

**C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

**S U P E R I O R C O U R T
C O M M E R C I A L D I V I S I O N**

(SITTING AS A COURT DESIGNATED PURSUANT TO THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED)

NO: 500-11-048114-157

**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

**QUEBEC NORTH SHORE AND LABRADOR
RAILWAY COMPANY INC.**

Objecting Party

**NOTICE OF OBJECTION OF QUEBEC NORTH SHORE
AND LABRADOR RAILWAY COMPANY INC.
TO THE MOTION FOR THE ISSUANCE OF A CLAIMS PROCEDURE ORDER**

RELATED TO 207 OF THE PLUMITIF

TO THE HONOURABLE JUSTICE STEPHEN W. HAMILTON, J.S.C. OR ONE OF THE OTHER HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTREAL, THE OBJECTING PARTY, QNS&L RAILWAY, RESPECTFULLY SUBMITS THE FOLLOWING¹:

1. For the reasons outlined below and to be more fully developed at the hearing, Quebec North Shore and Labrador Railway Company Inc. (“**QNS&L**”) hereby objects to the Motion for the Issuance of a Claims Procedure Order dated October 23, 2015 (the “**CPO Motion**”).
2. QNS&L is a railway company which provided, *inter alia*, transportation services to one or more of the Bloom Lake CCAA Parties in respect of commodity produced from the Bloom Lake Mine and to one or more of the Wabush CCAA Parties in respect of commodity produced from the Wabush Mine pursuant to confidential transportation agreements which were resiliated pursuant to Section 32 of the CCAA.
3. QNS&L is a significant unrelated creditor of multiple CCAA Parties which likely holds the largest aggregate Claim in this CCAA matter.
4. The CPO Motion advanced by the Petitioners proposes a draft Claims Procedure Order (the “**Proposed CPO**”) which is materially different from the standard claims procedure order prepared by the Bar of Montreal Liaison Committee with the Superior Court, Commercial Division, as more fully appears from Exhibit R-10, which is a backline comparison between the Proposed CPO and the standard form.
5. QNS&L respectfully objects to certain features and stipulations of the Proposed CPO, which are unnecessary, prejudicial, unfair or otherwise inappropriate. Due to the limited time from available to QNS&L to make this objection, QNS&L has summarized below the principal elements of the Proposed CPO to which it objects:
 - a. Section 4.11 purports to define “Claim”, but in fact it also includes a final sentence (starting with “For greater certainty”) which goes well beyond a definitional function and purports to have the Court pre-decide a substantive question related to the existence of a “Claim” for interest and penalties accrued after the applicable Determination Date. QNS&L respectfully submits that this question should not be pre-determined or otherwise addressed in the Proposed CPO and should be addressed only if the issue arises after the filing of Proofs of Claim, and after the concerned Creditor has been given the opportunity to make submissions on the matter.
 - b. There is no deadline in section 35 for the Monitor to accept, revise or disallow a Claim. While this is it certainly understandable in cases where a high volume of Claims is expected, this matter does not appear to be one of them. Instead, it appears from the initial creditors list that a manageable number of claims can be expected. The lack of a deadline is particularly problematic with the definition of “Allowed Claim” at section 4.1(a), which stipulates in relevant part that a Claim will be finally determined *when* the Monitor has *not* sent out a Notice of Revision.

¹ Capitalized terms shall have the meaning given to them in the Motion for the Issuance of a Claims Procedure Order or the draft Claims Procedure Order attached as Exhibit R-9 thereto, unless otherwise defined herein.

It is not unreasonable to provide some certainty to Creditors by requiring that the Monitor have a reasonable deadline within which to make a decision on a Claim.

- c. Section 35 requires the Monitor to deliver a Notice of Revision or Disallowance to a Creditor whose Proof of Claim is challenged by the Monitor. As drafted, the Monitor must advise whether, and to what extent, the Claim set out in the Proof of Claim is revised or disallowed, and the reasons therefor. However, the Monitor is not required to provide the Creditor with any supporting documentation relied upon by the Monitor to disallow or revise a Claim. This contrasts with the requirements applicable to the Creditor who disputes a Notice of Revision or Disallowance, who appears to be required by the Proposed CPO to also provide its supporting documentation. If there is documentation available to the Monitor to support the revision or disallowance of a Claim, such documentation should be provided to the Creditor at the time of delivery of the Notice of Revision or Disallowance.
- d. Section 46 empowers the Monitor, in consultation with the CCAA Parties or with D&O Counsel, as applicable, to appoint an unlimited number of Claims Officers whose services will be paid for by the CCAA Parties. There are no guidelines governing the qualifications or appointment of Claims Officers or pools of potential candidates identified in the Proposed CPO, nor is there any process for a Creditor to have any input in, or make any objection to, the Claims Officer appointed by the Monitor. Given the important adjudicative role played by a Claims Officer, and the fact that the Monitor is also a party in this process, a greater degree of independence, transparency and fairness is required in the appointment of the Claims Officer.
- e. Section 48 empowers the Monitor to schedule a hearing before a Claims Officer. There is no requirement for consultation with the Creditor, who will be called to this hearing. Moreover, it is inappropriate and unfair that a party in the decision-making process be granted the authority to give notice of hearing, which is a basic requirement of natural justice. The notice of hearing should be given by the Claims Officer, not by the Monitor.
- f. Section 49 authorizes the Claims Officer to determine all procedural and evidentiary matters, but provides no guidelines therefor. Creditors are therefore presently unaware of the procedural and evidentiary rules which will govern the determination of their Claims before the Claims Officer. QNS&L respectfully submits that these rules should either be established or a safeguard be included in section 49, such as the following language which could be inserted at the end of section 49: "it being understood that in all such determinations the Claims Officer shall ensure that the Creditor shall have been given a meaningful opportunity to present its case and the rules of natural justice and procedural fairness shall be respected."
- g. There are no special provisions in the Proposed CPO for the treatment of related party Claims, in circumstances where it appears that there will be in the present matter significant related-party Claims. As such, such Claims will be treated by the Monitor like all other Claims, that is in consultation with counsel for the CCAA Parties. Although the Monitor is an officer of the Court, it is inappropriate for related party Claims to be treated in this manner. This is especially so when

there does not appear to be any ability for a Creditor to challenge or intervene in the determination of the Claims of other Creditors, as discussed below.

- h. There does not appear to be any ability for a Creditor to challenge or intervene in the determination of the Claims of other Creditors. Given the interests of Creditors and the circumstances of an insolvency filing, Creditors should have the ability to challenge, if the Monitor does not, and intervene in the determination of the Claims of other Creditors, especially when the determinations of Claims is said to be binding on all Persons pursuant to section 50.
 - i. Sections 55 and 56, dealing with set-off, are extraordinary especially given the mandatory provisions of the CCAA (Section 21) allowing for set-off or compensation for all parties, when applicable. They purport to make equitable set-off available to the CCAA Parties, but not to Creditors, in circumstances where equitable set-off would not be otherwise available under the law applicable in Quebec. Moreover, judicial compensation, which is available in Quebec, is not said to be available. Additionally, the final clauses in sections 55 and 56 (starting with “provided however”) reserve the rights of the CCAA Parties and appear questionable, if not entirely inappropriate.
 - j. The draft CPO provides at section 64 that Creditors and D&O Claimants shall be entitled to have access to all forms delivered by or to a Creditor or D&O Claimant and determinations of Claims or D&O Claims. Some of such material, which is subject to disclosure to Creditors, might be confidential and QNS&L anticipates that, in its case, there will be highly sensitive and confidential information and documentation which shall form part of its submissions as part of the claims process. As a result, the draft CPO should include a mechanism to protect the confidentiality of such information and documentation.
6. This objection is made pursuant to paragraph 55 of the Bloom Lake Initial Order and paragraph 57 of the Wabush Initial Order without prejudice to any of QNS&L’s rights, recourses, remedies and defences, and without admission of any kind.

FOR THE REASONS SET FORTH ABOVE, MAY IT PLEASE THE COURT TO

DISMISS the CPO Motion;

DIRECT the CCAA Parties to prepare and propose a revised Claims Procedure Order which addresses the grounds of objection set out in the present Notice of Objection of QNS&L;

THE WHOLE WITHOUT COSTS, SAVE AND EXCEPT IN THE EVENT OF CONTESTATION, AND THEN WITH COSTS SOLIDARILY AGAINST ANY CONTESTING PARTY.

Montréal, this 30th day of October 2015

(s) Langlois Kronström Desjardins ^{LLP}

LANGLOIS KRONSTRÖM DESJARDINS ^{L.L.P.}
Counsel for Objecting Party QNS&L

N° : 500-11-048114-157

Superior Court (Commercial Division)

District of Montreal

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Debtors

and

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