

CANADA

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,

Debtors

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

CLIFFS MINING COMPANY

Applicant

DE BENE ESSE APPLICATION TO LIFT THE STAY OF PROCEEDINGS

(Sections 11 and ff. of the *Companies' Creditors Arrangement Act* ("CCAA"))

TO MR. JUSTICE STEPHEN W. HAMILTON OR ONE OF THE OTHER HONOURABLE
JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE
DISTRICT OF MONTRÉAL, THE APPLICANT CLIFFS MINING COMPANY SUBMITS:

1. INTRODUCTION

1. The Applicant, Cliffs Mining Company ("CMC"), hereby requests that the stay of proceedings granted in favour of the Debtors in the Initial Order (as amended and restated, the "Initial Order") be lifted in order to allow CMC to perfect and register its security interest in certain assets of the Debtors located in the province of Newfoundland and Labrador, Canada.
2. This Application is presented on a *de bene esse* basis as CMC does not waive or renounce any of its rights and claims that its security interest is valid and enforceable

against the Debtors, regardless of possible registration defects or errors in Newfoundland and Labrador.

2. REASONS

3. Pursuant to a demand credit agreement dated as of February 23, 2015 (the "**Demand Credit Agreement**") between CMC, as lender, and Wabush Resources and Wabush Iron, as borrowers on a joint and several basis, Wabush Resources and Wabush Iron are indebted to CMC in the amount of approximately US\$7MM, plus interests and costs, the Demand Credit Agreement is communicated as **Exhibit CMC-1**
4. CMC holds a security interest in the universality of the Wabush Parties' equipment, as such term is defined in the Newfoundland and Labrador *Personal Property Security Act* ("**Equipment**"), under an Equipment Security Agreement dated February 23, 2015 (the "**Equipment Security Agreement**") and communicated as **Exhibit CMC-2**.
5. Such Equipment includes, and it was the intention of the parties to the Equipment Security Agreement to grant to CMC a security interest on, all the trucks used at the Scully Mine, including those referred to herein below.
6. On September 9, 2016, the Wabush Petitioners issued a *Motion for the issuance of an approval and vesting order with respect to the sale of certain assets* ("**Debtors' Motion**") pursuant to which the Debtors would seek to divest themselves of nine (9) Komatsu 830E haul trucks used at the Scully Mine more particularly described in Schedule "B" of the Asset Purchased Agreement ("**APA**") already filed as Exhibit R-7 to such Debtors' Motion (the "**Purchased Assets**");
7. Recently, CMC lawyers were informed by the Monitor and by Monitor's counsel that there were certain discrepancies between the description of the Purchased Assets in the APA, which has been verified as being accurate, and the description found in the Equipment Security Agreement and the Newfoundland and Labrador *Personal Property Security Act* registration in the province of Newfoundland and Labrador already filed as Exhibit R-9 to the Debtors' Motion (the "**PPSA Registration**");
8. It appears that for an unknown reason, the truck manufacturer, Komatsu, changed a digit in the sequence of the consecutive serial numbers of its 830E haul trucks for the manufacturing year 2013, which was not the case between 2006 and 2012 as appears from the list found at Schedule "B" of the APA.
9. This resulted in an error of a single digit in the description of three of the trucks in the Equipment Security Agreement and the PPSA Registrations.
10. Also, the Equipment Security Agreement and the PPSA Registration omits one of the Komatsu 830E 2013 haul trucks that the parties intended to have charged specifically by CMC's security.
11. There is no risk of confusion as to the particular trucks that the parties intended to charge with the security interest in favour of CMC as all the Komatsu 830E 2013 haul

trucks found at the Scully Mine should have been listed by the Wabush Parties in the Schedule to the Equipment Security Agreement, Exhibit CMC-2.

12. As a result the discrepancies between the APA description, on the one hand and the Equipment Security Agreement and the PPSA Registration, on the other hand, in the serial numbers and description are as follows with respect to four 2013 Komatsu 830E Haul trucks (the "Trucks"):

<u>APA</u>	<u>Description</u>	<u>PPSA</u>	<u>Registration</u>	<u>and</u>	<u>Equipment Security Agreement</u>
	KMTHD039N61A40883		A30883		
	KMTHD039N61A40889		A30889		
	KMTHD039N61A40893		A30893		
	KMTHD039N61A40882		omitted		

13. While CMC believed (and continues to believe) that its security interest is valid regardless of the Equipment Security Agreement and the registration, in an abundance of caution, CMC immediately took steps, as a conservatory measure, to enter into an Amendment to Equipment Security Agreement with the Debtors, the whole as appears from a copy of the Amendment to Equipment Security Agreement communicated as **Exhibit CMC-3**.
14. Such amendment was made to avoid any delays in the sale process and the issuance of the approval and vesting order sought by the Debtors.
15. In light of the above, CMC seeks an order ratifying the steps taken to date and allowing CMC to take any further steps required in order to perfect its security interest in the Trucks.
16. CMC further requests that the approval and vesting order proposed by the Debtors be modified to include a provision allowing the registration in the PPSA of the rectified description and transferring such rectified charge to the proceeds if the sale has closed.
17. Neither the Debtors nor any other stakeholder will suffer any prejudice from the order sought.
18. CMC respectfully submits that this application should be granted in accordance with its conclusions.
19. The present application is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

ORDER that the stay of proceedings ordered pursuant to the Initial Order be lifted to allow Cliffs Mining Company to take, continue and/or complete all steps necessary in order to perfect its security interest in the following 2013 Komatsu 830E Haul trucks of the Debtors in the province of Newfoundland and Labrador:

A40883

A40889

A40893

A40882

ORDER the provisional execution of the judgment to be rendered hereon; notwithstanding an appeal thereof and without the need to furnish security;

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

Montréal, September 21, 2016

A handwritten signature in blue ink that reads "Dentons Canada LLP". The signature is written in a cursive, flowing style.

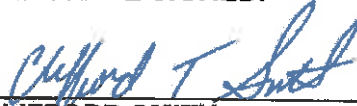
DENTONS CANADA LLP

Attorneys for the Applicant Cliffs Mining Company

AFFIDAVIT

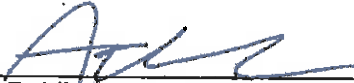
I, the undersigned, **CLIFFORD SMITH**, Executive Vice President, Business Development of Cliffs Mining Company, having a place of business at 200 Public Square, Suite 3300, Cleveland, State of Ohio, USA 44114-2544 solemnly affirm that all the facts alleged in the present *De Bene Esse Application to Lift the Stay of Proceedings* are true.

AND I HAVE SIGNED:



CLIFFORD SMITH

SOLEMNLY DECLARED before me
at Cleveland Ohio, this 21st day of
September 2016



Notary Public for the State of Ohio



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

NOTICE OF PRESENTATION

TO: THE SERVICE LIST

TAKE NOTICE that the present *De bene esse application to lift the stay of proceedings* will be presented for adjudication before the Honourable Stephen W. Hamilton of the Superior Court of Québec, District of Montréal, on **September 23, 2016, at 9:30 a.m., in room 15.09** or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, September 21, 2016

A handwritten signature in blue ink, appearing to read "Dentons Canada LLP", is written over a horizontal line.

DENTONS CANADA LLP

Attorneys for the Applicant Cliffs Mining Company

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LIST OF EXHIBITS

- Exhibit CMC-1:** Demand credit agreement dated as of February 23, 2015 between Cliffs Mining Company, as lender, and Wabush Resources and Wabush Iron;
- Exhibit CMC-2:** Equipment Security Agreement dated February 23, 2015;
- Exhibit CMC-3:** Amendment to Equipment Security Agreement between Wabush Resources Inc., Wabush Iron Co. Limited and Cliffs Mining Company.

Montréal, September 21, 2016



DENTONS CANADA LLP

Attorneys for the Applicant Cliffs Mining Company

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Mtre Roger P. Simard/ Our file: 561770-001

**DE BENE ESSE APPLICATION TO LIFT THE STAY OF
PROCEEDINGS**

(Sections 11 and ff. of the Companies' Creditors
Arrangement Act ("CCAA")), List of Exhibits and Exhibits

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