

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

**FORTY-SECOND 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 March 30, 2018.
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 as legal counsel to the Representatives, Koskie Minsky LLP (“**KM**”) and Nicholas Scheib¹ (collectively “**Representative Counsel**”).
5. To date, the Monitor has filed forty reports in respect of various aspects of the CCAA Proceedings. The purpose of this, the Monitor’s Forty-First Report (this “**Report**”), is to provide information to the Court with respect to the motion filed by Representative Counsel dated December 8, 2017 (the “**Replacement Counsel and Fee Motion**”) seeking, *inter alia*:
 - (a) The appointment of Fishman Flanz Meland Paquin LLP (“**FFMP**”) as Québec Representative Counsel in replacement of Nick Scheib following his resignation in June 2017;
 - (b) The authorization for the Wabush CCAA Parties to pay the fees of Representative Counsel for the period December 1, 2017 to March 31, 2018, subject to a cap of \$260,000; and

¹ Mr. Scheib resigned the position in June 2017.

- (c) The payment by the Wabush CCAA Parties of the legal fees of FFMP for the months of October and November 2017, in the aggregate amount of \$51,579 plus applicable taxes and disbursements, provided that FFMP renders 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.

TERMS OF REFERENCE

- 6. 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**").
- 7. 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.
- 8. The Monitor has prepared this Report in connection with the Replacement Counsel and Fee Motion and should not be relied on for other purposes.
- 9. 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.

10. 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.

REPLACEMENT COUNSEL AND FEE MOTION

INTRODUCTION

11. While the Monitor is making no specific recommendation on the Replacement Counsel and Fee Motion, the Monitor is of the view that certain statements in the Replacement Counsel and Fee Motion warrant comment and that additional information may be of benefit to the Court.

BACKGROUND AND CHRONOLOGY

12. As noted earlier in this Report, Mr. Scheib resigned his position as co-Representative Counsel in June 2017.
13. On June 15, 2017, following the resignation of Mr. Scheib, KM informed the Monitor that they required that an English translation of a factum filed by the City of Sept-Îles in French as “otherwise we cannot respond to their submissions and properly represent the non-USW employees and retirees on the monitor's motion.”
14. Given KM’s lack of French language expertise, the Monitor was concerned that a lack of Québec co-counsel could hinder the ability to respond to materials filed in French and significantly increase costs of Representative Counsel if it became necessary for them to translate materials filed in French. It was in that context that the Monitor encouraged KM to identify a replacement for Mr. Scheib.

15. Throughout the CCAA Proceedings, it appeared that Mr. Scheib was undertaking a limited supporting role to KM in the execution of the duties of Representative Counsel, for example, providing French language capabilities and dealing with points of Québec law and procedure. It was, and remains, the expectation of the Monitor that the role of any replacement for Mr. Scheib would be similarly limited in order to avoid unnecessary duplication of costs.
16. On October 27, 2017, KM informed that Monitor that they would be retaining FFMP as Québec co-counsel. The Monitor informed KM that, in its view, the appointment of FFMP would need to be approved by the Court.
17. Notwithstanding the fact that the appointment of FFMP had not been approved by the Court, or the fact that the Pension Priority Motion had been argued by KM without the apparent need for co-counsel, FFMP appeared together with KM at an uncontested hearing² before the Court of Appeal on October 31, 2017, at which leave to appeal the Pension Priority Motion was granted.
18. On November 17, 2017, the Monitor received a draft motion from FFMP in respect of the appointment of FFMP and approval of the fees of Representative Counsel. The Monitor informed KM that it had significant concerns about the drafting of the motion. Those concerns were discussed with KM by telephone on November 19, 2017, during which call KM agreed that co-counsel's role would be limited to linguistic and Québec specific issues in order to avoid unnecessary duplication of expense. KM also requested on that call that Monitor's counsel provide names of potential alternatives to FFMP.

² The Monitor had informed each of the four appellants that it would not contest the leave motions on October 4, 2017.

19. On November 24, 2017, FFMP provided a proposal for Representative Counsel fee cap of \$300,000 for the period December 2017 to March 2018, notionally being a cap of \$75,000 per month but with the ability to “carry-over” unused monthly amounts or overages. Given the significant increase from the previous period’s approved fee cap and actual expenditure³ and in order to properly consider the request for increased additional funding by the estate, the Monitor requested a break-down of the proposed amounts by work-stream, split between KM and FFMP, on November 25, 2017.
20. On December 1, 2017, KM provided the following break-down of the estimate:

Activity	KM		FFMP		Total	
	Low	High	Low	High	Low	High
Pension Appeal	30,000	30,000	15,000	18,000	45,000	48,000
Finalize OPEB Claims	3,000	3,000	-	-	3,000	3,000
Finalize Claims of Terminated Employees	2,000	2,000	-	-	2,000	2,000
Recharacterization of RP Claims	5,000	5,000	2,000	2,000	7,000	7,000
2014 Reorg	4,000	4,000	2,000	2,500	6,000	6,500
Other CCAA	3,000	3,000	2,500	2,500	5,500	5,500
Client Correspondence	3,000	5,000	-	-	3,000	5,000
Total	50,000	52,000	21,500	25,000	71,500	77,000

21. On December 2, 2017, counsel to the Monitor provided the following response to KM:

“We wish to advise you that the Monitor considers that a \$ 40,000 monthly cap (with no carry over from any unspent amount from the previous period) is appropriate based on historical billings of Representative Counsel and will not recommend an increase at a time where we should be

³ The fee cap for the five-month period July to November 2017 was \$200,000, or \$40,000 per month., Actual fees incurred were \$148,421, or an average of \$29,684.20 per month. The November 24 proposal therefore represents an increase of 87.5% in the monthly cap and an increase of 152.6% over the monthly average of the previous period.

focussed on winding-down the estates and where most of the restructuring work has been completed. While we have raised with you the opportunity to add a Quebec co-counsel to avoid unnecessary translation costs and in an effort to reduce overall costs borne by the estates, we consider that your proposal would on the contrary essentially double the required funding.

Adding a new firm to act as co-counsel at the appeal stage where the issues have already been fully debated at first instance by your firm alone, does not appear justified and offers no apparent benefit to the estates.

We consider that Representatives should be able to retain Quebec co-counsel as may be required on an ad hoc basis under an overall \$ 40,000 monthly cap, as achieved previously with Scheib & Ass.

Please also note that the Monitor has no authority to approve the invoices of FFMP for the months of October and November 2017 and we invite you to present a Motion to obtain the payment of same. We have invited you on numerous occasions to seek and obtain the appointment of co-counsel without further delay. The Monitor and the Court have also reminded you repeatedly to seek proper authorization prior to incurring fees to be funded by the estates.

22. On December 7, 2017, KM informed the Monitor that their funding request “is for a cap of \$25,000/month for FFMP (plus the same \$40,000/month for our firm) for the four month stay period for a total of \$65,000/month.” Without commenting on the amounts, the Monitor sought confirmation that the fee request would be separate caps for KM and FFMP. KM responded that this was not the case and that the request would be for one cap⁴.
23. The Monitor had not responded to that proposal when the Replacement Counsel and Fee Motion was served on December 8, 2017.

REPRESENTATIVE COUNSEL FEES TO DATE

24. Representative Counsel fees to date are summarized as follows:

Period	KM		Scheib		Total	Cap
June 22, 2015 to September 2016	\$507,331.50	84.0%	\$96,728.00	16.0%	\$604,059.50	\$195,000.00
October 2016 to January 2017	\$125,355.00	81.3%	\$28,810.00	18.7%	\$154,165.00	\$140,000.00
February to June 2017	\$180,665.00	94.6%	\$10,390.00	5.4%	\$191,055.00	\$200,000.00
July to November 2017	\$148,421.00	100.0%	\$0.00	0.0%	\$148,421.00	\$200,000.00
Total	\$961,772.50	87.6%	\$135,928.00	12.4%	\$1,097,700.50	\$735,000.00
Monthly Average						
June 22, 2015 to September 2016	\$31,708.22	84.0%	\$6,045.50	16.0%	\$37,753.72	
October 2016 to January 2017	\$31,338.75	81.3%	\$7,202.50	18.7%	\$38,541.25	
February to June 2017	\$36,133.00	94.6%	\$2,078.00	5.4%	\$38,211.00	
July to November 2017	\$29,684.20	100.0%	\$0.00	0.0%	\$29,684.20	
Total	\$32,059.08	87.6%	\$4,530.93	12.4%	\$36,590.02	

*Split between KM and Scheib prior to resignation was 85.7%/14.3%

25. As noted earlier in this Report, the Replacement Counsel and Fee Motion seeks to increase the notional monthly cap on Representative Counsel Fees from \$40,000 to \$65,000, an increase of 62.5% over the previous monthly cap, an increase of 119% over the actual average monthly fees for the previous approved period and an increase of 77.6% over the actual average monthly fees since the commencement of the CCAA Proceedings.

⁴ \$260,000 for the four month period.

26. KM has stated that there would not be separate caps for KM and FFMP. However, KM did indicate in their December 7 correspondence that the proposed cap of \$65,000 per month was notionally comprised of \$40,000 per month for KM and \$25,000 per month for FFMP, a split of 61.5% for KM and 38.5% for FFMP, as compared to the average of 85.7% for KM and 14.3% for Scheib before Scheib's resignation.

NOTES ON CERTAIN STATEMENTS IN THE REPLACEMENT COUNSEL AND FEE MOTION

Paragraph 2

27. While the Monitor concurs that the Salaried Members are a significant creditor group, the Monitor notes, for clarity, that:
- (a) It is the Pension Administrator that has the claim for the Salaried Pension Plan wind-up deficit, although the Salaried Members that are members of the Salaried Pension Plan would be the ultimate beneficiaries of recoveries on that claim; and
 - (b) The amount claimed in respect of OPEBs by the Salaried Members is not agreed and the Monitor expects that the amount of that claim, when finally determined, would be materially lower.

Paragraphs 5(j) to 5(m)

28. It is factually incorrect to say that the only meaningful recoveries in respect of the Pension Claims would be from Arnaud Railway. The Salaried Members have asserted their deemed trust claim against all of the Wabush CCAA Parties and all of the realizations from those estates. While the Monitor does not agree with that assertion, if there was a valid deemed trust for the Salaried Pension Plan deficit that had priority over all of the realizations of the Wabush CCAA Parties, the Monitor estimates that the recovery would be approximately \$22 million rather than the \$13 million stated in the Replacement Counsel and Fee Motion.

29. KM fails to note that additional recoveries would be available on account of the Salaried Pension Plan deficit and OPEB claims in the event that the action commenced by the Represented Employees under the *Class Actions Act, S.N.L. 2001, c. C-18.1* against CNR and CMC and a number of their current or former officers and directors⁵ is successful.

Paragraph 5(s)

30. KM states that “the Monitor and the CCAA Parties together behave as highly adversarial opponents of the Salaried Members”. The Monitor objects to this assertion. Firstly, the Monitor does not act in concert with the CCAA Parties but acts independently as an officer of the Court. Secondly, while the result of the Pension Priority Motion was adverse to the interests of the Salaried Members, the Monitor has a responsibility to consider the interests of all creditors and believes that it is important to protect the interests of the other creditors of the Wabush CCAA Parties that are not party to the appeal proceedings related to the Pension Priority Motion.
31. Furthermore, the Monitor has at all times endeavoured to work co-operatively with all parties involved in the appeals of the Pension Priority Motion. For example, at the request of Court of Appeal, the Monitor worked with the parties to prepare a table summarizing the matters at issue in the appeals and the conclusions sought with respect thereto by each of the parties. That summary was agreed by all parties other than Representative Counsel, which instead submitted its own summary prepared without input from the other parties.

⁵ File No. 2017 01G4037CP seeking orders to pay approximately \$27.5 million in respect of the Salaried Pension Plan wind-up deficit, approximately \$44.9 million in respect of OPEB claims and \$50 million in exemplary and punitive damages.

Paragraph 6

32. To clarify, the Monitor agreed that obtaining replacement Québec Representative Counsel was appropriate for the limited purpose of providing ad hoc support to KM with respect to French language and Québec law or procedural matters. The Monitor does not believe that it is necessary or appropriate for replacement Québec Representative Counsel to be consulted on, or participate, in matters that KM is qualified to handle directly. To do so would be an unnecessary duplication of expense.

33. Furthermore, the inclusion of the sentence “The Monitor also suggested the names of certain Quebec lawyers for KM to contact as potential replacements.” immediately before paragraph 7 that states that in early October 2017 KM consulted FFMP might be taken to imply that:
 - (a) The Monitor (actually the Monitor’s counsel) provided suggestions before FFMP was contacted by KM; and
 - (b) That FFMP was one of the suggestions made by Monitor’s counsel.

34. In fact, the Monitor’s counsel only provided some suggestions for replacement Québec counsel at the request of KM following the November 19 telephone conversation referred to earlier in this Report as KM had stated at that time that it may not be engaging FFMP.

Paragraphs 7, 10, 11

35. As noted earlier in this Report, paragraph 7 of the Replacement Counsel and Fee Motion states that in early October 2017 KM consulted FFMP. Paragraph 10 states that FFMP was asked to assist on the Salaried Members' Leave Application, amongst other things. Paragraph 11 notes that FFMP were consulted on a time sensitive basis as leave to appeal had to be filed within 21 days of the Pension Priority Decision, which was released on September 11, 2017. The Monitor notes that the Salaried Members' Leave Application was dated October 2, 2017.
36. Paragraph 11 of the Replacement Counsel and Fee Motion also states that FFMP was also required to spend the necessary time to become familiar with the status of the voluminous CCAA proceeding which has been underway since June, 2015, which included numerous discussions and written exchanges between FFMP and KM and extensive reviews of the CCAA materials by FFMP. Given what should be the limited supporting role of replacement Québec counsel, the Monitor queries the need for FFMP to undertake this apparently extensive review.

Paragraph 12

37. For clarity, the Monitor was only made aware of the involvement of FFMP on October 27, 2017.

REQUEST FOR APPROVAL OF FEES OF FFMP FOR OCTOBER AND NOVEMBER 2017

38. The Replacement Counsel and Fee Motion seeks the payment of \$51,579 plus disbursements and taxes⁶. The invoices of FFMP and the description of the work billed have not been provided in the Replacement Counsel and Fee Motion.

⁶ The amount of disbursements and taxes being requested is undisclosed.

39. On December 13, 2017, the Monitor requested that Representative Counsel provide copies of the FFMP invoices in order that the Monitor could review those charges and provide comment to the Court with respect to their reasonableness. While KM informed the Monitor that the FFMP invoices would be provided, they have not, to date, been received by the Monitor.
40. The Monitor does have potential concerns regarding the scope of work that was undertaken by FFMP in October and November, at a time when their engagement had not been approved by the Court, but reserves comment pending the opportunity to review the FFMP invoices.

The Monitor respectfully submits to the Court this, its Forty-Second Report.

Dated this 15th day of December, 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