

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-

MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON

PETITIONERS-Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

AFFIDAVIT OF MICHAEL KEEPER
(Sworn June 7, 2022)

I, **MICHAEL E. KEEPER**, of 1049 Fitzsimmons Drive, City of Brockville, in the Province of Ontario, **SOLEMNLY DECLARE AND MAKE OATH AND SAY:**

Introduction

1. I am the former Area Manager of the Wabush Mines Materials Department located in Pointe Noire, Québec. I worked with Wabush Mines for more than 36 years before retiring on May 1, 2001. When reference is made herein to the “company” it applies to my former employer, Wabush Mines. I am now 77 years old;
2. I have knowledge of the matters to which I hereinafter depose except where stated to be based on information or belief and regarding such matters I believe the same to be true. This affidavit is sworn in support of a motion for approval of further costs of the non-union employees and retirees (the "**Salaried Members**");
3. I have previously sworn several affidavits in this proceeding to date.

My Background

4. As part of my compensation as a long service employee with Wabush Mines, I earned various post-retirement benefits, such as:
 - (a) a monthly pension benefit to be paid to me on my 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) entitlement to post-retirement health benefits and life insurance benefits on which we relied in our retirement years; and,
 - (c) other senior managers also earned an additional supplemental pension benefit (collectively with health and life insurance benefits, those are known as "other post-employment benefits" or "**OPEBs**");

The Wabush Mines CCAA Proceedings

5. On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company, and Wabush Lake Railway Company Limited (collectively, the “**Wabush CCAA Parties**”) sought and obtained protection from their creditors from the Québec Superior Court under the *Companies' Creditors Arrangement Act*, R.S.C 1985, c. C-36 (“**CCAA**”) pursuant to an initial order granted by Mr. Justice Hamilton (the “**Wabush Initial Order**”). FTI Canada Consulting Inc. was appointed as the Monitor (the “**Monitor**”). The proceedings commenced by the Wabush CCAA Parties are referred to here as the “**Wabush CCAA Proceedings**” and, together with the proceedings that had been commenced under the CCAA by other affiliates of the Wabush CCAA Parties (the “**Bloom Lake CCAA Parties**”) on January 27, 2015 (the “**CCAA Proceedings**”);
6. There are approximately 690 Salaried Members of Wabush Mines who are impacted by the CCAA proceedings;
7. Following the realization and liquidation of the CCAA Parties’ assets, there are significant shortfalls in paying the Salaried Members and other creditors' claims in full. Ultimately, a plan of arrangement (the “**CCAA Plan**”) was approved and is still in the process of being implemented;

Court Order Appointing Representatives and Representative Counsel

8. On June 22, 2015, I was appointed by the court along with salaried retirees Neil Johnson, Terence Watt, and Damien Lebel (deceased as of February 24, 2019) (the “**Representatives**”) as the representatives of all Non-Union Active Employees and Retirees of Wabush Mines in the Wabush CCAA Proceedings, and the firms of Koskie Minsky LLP (Toronto) and Scheib Legal (Montreal) were appointed as Representative Counsel to represent the Salaried Members in the CCAA Proceedings;¹

¹ On December 21, 2017, the Montreal firm of Fishman Flanz Meland Paquin LLP was appointed to replace Scheib Legal as Québec Representative Counsel who had resigned.

9. The court also ordered that the legal costs of the Salaried Members be paid by the Wabush CCAA Parties up to a specified limit for a defined timeframe. As the CCAA Proceedings moved forward, the court issued additional Orders at various times ordering the payment of the Salaried Members' costs, to the limits and for the timeframes stated in those Orders;

The Monthly Pension Reductions and the termination of our OPEBs

10. As the CCAA proceedings proceeded, it became known to me and other Salaried Members that the Salaried Pension Plan from which our monthly pension benefits are paid, was significantly underfunded. This meant that the pension fund did not have sufficient funds to pay the full monthly pension benefits that were earned by employees during their working years for Wabush Mines. The funding deficit calculated on the wind up of the Salaried Pension Plan was substantial: \$27,450,000.00;²
11. On December 16, 2015, the Newfoundland Superintendent of Pension (the "**Superintendent**") wrote to the company declaring that the Salaried Pension Plan was terminated effective on the issuance of its letter (December 16, 2015) as a result of the suspension of special payments and the discontinuance of business operations by the Wabush CCAA Parties;
12. On January 26, 2016, the Salaried Members received a letter from Wabush Mines notifying them that the Superintendent had directed Wabush Mines to reduce the amount of monthly pension benefits being paid to the Salaried Members by 25% due to the underfunding in the Salaried Pension Plan. This reduction, coupled with the previous termination of our OPEBs compounded the Salaried Members' financial hardships as a result of the company's CCAA proceeding;
13. On March 1, 2016, counsel to the company wrote to the Superintendent requesting that an administrator be appointed to wind up (i.e., terminate) the Wabush Mines salaried and union pension plans;

² The Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited (the "**Wabush Union Plan**") was also underfunded.

14. On March 30, 2016, the Superintendent appointed the actuarial firm of Morneau Shepell ("**Morneau**"; now called "**LifeWorks**") as the replacement administrator of the Salaried Pension Plan and the Wabush Union Plan to wind-up the plans. The wind up process is complex and took over two years to complete;
15. On June 26, 2015, shortly after obtaining CCAA protection, the Wabush CCAA Parties stopped paying certain pension contributions and OPEBs. The total loss of OPEBs and the initial 25% loss to our monthly pension benefits severely impacted the livelihoods of the Wabush Mines retirees and caused significant financial hardship;

The Role of Representative Counsel

16. The Wabush Mines CCAA proceedings have been complicated and lengthy. There were significant issues affecting the Salaried Members and their claims for their losses of OPEBs and the pension reductions;
17. Representative Counsel has provided valuable representation and assistance to the Salaried Members throughout the proceedings that we would never have been able to obtain on our own;

a) Pension Deficit Claim

18. As part of its representation of the Salaried Members, a mechanism was negotiated by Representative Counsel such that the company, as the pension plan administrator at the time, submitted the Salaried Pension Plan wind-up deficit in its own claims process for the amount of \$27,341,000, subject to any revision to the wind-up deficit amount calculated by LifeWorks. Representative Counsel also asserted a statutory deemed trust priority claim for the pension plan deficit that was vigorously opposed by the Monitor, CCAA Parties and other creditors.³

³ The statutory priority claim was disputed by the Monitor and proceeded to a hearing before the Honourable Stephen W. Hamilton J.S.C. (as he was then), who did not allow the priority. Representative Counsel and the USW obtained leave to appeal to the Québec Court of Appeal and a hearing was scheduled on June 11-13, 2018 but was discontinued as a result of a settlement reached between Representative Counsel and the Monitor and Wabush CCAA Parties.

19. Representative Counsel was ultimately successful in settling two major issues affecting the Salaried Members:

- (a) A Priority Claim for the pension deficit in the Wabush Salaried Plan was settled with the Monitor and Wabush CCAA Parties that resulted in a meaningful distribution to improve the underfunding in the Salaried Pension Plan; and
- (b) A class action that I and the other three Representatives commenced on behalf of all the Salaried Members before the Newfoundland Court against the non-CCAA related parties of the Wabush CCAA Parties for compensation for the losses suffered by the Salaried Members in respect of our pension reductions and OPEB losses;⁴

(together the "**Pension Settlements**")

20. On June 29, 2018, after extensive negotiations with creditors, an Amended and Restated Joint Plan of Compromise and Arrangement (the "**Amended CCAA Plan** ") was reached between the Participating CCAA Parties, as defined in the Amended CCAA Plan, and their creditors. The Participating CCAA Parties include the Wabush CCAA Parties other than Wabush Lake Railway Company. The Amended CCAA Plan is complicated and contains different payments to different creditor groups based on various factors, including the Pension Claim Settlements described above.

21. As a result of the Pension Settlements, the Salaried Pension Plan received a payment of \$18 million under the Amended CCAA Plan (a recovery of approximately 67% of the pension deficit amount), which resulted in an increase to the funded ratio for the Salaried Plan from approximately 75% as of the wind-up date to approximately 92% for Newfoundland and Québec pensioners, and 85.77% for Québec non-pensioners and 86.8% for Salaried Members who are subject to federal pension regulation. The reduction in monthly pension benefits was decreased from 25% to 8-15%, and the members received a

⁴ The costs of the Salaried Members in the class action proceeding were not paid by the Wabush CCAA Parties.

lump sum payment to compensate them for the 25% reduction that had been imposed on them for over two years;

The Pension Plan Wind up Process and Annuity Purchases

22. As part of the pension wind up process, all plan members who earned a pension and who had not exercised their transfer rights (i.e. elected a commuted value payment), had an annuity purchased for them from an insurance company that continues the payment of monthly benefits after the pension plan was wound up;
23. As part of the wind-up process, the Representatives requested that Representative Counsel and Segal Consulting, the actuaries that have been assisting the Salaried Members throughout the CCAA proceeding ("**Segal**"), provide advice in ensuring that the best price was negotiated with the bidding life insurance companies for the annuities so that the pension benefits could be increased as much as possible from the 25% reductions;
24. In the end, the final funded percentage varied across jurisdictions as a result of the different pension legislation applicable to members in different provinces but overall it was a favourable increase to the funded ratio of the Salaried Pension Plan and best preserved the amounts successfully negotiated in the Pension Claim Settlement. A summary of the final funded percentage is below:

Jurisdiction (by group)	Pre-Settlement Funded Percentage (as at December 16, 2015)	Final Funded Percentage
Newfoundland	75.1%	92.85%
Québec (Pensioners)	75.1%	92.72%
Québec (Non-Pensioners)	75.1%	85.77%
Federal	75.1%	86.80%

b) OPEB Claim

25. Representative Counsel also prepared and submitted claims in the CCAA Claims Process in respect of the Salaried Members' terminated OPEBs;

c) CCAA Plan distributions to creditors

26. Estimates of potential recoveries to creditors under the CCAA Plan were set out in the Monitor's Forty-Sixth Report. The estimated recovery in respect of OPEB claims of the Salaried Members was low, only 7.39% to 9.33% on submitted claim amounts;
27. In September 2018, the Monitor mailed the first distribution cheques to the Salaried Members in respect of our OPEB claims;
28. Around February 2019, the Monitor mailed income tax slips to the Salaried Members in respect of the distribution payments. It was subsequently discovered that there were errors in the tax slips mailed to Salaried Members that required corrective action, otherwise incorrect and higher income tax liabilities would result for Salaried Members;
29. Ultimately, Representative Counsel advised that the Monitor had been provided with further instructions by CRA and Revenue Québec and that tax slips sent to certain Salaried Members would be canceled and/or amended to reflect the correct taxable and non-taxable status of the distributions that had been sent in September 2018 and the source withholdings, if any, that had been applied at that time;
30. Representative Counsel kept the Salaried Members informed of the developments through regular email, telephone, and website posting reporting. In addition, on April 5, 2019, Representative Counsel sent a reporting letter to all of the Salaried Members that some members would have their tax slips canceled or amended, and that members should hold off filing their tax return until they have received an amended tax slip from the Monitor;
31. In addition to issues with tax slips, I was advised by Representative Counsel and other Representatives, that after receiving the first CCAA distributions, certain Salaried Members received letters from Employment and Social Development Canada ("ESDC") demanding that they repay Employment Insurance ("EI") benefits that they received after they were terminated by the Wabush CCAA Parties. I understand that Representative Counsel provided assistance to these members, specifically providing them with information regarding the CCAA distribution amounts they received;

Activities of Representative Counsel from September 1, 2019 to May 31, 2022

32. Since the first distribution was made under the CCAA Plan and the related tax slip and EI repayment issues, a number of additional issues have arisen that have affected the Salaried Members and have required Representative Counsel's advice;
33. On May 17, 2021, the second interim distribution was made pursuant to the CCAA Plan. Relating to this distribution, I am advised and believe that Representative Counsel has responded to numerous inquiries from Salaried Members. Among other issues, Representative Counsel has provided advice to Salaried Members concerning individual claim amounts, the distributions and income tax withholdings;
34. I am advised by Representative Counsel that these inquiries continue to arise and that there will likely be further inquiries relating to the anticipated final distribution under the CCAA Plan in the future;
35. In addition, numerous distribution cheques were uncashed, for various reasons including delivery issues arising from a change of address or due to the passing of a Salaried Member. Representative Counsel has coordinated with the Monitor and the Representatives to locate missing Salaried Members and ensure delivery of uncashed cheques, where possible;
36. It is anticipated that there will be a subsequent final distribution under the CCAA Plan in the future and as a result, the Salaried Members continue to have an interest in the ongoing CCAA proceedings in respect of their claims. Representative Counsel's work has also included attending Court motions and other Court attendances that deal with issues that affect the retirees and their recoveries;
37. Representative Counsel has attended and advised the Representatives with respect to the following:
 - (a) a motion by the Wabush CCAA Parties' for an expansion of the Monitor's powers, which was granted by the Court on July 14, 2021, and a motion by Churchill Falls (Labrador) Corporation Limited (“CFLCo”) for leave to appeal from this decision;

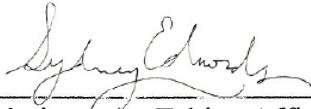
- (b) hearings of preliminary matters concerning the motion by the Wabush CCAA Parties' Motion for the winding up and dissolution of Twin Falls Power Corporation (“**Twin Falls**”), including a contestation by Twin Falls and CFLCo of the jurisdiction of this Court to hear this matter, and the motion for leave to appeal by CFLCo of the Court's judgment on this issue dated August 12, 2021;
- (c) the Monitor's motion for directions with respect to set-off and damage payment input tax credits claimed by the Wabush CCAA Parties, and the motion for leave to appeal by Revenue Québec of the decision of the Court in this matter (leave was granted by Mr. Justice Peter Kalichman, J.A., on December 17, 2021);
- (d) 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 relating to the foregoing motions and discussions with the Monitor;

The request for further costs of the Salaried Members

- 38. As a result of the work performed by Representative Counsel on behalf of Salaried Members since August 31, 2019, I am advised by Representative Counsel that \$60,050.00 for Koskie Minsky LLP, and the amount of \$52,110 for Fishman Flanz Meland Paquin LLP, plus disbursements and taxes, is owing to the end of May 31, 2022 in excess of the cost amount approved in the last court order dated September 23, 2019;
- 39. We also request approval of future potential costs capped at the amount of \$75,000 for the Salaried Members (plus taxes and disbursements), for the continued representation of the Salaried Members in the CCAA proceeding for the period from June 1, 2022 to the earlier of the completion and termination of the Wabush CCAA Proceedings or the discharge of Representative Counsel;
- 40. The amount of costs sought in this motion has no material impact on the future distribution to creditors;

41. We are very pleased with the results that have been achieved on behalf of Salaried Members by Representative Counsel. The Representatives have heard from many Salaried Members that having Representative Counsel has been key in obtaining results and protection from further losses for the Salaried Members.
42. We look forward to finalizing the final CCAA matters that remain outstanding with advice from Representative Counsel. Until the CCAA proceeding is complete, the Salaried Members require the continued representation of Representative Counsel;
43. I swear this affidavit in support of Representative Counsel's fees motion for the payment of outstanding fees and for an aggregate fee cap for future amounts.

SWORN REMOTELY by Michael Keeper of the City of Brockville, in the Province of Ontario, before me in the City of Toronto, in the Province of Ontario, on June 7, 2022, in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely.*



A Commissioner for Taking Affidavits, etc.

LSO #: 79946K



MICHAEL KEEPER

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

AFFIDAVIT OF MICHAEL KEEPER (SWORN JUNE 7, 2022)

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