

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL**

No: 500-11-048114-157

**SUPERIOR COURT
(Commercial Division)**

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

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

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

Petitioners

-and-

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

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

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

PETITIONERS-Mises-en-cause

-and-

**UNITED STEELWORKERS, LOCAL 6254,
UNITED STEELWORKERS, LOCAL 6285**

Mises-en-cause

-and-

MORNEAU SHEPELL
Mise-en-cause

**MOTION FOR AN ORDER FOR LEGAL COSTS OF SALARIED/NON-UNION
EMPLOYEES AND RETIREES**

(Sections 11 and 11.52 of the *Companies' Creditors Arrangement Act*)

TO THE HONOURABLE MR. JUSTICE MICHEL A. PINSONNAULT, J.S.C., OR TO ONE OF THE HONOURABLE JUDGES SITTING IN THE COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONERS-MISES-EN-CAUSE RESPECTFULLY SUBMIT THE FOLLOWING:

INTRODUCTION

1. Pursuant to the Order of the Honourable Stephen W. Hamilton J.S.C. (as he was then) dated June 22, 2015, as revised by the Order issued on December 21, 2017, (the “**Representation Order**”), Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson are the Court-appointed representatives (the “**Representatives**”) of all Salaried/Non-union employees and retirees of the Wabush CCAA Parties (as defined below) (the “**Salaried Members**”) in the CCAA proceedings of the Wabush CCAA Parties (the “**CCAA Proceedings**”) and the firms of Koskie Minsky LLP (“**KM**”) of Toronto, and Fishman Flanz Meland Paquin LLP (“**FFMP**”) of Montreal are the Representative Counsel of all of the Salaried Members.
2. The Representatives and Representative Counsel are responsible for the representation of approximately 690 Salaried Members in these CCAA proceedings.

BACKGROUND

3. Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company, and Wabush Lake Railway Company Limited (collectively, the “**Wabush CCAA Parties**”) had operated an open-pit iron ore mine in northern Labrador and a processing and shipping facilities in Sept-Iles, Quebec.
4. On May 20, 2015, the Wabush CCAA Parties obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (“**CCAA**”). FTI Consulting Canada Inc. was appointed as the Monitor. The CCAA Initial Order includes, among other things, a stay of all proceedings that had been previously brought or could be brought against the Wabush CCAA Parties.
5. While under CCAA protection, Wabush Mines shut down all mining operations and began a sales process of all of its assets under CCAA protection.

6. As part of their compensation as employees of the Wabush CCAA Parties, the Salaried Members earned post-retirement benefits which the Wabush CCAA Parties were contractually obligated to pay to them in their retirement years, including:
 - (a) a monthly pension benefit paid on retirement from the Contributory Defined Benefit Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (Nfld & Lab. Reg. No. 0021314, CRA Reg. No. 0343558) (the “**Salaried Pension Plan**”);
 - (b) retiree health benefits and life insurance; and,
 - (c) an additional supplemental pension benefit for certain senior managers paid directly by the company (collectively, with the health and life insurance benefits referred to in (b) above, the "other post-employment benefits" or "**OPEBs**").
7. The Wabush CCAA Parties terminated the Salaried Members OPEBs entirely, immediately after obtaining CCAA protection. The loss to the Salaried Members was in the amount of approximately \$469,355,000.
8. The Salaried Pension Plan was underfunded, meaning that there were not enough assets in the plan to pay full pension benefits, by an amount of approximately \$27,450,000. This precipitated the Newfoundland Superintendent of Pensions (the "**Superintendent**") to order its wind up while the company was under CCAA protection, as well as a 25% reduction to the monthly pension benefits being paid to retirees.
9. The Salaried Members thus became major creditors of the Wabush CCAA Parties.
10. The vast majority of the Salaried Members are retired and elderly individuals. They are not commercial creditors, and do not have union representation. Prior to the appointment of Representative Counsel, they constituted one of the most vulnerable creditor groups in these CCAA proceedings without means to represent themselves in complex and, often adversarial, insolvency proceedings where they had been significantly prejudiced.

Background to Legal Costs Orders for the Salaried Members

11. On June 22, 2015, four Salaried Members and Representative Counsel were appointed on behalf of the Salaried Members by Mr. Justice Hamilton.
12. Representative Counsel has provided important representation and assistance to the Salaried Members throughout the CCAA proceedings, including valuing and resolving claims for amounts owing to the Salaried Members for their OPEB and pension losses.
13. Representative Counsel also functions as a single point of representation and contact for the 690 Salaried Members, thus streamlining the CCAA process and generating costs savings.

14. In addition to settling the claims for the terminated OPEBs and pension losses, Representative Counsel was successful in resolving two major issues on behalf of the Salaried Members:
 - (a) advancing a claim for priority for the deficit in the underfunded Salaried Pension Plan which was ultimately settled and resulted in an improvement to the funded status of the Salaried Pension Plan above that of the deficit being treated as an unsecured claim; and
 - (b) outside the CCAA proceeding, filing a class action on behalf of the same class of Salaried Members before the Newfoundland Superior Court against the non-CCAA filed parent companies of the Wabush CCAA Parties, seeking compensation for the losses suffered by the Salaried Members in respect of their pension losses and the terminated OPEBs. The class action was also ultimately settled on favourable terms for the Salaried Members¹

(together the "**Pension Settlement**").

15. As part of the Representation Order of Mr. Justice Hamilton dated June 22, 2015, the legal costs of the Representatives incurred from the inception of the CCAA proceedings were ordered to be paid by the Wabush CCAA Parties. Further cost orders were issued throughout the CCAA proceedings as the work required to represent the Salaried Members continued.
16. The motions for cost orders proceeded unopposed, following often extensive negotiations with the Monitor and Wabush CCAA Parties.
17. In certain cases, the amount of the "fee cap" in the previous cost order was exceeded due to the work required in the period of the order, which in turn required another cost order to be sought for those "excess" incurred costs to be paid, as well as future anticipated costs. The chronology of costs orders is summarized below:
 - (a) On October 28, 2016, by further Order of Mr. Justice Hamilton, the legal costs of the Representatives incurred prior to October 1, 2016 that were incurred in excess of the amount ordered in the June 22, 2015 Representation Order, and the Representatives' legal costs for the period from October 1, 2016 until January 31, 2017, were directed to be paid by the Wabush CCAA Parties.
 - (b) On May 31, 2017, by further Order of Mr. Justice Hamilton, the excess legal costs of the Representatives prior to February 1, 2017 and the Representatives' legal costs for the period from February 1, 2017 until June 30, 2017 were directed to be paid by the Wabush CCAA Parties.

¹ The USW commenced a similar class action on behalf of its members, which was also settled.

- (c) On June 28, 2017, by further Order of Mr. Justice Hamilton, the Representatives' legal costs for the period from July 1, 2017 until November 30, 2017 were directed to be paid by the Wabush CCAA Parties.
- (d) On December 21, 2017, by further Order of Mr. Justice Hamilton, the firm FFMP was appointed as Québec Representative Counsel and the legal costs of FFMP for the months of October and November, 2017 and the Representatives' legal costs for the period from December 1, 2017 until March 31, 2018 were directed to be paid by the Wabush CCAA Parties.
- (e) On April 16, 2018, by further Order of Mr. Justice Hamilton, the legal costs of the Representatives for the period of April 1, 2018 to June 29, 2018 were directed to be paid by the Wabush CCAA Parties.
- (f) On June 29, 2018, the same day that Mr. Justice Hamilton approved the CCAA Plan (as defined below), he also ordered that the excess legal costs of the Representatives for the period April 1, 2018 to June 29, 2018 were to be paid by the Wabush CCAA Parties and established an aggregate cap of \$100,000 for the period from June 30, 2018, until the discharge of Representative Counsel or termination of the CCAA proceedings.
- (g) On September 23, 2019, Mr. Justice Pinsonnault ordered that the Wabush CCAA Parties pay the excess legal costs of the Representatives for the period June 30, 2018 to August 31, 2019 and established an aggregate fee cap of \$75,000 for the period from September 1, 2019 to the earlier of the discharge of Representative Counsel or the termination of the CCAA proceedings (the "**Eighth Order for Legal Costs**").

Implementation of the CCAA Plan

- 18. On June 29, 2018, after extensive negotiations with creditors, including the Salaried Members, an Amended and Restated Joint Plan of Compromise and Arrangement was reached between the Wabush CCAA Parties and their creditors, which was approved by the Court (the "**CCAA Plan**").
- 19. Following the approval of the CCAA Plan, Representative Counsel's work included the following:
 - (a) advising the Representatives regarding the September 2019 interim distribution paid to creditors, including to the Salaried Members with respect to their claims for terminated OPEBs, and responding to questions from Salaried Members regarding their distributions, individual claim amounts and income tax withholdings;
 - (b) advising the Representatives with respect to the distribution to the Salaried Pension Plan, as a result of the Pension Settlement reached in May 2018, and the corresponding decrease to the reduction in monthly pension benefits;

- (c) providing submissions to the Monitor with respect to the tax treatment of certain distribution amounts;
- (d) advising Salaried Members with respect to tax slips sent to the Salaried Members, which reported the distributions for some Salaried Members as taxable income when they were not taxable, and had had no tax withholdings applied at the time of the distribution;
- (e) providing CCAA claim information to Salaried Members to assist with disputing repayment notices from Employment and Social Development Canada ("ESDC"), for Employment Insurance ("EI") that were precipitated by the distribution payments; and
- (f) advising the Salaried Members with respect to the annuity purchase process for pension plan wind-up.

ACTIVITIES OF REPRESENTATIVE COUNSEL DURING THE PERIOD FROM SEPTEMBER 1, 2019 TO MAY 31, 2022

- 20. At the time the fee cap in the September 23, 2019 court Order was determined, it was largely based on the expectation of Representative Counsel that the CCAA proceedings would be substantially completed by around February 28, 2020, as the Wabush CCAA Parties had indicated at paragraphs 58 and 59 of their Motion for the Issuance of an Order Extending the Stay Period dated May 9, 2019. Consequently, the working assumption was that the work required of Representative Counsel to continue to represent and advise the retirees until the termination of the CCAA proceedings would be reducing in that timeframe.
- 21. Since then, however, the CCAA proceedings have continued and there have been Court motions, reports of the Monitor and Court attendances that deal with issues that affect the retirees and their recoveries and in respect of which they request and require advice and representation as they remain creditors still owed amounts in respect of their claims for pension and OPEB losses.
- 22. Representative Counsel's recent work that was largely captured under the fee cap in the Eighth Order for Legal Costs has included attending, advising, and informing the Salaried Members with respect to significant developments not anticipated at the time of the issuance of the said order but that impact the retirees' claims and recoveries, including:
 - (a) the hearing of the Wabush CCAA Parties' Motion for Expansion of the Monitors' Powers, and the motion for leave to appeal by Churchill Falls (Labrador) Corporation Limited ("CFLCo") of the judgment rendered by the Court on such matter on July 14, 2021;
 - (b) the hearing of preliminary matters concerning the Wabush CCAA Parties' Motion for the Winding Up and Dissolution of Twin Falls Power Corporation ("Twin

Falls”), more particularly the contestation by Twin Falls and CFLCo of the jurisdiction of this Court to hear such matter, and the motion for leave to appeal by CFLCo of the judgment rendered by the Court on the said jurisdictional issue on August 12, 2021;

- (c) the hearing of the Monitor's Motion for Directions with respect to set-off and damage payment input tax credits claimed by the Wabush CCAA Parties in respect of payments made to certain creditors in the first interim distribution pursuant to the CCAA Plan (the “**Set-Off Decision**”), and the motion for leave to appeal by Revenue Québec of the Set-Off Decision (leave was granted by Mr. Justice Peter Kalichman, J.A., on December 17, 2021);
 - (d) the hearing of the CCAA Parties’ Motion for Issuance of an Approval and Vesting Order with respect to the Sale of Shares of Twin Falls, further to the settlement concluded in this regard with CFLCo and Twin Falls; and
 - (e) case management conferences with respect to the foregoing motions.
23. In addition, following the second interim distribution pursuant to the CCAA Plan on May 17, 2021, Representative Counsel has dealt with a number of issues, including responding to questions from Salaried Members regarding their distributions, individual claim amounts and income tax withholdings.
24. Further, numerous distribution cheques remained uncashed following the second interim distribution, due to various issues including relocation or death of Salaried Members. Representative Counsel's activities have also included coordinating with the Monitor and the Representatives to ensure delivery of distribution cheques, where possible.
25. Representative Counsel also continues to respond to inquiries from Salaried Members regarding the second interim distribution, and anticipates there will be further inquiries in respect of the final distribution under the CCAA Plan.
26. Representative Counsel submitted its invoices to the Monitor from time to time following the September 23, 2019 Order, which were paid up until the aggregate cap was reached.
27. Representative Counsel continued their work after the fee cap was reached and submitted its invoices to the Monitor from time to time.
28. The fees of Representative Counsel incurred for the period September 1, 2019 to May 31, 2022, is in the aggregate amount of \$52,110.00 in respect of FFMP and \$60,050.00 in respect of KM (plus disbursements and taxes), which amounts include a portion of fees that were incurred that exceed the fee cap, respectively, of \$17,497.50 for FFMP and of \$22,060.00 for KM, and in respect of which the Monitor was made aware.
29. Consequently, Representative Counsel brings this motion for an Order from this Honourable Court directing the payment by the Wabush CCAA Parties of the excess fees of Representative Counsel incurred for the period September 1, 2019 to May 31, 2022, in

the aggregate amount of \$17,497.50 in respect of FFMP and \$22,060.00 in respect of KM (plus disbursements and taxes).

30. The amounts sought in this order for Salaried Members representation and advice described herein have no material impact on the next distribution to creditors.

PROJECTED ACTIVITIES OF REPRESENTATIVE COUNSEL AFTER MAY 31, 2022

31. The future work of Representative Counsel is expected to be limited. Representative Counsel anticipates that it will continue to interact with the Monitor for any additional issues that may arise related to the remaining distribution or distributions, respond to questions to assist the Salaried Members and address any remaining matters in the CCAA proceedings that are relevant to the interests of the Salaried Members, including most notably, the litigation and/or resolution of the appeal of the Set-Off Decision by Revenue Québec before the Québec Court of Appeal, and making oral submissions in such proceedings on behalf of the Salaried Members. The hearing of the appeal of the Set-Off Decision by the Court of Appeal has been scheduled for the week of September 12, 2022.
32. The next and presumably final distribution will not occur until the realization or collection of all material assets of the Wabush CCAA Parties including the input tax credits. As such, the Salaried Members have an obvious interest in closely following the development and progress of these matters, interacting with the Monitor and making submissions to the Court as necessary to support distributions in respect of their claims.
33. It is respectfully submitted that the fee cap for work performed by Representative Counsel in the period June 1, 2022, to the earlier of the discharge of Representative Counsel or the termination of the CCAA proceedings should be \$75,000 (plus disbursements and taxes). This amount is a cap; if less work is involved, then the full amount of the cap would not be utilized.
34. The present Motion is well founded in fact and in law.

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

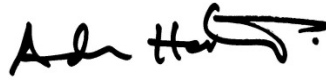
GRANT the present Motion;

ISSUE an Order in the form of the Draft Order communicated herewith as **Exhibit R -1**;

DECLARE that service and notice of this Motion was good and sufficient;

THE WHOLE without costs, save and except in case of contestation.

Toronto and Montreal, June 7, 2022



KOSKIE MINSKY LLP
Andrew J. Hatnay and Sydney Edmonds



FISHMAN FLANZ MELAND PAQUIN LLP
Mark E. Meland and Nicolas Brochu

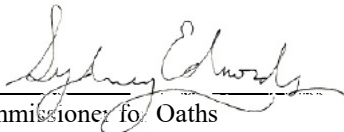
Representative Counsel for the Petitioners-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, the Representatives of the Salaried Members.

AFFIDAVIT

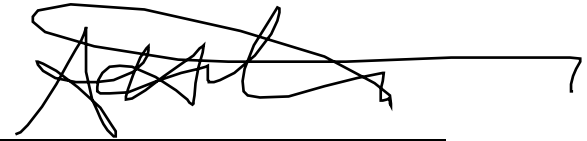
I, the undersigned Andrew Hatnay, carrying on practice at 20 Queen Street West, Suite 900, Toronto, ON M5H 3R3, hereby solemnly declare and make oath and say the following:

1. I am a partner with the firm of Koskie Minsky LLP, the Court-appointed Representative Counsel to all the Salaried Members of the Wabush CCAA Parties;
2. All of the facts alleged in the present *Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees* are true.

SWORN BEFORE ME at Toronto,
in the Province of Ontario,
on June 8, 2022


A Commissioner for Oaths

LSO #: 79946K


ANDREW J. HATNAY

NOTICE OF PRESENTATION

Petitioners-Mise-en-causes' Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees

TO: Me Bernard Boucher (bernard.boucher@blakes.com)
Me Sébastien Guy (sebastien.guy@blakes.com)
BLAKE, CASSELS & GRAYDON LLP
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Counsel for the Petitioners and the Mises-en-cause (i.e., Wabush CCAA Parties)

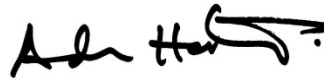
AND TO: Me Sylvain Rigaud (srigaud@woods.qc.ca)
WOODS LLP
2000, McGill College, Suite #1700
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Counsel for the Monitor

AND TO: SERVICE LIST

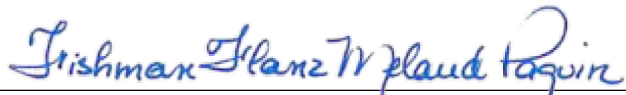
TAKE NOTICE that the present *Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees* will be presented for adjudication before The Honourable Mr. Justice Michael A. Pinsonnault, J.S.C., or another of the Honourable Justices of the Superior Court, Commercial Division, sitting in and for the district of Montreal, at the Montreal Courthouse located at 1 Notre-Dame Street East, Montreal, Québec, on a date to be determined.

GOVERN YOURSELVES ACCORDINGLY.

Toronto and Montreal, June 8, 2022



KOSKIE MINSKY LLP
Andrew J. Hatnay and Sydney Edmonds



FISHMAN FLANZ MELAND PAQUIN LLP
Mark E. Meland and Nicolas Brochu

Representative Counsel for the Petitioners-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, the Representatives of the Salaried Members

No.: 500-11-048114-157

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

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

BLOOM LAKE GENERAL PARTNER LIMITED & AL.

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP &
AL.**

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

**MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL and NEIL
JOHNSON (as Representatives of the Salaried/Non-Union Employees and
Retirees)**

PETITIONERS-Mises-en-cause

**MOTION FOR AN ORDER FOR LEGAL COSTS OF SALARIED/NON-
UNION EMPLOYEES AND RETIREES, AFFIDAVIT, NOTICE OF
PRESENTATION AND EXHIBIT R-1
(Sections 11 and 11.52 of the *Companies' Creditors Arrangement Act*)**

ORIGINAL

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