

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-11-048114-157

SUPERIOR COURT  
(Commercial Division)

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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 QUEBEC  
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

OBJECTING PARTIES-Mises-en-cause

-and-

UNITED STEELWORKERS, LOCAL 6254,  
UNITED STEELWORKERS, LOCAL 6285

Mises-en-cause

-and-

MORNEAU SHEPELL  
Mise-en-cause

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**NOTICE OF OBJECTION BY THE REPRESENTATIVES OF THE SALARIED  
EMPLOYEES AND RETIREES (THE "OBJECTING PARTIES") TO THE MOTION  
BY THE PARTICIPATING CCAA PARTIES FOR THE ISSUANCE OF A PLAN  
FILING AND MEETINGS ORDER**  
(Sections 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

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TO THE HONOURABLE MR. JUSTICE STEPHEN W. HAMILTON, J.S.C., OR TO ONE OF THE OTHER JUDGES SITTING IN THE COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE OBJECTING PARTIES RESPECTFULLY SUBMIT THE FOLLOWING:

In accordance with the procedure for motions in paragraph 55 of the Amended Initial CCAA Order dated February 20, 2015, Representative Counsel to the court-appointed Representatives to all of the non-union employees and retirees (the "**Salaried Members**") of the Wabush CCAA Parties object to the Motion by the "Participating CCAA Parties" for the "Issuance of a Plan Filing and Meetings Order" (the "**Motion**") returnable on March 26, 2018, on the following grounds:

1. The Motion was short-served by the Participating CCAA Parties on Monday, March 19, 2018, seven days before its return date on Monday, March 26, 2018. The motion materials and the documents contained therein are voluminous and complicated, and the orders sought would have a significant impact on the recoveries of the Salaried Members and other similarly situated stakeholders from the estates of the Participating CCAA Parties.
2. Representative Counsel was not involved in the negotiations of the proposed Joint Plan of Compromise and Arrangement (the "**Draft Plan**"), the Restructuring Term Sheet (the "**Term Sheet**"), nor the draft Plan Filing and Meetings Order, Exhibit R-1 (the "**Proposed Order**"). This is the first time these voluminous documents have been provided to Representative Counsel.
3. The Motion should be adjourned. Seven days prior notice of a hearing is unreasonable (and contrary to the Initial CCAA Order regarding service of motions) for a motion of

this complexity and with potentially highly negative consequences on employees and retirees in this liquidating CCAA where there is no restructuring.

4. In order to be able to respond to this motion and prepare responding materials, Representative Counsel requires additional time to review the motion materials, including the Term Sheet and the Draft Plan, to properly ascertain the impact of same on creditors' claims against the Wabush CCAA Parties and, in particular, the claims of the Salaried Members, which are being advanced as priority claims, both for the statutory pension deemed trusts and the pension plan administrator's statutory lien and charge, which is a secured claim. Representative Counsel also requires additional time to further discuss these issues with counsel to the Newfoundland Superintendent of Pensions, counsel to Morneau Shepell (the replacement plan administrator), counsel to the United Steelworkers (the "**Union**"), and other affected stakeholders to determine the financial and legal consequences of the distributions, if any, to various creditors, the proposed classes of creditors, and the "limited substantive consolidations" that the Participating CCAA Parties are seeking in their Draft Plan.
5. Representative Counsel also intends to examine the affiant Clifford Smith, the Executive Vice-President and a director of Bloom Lake General Partner Limited and Cliffs Quebec Iron Mining ULC, as well as possibly the Monitor, in respect of the matters raised in the Motion.
6. Representative Counsel requests an adjournment of the Motion to consult and discuss with other stakeholders and to prepare for and conduct the required examinations.
7. This Notice of Objection also raises the following additional grounds in support of the position of the Salaried Members that it would be premature at this time for this Court to hear the Motion and grant the requested relief, and as preliminary grounds in contestation thereof:
  - a) In its 43rd report, the Monitor states that as a result of the Draft Plan, *"it is estimated that the overall increase in the aggregate amounts that would be distributed to unsecured creditors of the CCAA Parties would be likely in the*

*range of approximately \$62 million to approximately \$100 million.*"<sup>1</sup> This is a misleading statement in that this alleged increase does not benefit the creditors of the Wabush CCAA Parties except for a potential *pro rata* sharing (between all unsecured creditors of the various classes) of \$1 million. This minimal benefit is more than offset by the prejudice that would result from summarily allowing, as proven secured or unsecured claims, all of the related party Interco Claims listed on schedules "F", "G" and "H" of the Proposed Order and thus overwhelmingly diluting any recovery by the Salaried Members and the Union retirees. It is essential that the Salaried Members be afforded the full opportunity to expose to the Court the true effects of the Draft Plan insofar as the impact on creditors of the Wabush CCAA Parties are concerned;

- b) The Draft Plan purports to eliminate potential claims by the CCAA Parties against Cleveland-Cliffs Inc. (the "**Parent**") and certain affiliates relating, *inter alia*, to the 2014 Reorganization<sup>2</sup>. As acknowledged in the Motion and related materials, these potential claims relate to, *inter alia*, a cash payment of US\$142 million, a transfer of the Australian subsidiaries of CQIM, and to certain reviewable transactions in the amount of US \$30.6 million. Under the terms of the Draft Plan, these potential claims are eliminated and the distributions accruing to the related parties are then re-directed to the creditors of the CQIM/Quinto Parties. This mechanism solely benefits the related parties and the creditors of the CQIM/Quinto Parties, and prejudices all other creditors;
- c) Of greatest concern to the Salaried Members, the Proposed Order provides, at paragraphs 17.1, 17.2 and 17.3 thereof, that all Non-Filed Unsecured and Secured Interco Claims described in the schedules thereto will be summarily **allowed for voting and distribution purposes**, even though there are serious grounds to contest such claims; for example on the basis of "debt-equity recharacterization". The Salaried Members and other affected creditors should have the opportunity to review and, if necessary, contest these related party claims. In its 39th Report, the

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<sup>1</sup> 43<sup>rd</sup> of the Monitor, at paragraph 46

<sup>2</sup> As summarily described in paragraph 14 of the Motion for the Issuance of and Order Extending the Stay Period.

Monitor stated that it is considering the recharacterization issue and "*intends to consult with major third-party creditors with respect thereto. The Monitor is also considering whether a motion for advice and directions on this point might be appropriate.*"<sup>3</sup> As appears from the Motion, the Monitor has abandoned this possible course, without first disclosing its decision to Representative Counsel or counsel to the Union, or giving them the opportunity to bring this matter before the Court. Without any evidence whatsoever, this Court is being called upon to decide this **substantive** issue in the guise of a **procedural order for the calling of meetings**;

- d) If the Proposed Order is granted, approximately \$782 million of Non-Filed Affiliate Unsecured Interco Claims and \$8.9 million of Non-Filed Affiliate Secured Interco Claims against the Wabush CCAA Parties will be allowed as valid claims. Similarly, \$23 million of CCAA Pre-Filing Interco Claims and \$1.1 million of Non-Filed Affiliate Unsecured Interco Claims against Arnaud Railway Company will be allowed. Consequently, if the Proposed Order is granted, the Salaried Members and Union retirees will receive no meaningful recovery should the pension claims be relegated to unsecured status after the conclusion of the Pension Priority litigation;
- e) The Proposed Order would authorize the CCAA Parties to convene creditors' meetings on May 10, 2018 to vote on the Draft Plan. However, the Quebec Court of Appeal hearing in respect of the Pension Priority issues has been scheduled for June 11 and 12, 2018. In addition, the Monitor and the City of Sept-Iles have also appealed to the Supreme Court of Canada in respect of the Reference Opinion rendered by the Newfoundland Court of Appeal and the hearing in that matter is scheduled before the Supreme Court for October 18, 2018. It is manifestly unfair to compel the creditors of the Wabush CCAA Parties to vote on the Draft Plan before the final resolution of the Pension Priority issues;

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<sup>3</sup> 39<sup>th</sup> Report of the Monitor, at paragraph 196.

- f) Similarly, it is manifestly unfair to schedule the Sanction Hearing for May 18, 2018 since the parties and the Court will not yet know the outcome of the Pension Priority issues. There is no urgency for the Sanction Hearing to occur before there is a resolution of these critical issues, especially in the context of a liquidating CCAA;
- g) It appears that the Draft Plan is another step in the Parent's overall objective to disengage from its Canadian mining operations by utilizing the CCAA process, and to use the deficient sales proceeds from asset sales of its insolvent Canadian subsidiaries and affiliates to resolve its potential legal exposure while paying minimal or potentially no amounts on Canadian creditors' claims. Although the Draft Plan is presented as a "concession" by the Parent, it actually appears to be crafted primarily for its own benefit and the benefit of the largest unsecured creditor of the CQIM/Quinto Parties<sup>4</sup>. The Parent also continues to retain discretion with respect to the contents of the Plan and, for example, paragraph 6 of the Proposed Order includes provisions that require the Parent's consent before any modifications to the Draft Plan can be made;
- h) Neither the Draft Plan nor the Term Sheet explain how the Pension Plan beneficiaries' statutory deemed trusts will be paid if ultimately found to be operative. The definitions are complex and no financial illustrative examples of recoveries are provided;
- i) In addition, neither the Draft Plan nor the Term Sheet mention the Pension Plan Administrator's statutory lien and charge under subsection 32(4) of the *Pension Benefits Act*, 1997, SNL 1996, c. P-4.01 (the "NPBA") for the amounts owing to the Salaried Pension Plan. Under section 32(4) NPBA, this secured claim is over "the assets of the employer". The "employer" under the Salaried Pension Plan consists of Wabush Mines, Cliffs Mining Company, Arnaud Railway Company, and Wabush Lake Railway Company Limited. Additional information is required

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<sup>4</sup> Quebec North Shore and Labrador Railway Company, Inc. ("QNS&L") According to the Monitor's 43<sup>rd</sup> Report, QNS&L's claims represent approximately 66% of the third-party claims against CQIM.

to better understand the proposed treatment of the Administrator's secured claim;  
and

- j) Representative Counsel require additional information regarding proposed payments of undisputed Outstanding Property Taxes to ensure that no payments derive from any assets against which the Salaried Members have outstanding employee, OPEB and pension benefit loss claims.
8. On its face, the Draft Plan is unreasonable and as such is incapable of being sanctioned by the court in any event. In such cases, the courts have held that the creditors' meeting should not be ordered to be scheduled. The Proposed Order should not be issued:

[68] Simply put, I am of the view that this Plan does not have even a reasonable chance of success, as it could not, in this form, be sanctioned.

[69] As such, I see no point in directing Target Canada to call and conduct a meeting of creditors to consider this Plan, as proceeding with a meeting in these circumstances would only result in a waste of time and money.

...

[72] It is incumbent upon the court, in its supervisory role, to ensure that the CCAA process unfolds in a fair and transparent manner. It is in this area that this Plan falls short...<sup>5</sup>

9. Representative Counsel reserve their rights to raise other grounds of contestation in respect of the matters raised in the Motion.
10. This Notice of Objection is well founded in fact and in law.

**FOR THESE REASONS THE OBJECTING PARTIES REQUEST THAT THIS HONOURABLE COURT:**

[A] **ADJOURN** the Initial Return Date for the Motion until such time as Representative Counsel have had the full opportunity to review all information relative to the Motion

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<sup>5</sup> *Target Canada Co. (Re)*, 2016 ONSC 316

with the Monitor and other affected stakeholders and to schedule and conduct examinations;

- [B] **ORDER** the Participating CCAA Parties and the Monitor to provide such additional information as is necessary for Representative Counsel to make an informed decision on the appropriateness of the Proposed Order;

**ON THE MERITS,**

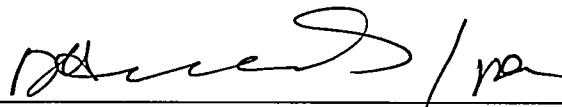
- [C] **DISMISS** the Motion, and/or render such other Orders in respect of the filing of a plan of compromise and arrangement and the holding of creditors' meetings as the Court may determine.

March 22, 2018



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**Andrew J. Hatnay and Amy Tang**  
**KOSKIE MINSKY LLP**



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**Mark E. Meland and Nicholas Brochu**  
**FISHMAN FLANZ MELAND PAQUIN LLP**

*Representative Counsel for the Objecting Parties  
Michael Keeper, Terence Watt, Damien Lebel and  
Neil Johnson, the Representatives of the Salaried  
Members*




**NOTICE OF PRESENTATION**

**TO: SERVICE LIST**

**TAKE NOTICE** that the present *Notice of Objection to the Motion for the Issuance of a Plan Filing and Meetings Order* will be presented for adjudication before The Honourable Mr. Justice 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 Montreal, at the Montreal Courthouse located at 1 Notre-Dame Street East, Montreal, Québec, on March 26, 2018 in a room and at a time to be determined.

**GOVERN YOURSELVES ACCORDINGLY.**

March 22, 2018



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**Andrew J. Hatnay and Amy Tang  
KOSKIE MINSKY LLP**



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N° / No. C.S.: 500-11-048114-157

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Petitioners

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

**FTI CONSULTING CANADA INC.**  
Mises-en-cause  
Monitor

**MICHAEL KEEPER, TERENCE WATT, DAMIEN LABEL AND NEIL JOHNSON as Representatives of the Salaried/Non-Union Employees and Retirees)**  
Objecting Parties- Mises-en-cause

**FTI CONSULTING CANADA INC.**  
Monitor

**UNITED STEELWORKERS, LOCAL 6254, UNITED STEELWORKERS, LOCAL 6285**  
Mises-en-cause  
**MORNEAU SHEPELL**  
Mise-en-cause

**NOTICE OF OBJECTION BY THE REPRESENTATIVES OF THE SALARIED EMPLOYEES AND RETIREES (THE "OBJECTING PARTIES") TO THE MOTION BY THE PARTICIPATING CCAA PARTIES FOR THE ISSUANCE OF A PLAN FILING AND MEETINGS ORDER**

**ANDREW HATNAY, AMY TANG**  
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