

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

Commercial Division

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

N°: 500-11-048114-157

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

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

WABUSH RESOURCES INC.

WABUSH IRON CO. LIMITED

Petitioners

-and-

RITCHIE BROS AUCTIONEERS (CANADA) LTD.

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**MOTION FOR THE ISSUANCE OF AN APPROVAL AND VESTING ORDER
WITH RESPECT TO THE SALE OF CERTAIN ASSETS**
(Sections 11 and 36 *ff.* of the *Companies' Creditors Arrangement Act*)

**TO THE HONOURABLE STEPHEN W. HAMILTON, J.S.C. OR ONE OF THE HONOURABLE
JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR
THE DISTRICT OF MONTRÉAL, THE PETITIONERS SUBMIT:**

1. BACKGROUND

1. On January 27, 2015, Mr. Justice Martin Castonguay, J.S.C., issued an Initial Order (the "**Bloom Lake Initial Order**") commencing these proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Québec Iron Mining ULC ("**CQIM**"), The Bloom Lake Iron Ore Mine Limited Partnership (the "**Bloom Lake LP**") and Bloom Lake Railway Company Limited (together, the "**Bloom Lake CCAA Parties**"), as appears from the Bloom Lake Initial Order, which forms part of the Court record and is communicated herewith for convenience as **Exhibit R-1**.

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**").
3. On April 17, 2015, Mr. Justice Hamilton issued, *inter alia*, an Order (the "**SISP Order**"), *inter alia*, approving sale and investor solicitation procedures (the "**Initial SISP**") in respect of the Bloom Lake CCAA Parties, as appears from a copy of the SISP Order, which forms part of the Court record and is communicated herewith as **Exhibit R-2**.
4. On May 20, 2015, Mr. Justice Hamilton, issued an Initial Order (as subsequently amended, rectified and/or restated the "**Wabush Initial Order**") extending the scope of the CCAA Proceedings to the Petitioners Wabush Iron Co. Limited ("**Wabush Iron**") and Wabush Resources Inc. ("**Wabush Resources**") and the Mises-en-cause Wabush Mines, an unincorporated contractual joint venture, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**"; collectively with the Bloom Lake CCAA Parties, the "**CCAA Parties**"), as appears from the Initial Order dated May 20, 2015, which forms part of the Court record and is communicated herewith for convenience as **Exhibit R-3**.
5. Pursuant to the Wabush Initial Order, *inter alia*:
 - a) the Monitor was appointed as the monitor of the Wabush CCAA Parties (para. 39 of the Wabush Initial Order) and a stay of proceedings was granted to the Wabush CCAA Parties until June 19, 2015 (the "**Wabush Stay Period**") (para. 7 *ff.* of the Wabush Initial Order); and
 - b) the Wabush CCAA Parties were authorized, subject to approval of the Monitor, sections 11.3 and 36 of the CCAA and further order of the Court, to pursue all avenues to, *inter alia*, market, convey, transfer, assign or in any other manner dispose of the Business or Property (as such terms are defined in the Wabush Initial Order), in whole or part (para. 33(b) of the Wabush Initial Order).
6. On June 9, 2015, Mr. Justice Hamilton, issued an order (the "**Wabush Comeback Order**"), *inter alia*:
 - a) extending the Wabush Stay Period to July 31, 2015; and
 - b) approving the Initial SISP as it relates to the Wabush CCAA Parties, authorizing the amendment and restatement of the Initial SISP *nunc pro tunc*, and approving an amended and restated sale and investor solicitation process in respect of all CCAA Parties (the "**SISP**"), a copy of which is communicated herewith as **Exhibit R-4**;

the whole as appears from the Wabush Comeback Order, which forms part of the Court record and is communicated herewith for convenience as **Exhibit R-5**.

7. The Wabush Stay Period has been extended by order of the Court from time to time, most recently on April 20, 2016, and currently expires on October 12, 2016, as appears from the Court record.
8. In accordance with the SISP Order, on January 27, 2016, Mr. Justice Hamilton issued an order approving a transaction (the "**Bloom Lake Transaction**") representing the

divestiture of the right, title and interest of CQIM, Quinto, Bloom Lake GP, Bloom Lake LP and Bloom Lake Railway Company in favour of Québec Iron Ore Inc. ("**QIO**"), in and to substantially all of the assets relating to the Bloom Lake Mine and the Bloom Lake Railway, subject to certain excluded assets, which excluded assets included, among other things, the Purchased Assets (as defined below), as appears from the Court record and the Bloom Lake Transaction Asset Purchase Agreement (the "**Bloom Lake APA**"), communicated herewith as **Exhibit R-6**.

9. On April 11, 2016, the Bloom Lake Transaction closed.
10. On September 1, 2016, the Petitioners filed a motion seeking the authorization to sell their right, title and interest in and to certain equipment, including, *inter alia*, five (5) Komatsu 830E haul trucks located at the Bloom Lake Mine, as appears from the Court record (the "**830E Motion**").
11. On September 20, 2016, QIO filed a *De Bene Esse Notice of Objection of Québec Iron Ore Inc. to the Motion for the Issuance of an Approval and Vesting Order with respect to the Sale of certain Assets of the Petitioners dated September 9, 2016*, in which it seeks a declaration of the Court that the tires and rims attached to and forming part of the five (5) Komatsu 830E haul trucks located at the Bloom Lake Mine were acquired as part of the Bloom Lake Transaction, as appears from the Court record (the "**QIO Objection**") and ought to be removed prior to the sale of such trucks.
12. The Petitioners contest the QIO Objection, as the five (5) Komatsu 830E haul trucks located at the Bloom Lake Mine, including their tires and rims, were clearly part of the assets excluded from the Bloom Lake Transaction and were always intended to be so.

2. ORDERS SOUGHT

13. Bloom Lake LP, Wabush Resources and Wabush Iron, (collectively, the "**Petitioners**") hereby seek the issuance of an Approval and Vesting Order substantially in the form of the draft Approval and Vesting Order communicated herewith as **Exhibit R-7** (the "**Draft Approval and Vesting Order**"), which provides, *inter alia*, for:
 - b) the Court's approval of the proposed transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement dated as of October 11, 2016 (the "**Second RBA Asset Purchase Agreement**") by and between Bloom Lake LP, Wabush Resources and Wabush Iron, as vendors, and the *Mise-en-cause* Ritchie Bros Auctioneers (Canada) Ltd., as purchaser (the "**Purchaser**"); and
 - c) the vesting of all of Petitioners' right, title and interest in and to the Purchased Assets (as defined below) in the Purchaser, free and clear of all encumbrances (the "**Encumbrances**"), upon the issuance to the Petitioners and the Purchaser of a certificate by the Monitor in the form of Schedule "A" to the Draft Approval and Vesting Order (the "**Monitor's Certificate**"), the whole as provided in the Second RBA Asset Purchase Agreement and as further detailed herein below.
14. A redacted copy of the Second RBA Asset Purchase Agreement is communicated herewith as **Exhibit R-8**. Unless otherwise defined herein, all initially capitalized terms used in this Motion shall have the meaning given to them in the Second RBA Asset Purchase Agreement.

3. OVERVIEW OF THE PROPOSED TRANSACTION

15. Certain of the Petitioners, Wabush Resources and Wabush Iron, through an unincorporated contractual joint venture Wabush Mines JV, used to operate, among others, the business of the iron ore mine and processing facility located north of the Town of Wabush in Newfoundland and Labrador, known as the Wabush Mine or the Scully Mine (the "**Scully Mine**").
16. The Petitioner Bloom Lake LP used to operate, among others, the business of the iron ore mine and processing facility located approximately 13 km north of Fermont, Québec, in the Labrador Trough, known as the "Bloom Lake Mine" (the "**Bloom Lake Mine**").
17. On or about September 21, 2016 the Petitioners received, and accepted a proposal from the Purchaser for the acquisition of Wabush Scully Mine Equipment, Wabush Bloom Lake Mine Equipment and the Bloom Lake LP Equipment (each as defined in the Second RBA Asset Purchase Agreement).
18. The proposed Transaction contemplates the sale, transfer, and assignment by the Petitioners to the Purchaser of the Petitioners' right, title and interest in and to the Purchased Assets.
19. If approved, the proposed Transaction will result in (i) the Wabush Scully Mine Equipment being removed by the Purchaser from the Scully Mine in accordance with Article 6 of the Second RBA Asset Purchase Agreement, (ii) the Bloom Lake LP Equipment and Wabush Bloom Lake Mine Equipment being removed by the Purchaser from the Bloom Lake Mine in accordance with Article 5 of the Second RBA Asset Purchase Agreement and the Access Agreement executed, *inter alia*, between the Petitioners and QIO, which will be acknowledged by the Purchaser on Closing, and (iii) the creation of significant value for the estates of the Petitioners.

3.1 The Purchased Assets

20. The Purchased Assets (as defined below) are comprised of specific mobile equipment of the Petitioners located at the Bloom Lake Mine and the Scully Mine as follows:
 - a) specified equipment of Bloom Lake LP located at the Bloom Lake Mine defined in the Second RBA Asset Purchase Agreement, as the "**Bloom Lake LP Equipment**",
 - b) specified equipment of Wabush Resources and Wabush Iron located at the Bloom Lake Mine defined in the Second RBA Asset Purchase Agreement as the "**Wabush Bloom Lake Mine Equipment**", and
 - c) specific equipment of Wabush Resources and Wabush Iron located at the Scully Mine defined the Second RBA Asset Purchase Agreement as the "**Wabush Scully Mine Equipment**".

Notwithstanding the foregoing descriptions, the Second RBA Asset Purchase Agreement expressly provides that the Petitioners make no representations or warranties in the Second RBA Asset Purchase Agreement as to the location of the Purchased Assets.

21. The Wabush Scully Mine Equipment includes, *inter alia*, 4 Letourneau L-1850 Wheel Loaders, a Komatsu PC5500-6E Front Shovel, a Komatsu PC5500 Front Shovel, a Komatsu WA600-6 Wheel Loader, Bucyrus Erie MD6640 49RH Crawler Blast Hole and Komatsu D375A-6 Crawler Tractor, and all the accessories, tires and rims attached thereto, as more particularly described in Schedule "B" to the Second RBA Asset Purchase Agreement.
22. Wabush Bloom Lake Mine Equipment includes, *inter alia*, 19 Ford F250 trucks, a Kenworth T800 Flatbed Truck with crane, a Sterling RS70100 Boom Truck, a Kenworth T370 Service truck and a Caterpillar 988F Wheel Loader, and all the accessories, tires and rims attached thereto, as more particularly described in Schedule "B" to the Second RBA Asset Purchase Agreement.
23. The Bloom Lake LP Equipment includes 7 Komatsu 930E haul trucks located at the Bloom Lake Mine (the "**930E Trucks**"), a Komatsu PC4000-6 Front Shovel, a Caterpillar MD6640 Blast Hole Rotary, a Caterpillar 7495 Electric Rope Shovel including 59 yd FastFill dipper with 192 inch spade lip, as well as a Bucket fitting the Caterpillar Bucket 7495 and related training simulator module, including all attachments thereto, and all the accessories, tires and rims attached thereto, as more particularly described in Schedule "B" to the Second RBA Asset Purchase Agreement (collectively and together with the Wabush Scully Mine Equipment and the Wabush Bloom Lake Mine Equipment, the "**Purchased Assets**").
24. The Purchaser has advised that it requires all of the Purchased Assets *en bloc* and is not agreeable to acquiring less than all of the Purchased Assets or only particular parts of the Purchased Assets, subject only to Casualty (as defined in the Second RBA Asset Purchase Agreement).

3.2 Excluded Assets From the Bloom Lake APA

25. As described in previous materials before this Court, pursuant to a master loan and security agreement between CQIM, Bloom Lake LP, Wabush Mines Joint Venture and Key Equipment Finance Inc., a financing arm of Key Bank ("**Key**"), Key advanced 10 loans to Bloom Lake LP and 4 loans to CQIM in the aggregate principal amount of up to USD \$164,829,438 to finance the acquisition of certain mining equipment including all of the Bloom Lake LP Equipment (the "**Key Bank Facility**"). The Key Bank Facility was guaranteed by Cliffs Natural Resources Inc. ("**CNR**").
26. All mining equipment financed by the Key Bank Facility was specifically excluded from the Bloom Lake APA.
27. Therefore, the Bloom Lake LP Equipment did not form part of the assets conveyed as part of the Bloom Lake Transaction.
28. The CCAA Parties understand that, following the receipt of the QIO Objection, the Monitor wrote a letter to QIO to inquire whether QIO would take a similar position with respect to any other assets excluded from the Bloom Lake Transaction. The Monitor received no response to such letter.

3.3 Discrepancies Between the Revised Proposal and the Schedule of Excluded Assets in the Bloom Lake APA

29. During their due diligence process, the Purchaser and the Petitioners identified several minor discrepancies in the serial numbers of the Wabush Bloom Lake Mine Equipment between the Revised Proposal (as defined below) of the Purchaser and the schedule of excluded assets in the Bloom Lake APA.
30. The equipment affected with discrepancies (collectively “**Discrepancy Equipment**”) is listed below:

Discrepancy Equipment	Serial Number from Revised Proposal	Serial Number on the list of assets excluded from the Bloom Lake Transaction
(i) 2011 Ford E350	1FDSS3ES9BDB34091	1FDSS3ES9BDB344091
(ii) 2012 Ford F250	1FT7WB6XCEA18670	1FT7W2B6XCEA18670
(iii) 2012 Ford F250	1FT7W2B61CEA04124	1FT7W2B61CEA044124

31. Despite the discrepancies listed above, the Petitioners submit that no Discrepancy Equipment was part of the Bloom Lake Transaction, because:
- a) There is no other Ford E350 owned by the Petitioners, so despite the minor discrepancy in the serial number, the Ford E350 listed as (i) above is excluded from the Bloom Lake Transaction;
 - b) There are no other Ford F250s with a serial number resembling that listed as (ii) above on the list of assets excluded from the Bloom Lake Transaction and the discrepancy is clearly a minor typographical error;
 - c) The serial number on the list of assets excluded from the Bloom Lake Transaction for the Ford F250 listed as (iii) above has too many digits and is incorrect and the discrepancy is clearly a minor typographical error; and

4. THE SISP

32. As outlined above, Mr. Justice Hamilton approved the Initial SISP in respect of the Bloom Lake CCAA Parties in April 2015, which was subsequently amended on June 9, 2015 to include the Wabush CCAA Parties.
33. The SISP contemplated two phases:
- a) the first phase of the SISP contemplated delivery of non-binding letters of intent (“**LOIs**”) by 5:00 p.m. (Montréal time) May 19, 2015; and
 - b) a subset of bidders with LOIs that met certain criteria would be invited to submit binding offers in the second phase by July 16, 2015 at 5:00 p.m. (Montréal time) (the “**Bid Deadline**”), written notice of which was provided to all such qualified bidders and posted on the Monitor’s Website.

34. No offers were received for the Purchased Assets by the Bid Deadline.
35. No going concern offers were received for the Scully Mine by such Bid Deadline.
36. The CCAA Parties, in consultation with the Monitor therefore endeavoured to negotiate definitive agreements for the liquidation of the equipment located at the Scully Mine.
37. On December 23, 2015, the Monitor was introduced to a party interested in the acquisition of the Scully Mine. That party executed a non-disclosure agreement and undertook a due diligence process.
38. On January 20, 2016, a letter of intent was submitted by the interested party and was considered by the Wabush CCAA Parties in consultation with the Monitor.
39. On May 19, 2016, the Monitor informed the Wabush CCAA Parties and the service list that the interested party decided to not proceed with the transaction for the acquisition of the Scully Mine and that the Wabush CCAA Parties and the Monitor recommenced its pursuit of the liquidation of the equipment located at the Scully Mine. Subsequently, additional discussions were had with the interested party; however, those discussions have since terminated and the Wabush CCAA Parties and the Monitor are once again pursuing the liquidation of the equipment located at the Scully Mine.
40. Both prior to and following approval of the Bloom Lake Transaction, Bloom Lake LP, among others, with the assistance of the Monitor, have marketed the assets that were not included in the Bloom Lake Transaction.
41. As set out above, the Purchased Assets were made available in the SISP and liquidation proposals had also been sought by the Monitor for the Purchased Assets in parallel to the SISP.
42. The Purchased Assets attracted very little interest during the SISP and liquidation process.
43. On August 18, 2016, the Monitor, in consultation with the CCAA Parties contacted several potential purchasers to solicit proposals for certain pieces of major mobile equipment located at the Scully Mine and the Bloom Lake Mine (the "**RFP**").
44. The Purchased Assets were among the assets listed in the RFP and proposals were to be received by September 16, 2016 (the "**RFP Deadline**").
45. On September 16, 2016, the Purchaser submitted a proposal for all assets included in the RFP, except for railcars (the "**Initial Proposal**"), complying with the RFP Deadline.
46. Following the receipt of the Initial Proposal, it was discovered that one of the assets listed in the RFP was not available for sale.
47. In light of this correction, on September 21, 2016, the Purchaser submitted a revised proposal for the Purchased Assets (the "**Revised Proposal**").
48. The Petitioners, in consultation with the Monitor, reviewed the Revised Proposal in light of the other proposals submitted and have determined, in consultation of the Monitor,

that the Revised Proposal is the highest and best proposal received for the assets subject to the RFP and subsequently entered into negotiations with the Purchaser, culminating in the Petitioners' execution of the Second RBA Purchase Agreement and the Petitioners' motion seeking the Court's approval of the Second RBA Purchase Agreement.

49. The Monitor was consulted on and approved the steps taken to solicit proposals for the Purchased Assets, and the Petitioners understand that the Monitor is satisfied that the efforts to sell the Purchased Assets are reasonable in the circumstances.

5. THE SECOND RBA ASSET PURCHASE AGREEMENT

5.1 The Purchaser

50. The Purchaser has advised that Ritchie Bros Auctioneers (Canada) Ltd. (together with its affiliates) is a global leader in asset management and disposition, and the world's largest industrial auctioneer. It helps customers buy and sell new and used equipment for use in several industries, notably construction, mining and oil & gas.

51. The Purchaser has also advised that it has sufficient internal resources, or has received sufficient non-contingent funding commitments, to consummate the Transaction immediately upon issuance by the Court of the Approval and Vesting Order.

5.2 Purchase Price

52. The Purchase Price, the Purchase Price allocation and the Deposit (as defined below) are redacted from the copy of the Second RBA Asset Purchase Agreement communicated herewith (Exhibit R-8).

53. The Second RBA Asset Purchase Agreement contemplates the sale of the Purchased Assets for a purchase price, which should remain confidential and is subject to certain adjustments in the event of material damage to the Purchased Assets ("**Purchase Price**").

54. The Purchased Assets are being sold on an "as is, where is" basis without legal warranty and at the risk of the Purchaser.

55. The redactions of the Purchase Price, the Purchase Price allocation and the Deposit mentioned at paragraph 52 above are necessary for commercial reasons, as the Purchaser is in the business of re-marketing and selling equipment to third party purchasers, intends to re-market the Purchased Assets and has indicated that the redactions are a necessary condition to it entering into the Second RBA Asset Purchase Agreement.

5.3 Conditions to Closing

56. The Closing of the Transaction contemplated by the Second RBA Asset Purchase Agreement is conditional on certain conditions, set forth in Section 9.1 and Section 9.2 thereof, including Court approval of the Second RBA Asset Purchase Agreement, as contemplated by the Draft Approval and Vesting Order sought herein.

57. In addition to Court approval of the Draft Approval and Vesting Order, the Petitioners and the Purchaser require, among other things, the following customary closing conditions to be satisfied on or before the Closing of the Transaction:
- a) both the Purchaser and the Petitioners will have executed and delivered (or caused to be executed and delivered) all closing documents required in connection with the Transaction;
 - b) during the interim period from execution of the Second RBA Asset Purchase Agreement until Closing, no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable Order or Law which has the effect of (i) making the proposed Transaction illegal, or (ii) otherwise prohibiting, preventing or restraining the consummation of the proposed Transaction;
 - c) both the Petitioners and the Purchaser shall have performed, in all material respects all covenants, obligations and agreements required of them, respectively; and
 - d) each of the representations and warranties made by the Petitioners and Purchaser contained in the Second RBA Asset Purchase Agreement shall be true and correct in all material respects (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.

5.4 Closing Mechanics

58. Pursuant to the Second RBA Asset Purchase Agreement, the Monitor has informed the Petitioners that a deposit representing (10%) of the Purchase Price was paid by the Purchaser to the Monitor in trust on behalf of the Petitioners on October 12, 2016 (the "**Deposit**").
59. Pursuant to the Second RBA Asset Purchase Agreement, the Deposit will be applied against the Purchase Price upon Closing.
60. The Second RBA Asset Purchase Agreement also provides that payment of the balance of the Purchase Price and applicable Transfer Taxes which are payable upon Closing, shall be paid in full by the Purchaser to the Monitor at Closing.
61. Upon receipt of payment in full of the Purchase Price and applicable Transfer Taxes on Closing, as well as receipt by the Monitor of the Conditions Certificates contemplated in Section 9.3 of the Second RBA Asset Purchase Agreement, the Monitor shall issue its Monitor's Certificate forthwith concurrently to the Petitioners and Purchaser, at which time Closing shall be deemed to have occurred. The Monitor shall then file, as soon as practicable, a copy of the Monitor's Certificate with the Court (and shall thereafter provide a true copy of such filed certificate to the Petitioners and the Purchaser).
62. The Draft Approval and Vesting Order, among other things:
- a) directs the Monitor to remit the Transfer Taxes received by it (if any are payable) from the Purchaser to the applicable taxing authorities in accordance with Applicable Law on behalf of and as directed by the Petitioners; and

- b) directs the Monitor to receive and hold the Purchase Price in accordance with the provisions set forth therein pending further order of the Court, subject to the remittance of Transfer Taxes (if any are payable), and the remittance of any amounts to the Receiver General for Canada and the Ministère du Revenu (Québec) in accordance with sections 3.4 and 3.5 therein.
63. The Transaction is targeted to close by the date which is 3 Business Days following issuance by the Court of the Approval and Vesting Order, and must close no later than 5 Business Days after the date of the issuance by the Court of the Approval and Vesting Order, in each case subject to such extensions as may be mutually agreed upon by the Petitioners and the Purchaser.
64. Pursuant to the Second RBA Asset Purchase Agreement, the Approval and Vesting Order must be obtained by no later than November 15, 2016.
65. The Purchased Assets will be delivered *in situ* to the Purchaser at the Bloom Lake Mine and the Scully Mine.
66. On Closing, the Purchaser will obtain access to the Purchased Assets located at the Bloom Lake Mine pursuant to Article 5 of the Second RBA Asset Purchase Agreement and the terms of the Access Agreement and will obtain access to the Purchased Assets located at the Scully Mine pursuant to and in accordance with Article 6 of the Second RBA Asset Purchase Agreement.
67. The Purchaser will remove and transport the Purchased Assets located at the area of the Scully Mine that is the subject of the sublease of MFC Industrial Ltd. (the "**Subleased Area**") by January 15, 2017, in accordance with Section 6.2 of the Second RBA Asset Purchase Agreement.
68. The Purchaser will remove and transport the Purchased Assets located at the Scully Mine outside the Subleased Area within 12 months of the Closing Date, pursuant to and in accordance with Section 6.2 of the Second RBA Asset Purchase Agreement.
69. The Purchaser will remove and transport the Purchased Assets located at the Bloom Lake Mine by April 11, 2018, pursuant to and in accordance with Section 5.1 of the Second RBA Asset Purchase Agreement as well as the Access Agreement, it being understood that the Purchaser is free to enter into other access arrangements with QIO.

5.5 Overall Assessment

70. The Petitioners are satisfied that, based on other proposals received during the marketing process in the CCAA Proceedings, the Purchase Price for the sale of the Purchased Assets is reasonable and fair in the circumstances.
71. The Petitioners are satisfied that the conditions to closing and the closing mechanics should lead to the closing of the proposed Transaction on an expedited basis should this Court approve this Motion and that the closing risks are minimal.
72. Furthermore, the following notable aspects of the Second RBA Asset Purchase Agreement support the approval by the Court of the Second RBA Asset Purchase Agreement and of the Transaction contemplated therein:

- a) if the Transaction is terminated by the Petitioners due to a material breach by the Purchaser of any representation, warranty or covenant contained in the Second RBA Asset Purchase Agreement, which breach has not been waived by the Petitioners, and (i) such breach is not curable and has rendered the satisfaction of any condition in section 9.2 of the Second RBA Asset Purchase Agreement impossible to satisfy by the Outside Date; or (ii) if such breach is curable, the Petitioners have provided written notice of such breach to the Purchaser and such breach has not been cured within 10 days of receipt of such notice, then the Monitor will retain the Deposit for the benefit of the Petitioners;
 - b) if the Transaction is terminated for any other reason, the Deposit is returned to the Purchaser; however, the return of the Deposit will be the Purchaser's sole and exclusive remedy for any termination of the Second RBA Asset Purchase Agreement;
 - c) the Purchased Assets are being sold on an "as is, where is" basis, without legal warranty;
 - d) the Purchaser is entirely responsible for removing the Purchased Assets from the Bloom Lake Mine by April 11, 2018, pursuant to Section 5.1 of the Second RBA Asset Purchase Agreement and the terms of the Access Agreement, for transporting the Purchased Assets offsite and supplying all equipment, personnel and materials required to carry out the foregoing, all at the Purchaser's own risk and peril and at the Purchaser's sole cost and expense, without liability of any kind or nature in respect thereof to the Petitioners;
 - e) the Purchaser is entirely responsible for removing the Purchased Assets from the Subleased Area by January 15, 2017 and from the Scully Mine site outside of the Subleased Area within 12 months of the Closing Date, pursuant to and in accordance with Article 6 of the Second RBA Asset Purchase Agreement, for transporting the Purchased Assets off the Subleased Area and from the Scully Mine site and supplying all equipment, personnel and materials required to carry out the foregoing, all at the Purchaser's own risk and peril and at the Purchaser's sole cost and expense, without liability of any kind or nature in respect thereof to the Petitioners; and
 - f) the Purchaser has also indemnified the Petitioners, the Petitioners' Affiliates and their respective Representatives for any Damages in connection with or related in any manner whatsoever to (i) the payment of any Taxes (including Transfer Taxes) which may be assessed against the Petitioners, and (ii) the Purchaser's access to Bloom Lake Mine and to the Scully Mine, including for the removal and transportation or any use or resale of the Purchased Assets by the Purchaser.
73. The Petitioners are satisfied that the criteria set out in section 36 of the CCAA have been met and understand that the Monitor supports the Transaction and will file a report in respect thereof.

6. PROCEDURAL MATTERS

74. The CCAA Parties submit that the notices given of the presentation of the present Motion are proper and sufficient.

75. Pursuant to paragraph 54 of the Bloom Lake Initial Order and to paragraph 56 of the Wabush Initial Order, all motions in these CCAA Proceedings are to be brought on not less than ten (10) calendar days' notice to all Persons on the service list. Each motion must specify a date (the "**Initial Return Date**") and time for the hearing.
76. The service of the present Motion serves as notice pursuant to paragraph 54 of the Bloom Lake Initial Order and to paragraphs 47 and 56 of the Wabush Initial Order.
77. Paragraph 55 of the Bloom Lake Initial Order and paragraph 57 of the Wabush Initial Order require that any Person wishing to object to the relief sought on a motion in the CCAA Proceedings must serve responding motion materials or a notice stating the objection to the motion and grounds for such objection (a "**Notice of Objection**") in writing to the moving party and the Monitor, with a copy to all persons on the service list, no later than 5 p.m. Montréal time on the date that is four (4) calendar days prior to the Initial Return Date (the "**Objection Deadline**"). Accordingly, any parties wishing to object to the relief sought on this Motion must serve responding motion materials or a Notice of Objection by no later than 5 p.m. Montréal time on October 24, 2016.
78. Paragraph 56 of the Bloom Lake Initial Order and paragraph 58 of the Wabush Initial Order further provide that if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of the motion may determine whether a hearing is necessary, whether such hearing will be in person, by telephone or in writing and the parties from whom submissions are required (collectively, the "**Hearing Details**").
79. Paragraph 57 of the Bloom Lake Initial Order and paragraph 59 of the Wabush Initial Order provide that the Monitor shall communicate with the Judge and the service list with respect to the Hearing Details.

7. CONCLUSIONS

80. In light of the foregoing, the Petitioners hereby respectfully seek the issuance of an Order substantially in the form of the Draft Approval and Vesting Order (Exhibit R-7), which provides for the Court's approval of the Second RBA Asset Purchase Agreement and of the Transaction contemplated therein.
81. The Petitioners further submit that the notices given of the presentation of the present Motion are proper and sufficient because:
 - a) other than CNR as assignee of certain equipment financing facilities provided by Key Equipment Financing Inc., Cliffs Mining Company ("**CMC**"), and the charges created by the Orders issued in these Proceedings, and the liens and deemed trusts claims asserted in the claim process established by the CCAA Parties in these CCAA Proceedings against the assets of Wabush Iron and Wabush Resources, among others, in respect of the estimated windup deficits, including outstanding amortization payments, under the Contribution Pension Plan for Salaried Employees and Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway and Wabush Lake Railway Company, the Petitioners are not aware of any third parties having asserted a lien or charge over the Purchased Assets; and

- b) Other than CNR and CMC, searches conducted at the following registries against the Petitioners did not disclose any third parties having registered a security interest over the Petitioners' interest in the Purchased Assets:
 - i) RPMRR (Québec) search results summary on the Petitioners' movable property, communicated herewith as **Exhibit R-9**; and
 - ii) Personal Property Registry of Newfoundland and Labrador search results on the Petitioners' movable property, communicated herewith as **Exhibit R-10**.

82. The present Motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Motion;

ISSUE an order substantially in the form of the Draft Approval and Vesting Order (Exhibit R-7) communicated in support hereof;

WITHOUT COSTS, save and except in case of contestation.

Montréal, October 17, 2016


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Petitioners

AFFIDAVIT

I, the undersigned, **CLIFFORD T. SMITH**, the President of Wabush Resources Inc., the President and a director of Wabush Iron Co. Limited, and the Executive Vice-President and a director of Bloom Lake General Partner Limited having a place of business at 1 Place Ville Marie, Bureau 3000, Montréal, Québec, H3B 4N8, solemnly affirm that all the facts alleged in the present *Motion for the Issuance of an Approval and Vesting Order with respect to the Sale of Certain Assets* are true.

AND I HAVE SIGNED:



CLIFFORD T. SMITH

SOLEMNLY DECLARED before me at
Cleveland, Ohio, on this
20th day of October, 2016



Notary Public



ADAM D. MUNSON, Atty.
NOTARY PUBLIC
STATE OF OHIO
My Commission Has No
Expiration Date
Section 147.03 R.C.

NOTICE OF PRESENTATION

TO: Service List

AND: Ritchie Bros Auctioneers (Canada) Ltd.
c/o Ryan Welsh
Associate Counsel
9500 Glenlyon Parkway
Burnaby, BC V5J 0C6

rwelsh@rbauction.com

TAKE NOTICE that the present *Motion for the Issuance of an Approval and Vesting Order with respect to the Sale of Certain Assets* 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 **October 28, 2016**, at 2:00 p.m. in a room to be determined.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, October 17, 2016


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Petitioners

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF **MONTREAL**

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

N°: **500-11-048114-157**

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

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

WABUSH RESOURCES INC.

WABUSH IRON CO. LIMITED

Petitioners

-and-

RITCHIE BROS AUCTIONEERS (CANADA) LTD.

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

LIST OF EXHIBITS

(In support of the *Motion for the Issuance of an Approval Order
with respect to the Sale of Certain Assets*)

- R-1** Initial Order, dated January 27, 2015
- R-2** SISP Order dated, April 17, 2015
- R-3** Wabush Initial Order, dated May 20, 2015
- R-4** SISP
- R-5** Wabush Comeback Order, dated June 9, 2015
- R-6** Bloom Lake APA

- R-7 Draft Approval and Vesting Order
- R-8 Redacted copy of the Second RBA Asset Purchase Agreement
- R-9 RPMRR (Québec) search results
- R-10 Personal Property Registry of Newfoundland and Labrador search results summary

The exhibits are available at the following link:

<https://blakes.sharefile.com/d-sc774fababb2408c9>

Montréal, October 17, 2016


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Petitioners

N°: 500-11-048114-157

**SUPERIOR COURT
DISTRICT OF MONTREAL**
(Commercial Division)

**IN THE MATTER OF THE PLAN OF COMPROMISE
OR ARRANGEMENT OF:
THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP & AL**

Petitioners

and-

RITCHIE BROS AUCTIONEERS (CANADA) LTD.

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**MOTION FOR THE ISSUANCE OF AN APPROVAL
AND VESTING ORDER WITH RESPECT TO THE
SALE OF CERTAIN ASSETS, AFFIDAVIT,
NOTICE OF PRESENTATION AND
EXHIBITS R-1 TO R-10**
(Sections 11 and 36 ff. CCAA)

ORIGINAL

M^{tr} Bernard Boucher

BB-8098

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