Proceeds Accounts	66,538	71,449	137,987
Operating Accounts	13,061	2,780	15,841
Minimum Royalty Deposits	0	6,539	6,539
GIC Investments	2,000	5,000	7,000
Total Held by Monitor	81,599	85,768	167,367

CURRENT STATUS OF ASSETS REALIZATIONS

THE WABUSH MINE

18. The Scully Mine Transaction closed on July 18, 2017.

EMPLOYEE HOMES

19. The sale of the final remaining employee home is currently expected to close in October.

CONDITIONAL SALE EMPLOYEE HOMES

20. Eight Conditional Sale Employee Homes remain occupied pursuant to the terms of the respective conditional sale agreements. An offer has been received for the sale of the portfolio, which offer is currently under review by the CCAA Parties in consultation with the Monitor. A separate offer has been received for one of the Conditional Sale Employee Homes, which offer is also under review by the CCAA Parties in consultation with the Monitor.

VACANT REAL PROPERTY

21. A map of the vacant real properties in the Town of Wabush held by the Wabush CCAA Parties and which were excluded from the Scully Mine Transaction has now been located and is being reconciled with tax roll and land registry information. Once that exercise is complete, the parties that have previously expressed interest in the vacant properties will be invited to submit offers.

TWIN FALLS POWER CORPORATION LIMITED

22. Twin Falls Power Corporation Limited (“**Twin Falls**”) is incorporated under the laws of Canada and developed a 225 megawatt hydroelectric generating plant on the Unknown River in Labrador. The plant, which has been inoperative since 1974, is located on land that was subleased by Twin Falls from Churchill Falls (Labrador) Corporation Limited (“**Churchill Falls**”). That sub-lease expired on December 31, 2014 and ownership of the plant now resides with Churchill Falls.²
23. The ownership of Twin Falls, based on all outstanding share classes, is as follows: 33.3% by Churchill Falls, 49.6% by Iron Ore Company of Canada (“**IOC**”), 12.5% by WRI and 4.6% by WICL. Churchill Falls is 65.8% owned by Newfoundland and Labrador Hydro, whose parent company is Nalcor Energy.³ The shares in Twin Falls owned by WICL and WRI were expressly excluded from the Scully Mine Transaction.
24. Until their resignation on July 14, 2017, two representatives of WRI and WICL were members of the board of directors of Twin Falls.

² Information obtained from Twin Falls Financial Statements as at December 31, 2016.

³ Information obtained from Twin Falls Financial Statements as at December 31, 2016.

25. The financial statements of Twin Falls show significant total net equity value at December 31, 2016. The equity value largely arises from cash held by Twin Falls. The notes to the financial statements in respect of contingent liabilities also state that the extent of Twin Falls' responsibility for any environmental liabilities or other obligations subsequent to 2014 is being examined but was undeterminable at the date of the financial statements.
26. The CCAA Parties have requested additional information regarding the current financial situation and the determination of any contingent liabilities in order to better assess the potential value of the interests held in Twin Falls. The CCAA Parties, in consultation with the Monitor, are also considering the options available to realize WRI and WICL's interests in Twin Falls if possible.

NET SMELTER ROYALTY

27. CQIM holds a 3% net smelter royalty in respect of a number of development properties located in the Kirkland Lake mining belt that was sold in April 2012 (the "NSR").
28. The owner of the properties has confirmed that there has been no production from the subject properties and that there are no current plans for their development.
29. The CCAA Parties, in consultation with the Monitor, are investigating whether any value may be realizable from the NSR.

POTENTIAL TAX REFUNDS AND REDUCTIONS

30. As previously reported, the CCAA Parties have been seeking refunds in respect of federal and provincial taxes and mining duties. Also as previously reported, 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.
31. As previously reported, a number of municipal tax contestations are being pursued which, if successful, could lead to refunds or reductions in priority claims.

THE CRA ITA AUDIT

32. The CCAA Parties have informed the Monitor that eleven of sixteen CRA audit enquiries have been answered in full and that the majority of the remainder have also been answered. The CCAA Parties anticipate providing responses to the outstanding questions in the near future, subject to any additional queries from CRA.
33. In addition to the foregoing, a new audit request was issued by CRA on September 27, 2017.

THE CLAIMS PROCEDURE

CLAIMS

34. 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	65,756			2	3,803	8	102,816
Bloom Lake LP	19	32,350	2	131,554	2	3,661	3	8,472	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	55,188			1	15	1	25,774
WICL			2	9,101						
WRI			2	11,707			1	1,940		
Arnaud Railway			3	55,326			1	242		
Wabush Lake Railway			2	54,937						
Total Secured	22	34,329	17	383,569	2	3,661	9	40,887	29	248,467
Unsecured										
CQIM	59	706,271	14	1,184,106			3	6,704	18	37,287
Bloom Lake LP	190	689,855	13	660,282			3	6,472	77	73,138
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	98	57,075	1,096	243,387	5	2,341	4	1,535,976	189	74,608
WICL	5	56,803	10	336,674					19	62,259
WRI	3	49,778	14	677,565					17	66,233
Arnaud Railway	5	4,255	454	58,983	2	2,148			24	1,962
Wabush Lake Railway			394	90,724					17	2,988
Total Unsecured	365	2,154,867	2,000	3,268,673	7	4,489	10	1,549,152	404	345,641
Total	387	2,189,196	2,017	3,652,242	9	8,150	19	1,590,039	433	594,108

35. The claims in progress are summarized as follows:

- (a) Seven claims by three creditors are municipal tax claims in the aggregate amount of approximately \$27.3 million. As previously reported, a number of municipal tax contestations are being pursued that could result in reductions in the pre-filing claims if successful;

- (b) Six claims in the aggregate amount of approximately \$164.8 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;
- (c) 1,931 claims in the aggregate amount of approximately \$291.2 million are claims of former employees in respect of OPEBs and other employment related amounts, of which 842 claims in the aggregate amount of approximately \$123.9 million are filed on a joint and several basis against two of the CCAA Parties; and
- (d) 73 claims in the aggregate amount of approximately \$3.2 billion are Related Party Claims.

Pension Claims

- 36. 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. The wind-up reports were filed by the Pension Administrator on December 16, 2016.
- 37. As at the date of this Report, the wind-up reports have not yet been approved by the relevant regulators. However, the Pension Administrator has informed the Monitor that comments have now been received from the regulators and that the Pension Administrator anticipates filing revised wind-up reports in November 2017, incorporating the comments of the regulators. The Pension Administrator also informed the Monitor that it does not expect any material change to the wind-up deficit amounts in the revised wind-up reports.

38. 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 Pension Priority Motion was heard June 28 and 29, 2017, and the decision of the Honourable Mr. Justice Hamilton J.S.C. in respect of the Pension Priority Motion (the "**Pension Priority Decision**") was released September 11, 2017.
39. Pursuant to the Pension Priority Decision, the Court:
- (a) Granted the Pension Priority Motion;
 - (b) Declared that the trusts created under the SPPA, PBSA and NLPBA are not enforceable in CCAA proceedings; and
 - (c) Declared that the employee contributions and normal cost payments are protected to the extent provided for by sections 6(6) and 36(7)⁴ of the CCAA.
40. All of the employee contributions and normal cost payments were paid by the Wabush CCAA Parties up to the date of the termination of the Pension Plans⁵. Accordingly, subject to any successful appeal of the Pension Priority Decision, the Pension Claims are unsecured claims. Motions for leave to appeal were filed on October 2, 2017, by OSFI, the Newfoundland Regulator, the USW and Representative Counsel. No appeal was filed by the Pension Administrator or the Quebec Regulator.

⁴ Paragraph 217 of the Pension Priority Decision mistakenly references section 37(6) instead of section 36(7).

⁵ Normal cost contributions for December 2015 were pro-rated to December 16, 2015, the date of the termination of the Pension Plans. The Pension Priority Decision does not specifically address this issue.

41. The Pension Claims were asserted jointly and severally against Wabush Mines⁶, Arnaud Railway and the Wabush Lake Railway Company. The determination of which estates have liability for the Pension Claims is being reviewed by the Monitor's counsel, but that issue has yet to be determined.

OPEB Claims

42. 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.
43. As previously reported, 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 has now received the output of those calculations from the actuary of the Representative Counsel and the USW and is now assessing the potential impact of those amendments on the OPEB claims and potential distributions in order to formulate, in consultation with the CCAA Parties, a formal response with respect to the OPEB claims.

Related Party Claims

44. The Monitor's Thirty-Ninth Report dated September 11, 2017, provided details of the Monitor's review of the Related Party Claims. As noted therein, the Monitor was awaiting various information and documentary support in respect of a significant number of transactions at that time. Since the filing of the Thirty-Ninth Report, additional information and documentary support have been provided for some of those transactions.
45. Paragraph 196 of the Monitor's Thirty-Ninth Report stated:

⁶ As noted in previous Reports claims against Wabush Mines would in fact be claims against WICL and WRI.

“196. The Monitor and its legal counsel are still considering the issue of the characterization of the Related Party Claims and intends to consult with major third-party creditors with respect thereto. The Monitor is also considering whether a motion for advice and directions on this point might be appropriate in the circumstances.”

46. The Monitor has reached out to a number of the largest third-party creditors in the CCAA Proceedings, which group between them has claims against each of the relevant CCAA Parties⁷, in order to commence the consultation process.

Construction Legal Hypothec Claims

47. In addition to the foregoing claims in progress, the validity of the security of two Construction Hypothec Claims remains to be determined as the claimants disputed the Monitor’s Notice of Revision or Disallowance with respect thereto.
48. The quantum of all Construction Hypothec Claims has been finally determined in accordance with the provisions of the Claims Procedure Order. For those Construction Hypothec Claims that are validly secured, the quantum validly secured remains subject to the allocation of proceeds and costs of realization in accordance with the Allocation Methodology approved by the Court.

THE NEWFOUNDLAND REFERENCE

49. Notwithstanding the Pension Priority Decision, the Monitor determined that its continued involvement in the Newfoundland Reference was appropriate in order to present its views concerning the proper scope and interpretation of section 32 of the Newfoundland and Labrador *Pensions Benefits Act*, to ensure that the Newfoundland COA had a balanced view of the facts and circumstances, and was made aware of the Pension Priority Decision.

⁷ Quinto Mining Corporation has no third-party creditors. 8568391 Canada Limited and Bloom Lake Railway Company Limited have no creditors.

50. The Newfoundland Reference was heard on September 21 and 22, 2017. The Newfoundland COA reserved its response to the Reference Questions and has requested written submissions on the statutory lien and charge under section 32(4) of the NLPBA to assist in its determination of the answer to the Reference Questions relating to that section. The deadline for written submissions is October 10, 2017. Neither the CCAA Parties nor the Monitor intend to file written submissions.

THE 2014 REORGANIZATION AND OTHER REVIEWABLE TRANSACTIONS

51. 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.
52. As noted in the Monitor's Thirty-Eighth Report, such discussions have continued and 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. Since the date of the Thirty-Eighth Report:
- (a) The Monitor has been undertaking due diligence on those calculations;
 - (b) The Monitor has sought further information and clarification from CNR with respect to those calculations; and
 - (c) The Monitor's counsel has been conducting legal research and analysis on various matters relating to the 2014 Reorganization.

53. The Monitor intends to discuss the results of its diligence with CNR Counsel in order to determine whether there is any reasonable prospect of settlement so that a recommendation to the Court in respect of the 2014 Reorganization can be formulated.
54. As noted in the Monitor's Thirty-Ninth Report in respect of the Related Party Claims, a number of other payment transactions have been identified that fall within the "look-back" period in respect of preference transactions under the *Bankruptcy and Insolvency Act*. The Monitor is in the process of reviewing the circumstances of these payments.

MATTERS INVOLVING MFC

THE MFC ROYALTY LITIGATION

55. As previously reported, 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.
56. On July 26, 2017, approximately one week after the closing of the Scully Mine Transaction and the assignment of the MFC Sub-Lease to the Purchaser, counsel to MFC requested confirmation that the deposit due July 24 had been made by the Wabush CCAA Parties. The Monitor replied that the deposit had not been made as a result of the operation of paragraph 23 of the Assignment Order which states:

“23. ORDERS that the Vendors are hereby irrevocably and unconditionally fully and finally released of and from any and all claims, liabilities or obligations whatsoever arising from any event, fact, matter or circumstance occurring or existing following the Closing Time in respect to any Assigned Contract, including, for greater certainty, any obligation to remit to MFC any amounts payable under

the Wabush Sub-Lease from the period from and after the Closing Time.”

57. Subsequently, the Purchaser informed the Monitor that MFC had demanded the quarterly payment from it and had threatened to issue a notice of default under the MFC Sub-Lease if the payment was not received. The Purchaser noted that the payment related to the three months ended June 2017 and, accordingly, related to a pre-closing period. The Wabush CCAA Parties and the Monitor reviewed the matter and concurred with that assessment and the deposit was subsequently transferred to the Monitor’s segregated account for the Disputed Post-Filing Royalty Payments⁸.
58. When the Monitor informed counsel to MFC that the deposit had been received, MFC’s counsel took the position that the amount must be paid to MFC directly⁹ and not into trust as the payment date was after the date of the assignment of the MFC Sub-Lease. The Monitor informed MFC’s counsel that it disagreed with that position.
59. In the meantime, in order to avoid MFC issuing the threatened notice of default under the MFC Sub-Lease, the Purchaser also made a payment under protest of the minimum royalty amount for that same period, less the applicable mineral rights withholding tax, reserving all rights of reimbursement.

⁸ In practice the Monitor was already holding the funds as it is holding all funds of the CCAA Debtors. The “deposit” was merely moving the funds from one account of the Monitor into the separate account of the Monitor designated for the Disputed Post Filing Royalty payments.

⁹ Presumably by the Purchaser.

60. On August 8, 2017, Mr. Justice Hamilton determined that he would not hear the MFC Royalty Litigation in light of the involvement of the Purchaser and its counsel and referred the matter to another judge of the Court. A case management conference was heard by the Honourable Mr. Justice Louis J. Gouin on September 5, 2017. A Declaration of Readiness was sent to Mr. Justice Gouin on September 28, 2017, with a view to fixing new dates for a hearing. On October 3, 2017, following confirmation that the Purchaser would neither be involved as a party to the MFC Royalty Litigation nor impacted by any decision with respect thereto, Mr. Justice Gouin informed the parties that the matter would now be heard by Mr. Justice Hamilton.
61. Dependent on the outcome of the MFC Royalty Litigation, the issue of whether the Purchaser or the Vendors are responsible for the July 2017 minimum royalty payment may have to be determined and the applicability and impact of mineral rights withholding taxes will have to be considered in respect of any amounts payable to MFC.

THE MFC CURE COSTS

62. Pursuant to the Scully Mine APA and the Assignment Order, the amount deposited by the Purchaser on Closing of the Scully Mine Transaction included the Maximum MFC Pre-Filing Cure Costs, being \$11,237,679.
63. Paragraph 19 of the Assignment Order states:

“[19] ORDERS that any outstanding procedural issues in connection with the determination of the MFC Pre-Filing Claim shall be agreed upon between MFC and the Purchaser or determined by order of this Court.”

64. The Monitor has been informed that, subject to execution of definitive documentation, the Purchaser and MFC have reached an agreement in principle in respect of the MFC Pre-Filing Cure Costs. Once definitive documentation has been executed, the Monitor will be in a position to distribute the funds it is holding on account of the Maximum MFC Pre-Filing Cure Costs in accordance with the provisions of the Assignment Order.

DISPUTED DEADBED ROYALTY

65. One of the assets of the Wabush CCAA Parties expressly excluded from the Scully Mine Transaction was any claim in respect of certain royalties paid under protest by WRI and WICL to MFC on or about December 12, 2014, relating to certain spiral concentrates, pellets and “deadbed” concentrates at the Pointe-Noire Facility that had not been, were not going to be, shipped to customers (collectively, the “**Deadbed**”).
66. In December 2014, MFC asserted that it was owed royalty on the Deadbed and demanded payment of \$2,610,245 (the “**Disputed Deadbed Royalty**”). WICL and WRI disputed that any royalty was owing on the Deadbed for various reasons but nonetheless paid the Disputed Deadbed Royalty under protest and without prejudice to their position.
67. The issue of the Disputed Deadbed Royalty was indeed added to the arbitration proceeding between MFC and WRI and WICL pending in December 2014 (the “**MFC Royalty Arbitration**”). The MFC Royalty Arbitration was suspended as a result of the stay of proceedings that came into effect on the granting of the Wabush Initial Order on May 20, 2015.
68. The Wabush CCAA Parties, in consultation with the Monitor, are in the process of reviewing matters related to the Disputed Deadbed Royalty to determine what, if any, steps should be taken with respect thereto.

ESTIMATED RANGES OF POTENTIAL DISTRIBUTIONS

69. In previous reports, the Monitor has 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.
70. The Monitor has now updated its estimates based on the information currently available. No amounts have been included in the estimates for any amounts that might be recoverable in respect of the 2014 Reorganization or other transactions entered into prior to the commencement of the CCAA Proceedings. The estimate applies the Allocation Methodology approved by the Court.
71. 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 properly characterized as debt claims, are summarized below:

	Low	High
Bloom Lake LP	1.76%	2.11%
Bloom Lake GP	0.00%	0.00%
CQIM	2.31%	2.73%
Quinto Mining	51.74%	58.05%
Arnaud Railway	0.00%	20.57%
WICL	0.00%	1.10%
Wabush Lake Railway	0.00%	0.01%
Wabush Mines ¹	0.00%	0.00%
WRI	0.00%	2.57%

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 Fortieth Report.

Dated this 6th day of October, 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