Dossier nº _____

COUR SUPRÊME DU CANADA

(EN APPEL D'UN JUGEMENT DE LA COUR D'APPEL DU QUÉBEC)

ENTRE :

DANS L'AFFAIRE DU PLAN D'ARRANGEMENT AVEC LEURS CRÉANCIERS DE BLOOM LAKE GENERAL PARTNER LIMITED, QUINTO MINING CORPORATION, 8568391 CANADA LIMITED, CQIM QUÉBEC IRON MINING ULC, WABUSH IRON CO. LIMITED, WABUSH RESOURCES INC., THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP, BLOOM LAKE RAILWAY COMPANY LIMITED, WABUSH MINES, ARNAUD RAILWAY COMPANY ET WABUSH LAKE RAILWAY COMPANY LIMITED

AGENCE DU REVENU DU QUÉBEC

DEMANDERESSE
(appelante)

- et -

FTI CONSULTING CANADA INC.

INTIMÉE
(intimée)

- et -

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

(Suite de l'intitulé en page intérieure)

DEMANDE D'AUTORISATION D'APPEL

(article 40(1) de la *Loi sur la Cour suprême* et règle 25 des *Règles de la Cour suprême du Canada*)
Volume I, pages 1 – 163

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY LIMITED
QUEBEC NORTH SHORE AND LABRADOR RAILWAY COMPANY INC.
IRON ORE COMPANY OF CANADA

INTIMÉES
(mises en cause)

- et -

EMPLOYÉS SALARIÉS, NON SYNDIQUÉS

INTERVENANT
(mis en cause)

M^e Daniel Cantin
M^e Jean-Claude Gaudette
M^e Henrick Lavoie
Larivière Meunier (Revenu Québec)
Secteur D221LC
3, Complexe Desjardins
Montréal (Québec)
H5B 1A7

Tél. : 514 287-8154 (M^e Gaudette)
Tél. : 514 287-3759 (M^e Lavoie)
Téléc. : 514 285-5348
jean-claude.gaudette@revenuquebec.ca
henrick.lavoie@revenuquebec.ca
Tél. : 418 652-5245 (M^e Cantin)
Téléc. : 418 577-5327
danielcantin@revenuquebec.ca

Procureurs de la demanderesse

Me Sylvain Rigaud
Me Bogdan-Alexandru Dobrota
Woods s.e.n.c.r.l.
Bureau 1700
2000, avenue McGill College
Montréal (Québec)
H3A 3H3

Tél. : 514 982-4545
Téléc. : 514 284-2046
srigaud@woods.qc.ca
adobrota@woods.qc.ca

Procureurs de l'intimée
FTI Consulting Canada inc.

Me Bernard Boucher
Me Youssef Kabbaj
Blake, Cassels & Graydon
S.E.N.C.R.L./s.r.l.
Bureau 3000
1, Place Ville Marie
Montréal (Québec)
H3B 4N8

Tél. : 514 982-4000
Téléc. : 514 982-4099
bernard.boucher@blakes.com
youssef.kabbaj@blakes.com

Procureurs des intimées
Bloom Lake General Partner Limited,
Quinto Mining Corporation,
8568391 Canada Limited,
CQIM Québec Iron Mining ULC,
Wabush Iron Co. Limited,
Wabush Resources Inc.,
The Bloom Lake Iron Ore Mine Limited Partnership,
Bloom Lake Railway Company Limited,
Wabush Mines,
Arnaud Railway Company,
Wabush Lake Railway Company Limited

M^e Gerry Apostolatos
Langlois Avocats, S.E.N.C.R.L.
20^e étage
1250, boul. René-Lévesque Ouest
Montréal (Québec)
H3B 4W8

Tél. : 514 282-7831
Téléc. : 514 845-6573
gerry.apostolatos@langlois.ca

Procureur des intimées
Quebec North Shore and Labrador
Railway Company inc. et
Iron Ore Company of Canada

M^e Nicolas Brochu
Fishman Flanz Meland Paquin s.e.n.c.r.l.
Bureau 4100
1250, boul. René-Lévesque Ouest
Montréal (Québec)
H3B 4W8

Tél. : 514 932-4100, poste 235
Téléc. : 514 932-4170
nbrochu@ffmp.ca

M^e Andrew J. Hatnay
Koskie Minsky LLP
Bureau 900
20 Queen Street West
Toronto (Ontario)
M5H 3R3

Tél. : 416 595-2083
Téléc. : 416 204-2872
ahatnay@kmlaw.ca

Procureurs de l'intervenant Employés salariés, non syndiqués

TABLE DES MATIÈRES

Demande d'autorisation d'appel **Page**

Volume I

TABLE DES MATIÈRES

Demande d'autorisation d'appel **Page**

Volume I *(suite)*

TABLE DES MATIÈRES

Demande d'autorisation d'appel **Page**

Volume I *(suite)*

DOCUMENTS À L'APPUI

Procédures

Pièces

Volume II

TABLE DES MATIÈRES

Demande d'autorisation d'appel **Page**

Volume II *(suite)*

Dossier nº _____

COUR SUPRÊME DU CANADA

(EN APPEL D'UN JUGEMENT DE LA COUR D'APPEL DU QUÉBEC)

ENTRE :

DANS L'AFFAIRE DU PLAN D'ARRANGEMENT AVEC LEURS CRÉANCIERS DE BLOOM LAKE GENERAL PARTNER LIMITED, QUINTO MINING CORPORATION, 8568391 CANADA LIMITED, CQIM QUÉBEC IRON MINING ULC, WABUSH IRON CO. LIMITED, WABUSH RESOURCES INC., THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP, BLOOM LAKE RAILWAY COMPANY LIMITED, WABUSH MINES, ARNAUD RAILWAY COMPANY ET WABUSH LAKE RAILWAY COMPANY LIMITED

AGENCE DU REVENU DU QUÉBEC

DEMANDERESSE
(appelante)

- et -

FTI CONSULTING CANADA INC.

INTIMÉE
(intimée)

- et -

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

(Suite de l'intitulé en page intérieure)

AVIS DE DEMANDE D'AUTORISATION D'APPEL

(règle 25 des *Règles de la Cour suprême du Canada*)

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY LIMITED
QUEBEC NORTH SHORE AND LABRADOR RAILWAY COMPANY INC.
IRON ORE COMPANY OF CANADA

INTIMÉES
(mises en cause)

- et -

EMPLOYÉS SALARIÉS, NON SYNDIQUÉS

INTERVENANT
(mis en cause)

SACHEZ que l'Agence du revenu du Québec demande l'autorisation de se pourvoir en appel devant la Cour contre le jugement de la Cour d'appel dans le dossier C.A. 500-09-029797-214 prononcé le 22 décembre 2022, (2022 QCCA 1740), en vertu de l'article 40 de la *Loi sur la Cour suprême* et de la règle 25 des *Règles de la Cour suprême du Canada*, pour obtenir une ordonnance accueillant la demande d'autorisation de se pouvoir en appel devant cette Cour ou toute autre ordonnance que la Cour estime indiquée.

SACHEZ DE PLUS que la demande d'autorisation d'appel est fondée sur les moyens suivants :

1. Cette demande soulève l'importante question de la compensation pré-post en situation de LACC où seulement la distribution des actifs demeure en jeu.

2. La présente demande d'autorisation de porter en appel l'arrêt de la Cour d'appel vise uniquement l'élément qui concerne la compensation pré-post.

3. La question soumise par la demanderesse est la suivante :

- En situation de LACC de liquidation, où seulement la distribution du produit des actifs demeure en jeu, le juge surveillant, dans l'exercice de sa discrétion en vertu de l'article 11 LACC afin d'autoriser ou non la compensation pré-post, peut-il se limiter à ne considérer que deux des objectifs réparateurs soit de « *maximiser le recouvrement* » et « *assurer une distribution équitable entre les créanciers* »?

4. La Cour d'appel accorde une importance démesurée aux objectifs réparateurs de « *maximiser le recouvrement* » et « *assurer une distribution équitable des actifs entre les créanciers* ». Elle le fait au détriment des autres facteurs de la considération de base de l'opportunité de la décision et des deux autres considérations, soit la diligence et la bonne foi.

5. Cette Cour a qualifié la compensation de « *quasi-privilège* » sur les biens de la débitrice, ne remettant pas en cause la règle de l'égalité entre les créanciers.

6. Cette Cour a également mentionné qu'en permettant la compensation, le législateur autorise à « *modifier* » l'ordre de priorité qu'il a établi en matière de faillite; le droit à la compensation ayant pour effet de « *garantir la réclamation de la partie qui invoque la compensation* ».

7. Dans une telle situation de LACC de liquidation où seulement la distribution des actifs demeure en jeu, l'intérêt public doit bénéficier d'un poids prépondérant pour l'exercice du pouvoir discrétionnaire du juge surveillant considérant que les lois fiscales sont d'ordre public.

LE TOUT RESPECTUEUSEMENT SOUMIS

.

Fait à Montréal, province de Québec, le 16 février 2023

_____

Me Daniel Cantin
Me Jean-Claude Gaudette
Me Henrick Lavoie
Larivière Meunier (Revenu Québec)
Secteur D221LC
3, Complexe Desjardins
Montréal (Québec)
H5B 1A7

Tél. : 514 287-8154 (Me Gaudette)
Tél. : 514 287-3759 (Me Lavoie)
Téléc. : 514 285-5348
jean-claude.gaudette@revenuquebec.ca
henrick.lavoie@revenuquebec.ca
Tél. : 418 652-5245 (Me Cantin)
Téléc. : 418 577-5327
danielcantin@revenuquebec.ca

Procureurs de la demanderesse

ORIGINAL : REGISTRAIRE

COPIE :

Me Sylvain Rigaud
Me Bogdan-Alexandru Dobrota
Woods s.e.n.c.r.l.
Bureau 1700
2000, avenue McGill College
Montréal (Québec)
H3A 3H3

Tél. : 514 982-4545
Téléc. : 514 284-2046
srigaud@woods.qc.ca
adobrota@woods.qc.ca

Procureurs de l'intimée
FTI Consulting Canada inc.

Me Bernard Boucher
Me Youssef Kabbaj
Blake, Cassels & Graydon S.E.N.C.R.L./s.r.l.
Bureau 3000
1, Place Ville Marie
Montréal (Québec)
H3B 4N8

Tél. : 514 982-4000
Téléc. : 514 982-4099
bernard.boucher@blakes.com
youssef.kabbaj@blakes.com

Procureurs des intimées
Bloom Lake General Partner Limited, Quinto Mining Corporation,
8568391 Canada Limited,
CQIM Québec Iron Mining ULC,
Wabush Iron Co. Limited,
Wabush Resources Inc.,
The Bloom Lake Iron Ore Mine Limited Partnership,
Bloom Lake Railway Company Limited, Wabush Mines,
Arnaud Railway Company,
Wabush Lake Railway Company Limited

Me Gerry Apostolatos
Langlois Avocats, S.E.N.C.R.L.
20e étage
1250, boul. René-Lévesque Ouest
Montréal (Québec)
H3B 4W8

Tél. : 514 282-7831
Téléc. : 514 845-6573
gerry.apostolatos@langlois.ca

Procureur des intimées
Quebec North Shore and Labrador Railway Company inc. et
Iron Ore Company of Canada

M^e^ Nicolas Brochu
Fishman Flanz Meland Paquin s.e.n.c.r.l.
Bureau 4100
1250, boul. René-Lévesque Ouest
Montréal (Québec)
H3B 4W8

Tél. : 514 932-4100, poste 235
Téléc. : 514 932-4170
nbrochu@ffmp.ca

M^e^ Andrew J. Hatnay
Koskie Minsky LLP
Bureau 900
20 Queen Street West
Toronto (Ontario)
M5H 3R3

Tél. : 416 595-2083
Téléc. : 416 204-2872
ahatnay@kmlaw.ca

Procureurs de l'intervenant Employés salariés, non syndiqués

AVIS AUX INTIMÉES : Les intimées peuvent signifier et déposer un mémoire en réponse à la demande d'autorisation d'appel dans les trente jours suivant l'ouverture par la Cour d'un dossier à la suite du dépôt de la demande ou, si un tel dossier est déjà ouvert, dans les trente jours suivant la signification de la demande. Si aucune réponse n'est déposée dans ce délai, le registraire soumettra la demande d'autorisation d'appel à l'examen de la Cour conformément à l'article 43 de la *Loi sur la Cour suprême.*

JUGEMENTS ET MOTIFS

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-048114-157

DATE: November 8, 2021

BY THE HONOURABLE MICHEL A. PINSONNAULT, J.S.C.

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

BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
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

AGENCE DE REVENU DU QUÉBEC (ARQ)
AGENCE DU REVENU DU CANADA (ARC)
ARQ Mises-en-cause

JUDGMENT ON MOTION BY MONITOR FOR DIRECTIONS WITH RESPECT TO SET-OFF AND DAMAGE PAYMENT INPUT TAX CREDIT

(Sections 11, 21 and 23(k) of the *Companies' Creditors Arrangement Act*)

OVERVIEW

[1] In the context of the implementation of a Plan of Arrangement[1] (the "**Plan of Arrangement**") sanctioned by Justice Stephen W. Hamilton[2] pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**"), FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of the Petitioners and Mises-en-cause (the "**Monitor**") is seeking directions from the Court regarding the treatment of certain tax credits and tax refunds sought from the *Agence du Revenu du Québec*[3] (the "**ARQ**").

[2] The directions sought by the Monitor involve the application of the rules of set-off or compensation to certain claims between Petitioner Cliffs Québec Iron Mining ULC ("**CQIM**") and the ARQ which may be subject or not to set-off or compensation.

[3] This exercise requires the determination as to whether certain claims should be treated as pre-Filing Date ("**pre-filing**") claims and post-Filing Date ("**post-filing**") claims.

[4] The applicable filing date for the purposes hereof, is January 27, 2015 (the "**Filing Date**"), which is the date when Justice Stephen W. Hamilton issued the Bloom Lake Initial Order[4].

[5] More precisely, the present matter relates to the right of the ARQ to set-off its $13,391,896.40[5] pre-filing claims (the "**ARQ $13M Claims**") against one of the Petitioners, CQIM who filed a $7,459,257.85[6] claim (the "**CQIM $7.5M Claim**") with the ARQ in 2018 some 3 years after the Filing Date.

[6] According to CQIM and the Monitor, ARQ is precluded from operating compensation between its ARQ $13M Claims and the CQIM $7.5M Claim on the basis that the former are pre-filing claims that cannot be offset with the latter being a post-filing claim.

[7] The CQIM $7.5M Claim was filed with the ARQ following the First Interim Distribution[7] made in 2018 under the Plan of Arrangement by the Monitor to the creditors of the CCAA Parties[8] including certain of CQIM's creditors who received partial damage

---

[1] **R-3**.
[2] **R-1**.
[3] ARQ is acting in the present proceedings on its own behalf based on Section 25 of the *Tax Administration Act* with respect to unpaid Québec sales tax ("**QST**") but also acting on behalf of Canada Revenue Agency ("**CRA**") based on Section 296 (1) of the *Excise Tax Act* with respect to unpaid goods and services tax ("**GST**").
[4] *Ibid*.
[5] Amount admitted by the Monitor.
[6] Amount admitted by the ARQ.
[7] As defined hereafter.
[8] As defined hereafter.

payments following notices of resiliation or of disclaimer of their respective agreements entered into with CQIM prior to the Filing date, the whole in virtue of Section 32 CCAA.

[8] According to the Monitor, the First Interim Distribution damage payments made to those four specific creditors of CQIM (the "**CQIM Creditors**") generated the CQIM $7.5M Claim, the payment of which the Monitor expects to receive from the ARQ without the latter applying the same in compensation of its own ARQ $13M Claims.

[9] Relying, *inter alia*, on Section 21[9] CCAA dealing with set-off and compensation, the Monitor contends that the CQIM $7.5M Claim is a post-filing claim against the ARQ that cannot be compensated with the ARQ $13M Claims which are pre-filing claims. Compensation can only be applied between two pre-filing claims which are liquid, certain and exigible or between two post-filing such claims, but never between pre-filing and post-filing claims.

[10] In summary, the central issue essentially boils down to determining whether the CQIM $7.5M Claim is a pre-filing or a post-filing claim, thus enabling the ARQ to set-off or not the same with its ARQ $13M Claims which are undisputed pre-filing claims.

[11] All in all, if the ARQ's position is correct, it should not have to pay to the Monitor the CQIM $7.5M Claim as the same will have been satisfied by way of compensation with its own ARQ $13M Claims that would be reduced by as much.

[12] Failing which, the Monitor and CQIM contend that the ARQ should have to remit to them an amount equal to the CQIM $7.5M Claim for distribution among all the creditors of CQIM creditors including, ironically, the ARQ itself.

[13] However, the ARQ argues that the *pre* or the *post* filing nature of the CQIM $7.5M Claim is irrelevant as it can, in any event, be compensated with its ARQ $13M Claims given the very close and direct connection between the damage partial payments made to the CQIM Creditors that generated the CQIM $7.5M Claim and those CQIM Creditors disclaimed (pre-filing) contracts.

[14] Even though CQIM issued notices of disclaimer to the CQIM Creditors after the Filing Date[10] (the "**Notices of disclaimer**"), Section 32 (7)[11] CCAA provides that the damage claims resulting therefrom are nevertheless *considered* to be provable claims of the CQIM Creditors against CQIM in the context of the CCAA proceedings.

---

[9] **21.** The law of set-off or compensation applies to all claims made against a debtor company and to all actions instituted by it for the recovery of debts due to the company in the same manner and to the same extent as if the company were plaintiff or defendant, as the case may be.

[10] **ARQ-1**.

[11] **32 (7)** If an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.

[15] Be that as it may, the position adopted by the ARQ begs the following question.

[16] If the CQIM $7.5M Claim results from a payment of GST/QST which is *deemed* to have been made by CQIM as a result of the First Interim Distribution paid to the CQIM Creditors due to a fiction created by the tax statutes, should that $7.5M claim be treated in the same manner as the CQIM Creditors' provable claims[12] that triggered the damage payments made via the First Interim Distribution and be considered to be a pre-filing claim as well?

[17] The ARQ adds that even though they result from Notices of disclaimer issued by CQIM after the Filing Date, two realities must be considered namely, the damage claims lodged by the CQIM Creditors following CQIM's disclaimer of their contracts were nevertheless deemed to be provable claims in the present CCAA proceedings pursuant to Section 32 (7)[13] CCAA and those claims and damages are all directly related to pre-filing contracts entered into between CQIM and the CQIM Creditors prior to the Filing Date.

[18] In other words, given the very close and direct relationship between the damage payments made with the First Interim Distribution[14], the proofs of claim filed by the CQIM Creditors pursuant to Section 32 (7) CCAA and the (pre-filing) agreements or contracts that gave rise to the Notices of disclaimer issued by CQIM after the Filing Date, shouldn't the CQIM $7.5M Claim be afforded the same treatment and be "*considered*" a pre-filing claim as well?

[19] Ultimately, the ARQ having recognized proofs of claim of some $13M against CQIM does not want to have to disburse to CQIM/Monitor an additional $7.5M that would aggravate further its already deficit position.

CONTEXT

[20] On June 29, 2018, Justice Stephen W. Hamilton issued an Order[15] sanctioning the Joint Plan of Arrangement dated as of May 16, 2018,[16] submitted jointly by the Petitioners and the Mises en cause (collectively the "**CCAA Parties**" for the purposes hereof).

[21] Pursuant to the present CCAA proceedings initiated in January 2015, the CCAA Parties with the assistance of the Monitor, worked to implement the Plan of Arrangement and proceeded to wind down the estates of the CCAA Parties so that the net proceeds

[12] Being either a pre-filing claim or *considered* to be a pre-filing claim.
[13] **32 (7)** If an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.
[14] That generated the *deemed* payment of the GST/QST by CQIM and the CQIM $7.5M Claim.
[15] **R-4**.
[16] **R-3**.

from such recoveries and realizations can finally be distributed to the creditors of the CCAA Parties as soon as possible.

[22] In August 2018, the Monitor commenced the first interim distributions totaling $59,258,118 to Affected Third Party Unsecured Creditors[17] from each of the Unsecured Creditor Cash Pools and Pension Cash Pools[18], while interim distributions on account of the Salaried Late Employee Claims[19] and the USW Late Employee Claims[20] were made in January 2020, in accordance with the Order for leave to file late claims and authorization to make modifications to the Plan dated December 3, 2019 (collectively, the "**First Interim Distribution**").

[23] As previously mentioned, the four CQIM Creditors were part of the First Interim Distribution and received on August 16, 2018, partial damage payments from CQIM which payments generated the CQIM $7.5M Claim against the ARQ.

1.1 **The ARQ $13M Claims and the ITC Claims**

[24] On October 2, 2020, the Monitor issued a Notice of Allowance[21] to the ARQ allowing its proofs of claim for an aggregate amount of $13,392,752.86[22] based on:

- Section 25[23] of the *Act respecting fiscal administration*[24] ("**FAA**") with respect to unpaid QST in the amount of $5,653,595.34; and

[17] *Ibid*.
[18] *Ibid*.
[19] As defined in the December 3, 2019, Order for leave to file late claims and authorization to make modifications to the Plan of Arrangement.
[20] *Ibid*.
[21] **R-6**.
[22] **ARQ-8** and **ARQ-9**.
[23] **25**. The Minister may determine or redetermine the amount of the duties, interest and penalties owed by a person under a fiscal law as well as the amount of the refund to which a person is entitled under a fiscal law and send a notice of assessment to him in this regard.
However, no such assessment may be made
(a) more than four years after the later of
i. the date on which the duties should have been paid, and
ii. the date on which the return was filed; or
(b) more than four years after the application for a refund was filed.
This section does not apply in respect of a repayment referred to in section 21.0.1.
[24] C.Q.L.R., c. A-6.002.

- Section 296 (1)[25] of the *Excise Tax Act*[26] ("**ETA**") with respect to unpaid GST in the amount of $7,739,157.52 on account of taxable supply of goods and services received by CQIM prior to the Filing Date;

  where such tax amounts remained unpaid by CQIM as at the Filing Date of January 27, 2015.

[25] Acting as agent for the Québec Minister of Revenue, the ARQ is responsible for the administration of tax legislation in Québec, including the *Act respecting the Québec sales tax*[27] ("**QSTA**").

[26] Under an agreement between the federal and Québec governments, the ARQ also administers on behalf of the CRA in Québec the *Goods and services tax* ("**GST**").

[27] As a result, in Québec, the ARQ is responsible for the collection of *Québec sales taxes* ("**QST**") and GST, as well as the reimbursement of net tax refunds determined based on the amount of tax collected, minus *input tax credits* ("**ITCs**") for the purpose of the GST and *input tax refunds* ("**ITRs**") for the purpose of the QST (collectively, the "**ITC Claims**").

[28] Neither the quantum of the ARQ $13M Claims nor their pre-filing nature is disputed by the parties.

1.2 **The Damage Payments ITCs and the CQIM $7.5M Claim**

[29] The gravamen of the dispute between the parties lies in the determination of the nature of the ITC Claims for QST and GST that were *deemed* paid in 2018 as part of the First Interim Distribution remitted to the four CQIM Creditors on account of their damage claims against CQIM arising from the resiliation or disclaimer of their contracts effected after the Filing Date pursuant to Section 32 CCAA (the "**Damage Payments ITCs**").

---

[25] **296 (1)** The Minister may assess
(a) the net tax of a person under Division V for a reporting period of the person,
(b) **any tax payable by a person under Division II, IV or IV.1**,
(c) any penalty or interest payable by a person under this Part,
(d) any amount payable by a person under any of paragraphs 228 (2.1)(b) and (2.3)(d), section 230.1 and paragraphs 232.01 (5)(c) and 232.02 (4)(c), and
(e) any amount which a person is liable to pay or remit under subsection 177 (1.1) or Subdivision A or B.1 of Division VII,
and may reassess or make an additional assessment of tax, net tax, penalty, interest or an amount referred to in paragraph (d) or (e).
[Emphasis added]

[26] R.S.C. 1985, c. E-15.

[27] C.Q.L.R., c. T-01.

[30] Do the Damage Payments ITCs[28] constitute a pre-filing or post-filing claim against the ARQ? The answer will dictate whether the Damage Payments ITCs can validly be offset with the ARQ $13M Claims?

[31] In furtherance of the Bloom Lake Initial Order[29], CQIM decided to disclaim or resiliate certain of its contracts, the whole in accordance with Section 32 CCAA[30].

[32] As a result thereof, each of Canadian Iron Ore Railcar Leasing LP[31], Québec North Shore and Labrador Railway Company, Inc.[32], The CSL Group Inc.[33] and Western Labrador Rail Services[34] representing the CQIM Creditors, has asserted a damage claim against CQIM (collectively the "**Restructuring Claims**") in accordance with the Claims Procedure Order[35] issued by Justice Hamilton on November 16, 2015.

[33] Following the First Interim Distribution, in its sales tax returns for the period ended November 30, 2018, CQIM claimed the Damage Payments ITCs in connection with the sales taxes *deemed* paid with the partial damage payments remitted to the CQIM Creditors on account of their Restructuring Claims.

[34] Based on its audit work, the ARQ assessed the Damage Payments ITCs (as they relate to partial damage payments of the Restructuring Claims made to the CQIM Creditors) to be in the amount of $7,459,257.85, hence the CQIM $7.5M Claim.

1.3 **Other ITCs**

[35] In addition to the Damage Payments ITCs (becoming the CQIM $7.5M Claim), the ARQ is also in indebted to CQIM for an amount of $422,490.35 representing other post-filing ITCs that are not in relation to the Restructuring Claims, but rather in relation to supplier invoices issued after the Filing Date and which were not covered in the ARQ $13M Claims. The sum of $422,490.35 includes $234,755.16[36] in relation to services actually rendered in favour of CQIM during the post-filing period[37].

---

[28] Represented by the CQIM $7.5M Claim against the ARQ.
[29] **R-1**.
[30] The Notices of resiliation were issued to the four CQIM Creditors on January 28, 2015 (with effect as of February 27, 2015), save and except for Canadian Iron Ore Railcar Leasing with a Notice bearing the date of March 6, 2016.
[31] **ARQ-2**.
[32] **ARQ-4**.
[33] **ARQ-6**.
[34] **ARQ-5**.
[35] **R-2**.
[36] Amount admitted by the ARQ as being post-filing.
[37] Based on the May 14, 2021, Contestation filed by ARQ, paragraphs 22, 23, 24(c), 89–92 and 94 III.

[36] The Monitor also contends that these additional ITCs in the amount of $234,755.16 for services rendered after the Filing Date clearly represent a post-filing claim that cannot be offset by the ARQ with its pre-filing claims (i.e., the ARQ $13M Claims).

[37] The difference of $188,185.19 constitutes an undisputed pre-filing claim that can validly be compensated with the ARQ $13M Claims which is not at issue herein.

2. THE ISSUES

[38] Is the CQIM $7.5M Claim against the ARQ a pre-filing or a post-filing claim susceptible to be set-off or compensated with the ARQ $13M Claims which are pre-filing claims?

[39] What treatment should be given to the other ITCs claim of $234,755.16 which clearly results from services rendered to CQIM after the Initial Order (or after the Filing Date) and which clearly constitutes a post-filing claim?

[40] Given the fact that according to the ARQ, the Court of Appeal's judgment in the case of *Kitco*[38] is of limited importance and that it does not find application in the context of liquidation proceedings performed under the CCAA as opposed to restructuring proceedings, should the CQIM $7.5M Claim and the sum of $234,755.16 being post-filing claims, be nevertheless treated just as if they were pre-filing claims and therefore, be subject to set-off and compensation with the ARQ $13M Claims?

3. ANALYSIS

3.1 The fiscal legal provisions pertaining to the Damage Payments ITCs

[41] According to the Monitor, the Damage Payments ITCs giving rise to the CQIM $7.5M Claim, arose as of the date of damage payments of the First Interim Distribution pursuant to Sections 182 (1) ETA and 318 QSTA which read as follows:

182 ETA	**318 QSTA**
*182 (1) For the purposes of this Part, **where at any time**, as a consequence of the breach, modification or termination after 1990 of an agreement for the making of a taxable supply (other than a zero-rated supply) of property or a service in Canada by a registrant to a person, **an amount is paid or forfeited to the registrant otherwise than***	***318. Where at any time**, as a consequence of the breach, modification or termination, after 30 June 1992, of an agreement for the making of a taxable supply, other than a zero-rated supply, of property or a service in Québec by a registrant to a person, **an amount is paid or forfeited to the registrant otherwise than as consideration for the supply**, or a debt or other obligation of the registrant is reduced*

[38] *Arrangement relatif à Métaux Kitco inc.*, 2017 QCCA 268, confirming 2016 QCCS 444 ("***Kitco***").

***as consideration for the supply**, or a debt or other obligation of the registrant is reduced or extinguished without payment on account of the debt or obligation,* *(a) the **person is deemed to have paid, at that time, an amount of consideration for the supply** equal to the amount determined by the formula* [. . .] *(b) the registrant is deemed to have collected, and the **person is deemed to have paid, at that time, all tax in respect of the supply** that is calculated on that consideration, which is deemed to be equal to (. . .)* [Emphasis added]	*or extinguished without payment being made in respect of the debt or obligation,* *(1) **the person is deemed to have paid, at that time, an amount of consideration for the supply** equal to the amount determined by multiplying the amount paid or forfeited, or by which the debt or obligation was reduced or extinguished, as the case may be, by 100/109.975; and* *(2) the registrant is deemed to have collected, and **the person is deemed to have paid, at that time, all tax in respect of the supply** that is calculated on that consideration, which is deemed to be equal to tax under section 16 calculated on that consideration.* [Emphasis added]

3.2 **The position of the Monitor and CQIM**

[42] The Monitor and CQIM contend that:

- Sections 182 (1) ETA and 318 QSTA *deem* the damage payment on account of the Restructuring Claims (which were made in 2018) to be a consideration for a taxable supply;

- The Restructuring Claims themselves asserted previously by the CQIM Creditors with their respective proofs of claim, were not *deemed* to be consideration payable for a taxable supply before the 2018 damage partial payments were made via the First Interim Distribution;

- However, Sections 182 (1) ETA and 318 QSTA nevertheless not only *deem* that such damage payments include GST and QST but also *deem* that the GST and QST were collected and paid by CQIM to the CQIM Creditors at the time of said damage payments, hence the right of CQIM to file with the ARQ for the Damage Payments ITCs resulting therefrom, hence the CQIM $7.5M Claim;

- In the absence of those *deeming* rules found in those two tax statutes, the damage partial payments made in 2018 on account of the Restructuring Claims would not have been a consideration for a taxable supply and would not have given rise to any obligation of the CQIM Creditors to remit any GST/QST and no portion of the payments made to the CQIM Creditors would have been considered to be GST/QST also paid by CQIM;

- Of crucial importance for the Monitor, the wording of Sections 182 (1) ETA and 318 QSTA makes it clear that these *deeming* rules only apply at the time of the damage partial payments were actually made, i.e., during the post-filing period in the present instance;

- The wording of those two sections does not suggest nor *deem* GST/QST to have been paid nor to have become payable during the pre-filing period i.e., before the actual damage partial payments were made by CQIM to the CQIM Creditors in August 2018 or at any time prior to the Filing Date of January 27, 2015;

- The Damage Payments ITCs were requested by CQIM in its sales tax returns for the period ended November 30, 2018, on the basis that GST/QST only arose and became payable upon payments made during the First Interim Distribution in 2018;

- CQIM's right to the Damage Payments ITCs (the CQIM $7.5M Claim) only arose as a result of Sections 182 (1) ETA and 318 QSTA *deeming* that GST and QST were included in its damage partial payments to the CQIM Creditors made on account of the Restructuring Claims in August 2018;

- Those damage partial payments that gave rise to the CQIM $7.5M Claim, were all made in the post-filing period and cannot have a retroactive effect and application to the pre-filing period insofar as the GST and QST are concerned.

[43] The Monitor and CQIM also argue that pursuant to Sections 182 (1) ETA and 318 QSTA, the tax obligation giving rise to the Damage Payments ITCs did not exist at the time of the:

(i) Bloom Lake Initial Order;

(ii) Disclaimer or resiliation of the contracts entered into with the CQIM Creditors giving rise to the Restructuring Claims;

(iii) Filing of the Restructuring Claims by the CQIM Creditors, nor

(iv) When the Restructuring Claims became Proven Claims under the Claims Procedure Order.

[44] Instead, always pursuant to Sections 182 (1) ETA and 318 QSTA, the tax obligations only arose when the First Interim Distribution was made in 2018 on account of the Restructuring Claims.

[45] In their view, the clear and unambiguous wording of the relevant provisions of the ETA and QSTA are dispositive of the issue.

[46] The mere existence of the Restructuring Claims, or indeed of any of the relevant pre-filing contracts for the supply of goods or services, does not give rise to GST and QST being paid or becoming payable. Therefore, it cannot form the basis of the Damage Payment ITCs which are solely dependent upon the GST and QST becoming payable or having been paid to the CQIM Creditors.

[47] Consequently, the right to claim the Damage Payments ITCs is a post-filing right as it only arose from and at the time of the distribution of the damage payments on account of the Restructuring Claims, which clearly occurred post-filing.

3.3 **The position of the ARQ**

[48] In a nutshell, the ARQ asserts the position that:

> a) the Damage Payment ITCs must be treated as pre-filing claims owed by the ARQ to CQIM, which can be set-off against the ARQ's pre-filing claims, namely the ARQ $13M Claims;
>
> b) Alternatively, on the basis that the reasoning of the Court of Appeal in the case of *Kitco*[39] is of limited importance and that it does not find application in the context of liquidation proceedings performed under the CCAA as opposed to restructuring proceedings, the particular circumstances of the present case permit the ARQ to set-off the CQIM $7.5M Claim against its pre-filing ARQ $13M Claims, even if the CQIM $7.5M Claim were to be considered a post-filing claim.

[49] The ARQ's approach is completely different from the arguments made by the Monitor and CQIM to support their position.

[50] It is recognized that the four CQIM Creditors who received damage payments with the First Interim Distribution were all bound by contracts that were entered into prior to the Filing Date with CQIM to provide and make taxable supplies to the latter in Canada.

[51] According to the ARQ, the conditions giving rise to the Damage Payment ITCs pursuant to Sections 182 (1) ETA and 318 QSTA already existed before the Bloom Lake

---

[39] *Arrangement relatif à Métaux Kitco inc.*, 2017 QCCA 268, confirming 2016 QCCS 444 ("***Kitco***").

Initial Order[40] that defines the Filing Date due to their close if not direct connection with the Disclaimed Contracts[41].

[52] Indeed, on the Filing Date, CQIM already had ongoing contractual obligations towards the four CQIM Creditors that will subsequently see their respective contracts disclaimed or resiliated (the "**Disclaimed Contracts**").

[53] The partial damages paid to the CQIM Creditors via the First Interim Distribution on account of the Disclaimed Contracts must be considered as payments on account of pre-filing debts since the proofs of claim filed by the CQIM Creditors in connection therewith were treated as provable claims pursuant to the provisions of Section 32 (7) CCAA.

[54] In fact, the ARQ argues that since Section 32 (7) CCAA provides that the CQIM Creditors are *considered* to have a provable claim with respect to losses (damages) arising out of the Disclaimed Contracts, it ensues that the damages paid to the CQIM Creditors by CQIM after the Filing Date are payments made against pre-filing debts of CQIM to the CQIM Creditor given that such losses can be compromised as part of the Plan of Arrangement pursuant to Section 19 (1) (b) CCAA.

[55] The damage partial payments made to the CQIM Creditors via the First Interim Distribution, although made after the Filing Date, simply crystallized pre-filing obligations of CQIM to compensate the CQIM Creditors for the Disclaimed Contracts.

[56] Therefore, the funds forming the CQIM $7.5M Claim must be considered and treated as accessories to those pre-existing (or pre-filing) contractual damages since the Damage Payments ITCs result from and are closely connected to the pre-filing Disclaimed Contracts and to the payments made on account of pre-filing provable claims.

[57] In other words, the only occurrence that happened after the Filing Date, was the determination (quantification) of the ITCs and of the RTIs linked to pre-filing obligations (the Disclaimed Contracts). The damage partial payments made to the CQIM Creditors simply crystallized the exact amount of the Damage Payments ITCs, hence the CQIM $7.5M Claim must be treated as a pre-filing claim.

[58] This post-filing determination or crystallization of the Damage Payments ITCs generating the CQIM $7.5M Claim, did not cause to change or alter its pre-filing nature. The Damage Payments ITCs are only an accessory of the damages sought by the CQIM Creditors which were *considered* provable claims pursuant to Section 32 (7) CCAA.

---

[40] **R-1**.
[41] As defined below.

[59] Therefore, under such circumstances, the ARQ is in its absolute right to compensate the CQIM $7.5M Claim with its ARQ $13M Claims.

[60] To characterize the pre-filing or post-filing nature of the CQIM $7.5M Claim, the ARQ also resorted to a contextual and purposive approach to statutory interpretation.

[61] The ARQ expressed the view that Sections 182 (1) ETA and 318 QSTA had to be considered in conjunction with Section 21 CCAA dealing with set-off and compensation as well as Sections 19(1) b) and 32(7) CCAA.

[62] Section 19 (1) (b) CCAA determines what claims may be provable claims in the context of a compromise or of an arrangement:

> **19 (1)** Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are
>
> (a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of
>
> (i) the day on which proceedings commenced under this Act, and
>
> (ii) if the company filed a notice of intention under section 50.4 of the Bankruptcy and Insolvency Act or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the Bankruptcy and Insolvency Act, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and
>
> (b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned **by reason of any obligation incurred by the company before the earlier** of the days referred to in subparagraphs (a)(i) and (ii).
>
> [Emphasis added]

[63] Section 32 (7) essentially flows from Section 32 (1) CCAA:

> **32 (1)** Subject to subsections (2) and (3), a debtor company may—on notice given in the prescribed form and manner to the other parties to the agreement and the monitor—disclaim or resiliate any agreement to which the company is a party **on the day on which proceedings commence under this Act**. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.
>
> **32 (7)** If an agreement is disclaimed or resiliated, a party to the agreement who suffers a **loss in relation to the disclaimer or resiliation is considered to have a provable claim**.

[Emphasis added]

[64] The ARQ proposed that in a CCAA insolvency context, such as the present one, Sections 182 (1) ETA and 318 QSTA cannot be read in a silo or in a vacuum as suggested by the Monitor and CQIM, without considering Sections 19 (1) (b) and 32 (7) CCAA as well.

[65] Contrary to the approach advocated by the Monitor and CQIM that there is no need to resort to other legislative provisions since the wording of Sections 182 (1) ETA and 318 QSTA is clear and unambiguous, the ARQ pointed out that nowadays fiscal laws must no longer be interpreted in a restrictive manner but more as part of a coherent system[42].

[66] Taking into consideration the present particular context, the ARQ also urged the Court to interpret these sections together in compliance with the principle that laws are presumed to be coherent among themselves and that concept applies equally to tax laws.[43]

[67] Moreover, the ARQ pointed out that in the case of *Bellatrix Exploration Ltd (Re)*[44], the Alberta Court of Appeal favoured a liberal interpretation of Section 32 CCAA:

> [63] Section 32 of the CCAA should be read in light of the objectives, context, intent and policies of Parliament (which objectives, context, intent and policies are described in *Callidus Capital*): see *Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at para 21, saying that the "words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see also *Canada Trustco Mortgage Co. v Canada*, 2005 SCC 54 para 10, [2005] 2 SCR 601, cited in Callidus Capital at para 60 and in Orphan Well Association v Grant Thornton Ltd, 2019 SCC 5 at para 88, [2019] 1 SCR 150.
>
> [64] **Section 32 should also be read consistently with the applicable canons of interpretation, including that the provision is part of a larger scheme across several pieces of legislation, and accordingly it should be read in harmony with the scheme and not so as to render any other parts of the scheme ineffective**. This canon of interpretation also dates back to *Lord Mansfield in R. v Loxdale* (1758) 1 Burr 445 at p 447 where he said:

---

[42] *Québec (Revenu) v. Caisse populaire Desjardins de Montmagny*, 2009 CSC 49 (CanLII), par. 19 and 21; *Agence du revenu du Québec v. Des Groseillers* 2021 QCCA 906, par. 67.
[43] P-A. Côté avec la collaboration de S. Beaulac et M. Devinat, *Interprétation des lois,* 4 th ed., Montréal, Éditions Thémis, 2009 EYB2009THM227, par. 1269-1270 ; Ruth Sullivan, *On the Construction of Statutes*, 6th ed., Lexis Nexis, page 338; Ruth Sullivan, *Statutory Interpretation*, 3rd ed., Irwin Law, page 181.
[44] 2021 ABCA 85.

> Where there are different statutes in *pari materia* though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system, and explanatory of each other.

This was lately cited by the *UKSC in T W Logistics Ltd v Essex County Council and another*, [2021] UKSC 4 at para 75; see likewise *Food and Drug Administration et al. v. Brown & Williamson Tobacco Corp. et al.*, 529 U.S. 120 (2000) where O'Connor J pointed to the need to see a statutory system as "as a symmetrical and coherent regulatory scheme".

[65] Similarly, Antonin Scalia and Bryan Garner wrote in *Reading Law: The Interpretation of Legal Texts* (2012) at p. 180:

> **The imperative of harmony among provisions is more categorical than most canons of construction because it is invariably true that intelligent drafters do not contradict themselves. . . Hence there can be no justification for needlessly rendering provisions in conflict if they can be interpreted harmoniously**".

See also *Geophysical Service Inc v EnCana Corporation*, 2017 ABCA 125 at para 38, [2017] 9 WWR 55, leave denied [2017] SCCA No 260 (QL) (SCC No 37634).

[Emphasis added]

[68] A year earlier in 2020, in the matter of *Repsol Canada Energy Partnership v Delphi Energy Corp*[45], the Alberta Court of Appeal made the following comment with respect to Section 19 CCAA stated:

> "16. In determining whether something is a pre-filing claim under the CCAA, regard must be had to the wording of the CCAA itself. Analysis of the issue in the context of the Limitations Act of a particular jurisdiction, while interesting, cannot provide guidance if it is directly in contradiction to what the CCAA provides. **The specific provisions of s 19 were designed to capture claims that are broader than crystallized causes of action** [. . .]
>
> [Emphasis added]

[69] Relying on the foregoing principles, the ARQ suggested that the legal effects of Sections 19 (1) (b) and 32 (7) CCAA allow to safely conclude that ITCs and ITRs stemming from Sections 182 (1) ETA and 318 QSTA are pre-filing claims or debts as they are accessories to the damages paid by the Monitor following the Notices of disclaimer sent to the CQIM Creditors that triggered their proofs of claim who must necessarily be *considered* as pre-filing claims given the explicit wording of Section 32 (7) CCAA.

---

[45] 2020 ABCA 364.

[70] In any event, should the Court conclude that the CQIM $7.5M Claim is a post-filing claim, the ARQ should nevertheless be allowed to compensate the same with its pre-filing ARQ $13M Claims as the teachings of the Court of Appeal in *Kitco* involved a CCAA restructuring and that the same should not apply to Liquidating CCAAs where the debtor corporation is not seeking to survive beyond the restructuring process.

3.4 Is the CQIM $7.5M Claim against the ARQ a pre-filing or a post-filing claim susceptible to set-off or be compensated with the ARQ $13M Claims which are pre-filing claims?

[71] The Court is confronted with two competing positions that are mutually exclusive.

[72] However, for the reasons that follow, the Court finds that the CQIM $7.5M Claim is a post-filing debt of the ARQ that may not be set-off or compensated with its pre-filing ARQ $13M Claims.

[73] On the one hand, the Monitor and CQIM argued that the wording of Sections 182 (1) ETA and 318 QSTA is clear and unambiguous in that these sections contain specific *deeming* provisions, whereby certain types of payments like the damage partial payments made to the CQIM Creditors in the present instance, were *deemed* to be a consideration for taxable supplies.

[74] This *deeming* rule only occurs when an amount of money is actually paid from one person (CQIM) to another (the CQIM Creditors) as compensation or indemnification for damages that result from terminating or disclaiming an agreement for the "making[46]" of a taxable supply, otherwise known as damage payments.

[75] In other words, upon actually making (not before) the damage partial payments to the CQIM Creditors via the First Interim Distribution of August 2018, CQIM was *deemed* to:

- have paid, at the time of payment, to the CQIM Creditors an amount in consideration of the taxable supply;
- have paid, at the time of payment, to the CQIM Creditors all the taxes (QST/GST) in respect of that supply; and
- the CQIM Creditors were *deemed* to have collected[47] said taxes from CQIM with the reporting obligations that ensue.

[76] There is no doubt in the mind of the Court that in the absence of those *deeming* rules, the damage partial payments made to the CQIM Creditors by CQIM on account of

[46] As this word is used in Sections 182 (1) ETA and 318 QSTA.
[47] Which implies that the CQIM Creditors had to account to the ARQ for those collected taxes.

the Restructuring Claims would not have been a consideration for a taxable supply and would not have given rise to any obligation to pay and to remit any GST/QST, and no portion of the First Interim Distribution on account of the Restructuring Claims would have been considered or *deemed* to be GST/QST paid by CQIM to the CQIM Creditors.

[77] Indeed, without the legal fiction created by Sections 182 (1) ETA and 318 QSTA, the damage partial payments made on account of the Restructuring Claims would not be a consideration for the taxable supplies which were initially to be provided by the CQIM Creditors under the Disclaimed Contracts, but rather sums which were paid to partially indemnify the CQIM Creditors who suffered losses as a result of the Notices of disclaimer.

[78] Those damage partial payments were only *deemed* to be a consideration for taxable supplies and inclusive of GST/QST due to the specific *deeming* rules of Sections 182 (1) ETA and 318 QSTA.

[79] The Monitor and CQIM were right to rely on the unambiguous wording of Sections 182 (1) ETA and 318 QSTA that makes it clear that these *deeming* rules only apply at the time of payment, which in this case, was made during the post-filing period. These provisions do not *deem* that the GST and the QST have been paid or were payable any time before the actual damage payment was made. It follows that the GST and the QST were not paid or *deemed* to be paid during the pre-filing period, nor at any time prior to the Bloom Lake Initial Order.

[80] Moreover, the Damage Payment ITCs were, rightfully so, only claimed by CQIM in its sales tax returns for the period ending November 30, 2018, on the basis that GST/QST only arose and became payable upon the damage partial payments of the First Interim Distribution made in August 2018.

[81] CQIM had no right to file such a claim with the ARQ at any time before the damage partial payments were actually made some three years after the Filing Date.

[82] Indeed, the Court finds that CQIM's right to the Damage Payment ITCs only arose as a result of Sections 182 (1) ETA and 318 QSTA *deeming* them to become due, at the time of the damage payments on account of the Restructuring Claims, as the applicable GST and QST were included in such partial payments. Those damage partial payments were only made during the post-filing period.

[83] Pursuant to Sections 182 (1) ETA and 318 QSTA, the tax obligation of CQIM only arose when the First Interim Distribution was made to the CQIM Creditors in August 2018 on account of Restructuring Claims.

[84] With all due respect, the mere existence of the Restructuring Claims, or any of the relevant pre-filing contracts for the supply of goods or services, did not give rise to GST and QST being paid or becoming payable before the Filing Date with respect to the Disclaimed Contracts.

[85] Therefore, it cannot form the basis of the Damage Payments ITCs (the CQIM $7.5M Claim), which are dependent upon GST and QST being payable or having been paid, which occurred in August 2018.

[86] CQIM's right to the Damage Payments ITCs only arose from and at the time of the damage partial payments made with the First Interim Distribution on account of the Restructuring Claims, which clearly occurred post-filing.

[87] For those reasons, the Monitor and CQIM were of the view that the clear wording of the relevant provisions of Sections 182 (1) ETA and 318 QSTA was dispositive of the issue.

[88] With all due respect, the Court shares the same opinion.

[89] Be that as it may, the Court shall nevertheless address the additional principal arguments raised in a very able manner by the counsels for the ARQ, arguments who were very appealing at first glance, but that could not overcome or outweigh the compelling wording of Sections 182 (1) ETA and 318 QSTA that leaves no doubt as to when the Damage Payments ITCs' claims came into existence.

[90] The Restructuring Claims themselves filed by the CQIM Creditors via their proofs of claim were not *deemed* to be a consideration payable for taxable supplies before the damage payments were actually made in August 2018.

[91] With respect to the contextual interpretation of Sections 182 (1) ETA and 318 QSTA such that they should be read harmoniously with Sections 19, 21 and 32 CCAA, before favouring a contextual and purposive approach to statutory interpretation, the Court believes that it must first rely on the plain wording used by the legislator.[48]

[92] First and foremost, the *deeming* provisions set out by Sections 182 (1) ETA and 318 QSTA and the right to claim input tax credits in respect of taxable supplies must be construed in the light of the ETA[49] and the QSTA as a whole.

[93] Needless to say, the objects and purposes of the ETA, on the one hand, and of the *Bankruptcy and insolvency Act* ("**BIA**") and the CCAA, on the other hand, are completely different and cannot be considered as statutes in *pari materia* or dealing with the same subject matter.

---

[48] *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, par. 10; *Bell ExpressVu v. Rex*, 2002 SCC, par. 26-27 ; *Placer Dome Canada Ltd v. Ontario (Minister of finance)*, 2006 SCC 20, par. 21–23; *Centre de traitement de la biomasse de la Montérégie Inc. v. Agence du revenu du Québec*, 2021 QCCA 1068, par. 30-32.

[49] *Reference Re G.S.T.*, [1992] 2 S.C.R. 445, page 471.

[94] Therefore, the "contextual" analysis of the ETA requires a reading of its provisions in light of that statute as a whole.

[95] Such a reading of the relevant provisions of the ETA dealing with ITCs does not in any way support any argument to the effect that regard must be had to the underlying contracts to determine when a tax obligation arises.

[96] The Court noted from different provisions in the ETA, that the legislator clearly expressed its intentions when certain provisions needed to be read in conjunction with provisions of the CCAA by making express references to same.[50] The same findings apply to the QSTA and the *Tax Administration Act*.

[97] Yet, with respect to Sections 182 (1) ETA and 318 QSTA, the legislator did not choose to specifically address situations involving the payment of damages or compensation in the context of a breach or termination of an agreement for the making of a taxable supply in the context of bankruptcy or CCAA proceedings, which would have prevented the present debate in all likelihood.

[98] Maybe the legislator should consider amending these specific sections to clarify the situation when circumstances such as to one raised in the present instance occur.

[99] With all due respect, nothing in the ETA (and in the QSTA) leads the Court to conclude that for the purposes hereof, those tax statutes constitute somehow an accessory of civil law, and that the timing of a tax liability on account of damage claims linked to the Disclaimed Contracts should rely on private law concepts and be determined by reference to the date of execution of the underlying contracts, despite the clear wording of Sections 182 (1) ETA and 318 QSTA.

[100] In summary, the Court shares the view of counsels for the Monitor and CQIM that, a "contextual" analysis of the relevant provisions in the ETA relating to ITCs in the context of this file yields the following result:

a) when an agreement for the making of a taxable supply is disclaimed by the debtor and a Damage Payment is made pursuant to a compromise or arrangement, the person is *deemed* to have paid, at the time the payment is made, an amount of consideration for a taxable supply, based on the formula at paragraph 182 (1)(a) ETA;

b) an ITC can be claimed in the reporting period during which the Damage Payment was made, pursuant to subsection 169 (1) ETA;

[50] See Sections 82(2.6) (d), 222 (1.1) and 265 ETA for examples.

c) a “reporting period” is a public law concept that is specific to the ETA, which does not call any private law concepts into play, as the ETA is comprehensive regarding the timing of liabilities.

[101] What about the argument that the Restructuring Claims are pre-filing claims?

[102] The Court understands that based on Sections 19(1) and 32 (7) CCAA, the ARQ is of the view that the proofs of claim filed by the CQIM Creditors in connection with the Disclaimed Contracts, evidence that said claims are pre-filing claims notwithstanding the fact that they result from Notices of disclaimer sent after and in compliance with the Initial Order.

[103] Therefore, should any subsequent payment made in connection therewith retain the same pre-filing characteristics including its accessory, i.e., the Damage Payments ITCs?

[104] Again, with all due respect, the Court disagrees with such a proposition.

[105] Firstly, nothing in the wording of Sections 182 (1) ETA and 318 QSTA leads to such a conclusion regarding the Damage Payments ITCs.

[106] Secondly, the Restructuring Claims herein cannot only be characterized in light of Sections 19 and 32(7) CCAA.

[107] The Court cannot ignore the provisions of the Plan of Arrangement[51] that was sanctioned by Order of Justice Hamilton of June 29, 2018[52].

[108] The mere fact that Section 32(7) CCAA provides that “*if an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim*”, and that such a claim can be subject to a compromise or an arrangement pursuant to Section 19 (1)(b) CCAA, does not automatically confer upon the same, the characteristic of a pre-filing claim.

[109] While it is true that a claim in damages resulting from a breach or non-performance of a contract occurring prior to the applicable Initial Order would clearly amount to a pre-filing claim, this is not the case herein. A Restructuring Claim, which can only arise as a result of a disclaimer or resiliation after the issuance of an Initial Order under the CCAA in relation to a contract entered before that date[53], cannot be considered a pre-filing claim *per se*.

---

[51] **R-3**.
[52] **R-4**.
[53] Section 32(1) CCAA specifically provides that it can only apply to an “agreement to which the company is a party on the day on which proceedings commence under this Act.”

[110] The Court is rather of the view that the word "*considered*" ("*réputée*" in the French version) used by the legislator in Section 32(7) CCAA is the equivalent of the word "*deemed*" to be a provable claim.

[111] Under such circumstances, the claim resulting from an agreement or contract that was disclaimed or resiliated after the Filing Date pursuant to Section 32 CCAA[54], remains a post-filing claim even though the legislator chose to consider the same as an admissible provable claim for the purpose of treatment in the context of an arrangement or a compromise under the CCAA.

[112] In light of the *deeming* provision of Section 32 (7) CCAA, the legislator determined that such a post-filing claim was to be treated (or *considered*) as if it was a pre-filing claim in order to permit the application of Section 19 CCAA that deals with claims that may be subject to a compromise or an arrangement under the CCAA.

[113] Being *deemed* to be a provable claim that is subject to a compromise or an arrangement under the CCAA does not necessarily convert such a claim from post-filing to pre-filing claim for the purpose of set-off or compensation.

[114] Section 32(7) CCAA simply clarifies and removes any uncertainty that a claim stemming from a contract that was disclaimed or resiliated after the Initial Order pursuant to Section 32(1) CCAA, must (not may) nevertheless be *considered* as a provable claim subject to a compromise or an arrangement just as if it had occurred before the Initial Order.

[115] In the Court's opinion, the claims of the CQIM Creditors made in connection with their Disclaimed Contracts are and remain post-filing claims (Restructuring Claims) that were granted a special treatment by the legislator for the purpose of an arrangement or a compromise.

[116] The Court was cited the judgment rendered in the matter of *Aveos*[55] where a creditor with a $501,381 claim (a cancellation indemnity) resulting from the disclaimer of its contract pursuant to Section 32 CCAA was disputing (i) the right to cancel its contract and (ii) was nevertheless trying to execute the same immediately against Aveos on the basis that it was a "post-filing claim" that was not subject to the stay provisions of the Initial Order.

[117] The facts in that case differ significantly from those in the present instance. Moreover, the *Aveo* case does not involve any issue of compensation or set-off.

---

[54] Necessarily after the Initial Order for Section 32 CCAA to apply.
[55] *Aveos Fleet Performance Inc. /Aveos Fleet performance aéronautique inc. (Arrangement relatif à)*, 2012 QCCS 6796.

[118] Firstly, the creditor was contesting the right of Aveos to disclaim its contract pursuant to Section 32 CCAA as it was in a liquidation mode as opposed to a restructuring mode. Aveos was not to resume its activities afterwards.

[119] Justice Mark Schrager found that regardless of the fact that Aveos was involved in liquidation CCAA proceedings, it could nevertheless avail itself of the provisions of Section 32 CCAA and disclaim or cancel the contract in question.

[120] The case also raised the issue that if Aveos had the right to cancel the contract, could the creditor exact immediately the full amount of the indemnity on the basis that it was a "post-filing claim"?

[121] Finding that the claim in question was a provable claim pursuant to Section 19(1)(b) CCAA that deals with provable claims that are subject to a compromise or an arrangement under the CCAA, Schrager J. stated that, although Aveo may have triggered the cancellation penalty after the CCAA filing, the underlying obligation stemmed from a contract to which both parties were bound pre-CCAA filing.

[122] Schrager J. added that the creditor's $501,381 claim being a provable claim, it *would not have the status of a "post-filing claim" payable immediately, i.e., prior to the claims of other creditors*.[56]

[123] The judge then echoed the jurisprudence that pre-filing creditors cannot under the guise of a post-filing claim, obtain a preference over the other creditors under the CCAA and that *the equitable treatment of creditors' demands that claims for contractual damages arising from the termination of contracts after filing under the CCCAA be treated on a par with other provable claims*[57].

[124] At paragraph 65, Schrager J. made the following brief comment with respect to Section 32(7) CCAA without, however, addressing the incidence of the specific wording (*is considered to have a provable claim*) on the *pre* or *post*-filing status of such a claim in the context of set-off or compensation, which was not at issue at the time:

> [65] Regarding the $501,381.00 cancellation indemnity, the following should be added. Section 32(7) C.C.A.A. provides that any loss suffered in relation to the disclaimer is a provable claim. [. . .]

[125] With all due respect, the Court does not find that the *Aveos* case is of any assistance to the ARQ given the very particular context of the present question at issue and the compelling wording of Sections 182 (1) ETA and 318 QSTA that creates the legal fiction of the GST/QST being *deemed* to have been paid at the time of the damages

[56] *Ibid*., par. 59.
[57] *Ibid*., par. 60.

payments since those payments are also *deemed* to be amounts of consideration for a taxable supply.

[126] In short, the present context is totally different than the context was prevailing in *Aveos*.

[127] On a different note, the relevant provisions of the Claims Procedure Order[58] confirm the special and distinct status of the Restructuring Claims and paragraphs 4.11(a) and (b) of the definition of "*Claim*" provide as follows:

> 4.11 "**Claims**" means:
>
> (a) Any right or claim of any Person that may be asserted or made in whole or in part against the CCAA Parties (or any of them), whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, in existence on, or which is based on, an event, fact, act or omission which occurred in whole or in part **prior to** the applicable Determination Date[59], at law or in equity, by reason of the commission of a tort (intentional or unintentional), any breach of contract, lease or other agreement (oral or written), any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty), any breach of extra-contractual obligation, any right of ownership of or title to property, employment, contract or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise) or for any reason whatsoever against any of the CCAA Parties or any of their property or assets, and whether or not any such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured (by guarantee, surety or otherwise), unsecured, present, future, known or unknown, and whether or not any such right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, together with any other rights or claims not referred to above that are or would be claims provable under the BIA had the CCAA Parties (or any one of them) become bankrupt on the applicable Determination Date, including, for greater certainty, any Tax Claim and any monetary claim in connection with any indebtedness, liability or obligation by reason of a breach of a collective bargaining agreement, including grievances in relation thereto, or by reason of a breach of a legal or statutory duty under any employment legislation or pay equity legislation; or
>
> (b) **any Restructuring Claim**;[60]

[58] **R-2**, Order rendered on November 16, 2015, by Hamilton J.
[59] With respect to CQIM, the Determination Date is January 27, 2015, as provided by Section 4.23 of the Claims Procedure Order.
[60] **R-2**.

> [. . .]
>
> [Emphasis added]

[128] At paragraph 4.60, the expression *Restructuring Claim* is defined as follows:

> 4.60 **"Restructuring Claim"** means any right or claim of any Person against the CCAA Parties (or any one of them) in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the CCAA Parties (or any one of them) to such Person, arising out of the restructuring, disclaimer, resiliation, termination or breach or suspension, on or after the Determination Date, of any contract, employment agreement, lease or other agreement or arrangement, whether written or oral, and whether such restructuring, disclaimer, resiliation, termination or breach took place or takes place before or after the date of this Claims Procedure Order, and, for greater certainty, includes any right or claim of an Employee of any of the CCAA Parties arising from a termination of its employment after the Determination Date, provided, however, that "Restructuring Claim" shall not include an Excluded Claim;
>
> [Emphasis added]

[129] The Court shares the view of counsels for the Monitor and CQIM that if the expression *Restructuring Claims* referred to pre-filing claims, there would have been no point to make such a distinction in the Claims Procedure Order approved by Hamilton J.

[130] The Court also bears in mind that the Plan of Arrangement was sanctioned by Justice Hamilton on June 29, 2018,[61] after having been approved by the requisite majorities of creditors.

[131] Moreover, the Court also agrees that the Damage Payment ITCs cannot be dissociated from the GST/QST becoming payable and *deemed* paid on account of the Restructuring Claims as of the date of payments during the First Interim Distribution, which occurred in August 2018.

[132] With all due respect, there exists no reason to justify the proposition that the Damage Payments ITCs should be treated otherwise or differently, since the Restructuring Claims merely represent the present value of the services which were intended to be provided post-filing over time by the CQIM Creditors to CQIM pursuant to the Disclaimed Contracts.

[133] Absent of any payment made on account of those Restructuring Claims, CQIM could not claim any Damage Payments ITCs. The tax obligations created by the *deeming* rules of Sections 182 (1) ETA and 318 QSTA could only materialize if and when damage

---

[61] **R-4**.

payments are actually made on account of the Restructuring Claims in question, not before.

[134] Another element to consider is Section 11.01 CCAA that stipulates that no order made by the Court has the effect of *prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made,* does not rely on the pre-filing nature of contracts but rather on the timing of the consideration that must be provided after the Initial Order is made[62].

3.5 **The incidence of the *Kitco* case**

[135] The ARQ argues that the teachings of the Court of Appeal in the *Kitco* case which involved the right to compensate claims related to ITCs for sales tax in the context of CCAA proceedings, are of limited application in the present case since the company Kitco was in a restructuring process with ongoing operations *pre*- and *post*-filing as opposed to the present instance which only involves a liquidation process.

[136] In a nutshell, in *Kitco*[63], the Court of Appeal confirmed the decision of the Superior Court[64] and the principle that an ARQ post-filing claim could not be compensated with a pre-filing claim.

[137] For a better understanding, it is opportune to summarize the facts of *Kitco* as follows:

> a) Métaux Kitco inc. ("**Kitco**") was in the business of purchasing and extracting scrap gold in order to produce and sell pure gold. Kitco paid GST/QST on the scrap gold but did not collect it on the pure gold it sold, as the sale of pure gold is not taxable. Therefore, Kitco's ITCs claims generally resulted in a net tax refund for each reporting period;
>
> b) The ARQ and the CRA (the "**Agencies**") conducted audits and disallowed several ITCs it had paid to Kitco. It was alleged that Kitco participated in a fraudulent tax scheme, as it had claimed ITCs for sales tax that was never paid to its suppliers. In order to avoid enforcement measures by the Agencies, Kitco filed

---

[62] Subparagraph 33(e) of the Bloom Lake Initial Order (**R-1**) provided that the Bloom Lake CCAA Parties can terminate contracts "*and make provisions for the consequences thereof in the Plan*". The Plan compromises "*Affected Claims*", not "pre-filing claims". The definition of Affected Claims is a "*Claim other than an Unaffected Claim*". A "*Claim*" includes both (i) claims " . . . *in existence on, or which is based on, an event, fact, act or omission which occurred in whole or in part prior to the applicable Filing Date*. . ." (i.e. a "pre-filing claim") and (ii) "*Restructuring Claims*". Thus, both the CCAA and the Plan clearly provided for the authority to compromise Restructuring Claims even though they were not pre-filing claims.

[63] 2017 QCCA 268.

[64] 2016 QCCS 444 ("**Kitco QCCS**").

a Notice of intent under the *BIA*. The proceedings were then continued under the *CCAA* and an Initial Order was granted;

c) Kitco continued to operate as a going concern after the issuance of the Initial Order, and filed its ITCs claims as usual. The Agencies took the position that they were entitled to offset Kitco's pre-filing ITC-related debt with their post-filing ITC claims, and as a result withheld payment of approximately $1.8M in ITCs. Kitco then filed a motion for declaratory judgment in order to confirm that the Agencies could not operate compensation between the pre-filing ITC-related debt and their post-filing ITC claims.

[138] Madam Justice Marie-Anne Paquette concluded:

- The rules relating to compensation in an insolvency context are to be applied in light of the civil law rules relating to compensation (article 1673 *CCQ*), in that legal compensation can be operated between debts that are mutual, liquid, certain and exigible, and for judicial compensation to be effected, debts must also be connected;[65]

- Section 21 CCAA, which allows recourse to the compensation mechanism in CCAA proceedings, must be interpreted restrictively;[66]

- Such a restrictive interpretation of Section 21 CCAA is justified as the compensation mechanism in an insolvency context is an exception to the principle of equality of creditors, as it unavoidably has the effect of securing the claim of the party invoking compensation;[67]

- Compensation can only be operated between mutual debts that came into existence before the date of commencement of proceedings under the CCAA;[68]

- The debts were not connected, except for the identity of the parties and for the laws involved. But the ITCs forming part of both debts related to distinct periods, transactions and suppliers;[69]

- The ITCs claimed after Kitco's CCAA proceedings commenced were post-filing amounts, and as a result, could not be set-off by the Agencies against the pre-filing debts that they were owed by Kitco for the disallowed ITCs.[70]

[139] The Court's perusal of the Court of Appeal judgment also revealed that:

---

[65] *Kitco QCCS*, par. 77–87.
[66] *Kitco QCCS*, par. 99.
[67] *Kitco QCCS*, par. 100.
[68] *Kitco QCCS*, par. 102.
[69] *Kitco QCCS*, par. 116-117.
[70] *Kitco QCCS*, par. 118.

- the Court considered the ARQ's argument that the provisions of Section 21 CCAA permitted pre/post set-off, ran contrary to the objectives of the CCAA and the principle of equality of creditors;[71]

- The post-filing ITCs owed by the ARQ to Kitco were indeed post-filing amounts, since Kitco had no right to those post-filing ITCs on the day it commenced its insolvency proceedings; the right of Kitco to the post-filing ITCs arose from the payment of taxes to its suppliers after the Initial Order for taxable supplies or services rendered post-filing;[72]

- The ARQ was essentially attempting to claim a security interest on Kitco's property in setting off the post-filing ITCs owed to Kitco with its pre-filing debt, which was not permitted.[73]

[140] With all due respect, upon reading the Court of Appeal's decision, the Court does not find any comment that would allow or justify pre/post compensation or set-off in the context of insolvency proceedings under the CCAA.

[141] The Court of Appeal clearly pointed out that under the CCAA (and the BIA) the *pre*-filing or *post*-filing status of a claim is determined in light of the existence of a claim on the date of filing (the Initial Order):

> [81] Ce n'est pas de savoir si une dette existe, si elle est liquide et exigible ou connexe à une autre qui importe, c'est de déterminer si elle constitue une réclamation prouvable dûment prouvée ou « réputée prouvée » pour que la compensation s'opère.
>
> [82] À mon avis, les articles 21 *L.a.c.c.* et 97 (3) *L.f.i.* qui édictent que « les règles de la compensation s'appliquent à toutes les réclamations… », précisent par là le moment où la compensation s'opère, soit au moment où doivent être établies les réclamations ; c'est au jour d'Ouverture que s'établit la réciprocité temporelle.
>
> [83] Ainsi, le créancier établit sa réclamation au jour d'Ouverture, dont il soustrait sa propre dette à la débitrice. Si le solde est en sa faveur, il constitue sa réclamation prouvable, sinon, si le solde est en faveur de la débitrice, elle sera en droit de lui réclamer le solde, mais pas plus.
>
> [Emphasis added]

[142] The Court bears in mind that pursuant to Sections 182 (1) ETA and 318 QSTA, CQIM's tax liability only arose, and the Damage Payment ITCs only became payable upon payment of the First Interim Distribution well after the Filing Date.

---

[71] *Kitco*, par. 20-21.
[72] *Kitco*, par. 40.
[73] *Kitco*, par. 71.

[143] Therefore, much like in *Kitco*, it is plainly obvious that CQIM had no right to claim the Damage Payments ITCs when the Bloom Lake Initial Order was issued in January 2015. Accordingly, the CQIM $7.5M Claim represents post-filing amounts owed to CQIM which cannot be set-off against the ARQ $13M Claims which are pre-filing claims or debts.

[144] Notwithstanding the above, the ARQ also argued that the principles confirmed in *Kitco*, can only apply in the context of a "true" CCAA proceeding which contemplates the restructuration of an insolvent company that intends to carry on its operations after the completion of the restructuring process.

[145] Hence, the ARQ's proposition implies that a different set of rules should apply to liquidating CCAA proceedings such as the present one, where pre/post compensation or set-off should be allowed.

[146] With all due respect, the existing case law does not support such an interpretation.

[147] Nothing in the CCAA or the case law suggests that CCAA proceedings which involve sales of assets rather than restructuring ("**Liquidating CCAAs**") should be subject to a different set of rules.

[148] Liquidating CCAA proceedings have now been accepted in practice and case law[74].

[149] Indeed, in *Callidus*[75], the Supreme Court of Canada stated that liquidation was not inconsistent with the remedial objectives of the CCAA, as it may be a means to eliminate further loss for creditors. The Court noted that CCAA proceedings had evolved to permit outcomes that result in liquidation:

> [42] That said, the *CCAA* is fundamentally insolvency legislation, and thus it also "has the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by the firm's financial distress . . . and enhancement of the credit system generally". In pursuit of those objectives, *CCAA* proceedings have evolved to permit outcomes that do not result in the emergence of the pre-filing debtor company in a restructured state, but rather involve some form of liquidation of the debtor's assets under the auspices of the Act itself. Such scenarios are referred to as "liquidating CCAAs", and they are now commonplace in the *CCAA* landscape.
>
> [. . .]

---

[74] *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, 2020 QCCA 659 at para 68:
[68] What is inescapable and particularly applicable here is the acceptance, in the practice and case law, of the liquidating *CCAA* and the expanded view of the role of the monitor, indeed the baptism of the "super monitor". [. . .] [Emphasis added, references omitted]

[75] *9354-9186 Québec inc. v. Callidus Capital Corp*., 2020 SCC 10.

> [45] However, since s. 36 of the *CCAA* came into force in 2009, courts have been using it to effect liquidating CCAAs. Section 36 empowers courts to authorize the sale or disposition of a debtor company's assets outside the ordinary course of business. Significantly, when the Standing Senate Committee on Banking, Trade and Commerce recommended the adoption of s. 36, it observed that liquidation is not necessarily inconsistent with the remedial objectives of the *CCAA*, and that it may be a means to "raise capital [to facilitate a restructuring], eliminate further loss for creditors or focus on the solvent operations of the business" (p. 147). Other commentators have observed that liquidation can be a "vehicle to restructure a business" by allowing the business to survive, albeit under a different corporate form or ownership. Indeed, in *Indalex*, the company sold its assets under the *CCAA* in order to preserve the jobs of its employees, despite being unable to survive as their employer (see para.51).
>
> [46] Ultimately, the relative weight that the different objectives of the *CCAA* take on in a particular case may vary based on the factual circumstances, the stage of the proceedings, or the proposed solutions that are presented to the court for approval. Here, a parallel may be drawn with the *BIA* context. In *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, [2019] 1 S.C.R. 150, at para. 67, this Court explained that, as a general matter, the *BIA* serves two purposes: (1) the bankrupt's financial rehabilitation and (2) the equitable distribution of the bankrupt's assets among creditors. However, in circumstances where a debtor corporation will never emerge from bankruptcy, only the latter purpose is relevant (see para. 67). Similarly, under the *CCAA*, when a reorganization of the pre-filing debtor company is not a possibility, a liquidation that preserves going-concern value and the ongoing business operations of the pre-filing company may become the predominant remedial focus. Moreover, where a reorganization or liquidation is complete and the court is dealing with residual assets, the objective of maximizing creditor recovery from those assets may take center stage. As we will explain, the architecture of the *CCAA* leaves the case-specific assessment and balancing of these remedial objectives to the supervising judge.
>
> [Emphasis added, references omitted]

CONCLUSION

[150] Therefore, the Court finds that for the purposes hereof, the *Kitco* judgment of the Court of Appeal is not limited in scope and application by restraining its findings to Restructuring CCAAs only as opposed to Liquidating CCAAs and therefore, does not allow pre/post compensation or set-off in Liquidating CCAAs for the reason that the debtor corporation shall not resume its ongoing operations at the termination of the CCAA proceedings.

[151] Finally, the Court also agrees with counsel for the Monitor that the ARQ $13M Claims and the Damage Payments ITCs are not in any way connected. They arise from

different tax obligations and transactions, and the Damage Payments ITCs did not exist as of the date of the Bloom Lake Initial Order.

[152] Therefore, compensation (be it legal or judicial compensation) cannot operate herein. Moreover, there is no valid reason in fact or at law to allow for pre/post set-off or compensation in this case.

[153] In the present instance, the ARQ does not revendicate the status of secured creditor. All the claims in question are unsecured claims.

[154] In fact, the conclusions sought by the ARQ, if granted, would defeat the fundamental objectives of insolvency law and run contrary to the *pari passu* principle or the principle of equality between creditors.

[155] To all intents and purposes, under the present circumstances, allowing a pre/post compensation or set-off would be tantamount to grant a $7.5M security to the ARQ's unsecured $13M Claim.

[156] Limiting compensation between claims which did not exist as of the date of the Initial Order is tied to the fundamental objectives of maximizing creditor recovery and treating creditors equally, which remain applicable even under bankruptcy and liquidation.

[157] In closing, the Court shall not grant the request of the Monitor to issue a "blanket Order" that would bind the ARQ for all future Damage Payments ITCs resulting from additional distribution and from additional Damage Payments ITCs.

[158] With all due respect, the Court shares the view of counsel for the ARQ that at this juncture, the additional conclusions sought by the Monitor are too wide and hypothetical.

[159] Under the present circumstances, it is not unreasonable for the ARQ to adopt the position that should the facts surrounding the second Interim Distribution and any future distributions generating future Damage Payments ITCs, allow or warrant it, the ARQ will apply the conclusions of the present judgment once final, without necessarily being ordered to do so in advance without the benefit of the relevant facts.

[160] In any event, as the supervising judge in these CCAA proceedings, all future issues with the ARQ, if any, shall be submitted to the undersigned.

[161] Finally, the Court also shares the view of counsel for the ARQ that this matter being a tax litigation, the interests payable should be calculated in conformity with the applicable legislation relating to tax refunds as opposed to the interests and the additional indemnity calculated pursuant to the *Code of civil procedure* and the *Civil Code of Québec*.

FOR THESE REASONS, THE COURT HEREBY:

[162] **GRANTS** in part the *Amended Motion by the Monitor for Directions with respect to Set-off and Damage Payment ITCs* dated June 18, 2021 (the "**Amended Motion**");

[163] **DECLARES** that the notices given for the presentation of the Amended Motion are proper and sufficient;

[164] **DECLARES** that for the purposes hereof, the applicable filing date is January 27, 2015 (the "**Filing Date**"), when Justice Stephen W. Hamilton issued the Bloom Lake Initial Order;

[165] **DECLARES** that the following claims in the aggregate amount of $13,392,752.86 accepted by the Monitor on October 2, 2020 (collectively, the "**ARQ $13M Claims**") constitute pre-filing claims owing to the Agence du Revenu du Québec ("**ARQ**") by Cliffs Québec Iron Mining ULC (**"CQIM"**):

- The proof of claim submitted on August 11, 2016, by the ARQ acting on behalf of Canada Revenue Agency ("**CRA**") based on Section 296 (1) of the *Excise Tax Act* with respect to unpaid goods and services tax ("**GST**") in the amount of $7,739,157.52 on account of taxable supplies of goods and services received by CQIM prior to the Filing Date where such tax amounts remained unpaid by CQIM as of the Filing Date;

- The proof of claim submitted on August 25, 2020, by the ARQ acting on its own behalf based on Section 25 of the *Tax Administration Act* with respect to unpaid Québec sales tax ("**QST**") in the amount of $5,653,595.34 on account of taxable supplies of goods and services received by CQIM prior to the Filing Date where such tax amounts remained unpaid by CQIM as of the Filing Date;

[166] **DECLARES** that the input tax credits with respect to GST ("**ITCs**") and input tax refunds with respect to QST ("**ITRs**") for GST and QST *deemed* paid per Section 182 (1) of the *Excise Tax Act* and Section 318 of the *Act respecting the Québec Sales Tax* claimed by CQIM in its sales tax returns for the reporting period ending November 30, 2018, with respect to the First Interim Distribution in the aggregate amount of $7,459,257.85 for claims in damages arising from the disclaimer of contracts pursuant to Section 32 of the CCAA ("**Damage Payment ITCs**"), constitute post-filing amounts;

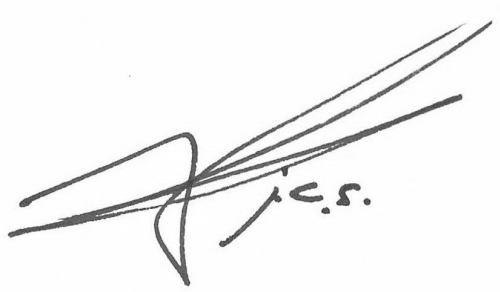
[167] **DECLARES** that the ARQ (acting on its own behalf and on behalf of the CRA) cannot offset the ARQ $13M Claims ($13,392,752.86) against the Damage Payment ITCs of $7,459,257.85;

[168] **ORDERS AND DECLARES** that the ARQ (acting on its own behalf and on behalf of the CRA) shall, without set-off of any kind, pay to FTI Consulting Canada Inc. acting as monitor (the "**Monitor**"), on behalf of the CCAA Parties and their creditors, the Damage Payment ITCs in the amount of $7,459,257.85 with respect to the First Interim Distribution, together with interest on that amount from the moment that this sum became due once calculated pursuant to Sections 28 (2) and 28 (3) of the *Tax Administration Act*[76] on the amount of $3,160,210 and pursuant to Section 230 of the *Excise Tax Act*[77] on the amount of $4,299,048, until payment in full;

[169] **ORDERS AND DECLARES** that the ARQ (acting on its own behalf and on behalf of the CRA) shall, without set-off of any kind, pay to the Monitor (acting on behalf of the CCAA Parties and their creditors) the post-filing ITCs and ITRs in the sum of $234,755.16, together with interest on that amount from the moment that this sum became due once calculated pursuant to Sections 28 (2) and 28 (3) of the *Tax Administration Act*[78] on the applicable amount of the ITRs and pursuant to Section 230 of the *Excise Tax Act*[79] on the applicable amount of the ITCs, until payment in full;

[170] **DECLARES** that the Court shall **REMAIN SEIZED** of this case should any issue arise in connection to the present judgment and its execution;

[171] **WITH COSTS** to be paid by the Agence du revenu du Québec**.**



MICHEL A PINSONNAULT, J.S.C.

M[tre] Bernard Boucher
Blake, Cassels & Graydon s.e.n.c.r.l.
Attorneys for the CCAA Parties.

[76] C. A-6.002.
[77] R.S.C. 1985, c. E-15.
[78] C. A-6.002.
[79] R.S.C. 1985, c. E-15.

M^tre^ Sylvain Rigaud
M^tre^ Alexandru Dobrota
M^tre^ Joshua Bouzaglou
Woods s.e.n.c.r.l.
Attorneys for the Monitor FTI Consulting Canada Inc.

M^tre^ Daniel Cantin
M^tre^ Jean-Claude Gaudette
M^tre^ Henrick Lavoie
Revenu Québec
Attorneys for the mises-en-cause Agence du revenu du Québec and Agence du revenu Canada

M^tre^ Gerry Apostolatos
Langlois avocats, s.e.n.c.r.l.
Attorneys for the Mises-en-cause Québec North Shore & Labrador Railway Company and Iron Ore Company of Canada

M^tre^ Nicolas Brochu
Fishman Flanz Meland Paquin s.e.n.c.r.l.
Attorneys for the Mise-en-cause for the Salaried/non-union employees and retirees

Hearing dates: August 19 and 20^th^, 2021

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No: 500-09-029797-214
(500-11-048114-157)

DATE: December 22, 2022

CORAM: THE HONOURABLE ROBERT M. MAINVILLE, J.A.
SOPHIE LAVALLÉE, J.A.
PETER KALICHMAN, J.A.

IN THE MATTER OF THE PLAN OF ARRANGEMENT WITH THEIR CREDITORS OF: BLOOM LAKE GENERAL PARTNER LIMITED, QUINTO MINING CORPORATION, 8568391 CANADA LIMITED, CQIM QUÉBEC IRON MINING ULC, WABUSH IRON CO. LIMITED, WABUSH RESOURCES INC., THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP, BLOOM LAKE RAILWAY COMPANY LIMITED, WABUSH MINES, ARNAUD RAILWAY COMPANY AND WABUSH LAKE RAILWAY COMPANY LIMITED

AGENCE DU REVENU DU QUÉBEC
AGENCE DU REVENU DU CANADA
APPELLANTS – Impleaded parties
v.
FTI CONSULTING CANADA INC.
Respondent – Monitor

and
BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
CQIM QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.
IMPLEADED PARTIES – Petitioners
and
THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED

500-09-029797-214 PAGE: 2

WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY LIMITED
IMPLEADED PARTIES – Impleaded parties
and
QUEBEC NORTH SHORE AND LABRADOR RAILWAY COMPANY INC.
IRON ORE COMPANY OF CANADA
8568391 CANADA LIMITED
EMPLOYÉS SALARIÉS, NON SYNDIQUÉS
IMPLEADED PARTIES

JUDGMENT

---

[1] The appellants are appealing a judgment rendered on November 8, 2021, by the Superior Court (the Honourable Michel A. Pinsonnault), granting a motion for directions and declaring that they cannot set off a debt they owe to the debtor company against a debt the debtor owes them. The appeal deals primarily with the right to effect compensation in the context of proceedings brought under the *Companies' Creditors Arrangement Act*.

[2] For the reasons of Kalichman, J.A., with which Mainville and Lavallée, JJ.A. concur, **THE COURT**:

[3] **DISMISSES** the appeal, with legal costs.

ROBERT M. MAINVILLE, J.A.

SOPHIE LAVALLÉE, J.A.

PETER KALICHMAN, J.A.

Mtre Jean-Claude Gaudette
Mtre Daniel Cantin
LARIVIÈRE MEUNIER (REVENU QUÉBEC)
For the Appellants

500-09-029797-214 PAGE: 3

Mtre Sylvain Rigaud
Mtre Bogdan-Alexandru Dobrota
WOODS
For the Respondent

Mtre Gerald N. Apostolatos
LANGLOIS AVOCATS
For Quebec North Shore and Labrador Railway Company Inc.
and Iron Ore Company of Canada

Mtre Bernard Boucher
Mtre Youssef Kabbaj
BLAKE, CASSELS & GRAYDON
For Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, CQIM Québec Iron Mining ULC, Wabush Iron Co. Limited, Wabush Resources Inc., The Bloom Lake Iron Ore Mine Limited Partnership, Bloom Lake Railway Company Limited, Wabush Mines, Arnaud Railway Company, Wabush Lake Railway Company Limited

Mtre Andrew J. Hatnay
KOSKIE MINSKY
Mtre Tina Silverstein for Me Nicolas Brochu
FISHMAN FLANZ MELAND PAQUIN
For Employés salaries, non syndiqués

Date of hearing: September 12, 2022

REASONS OF KALICHMAN, J.A.

[4] This is an appeal from a judgment rendered on November 8, 2021, by the Superior Court (the Honourable Michel A. Pinsonnault), granting a motion for directions and declaring that the appellants cannot set off a debt they owe to the debtor company against a debt the debtor owes them.[1] The appeal deals primarily with the right to effect compensation in the context of proceedings brought under the *Companies' Creditors Arrangement Act* (the ***CCAA***).[2]

I. Background

[5] The essential facts at issue in this appeal, which are summarized in the following paragraphs, are not in dispute.[3]

[6] On January 27, 2015, an initial order was rendered by the Superior Court (the Honourable Martin Castonguay) placing Cliffs Québec Iron Mining ULC (**CQIM**) under the protection of the *CCAA* and appointing FTI Consulting Canada Inc. as monitor (the **Monitor**).[4]

[7] At the time of the initial order, the Appellants, the Agence du revenu du Québec and the Agence du revenu du Canada (collectively the **ARQ**)[5] were owed $13,391,896.40 by CQIM (the **ARQ Claim**).

[8] Between January 2015 and February 2016, CQIM, invoking s. 32(1) of the *CCAA,* cancelled agreements with four of its suppliers, Canadian Iron Ore, Quebec North Shore and Labrador Railways Company Inc., Western Labrador Rail Services and the CSL Group (the **Suppliers**), each of which subsequently brought a damage claim against CQIM as a result of the cancelled contracts (the **Damage Claims**).

[9] On June 29, 2018, a plan of arrangement was sanctioned by the Superior Court (the Honourable Stephen W. Hamilton, as he then was).

---

1 *Arrangement relatif à Bloom Lake*, 2021 QCCS 4642 [judgment under appeal].
2 *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.
3 The parties filed a joint list of admissions (A.M., vol. 1 at pp. 168-172).
4 *Bloom Lake, g.p.l. (Arrangement relatif à)*, 2015 QCCS 169.
5 The ARQ is acting on its own regarding unpaid Quebec sales tax (**QST**) but also on behalf of the Agence du revenu du Canada regarding unpaid goods and services tax (**GST**).

[10] In August of 2018, the Monitor began making interim distribution payments to unsecured creditors of CQIM, totalling close to $60 million. As part of this interim distribution, the Suppliers received partial payment of the Damage Claims.

[11] Payments made to the Suppliers as part of the interim distribution entitled CQIM to claim income tax refunds and input tax credits from the ARQ, totalling $7,459,257.85 (the **Damage payment ITCs**). In addition, CQIM claimed tax refunds and input tax credits in connection with payments made to the Suppliers which totalled $422,940.35, $234,755.16 of which were related to services rendered after the initial order (the **Other ITCs**).

[12] The ARQ did not dispute the quantum of the Damage payment ITCs but maintained that it was entitled to operate compensation between that claim and its own. This would, in effect, allow the ARQ to recoup $7,459,257.85 of its claim, thus reducing it from $13,391,896.40 to $5,932,638.55. The ARQ did not assert that the Other ITCs were pre-filing claims.[6]

[13] The Monitor disagreed with the ARQ's position and brought a motion for instructions seeking, among other things, a declaration that the Damage payment ITCs could not be set off against the ARQ Claim.

[14] The Monitor's motion was heard over two days in August of 2021 and the judgment was rendered on November 8, 2021. The ARQ sought leave to appeal which was granted on December 17, 2021.[7]

II. The judgment

[15] At the outset, the judge noted that in the context of CCAA proceedings, compensation can only be applied between two pre-filing claims or two post-filling claims but not between a pre-filing claim and a post-filing claim. There was no dispute before the judge that the ARQ Claim existed when the initial order was rendered and was thus a pre-filing claim. The principal issue to be decided was whether the Damage payment ITCs also constituted a pre-filing claim as the ARQ argued, in which case, compensation was clearly possible. The ARQ submitted that even if the judge were to decide that the Damage payment ITCs came into existence after the initial order and thus constituted a post-filing claim, he had the discretion under s. 11 of the *CCAA* to allow such compensation and should exercise it.

[16] The judge concluded that the Damage payment ITCs constituted a post-filing claim and could not be set off against the ARQ Claim. In his view, a plain reading of s. 182 of

---

6 However, it does argue that the judge should have exercised his discretion pursuant to s. 11 CCAA regarding both the Damage payment ITCs and the Other ITCs. This question will be analysed later on in this judgment.

7 *Agence du revenu du Québec v. FTI Consulting Canada inc.*, 2021 QCCA 1925 (judge alone).

the *Excise Tax Act* (the ***ETA***)[8] and of s. 318 of the *Quebec Sales Tax Act* (the ***QSTA***)[9] (collectively the **Tax provisions**) leads to the conclusion that the Damage Payment ITCs could only have been claimed by CQIM when the Suppliers received partial payment on the Damage Claims. Since this occurred when the interim distribution was made in August of 2018, long after the initial order, the Damage payment ITCs were necessarily post-filing claims.

[17] The judge also disagree with the ARQ's submission that the Tax provisions, when read in the context of the *CCAA*, produce a different result. In his view, the object of the *ETA* is different from that of the *CCAA* such that they cannot be considered to be dealing with the same subject matter, *i.e.* are not *pari materia*. Furthermore, the judge did not agree with the ARQ that since the Damage Claims are considered to be provable claims in virtue of s. 32(7) of the *CCAA*, they are necessarily pre-filing claims. He thus rejected the submission that the Damage payment ITCs, as accessories of the Damage Claims, must also be pre-filing claims.

[18] The judge also rejected the view that the Tax provisions were accessory to the civil law and that the timing of the tax liability which gave rise to the Damage payment ITCs should thus be determined in reference to the date the contracts between CQIM and the Suppliers were entered into.

[19] Finally, the judge rejected the ARQ's reading of the Court's decision in *Arrangement relatif à Métaux Kitco inc.*[10] as implying that in a liquidation context – as opposed to a restructuring context – compensation between pre-filing claims and post-filing claims was possible.

III. The issues in appeal

[20] The ARQ argues that the judge erred in failing to conclude that the Damage payment ITCs constituted a pre-filing claim that can be set off against the ARQ Claim. Even if that conclusion stands, it maintains that the judge erred in failing to exercise his discretion under s. 11 of the *CCAA* to allow for compensation between pre-filing and post-filing claims.

[21] The Monitor and the impleaded parties submit that the judge was correct in determining that the Damage payment ITCs constitute a post-filing claim and could thus not be set off against the ARQ Claim. Furthermore, they disagree that the judge failed to exercise his discretion under s. 11 of the *CCAA* but add that, at any rate, the criteria for the exercise of such discretion are clearly not met.

---

8 *Excise Tax Act*, R.S.C. 1985, c. E-15.
9 *Act respecting the Québec sales tax*, CQLR, c. T-0.1.
10 2017 QCCA 268.

[22] The first issue to be determined is whether the judge erred in concluding that the Damage payment ITCs are a post-filing claim. If the judge was correct in that determination, the issue then becomes whether he erred in the exercise of his discretion under s. 11 of the *CCAA* in refusing to allow set off with the ARQ Claim.

IV. Analysis

(i) Did the judge err in concluding that the Damage payment ITCs constitute a post-filing claim?

[23] According to the ARQ, the judge adopted an overly literal interpretation of the Tax provisions and failed to read them in harmony with the *CCAA.* In its view, the relevant provisions of the *ETA*, the *QSTA* and the *CCAA* address the same subject, namely, the juridical effects of supplier contracts in the context of insolvency and must be considered in *pari materia.* The judge should thus have read the various dispositions as being in harmony with each other and not in conflict. According to the ARQ, had the judge adopted such an interpretation, he would necessarily have concluded that the Damage payment ITCs are pre-filing claims and can thus be set off against the ARQ Claim.

[24] The ARQ places particular emphasis on s. 32(7) of the *CCAA*, which provides that parties, like the Suppliers, who suffer a loss in relation to disclaimed contracts, are considered to have provable claims. Since, according to s. 19(1)(b) of the *CCAA*, a provable claim is one that relates to debts or liabilities incurred before the initial order (i.e., pre-filing claims) and since CQIM's contracts with the Suppliers were all entered into before the initial order, the judge erred in concluding that the Damage Claims were post-filing claims.

[25] Finally, the ARQ argues that even if a debt was not liquid and exigible at the time of the initial CCAA order, if its subject matter is sufficiently connected to that of a pre-filing debt, they can still be offset. Accordingly, despite concluding that the Damage payment ITCs were post-filing claims, the judge should nonetheless have allowed compensation with the ARQ Claim since the claims are between the same parties and are based on the same tax laws.

[26] For the following reasons, I do not agree with the ARQ.

[27] The right of CQIM to claim the Damage payment ITCs arises from the Tax provisions, the meaning of which could hardly be clearer. The relevant extracts are reproduced below:

182 (1) For the purposes of this Part, where at any time, as a consequence of the breach, modification or termination after 1990 of an agreement for the making of a taxable	**182** (1) Pour l'application de la présente partie, dans le cas où, à un moment donné, par suite de l'inexécution, de la modification ou de la résiliation, après 1990, d'une

supply (other than a zero-rated supply) of property or a service in Canada by a registrant to a person, an amount is paid or forfeited to the registrant otherwise than as consideration for the supply, or a debt or other obligation of the registrant is reduced or extinguished without payment on account of the debt or obligation,

convention portant sur la réalisation d'une fourniture taxable au Canada, sauf une fourniture détaxée, par un inscrit au profit d'une personne, un montant est payé à l'inscrit, ou fait l'objet d'une renonciation en sa faveur, autrement qu'à titre de contrepartie de la fourniture, ou encore une dette ou autre obligation de l'inscrit est réduite ou remise sans paiement au titre de la dette ou de l'obligation, les présomptions suivantes s'appliquent :

(a) the person is deemed to have paid, at that time, an amount of consideration for the supply equal to the amount determined by the formula (…)

a) la personne est réputée avoir payé, au moment donné, un montant de contrepartie pour la fourniture égal au résultat du calcul suivant (…)

(b) the registrant is deemed to have collected, and the person is deemed to have paid, at that time, all tax in respect of the supply that is calculated on that consideration, which is deemed to be equal to (…)

b) la personne est réputée avoir payé, et l'inscrit avoir perçu, au moment donné, la totalité de la taxe relative à la fourniture qui est calculée sur cette contrepartie, laquelle taxe est réputée égale au montant suivant (…)

318. Where at any time, as a consequence of the breach, modification or termination, after 30 June 1992, of an agreement for the making of a taxable supply, other than a zero-rated supply, of property or a service in Québec by a registrant to a person, an amount is paid or forfeited to the registrant otherwise than as consideration for the supply, or a debt or other obligation of the registrant is reduced or extinguished without payment being made in respect of the debt or obligation,

318. Dans le cas où, à un moment quelconque, par suite de l'inexécution, de la modification ou de l'expiration, après le 30 juin 1992, d'une convention relative à une fourniture taxable, autre qu'une fourniture détaxée, d'un bien ou d'un service au Québec qui doit être effectuée par un inscrit à une personne, un montant est payé à l'inscrit ou fait l'objet d'une renonciation en faveur de celui-ci autrement qu'à titre de contrepartie de la fourniture, ou une dette ou autre obligation de l'inscrit est éteinte ou réduite sans qu'un paiement ne soit effectué à l'égard de la dette ou de

	l'obligation, les règles suivantes s'appliquent:
(1) the person is deemed to have paid, at that time, an amount of consideration for the supply equal to the amount determined by multiplying the amount paid or forfeited, or by which the debt or obligation was reduced or extinguished, as the case may be, by 100/109.975; and	1° la personne est réputée avoir payée, à ce moment, un montant de contrepartie pour la fourniture égal au résultat obtenu en multipliant le montant payé, ayant fait l'objet d'une renonciation ou par lequel la dette ou l'obligation a été éteinte ou réduite, selon le cas, par 100/109,975;
(2) the registrant is deemed to have collected, and the person is deemed to have paid, at that time, all tax in respect of the supply that is calculated on that consideration, which is deemed to be equal to tax under section 16 calculated on that consideration.	2° l'inscrit est réputé avoir perçu et la personne est réputée avoir payé, à ce moment, la totalité de la taxe relative à la fourniture qui est calculée sur cette contrepartie, laquelle taxe est réputée égale à la taxe prévue à l'article 16 calculée sur cette contrepartie.
	(Underlined by the Court)

[28] Both provisions stipulate that when an amount is paid because of the termination of an agreement for the making of a taxable supply, the person is deemed to have paid for the supply and the registrant is deemed to have collected the tax, on the day that the damages were paid. I share the judge's view that the meaning of these provisions is unambiguous.

> [79] The Monitor and CQIM were right to rely on the unambiguous wording of Sections 182 (1) ETA and 318 QSTA that makes it clear that these deeming rules only apply at the time of payment, which in this case, was made during the post-filing period. These provisions do not deem that the GST and the QST have been paid or were payable any time before the actual damage payment was made. It follows that the GST and the QST were not paid or deemed to be paid during the pre-filing period, nor at any time prior to the Bloom Lake Initial Order.

[29] Accordingly, it was only when the interim distribution was made three years after the initial CCAA filing, that payment for the supply of a taxable service was deemed to have been made and the taxes due in respect of that payment were deemed to have been collected. As the judge wrote, the plain and simple language of the Tax provisions "leaves no doubt" as to when the Damage payment ITCs came into existence and that they are, therefore, post-filing claims.[11] Furthermore, as the Supreme Court held in *Placer Dome Canada v. Ontario (Min. of Finance)*, since taxpayers are entitled to rely on the clear meaning of taxation provisions, where the words of a statute are "precise and

---

[11] Judgment under appeal, para. 89.

unequivocal, those words will play a dominant role in the interpretive process."[12] Not only did the ARQ fail to demonstrate that the judge erred in his interpretation of the Tax provisions, but no such error was even alleged.

[30] It should be noted as well that the interpretation proposed by the ARQ does not even appear to be consistent with the logic of the Tax provisions themselves. The taxable supply that triggers payment (and the duty to pay tax) was never provided because the agreement that contemplated it was disclaimed. The Tax provisions create a fiction for the purpose of collecting the tax that would have been paid at some point in the future had the agreement not been disclaimed and the services continued to be provided. While the Tax provisions are based on a fiction, their logic is sound. If payment must be deemed to have been made and taxes collected, it stands to reason that the triggering event be the payment of the damages that replace what would otherwise have been paid. This fiction thus closely mirrors what occurred as the judge recognized.[13] Conversely, what the ARQ proposes – that the payment be deemed to have been paid years before - would create a fiction that is entirely arbitrary.

[31] While the terms of the Tax provisions are sufficiently clear to dismiss the first ground of appeal, I will nonetheless continue the analysis of the arguments raised by the ARQ.

[32] The ARQ maintains that the proper interpretation of the Tax provisions requires that they be read in harmony with and not in opposition to, the provisions of the *CCAA*. Had the judge adopted such an approach, he would have concluded that the supply of the services from the disclaimed contracts should be deemed to have been paid for and the taxes collected when the agreements were first concluded, which was years before the CCAA filing.

[33] There is nothing harmonious in this interpretation of the statues and none of the principles that the ARQ invokes would justify such a reading.

[34] Contrary to what the ARQ argues, the *CCAA* and the Tax provisions are not in *pari materia*.[14] The purpose of the *CCAA* is to provide companies with the means to avoid "the social and economic consequences of commercial bankruptcies"[15] whereas the purpose of the *ETA* and of the QSTA is to raise revenue for the government.[16] Furthermore, the Tax provisions and the relevant sections of the *CCAA* can be read separately without leading to an absurd or contradictory result. The fact that they overlap in a particular situation does not make them part of a single legislative scheme. Furthermore, as the

---

12 2006 SCC 20, para. 21.

13 Judgment under appeal, para. 132.

14 Given the result at which the Court arrives, it is not necessary to consider whether the QSTA, which is provincial legislation, could be *pari materia* with the CCAA, which is federal legislation.

15 *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, para. 15.

16 *Reference Re Goods and Services Tax,* [1992] 2 SCR 445, p. 471.

judge noted, when Parliament intended for the provisions of the *ETA* to be read in conjunction with those of the *CCAA*, that was made explicit.[17]

[35] Even if the Tax provisions and the *CCAA* were to be read as part of a single legislative scheme, the judgment does not place them in contradiction. The ARQ's arguments center primarily around s. 32(7) of the *CCAA*, which provides that if an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim. It reads as follows:

32 (1) Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.	**32 (1)** Sous réserve des paragraphes (2) et (3), la compagnie débitrice peut — sur préavis donné en la forme et de la manière réglementaires aux autres parties au contrat et au contrôleur et après avoir obtenu l'acquiescement de celui-ci relativement au projet de résiliation — résilier tout contrat auquel elle est partie à la date à laquelle une procédure a été intentée sous le régime de la présente loi.
(7) If an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.	**(7)** En cas de résiliation du contrat, toute partie à celui-ci qui subit des pertes découlant de la résiliation est réputée avoir une réclamation prouvable

(Underlined by the Court)

[36] According to the ARQ, claims brought under this provision, which are referred to as restructuring claims, are provable claims in accordance with s. 19(1)(b) of the *CCAA* and therefore, must be qualified as pre-filing claims. This section reads as follows:

19 (1) Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are	**19 (1)** Les seules réclamations qui peuvent être considérées dans le cadre d'une transaction ou d'un arrangement visant une compagnie débitrice sont :
(a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of	a) celles se rapportant aux dettes et obligations, présentes ou futures, auxquelles la compagnie est assujettie à celle des dates ci-après qui est antérieure à l'autre :

[17] Judgment under appeal, para. 96.

(i) the day on which proceedings commenced under this Act, and	(i) la date à laquelle une procédure a été intentée sous le régime de la présente loi à l'égard de la compagnie,
(ii) if the company filed a notice of intention under section 50.4 of the Bankruptcy and Insolvency Act or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the Bankruptcy and Insolvency Act, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and	(ii) la date d'ouverture de la faillite, au sens de l'article 2 de la Loi sur la faillite et l'insolvabilité, si elle a déposé un avis d'intention sous le régime de l'article 50.4 de cette loi ou qu'elle a intenté une procédure sous le régime de la présente loi avec le consentement des inspecteurs visés à l'article 116 de la Loi sur la faillite et l'insolvabilité;
(b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).	b) celles se rapportant aux dettes et obligations, présentes ou futures, auxquelles elle peut devenir assujettie avant l'acceptation de la transaction ou de l'arrangement, en raison d'une obligation contractée antérieurement à celle des dates mentionnées aux sous-alinéas a)(i) et (ii) qui est antérieure à l'autre.

[37] Since the Damage payment ITCs are accessories to restructuring claims, the ARQ contends that they must therefore be pre-filing claims as well and can thus be set off against the ARQ Claims.

[38] I do not share this interpretation. Restructuring claims are post-filing claims that are deemed to be provable claims by virtue of s. 32(7) of the *CCAA*. They do not take on all the characteristics of a provable claim by mere virtue of the fact that they are treated as such for a particular purpose. More specifically, they are not transformed into pre-filing claims. If, as the ARQ suggests, restructuring claims were in all respects, provable claims within the meaning of s. 19 of the *CCAA*, s. 32(7) would be superfluous. It is rather because they would not otherwise be considered as provable claims that s. 32(7) of the *CCAA* has meaning.

[39] The ARQ also argues that according to civil law, the Damage Claims resulted from the application of liquidated damage clauses contained in the disclaimed contracts such that the damages and, by extension, the Damage payment ITCs, crystalized at the time the contracts were concluded. Since fiscal law is an accessory to civil law, the ARQ contends that the judge erred in failing to recognize that the Damage payment ITCs were thus pre-filing debts.

[40] The judge committed no such error. The wording of the Tax provisions is perfectly clear and it is not necessary to look elsewhere to understand what event triggers the duty to pay tax or the moment at which that duty arises.

[41] The Monitor is correct in pointing out that the ARQ, through a variety of arguments, is essentially asking the Court to give effect to "unexpressed legislative intentions under the guise of purposive interpretation", an approach which the Supreme Court strongly cautioned against in *Shell Canada Ltd. v. Canada*.[18] To the extent that the rules of statutory interpretation could ever justify disregarding the clear and unequivocal wording of the Tax provisions, the judge committed no error in refusing to do so in this case.

(ii) Did the judge err in failing to exercise his discretion under s. 11 *CCAA* to allow for pre-post filing compensation?

[42] The ARQ argues that even if the judge were correct in determining that the Damage payment ITCs are a post-filing claim, he erred in failing to exercise his discretion under s. 11 of the *CCAA* to modify the initial order and to allow for compensation between the ARQ Claim, the Damage payment ITCs and the Other ITCs. In its view, the judge clearly felt bound by this Court's decision in *Kitco*[19], which held that the courts do not have the discretion to allow for compensation between pre-filing and post-filing claims. Since the Supreme Court subsequently reversed that position, the ARQ maintains that the Court should exercise this discretion in place of the supervising judge. In its view, the criteria for the exercise of such discretion are clearly met.

[43] I do not share that view.

[44] The Supreme Court's decision in *Montréal (City) v. Deloitte Restructuring Inc.*, which was rendered after the judgment under appeal, confirms that in exceptional circumstances, "a supervising judge has the discretion to authorize pre-post compensation".[20] In reaching this decision, the Supreme Court clearly rejected the prohibition that was proposed in *Kitco*:

> [57] A court's discretion is therefore broad enough to allow it to stay the right of creditors to effect pre-post compensation. In such a case, the prohibition against pre-post compensation flows directly from the stay order. Conversely, a court may in its discretion refuse to impose such a prohibition or, if pre-post compensation was stayed by the order, lift the stay at a later date to allow an interested creditor to assert its rights. On this point, we reject the absolute prohibition proposed by the Quebec Court of Appeal in Kitco, because we conclude that a court has the discretion to allow pre-post compensation in appropriate cases.

---

18 [1999] 3 SCR 622, para. 43.
19 *Arrangement relatif à Métaux Kitco inc.*, 2017 QCCA 268.
20 *Montréal (City) v. Deloitte Restructuring Inc.*, 2021 SCC 53, para. 20.

[45] The ARQ submits that the discretion to effect pre-post compensation in this case is based on s. 11 of the *CCAA*, which reads as follows:

> **11** Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.
>
> **11** Malgré toute disposition de la Loi sur la faillite et l'insolvabilité ou de la Loi sur les liquidations et les restructurations, le tribunal peut, dans le cas de toute demande sous le régime de la présente loi à l'égard d'une compagnie débitrice, rendre, sur demande d'un intéressé, mais sous réserve des restrictions prévues par la présente loi et avec ou sans avis, toute ordonnance qu'il estime indiquée.

[46] In exercising such discretion, a court must keep three baseline considerations in mind: "(1) the appropriateness of the order being sought, (2) due diligence and (3) good faith on the applicant's part."[21]

[47] In regards to the criterion of appropriateness, the ARQ raises several arguments, including that: (i) since CQIM is in liquidation, the Damage payment ITCs will not be used in the context of a restructuring but will simply be distributed as dividends; (ii) the ARQ's interest is superior to that of CQIM or its creditors, since it seeks to recover taxes on behalf of the public at large; and (iii) allowing compensation would not create an imbalance among creditors and disallowing it will only harm the ARQ.

[48] The ARQ's arguments are unconvincing. Allowing it to set off its claim against the Damage payment ITCs and the Other ITCs would be inconsistent with the remedial objectives of the *CCAA*, regardless of whether the focus is on restructuring the debtor's affairs or on liquidation.[22] These objectives include maximizing creditor recovery and providing for the equitable distribution of assets among creditors.[23] Such compensation would in fact be inequitable since it would prevent the $7,459, 257.85 in Damage payment ITCs from being distributed to the ordinary creditors of CQIM, including the ARQ.

[49] Furthermore, as the Monitor argues, the ARQ conflates its interest with that of the public.[24] If it were appropriate to adopt the ARQ's reasoning in this case, it would be difficult to conceive of a situation in which a tax authority would not be entitled to effect compensation between its pre-filing claim and any post-filing obligation. In this regard, it is important to remember that the ARQ's pre-filing claim is unsecured. Accordingly, the

---

21 *Id.*, para. 85.

22 *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, paras. 42, 46.

23 *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, para. 67.

24 See as well, *Montréal (City) v. Deloitte Restructuring Inc.*, 2021 SCC 53, paras. 88,89.

ARQ's position would amount to a court-ordered form of preference or security that Parliament chose not to grant.

[50] Even though the decision in *Deloitte* clears the path for a supervising judge to exercise discretion and allow for compensation between pre-filing and post-filing claims, the Supreme Court was perfectly clear that such discretion is only to be exercised in "exceptional circumstances, given the high disruptive potential of this form of compensation".[25] The judge committed no error much less a reviewable error in refusing to exercise such discretion in this case.

[51] Since the ARQ has failed to establish that the criterion of appropriateness is met, it is not necessary to consider good faith or due diligence.

[52] For these reasons, I propose that the appeal be dismissed with legal costs.

PETER KALICHMAN, J.A.

25 *Montréal (City) v. Deloitte Restructuring Inc.*, 2021 SCC 53, para. 20.

MÉMOIRE DE LA DEMANDERESSE

MÉMOIRE DE LA DEMANDERESSE

PARTIE I – EXPOSÉ DE LA POSITION DE LA DEMANDERESSE ET EXPOSÉ DES FAITS

A. Préambule

1. Le législateur canadien a adopté la *Loi sur les arrangements avec les créanciers des compagnies*[1] (« **LACC** ») afin d'établir un mécanisme plus souple que celui prévu à la *Loi sur la faillite et l'insolvabilité*[2] (« **LFI** »), dans lequel les tribunaux disposent d'un plus grand pouvoir discrétionnaire[3];

2. La LACC vise des objectifs réparateurs permettant au débiteur de continuer d'exercer ses activités par le biais d'un arrangement avec ses créanciers. Il est possible qu'une réorganisation échoue ou s'avère impossible et que la liquidation de ses biens s'ensuive avec ou sans plan d'arrangement ou en vertu des dispositions applicables de la LFI;

3. La caractéristique la plus importante de la LACC réside dans le vaste pouvoir discrétionnaire conféré au juge surveillant[4]. Il doit garder à l'esprit, pour exercer sa discrétion en vertu de l'article 11 LACC, les trois « *considérations de base* » qu'il incombe au demandeur de démontrer : (1) que l'ordonnance demandée est indiquée (2) qu'il a agi de bonne foi et (3) avec la diligence voulue[5];

4. Récemment, cette Cour a précisé l'état du droit régissant l'exercice du pouvoir discrétionnaire du juge surveillant d'autoriser une compensation pré-post en matière de LACC[6];

---

1 L.R.C. (1985), c. C-36.
2 L.R.C. (1985), c. B-3.
3 *Century Services inc.* c. *Canada (Procureur général),* 2010 CSC 60, par. 14 (« ***Century Services*** »).
4 *9354-9186 Québec inc.* c. *Callidus Capital Corp.,* 2020 CSC 10, par. 47-48 (« ***Callidus*** »).
5 *Century Services,* préc. note 3, par. 69.
6 *Montréal (Ville)* c. *Restructuration Deloitte inc.,* 2021 CSC 53 (« ***Restructuration Deloitte*** »).

5. Malgré les enseignements de cette Cour, la Cour d'appel du Québec, dans le présent dossier de LACC de liquidation où seulement la distribution des actifs demeure en jeu, a décidé que le juge de première instance était fondé à ne pas exercer sa discrétion pour autoriser une compensation pré-post;

6. Cet arrêt de la Cour d'appel pourrait créer un important précédent qui fermerait la porte à la compensation pré-post, de manière générale et absolue, en situation de LACC où seulement la distribution des actifs demeure en jeu ou même de manière plus générale, en situation de LACC de liquidation ou de restructuration;

7. En effet, la Cour d'appel du Québec considère uniquement l'opportunité de l'ordonnance sollicitée et décide que permettre une compensation pré-post irait à l'encontre de la réalisation de certains objectifs réparateurs de la LACC. Que ce soit dans un contexte de restructuration ou de liquidation, la Cour d'appel postule qu'en raison des objectifs réparateurs de la LACC, les critères à considérer ne sont que ceux de « *maximiser le recouvrement* » et « *d'assurer une distribution équitable des actifs entre les créanciers* »[7];

8. Pourtant, cette Cour, dans son arrêt récent *Restructuration Deloitte,* a retenu aux fins de l'application de la considération de l'opportunité de l'ordonnance :

> « [86] (…) À ce chapitre, le contexte d'une restructuration par voie de liquidation, ainsi que les répercussions de la compensation pré-post sur son bon déroulement, peuvent êtres soupesés par le tribunal dans l'exercice de son pouvoir discrétionnaire. (…) »[8]

9. Par ailleurs, et toujours dans cet arrêt, le juge Brown, dissident mais qui n'est pas contredit par la majorité quant à son analyse portant sur les situations de LACC de liquidation, a souligné que la compensation pré-post pouvait être permise puisqu'elle n'a pas comme pour effet de « *faire dérailler le processus de restructuration de l'entreprise, ce processus étant inexistant* »[9];

---

7 Jugement de la Cour d'appel, 22 décembre 2022, par. 48, **Demande d'autorisation d'appel (ci-après « D.A.A. »), vol. I, p. 53.**

8 *Restructuration Deloitte,* préc. note 6, par. 86.

9 *Id.,* par. 137.

10. Dans le présent dossier, la Cour d'appel reconnaît que sa position d'interdire la compensation pré-post qu'elle avait prise dans l'arrêt *Kitco*[10], a été clairement rejetée par cette Cour dans l'arrêt *Restructuration Deloitte*[11]. Par ailleurs, et avec respect, elle persiste néanmoins à refuser la compensation pré-post dans un contexte clair de LACC de liquidation où seulement la distribution des actifs demeure en jeu. Elle ne retient, pour fonder sa décision, que les deux seuls facteurs précités d'analyse aux fins de l'application de la considération de base de l'« *opportunité de l'Ordonnance* »;

11. Cet arrêt de la Cour d'appel est donc de nature à ébranler la confiance du public et à engendrer le cynisme face aux lois d'insolvabilité dans les situations où une débitrice qui y a recours, devient une coquille vide via un processus de liquidation mis en place (avec ou sans plan d'arrangement) et où seulement la distribution de ses actifs demeure en jeu. Dans ce contexte, les créanciers (autorités fiscales ou autres) ne pourraient alors se prévaloir de la compensation pré-post aux motifs que les objectifs réparateurs de la LACC de « *maximiser le recouvrement* » et « *d'assurer une distribution équitable des actifs entre les créanciers* » ne seraient pas rencontrés;

12. Pour les raisons exposées ci-après, la demanderesse Agence du revenu du Québec (« **ARQ** ») demande respectueusement l'autorisation de porter ce jugement en appel;

B. Les faits pertinents

13. Au Québec, l'ARQ est responsable de l'application de lois fiscales et elle agit à titre de mandataire de Sa Majesté du chef du Canada aux fins de la perception de la TPS en vertu de l'*Entente relative à l'administration par le Québec de la partie IX de la Loi sur la taxe d'accise* (L.R.C.) 1985 (ch. E-15) concernant *la Loi sur les produits et services*;

14. Le 27 janvier 2015, Cliffs Québec Mine de fer ULC (« **CQIM** »)[12] s'est placée sous la protection de la LACC (« **Ordonnance initiale** »);

---

10 *Arrangement relatif à Métaux Kitco inc.*, 2017 QCCA 268 (« ***Kitco*** »).

11 *Restructuration Deloitte,* préc. note 6, par. 57; Jugement de la Cour d'appel, 22 décembre 2022, par. 44, **D.A.A., vol. I, p. 52.**

12 Ainsi que : Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Wabush Iron Co. Limited et Wabush Resources Inc.

15. Le 28 janvier 2015 et le 4 février 2016, des préavis de résiliation de contrats en vertu du paragraphe 32 (1) LACC ont été transmis aux créanciers fournisseurs Quebec North Shore and Labrador Railway Company Inc. (« **QNSL** »), Western Labrador Rail Services (« **Western LRS** ») ,The CSL Group Inc (« **CSL Group** ») et Canadian Iron Ore Railcar Leasing LP (« **Canadian Iron Ore** ») ainsi qu'au Contrôleur;

16. Les créanciers fournisseurs suivants ont produit des preuves de réclamations relativement aux dommages pour les résiliations de leurs contrats intervenus avant l'Ordonnance initiale, soit :

> « QNSL : 463 460 218 $ Canadian Iron Ore : 72 353 170 $
>
> Western LRS : 2 825 000 $ CSL Group : 25 510 000 $
> (« **Fournisseurs** ») »

17. Aux termes de leurs preuves de réclamation, et en sus de leurs réclamations pour des dommages découlant de la résiliation de leurs contrats suivant le paragraphe 32 (7) LACC, les créanciers QNSL, Western LRS et CSL Group ont également réclamé des factures relativement à des biens et services rendus;

18. L'ARQ est créancière de CQIM aux termes d'une preuve de réclamation de 7 738 301,02 $ en vertu du paragraphe 296 (1) b) de la LTA et d'une preuve de réclamation de 5 653 595,34 $ découlant de l'article 25 de la *Loi sur l'administration fiscale*[13], de la *Loi sur la taxe de vente du Québec*[14] (« **LTVQ** ») et de la *Loi sur les impôts*[15], lesquelles totalisent 13 391 896,40 $ (collectivement « **Preuves de réclamation ARQ 25 LAF-296 LTA** »)[16]. Ces créances sont certaines, liquides et exigibles;

19. Le 16 août 2018, le Contrôleur a versé un dividende de 59 258 118 $ aux Fournisseurs dans le cadre d'un premier versement de dividende (« **Premier dividende** »);

---

13 *Loi sur l'administration fiscale,* RLRQ c. A-6.002.
14 *Loi sur la taxe de vente du Québec,* RLRQ, c. T-0.1.
15 *Loi sur les impôts,* RLRQ c. I-3.
16 Pièces ARQ-8 et ARQ-9, **D.A.A., vol. II, p. 16 et s.** (lesquelles preuves ont été acceptées par le Contrôleur le 2 octobre 2020, pièce R-6, **D.A.A., vol. II, p. 142 et s.**).

20. Suite au versement du Premier dividende, CQIM a réclamé des crédits de taxes sur les intrants (« **CTI** ») et des remboursements de taxes sur les intrants (« **RTI** ») relatifs au paiement des dommages liés aux résiliations des contrats des Fournisseurs (en vertu des articles 182 LTA et 318 LTVQ) ainsi que des CTI-RTI pour des factures des Fournisseurs;

21. L'ARQ a établi qu'aux termes du versement du Premier dividende, les CTI-RTI relatifs au paiement partiel des dommages découlant des résiliations des contrats des Fournisseurs s'établissaient à 7 459 257,85 $ et que ceux relatifs au paiement partiel des factures des Fournisseurs, pour des obligations postérieures (« *post* ») à l'Ordonnance initiale, s'établissaient à 234 755,16 $[17];

22. Les parties ont soumis en première instance une « *Liste des admissions communes* »[18], laquelle corrobore les faits précités;

23. Il s'agit en l'espèce véritablement d'un LACC de liquidation. CQIM a cessé ses opérations d'exploitation minière dès l'Ordonnance initiale. Ses actifs ont été liquidés au seul profit de ses créanciers et ainsi, elle est devenue une « coquille vide » au terme du processus de LACC, tel qu'en font foi :

    a) Requête pour obtenir l'Ordonnance initiale : paragraphe 15 : « *(…) none of the CCAA Parties are generating any further revenue, nor they expected to generate any revenue in the foreseeable future.* »[19];

    b) Requête pour obtenir l'Ordonnance initiale : paragraphe 104 : « *On or about January 2015, the last shipment of Iron was dispatched from Pointe-Noire.* »[20];

    c) Plan amendé du 13 décembre 2019 : Section E : « *As of the date hereof substancially all material assets of the CCAA Parties have been sold. (…)* »[21];

---

17 Pièces ARQ-10, par. 13 et 32, **D.A.A., vol. II, p. 23-24 et 28-29** et ARQ-11 p. 7 et 17, **D.A.A., vol. II, p. 38 et 48.**

18 Liste des admissions communes, 12 août 2021 signée par les parties, **D.A.A., vol. I, p. 151 et s.** (« Liste des admissions communes »).

19 Voir Motion for the Issuance of an Initial Order du 26 janvier 2015, par. 15, en ligne, Motion for the Issuance of an Initial Order (SERVED)(01262015).pdf (fticonsulting.com), site consulté le 2022-01-24.

20 *Id.*, par. 104.

21 Pièce R-3, par. E, **D.A.A., vol. II, p. 85.**

d) Rapport de vérification de l'ARQ : « *La société n'est plus en exploitation* »[22];

e) Liste des admissions communes, par. 14 : « *Dans l'hypothèse où les intrants (objets du présent litige) étaient remis, ceux-ci serviraient exclusivement au paiement de dividendes futurs en faveur des créanciers de CQIM, le tout conformément au Plan* »[23];

f) Jugement de la Cour supérieure, 8 novembre 2021 (« **Jugement CS** »), par. 21 : « *Pursuant to the present CCAA proceedings initiated in January 2015, the CCAA Parties with the assistance of the Monitor, worked to implement the Plan of Arrangement and proceeded to wind down the estates of the CCAA Parties so that the net proceeds from such recoveries and realizations can finally be distributed to the creditors of the CCAA Parties as soon as possible* »[24];

24. L'ARQ a informé diligemment le Contrôleur de son intention de compenser les CTI-RTI avec ses Preuves de réclamation ARQ 25 LAF-296 LTA, les faits qui le démontrent sont :

a) La période entre le 27 janvier 2015 (date de l'Ordonnance initiale) et le 21 décembre 2018 (date de la réclamation des CTI et RTI) n'est pas pertinente;

b) Février 2018 : début des vérifications fiscales envers CQIM[25];

c) Il y a eu des communications continues pendant la vérification fiscale des CTI-RTI (17/07/19, 3/03/20 et 2/2/20 : présentations de projets de cotisations et échanges subséquents)[26];

d) Le 4 décembre 2020, les procureurs du Contrôleur sont d'accord avec les rajustements, mais en désaccord avec la compensation des CTI-RTI[27];

e) 18 janvier 2021 : Motion by the monitor for directions with respect to setoff and damage payment input tax credits[28];

---

22 Pièce ARQ-11, p. 2, **D.A.A., vol. II, p. 33.**
23 Liste des admissions communes, par. 14, **D.A.A., vol. I, p. 154.**
24 **D.A.A., vol. I, p. 10-11.**
25 Pièce ARQ-10, par. 8, **D.A.A., vol. II, p. 23.**
26 *Id.*, par. 22, **D.A.A., vol. II, p. 27.**
27 *Id.*, par. 34, **D.A.A., vol. II, p. 30.**
28 **D.A.A., vol. I, p. 77 et s.**

f) 14 mai 2021 : Contestation de l'ARQ[29];

C. Les jugements des instances inférieures

25. En première instance et devant la Cour d'appel du Québec, l'ARQ a principalement soumis que :

a) L'ARQ était en droit de compenser ses preuves de réclamation dans le cadre du Plan d'arrangement de CQIM (13 391 896,40 $) (créances « *pré* ») avec des CTI-RTI que cette dernière réclame à l'ARQ. Ces CTI-RTI ont été générés par le paiement partiel de dommages de résiliations de contrats de fournisseurs de CQIM qui ont fait l'objet de preuves de réclamation des Fournisseurs concernés en vertu du paragraphe 32 (7) LACC (7 459 257,85 $). (compensation dite « *pré-pré* »);

b) Les CTI-RTI que doit l'ARQ, générés via le paiement partiel de dommages de résiliations de contrats de fournisseurs de CQIM en vertu de l'article 32 LACC, sont des dettes « *pré* » vu que les articles 182 LTA et 318 LTVQ doivent être interprétés en harmonie et de manière cohérente avec les paragraphes 19 1) (b) et 32 (7) LACC, que la jurisprudence concernant les réclamations en vertu de l'article 32 LACC confirme cette qualification et vu des arrêts de cette Cour qui sont à l'effet, qu'en droit québécois, la seule cristallisation d'une des deux dettes en présence qui survient après une ordonnance initiale LACC n'empêche pas une compensation dite « *pré-pré* »;

c) L'ARQ est en droit de demander l'autorisation d'effectuer une compensation de la somme de 234 755,16 $ pour des CTI-RTI relatifs à des factures pour des biens et services postérieurs à l'ordonnance initiale avec ses preuves réclamations (13 391 896,40 $) (compensation pré-post);

d) Advenant que la Cour supérieure (ou la Cour d'appel) conclue que les CTI-RTI relatifs aux dommages en résiliation sont considérés « *post* » (7 459 257,85 $), ceux-ci peuvent être compensés avec ses preuves de réclamation (13 391 896,40 $) (compensation pré-post);

---

[29] Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », **D.A.A., vol. I, p. 111 et s.**

e) L'ARQ peut demander l'autorisation d'effectuer des compensations « *pré-post* », et la Cour supérieure (ou la Cour d'appel), vu son pouvoir discrétionnaire, doit autoriser de telles compensations considérant qu'il s'agissait de circonstances exceptionnelles, qu'aucun effet perturbateur ne serait occasionné à CQIM et que l'ARQ rencontre les trois considérations de base nécessaires pour l'exercice du pouvoir discrétionnaire d'un juge surveillant, à savoir, l'opportunité de l'ordonnance sollicitée, la diligence et la bonne foi du demandeur;

26. Le 8 novembre 2021, l'honorable Michel A. Pinsonnault, de la Cour supérieure du Québec a rendu un jugement accueillant partiellement les conclusions recherchées par une requête pour directives du Contrôleur[30]. Ce jugement a conclu que la fourniture taxable est incluse dans le paiement partiel des dommages et ne naît qu'« *au moment du paiement* », le tout vu les présomptions des articles 182 LTA et 318 LTVQ, faisant donc en sorte que les CTI et RTI relatifs au paiement des dommages constitueraient des obligations « *post* ». Quant à la question de la compensation pré-post, le juge de première instance n'a pas exercé sa discrétion pour la permettre compte tenu de son interprétation de l'arrêt de la Cour d'appel du Québec dans *Kitco*[31] (l'arrêt de cette Cour *Restructuration Deloitte* n'ayant été rendu que postérieurement);

27. Le 22 décembre 2022, l'appel de ce jugement a été rejeté par la Cour d'appel du Québec (les juges Robert M. Mainville, Sophie Lavallée et Peter Kalichman);

28. L'ARQ demande l'autorisation de porter en appel devant cette Cour l'arrêt de la Cour d'appel du Québec rendu le 22 décembre 2022 **uniquement quant à l'élément qui concerne la compensation pré-post**. Sa demande d'autorisation soulève une question d'importance pour le public laquelle est détaillée ci-après;

D. La question d'importance pour le public

29. En situation de LACC de liquidation, où seulement la distribution du produit des actifs demeure en jeu, le juge surveillant, dans l'exercice de sa discrétion en vertu de l'article 11

30 Jugement CS, **D.A.A., vol. I, p. 7 et s.**
31 *Kitco*, préc. note 10; Jugement CS, par. 140, **D.A.A., vol. I, p. 33.**

LACC afin d'autoriser ou non la compensation pré-post, peut-il se limiter à ne considérer que deux des objectifs réparateurs soit de « *maximiser le recouvrement* » et « *assurer une distribution équitable entre les créanciers* »?

30. Pour l'exercice du pouvoir discrétionnaire que lui confère la LACC, le juge surveillant doit garder à l'esprit trois considérations de base : (1) l'opportunité de l'ordonnance sollicitée (2) la diligence et (3) la bonne foi du demandeur[32];

31. Avec respect, ces considérations de base n'ont pas été appliquées adéquatement par la Cour d'appel. Cette dernière n'a considéré que deux objectifs réparateurs dans le cadre de l'opportunité de l'ordonnance recherchée, soit ceux de : « *maximiser le recouvrement* » et celui « *d'assurer une distribution équitable des actifs entre les créanciers* »;

32. À cet égard, aux paragraphes 47 et 48 des motifs du juge Kalichman, la Cour d'appel s'est exprimée ainsi :

> « [47] In regards to the criterion of appropriateness, the ARQ raises several arguments, including that: (i) since CQIM is in liquidation, the Damage payment ITCs will not be used in the context of a restructuring but will simply be distributed as dividends; (ii) the ARQ's interest is superior to that of CQIM or its creditors, since it seeks to recover taxes on behalf of the public at large; and (iii) allowing compensation would not create an imbalance among creditors and disallowing it will only harm the ARQ.
>
> [48] The ARQ's arguments are unconvincing. Allowing it to set off its claim against the Damage payment ITCs and the Other ITCs would be inconsistent with the remedial objectives of the CCAA, regardless of whether the focus is on restructuring the debtor's affairs or on liquidation. <u>These objectives include maximizing creditor recovery and providing for the equitable distribution of assets among creditors</u>. <u>Such compensation would in fact be inequitable since it would prevent the $7,459,257.85 in Damage payment ITCs from being distributed to the ordinary creditors of CQIM, including the ARQ</u>. » (Notre soulignement; références omises)

33. Dans cette analyse, la Cour d'appel accorde une importance démesurée aux objectifs réparateurs de « *maximiser le recouvrement* » et « *d'assurer une distribution équitable*

---

32 *Callidus,* préc. note 4, par. 49; *Century Services,* préc. note 3, par. 70; *Restructuration Deloitte,* préc. note 6, par. 85.

des actifs entre les créanciers ». Elle le fait au détriment des autres facteurs de la considération de base de l'opportunité de la décision, tels qu'éviter les pertes sociales, préserver la valeur d'exploitation, protéger les emplois et les collectivités, améliorer le système de crédit de manière générale, le contexte d'une restructuration par voie de liquidation, ainsi que les répercussions de la compensation pré-post sur son bon déroulement et la protection de l'intérêt public ainsi que les deux autres considérations de base, soit la diligence et la bonne foi[33];

34. Au soutien de son raisonnement de retenir que ces deux objectifs réparateurs, la Cour d'appel du Québec ne réfère qu'à l'arrêt de cette Cour dans l'affaire *Orphan Well Association*[34] (au paragraphe 67 de ce dernier arrêt). Cet arrêt doit être distingué puisque, contrairement à la présente affaire, il ne s'agissait pas de décider de l'opportunité d'une compensation;

35. Les objectifs réparateurs de « *maximiser le recouvrement* » et « *d'assurer une distribution équitable des actifs entre les créanciers* » ne peuvent, qu'à eux seuls, empêcher la compensation pré-post dans un LACC de liquidation où seulement la question de la distribution des actifs demeure en jeu;

36. En effet, dans les arrêts de cette Cour *Husky Oil*[35] et *D.I.M.S.*[36], celle-ci a reconnu que les règles de la compensation s'appliquent à toutes les réclamations produites contre l'actif d'une société débitrice et qu'en conséquence, le législateur a expressément autorisé la partie qui invoque la compensation à modifier l'équilibre entre les créanciers;

37. Plus précisément, cette Cour dans l'arrêt *Husky Oil,* a qualifié la compensation de « *quasi-privilège* » sur les biens de la débitrice, ne remettant pas en cause la règle de l'égalité entre les créanciers[37];

---

33 *Restructuration Deloitte,* préc. note 6, par. 86.
34 *Orphan Well Association* c. *Grant Thornton Ltd.,* 2019 CSC 5.
35 *Husky Oil Operations Ltd.* c. *Ministre du Revenu national,* [1995] 3 RCS 453 (« ***Husky Oil*** »).
36 *D.I.M.S. Construction inc. (Syndic de)* c. *Québec (Procureur général),* 2005 CSC 52 (« ***D.I.M.S.*** »).
37 *Husky Oil,* préc. note 35, par. 58 et 67.

38. Cette Cour ajoute dans ce même arrêt qu'en permettant la compensation, le législateur autorise à « *modifier* » l'ordre de priorité qu'il a établi en matière de faillite; le droit à la compensation ayant pour effet de « *garantir la réclamation de la partie qui invoque la compensation* »[38];

39. Dans l'arrêt *Restructuration Deloitte,* cette Cour a réaffirmé qu'en matière de compensation, l'équilibre entre créanciers doit céder le pas en faveur du créancier qui peut bénéficier d'une compensation :

> « [71] Il est vrai que la compensation « crée une sorte de garantie sur l'actif de la [compagnie insolvable] », parce qu'elle « autorise la partie qui invoque la compensation à "modifier" l'ordre de priorité » en réduisant la valeur de sa créance (*Husky Oil Operations Ltd. c. Ministre du Revenu national,* [1995] 3 R.C.S. 453, par. 59-60; voir *Kitco,* par. 63-68). Le créancier se sert de sa dette envers la débitrice comme d'une forme de garantie à l'égard de sa créance, une garantie d'une valeur égale à sa dette envers la compagnie insolvable (Stein c. Blake, [1996] 1 A.C. 243 (H.L.), p. 251). Cette portion de sa créance est donc assurée d'être payée en totalité (*Husky Oil,* par. 58). Par ses effets, la compensation déroge ainsi au principe de l'égalité entre les créanciers ordinaires, un principe fondamental du droit de l'insolvabilité qui s'applique avec autant de force dans le cadre de procédures intentées sous le régime de la LACC, dont l'un des objectifs réparateurs vise à assurer un traitement juste et équitable des réclamations déposées contre un débiteur (*Callidus*, par. 40). L'exception créée par la compensation doit donc être interprétée de manière restrictive. (…) » (Nos soulignements)

40. Dans son arrêt *Kitco,* la Cour d'appel du Québec, avait interdit de manière absolue la compensation pré-post. L'arrêt *Restructuration Deloitte* de cette Cour a renversé cette position[39] :

> « [57] Le pouvoir discrétionnaire dont dispose le tribunal est donc suffisamment large pour lui permettre de suspendre le droit des créanciers d'opérer compensation pré-post. Dans un tel cas, l'interdiction d'opérer compensation pré-post découle directement de l'ordonnance de suspension. En revanche, le tribunal peut à sa discrétion refuser d'imposer une telle interdiction ou, si la compensation pré-post a été suspendue par l'ordonnance, lever cette suspension par la suite pour permettre à un créancier intéressé de faire valoir ses droits. Sur ce point, nous écartons l'interdiction absolue proposée par la Cour d'appel du Québec dans l'arrêt *Kitco*, puisque nous concluons que le tribunal possède le pouvoir discrétionnaire de permettre la compensation pré-post dans les cas qui s'y prêtent. » (Notre soulignement)

---

38 *Id.,* par. 60 et 57. Voir aussi : *Kitco,* préc. note 10, par. 70.

39 *Restructuration Deloitte,* préc. note 6, par. 57.

41. Dans le présent dossier, la Cour d'appel reconnaît que sa position antérieure prononcée dans son arrêt *Kitco,* quant à l'interdiction absolue de la compensation pré-post, a été renversée :

> « [44] The Supreme Court's decision in Montréal (City) v. Deloitte Restructuring Inc., which was rendered after the judgment under appeal, confirms that in exceptional circumstances, "a supervising judge has the discretion to authorize pre-post compensation". In reaching this decision, the Supreme Court clearly rejected the prohibition that was proposed in *Kitco*: (…) » (Notre soulignement)

42. L'application des objectifs réparateurs de « *maximiser le recouvrement* » et celui « *d'assurer une distribution équitable des actifs entre les créanciers* » ne peuvent, à eux seuls, exclure la possibilité de compenser pré-post. Dans la présente affaire, la Cour d'appel épouse une position équivalente à celle qu'elle avait adoptée dans son arrêt *Kitco* soit, une impossibilité absolue de compenser pré-post;

43. De plus, dans l'arrêt Deloitte, sur la considération de l'opportunité de l'ordonnance sollicitée, cette Cour a expressément prévu que le juge surveillant peut notamment tenir compte du fait qu'il s'agit d'un LACC de liquidation[40];

44. Toujours dans cet arrêt, le juge Brown (dissident), qui n'est pas contredit par la majorité sur son analyse quant aux situations de LACC de liquidation, s'exprime ainsi :

> « [137] En l'espèce, toutefois, et de l'avis même du contrôleur et des intervenants, il n'a jamais été question pour Groupe SM de proposer un plan d'arrangement. Dès le dépôt d'une demande d'ordonnance initiale en vertu de la LACC par les principaux créanciers de Groupe SM, il était clair que ces derniers souhaitaient opter pour un processus de liquidation, soit la vente de l'entreprise insolvable à un nouvel acquéreur. Dans ce cas particulier, alors qu'un plan d'arrangement n'est pas envisageable et que l'entreprise insolvable sera de toute manière liquidée ou vendue, conclure que la compensation pré-post n'est jamais permise pourrait être injuste pour les créanciers de cette entreprise ayant une créance certaine, liquide et exigible. En effet, dans ces cas, les recours des créanciers seront suspendus indéfiniment et ils ne pourront jamais exercer compensation pré-post, l'entreprise insolvable étant devenue après la vente une « coquille vide ». Par ailleurs, puisqu'un plan d'arrangement n'est pas envisageable, permettre la compensation

---

40 *Id.,* par. 86.

> pré-post n'aura pas comme effet de faire dérailler le processus de restructuration de l'entreprise, ce processus étant inexistant. »[41] (Nos soulignements)

45. Par ailleurs, la Cour d'appel retient que l'ARQ confond son intérêt avec celui du public et que cette position permettrait à l'ARQ d'obtenir une forme de préférence ou de garantie que le Parlement n'a pas prévue[42];

46. Pour l'application de la considération de base de l'opportunité de l'ordonnance, l'arrêt *Restructuration Deloitte* a indiqué que « *De surcroît, bien qu'elle recoupe un certain nombre des objectifs réparateurs dont les tribunaux doivent tenir compte, la protection de l'intérêt public doit elle aussi figurer sur cette liste* »[43], et ce, en référant aux arrêts de cette Cour *Callidus*[44] et *Century Services*[45];

47. Or, ce facteur d'« *intérêt public* », en contexte de LACC pour l'exercice de la discrétion du juge surveillant en vertu de l'article 11 LACC, n'a pas été défini précisément à ces trois arrêts. Par contre, il a été expliqué via des exemples de situations telles que la continuité de

---

41 *Id.,* par. 137. Il est a noté que dans cet arrêt *Restructuration Deloitte,* les motifs exprimés par la majorité concordent avec la dissidence, avec les nuances que pour la majorité, l'article 21 LACC n'a pas pour effet d'interdire la compensation pré-post et que, pour la dissidence, cet article le permet; ils diffèrent par ailleurs quant à la rigueur pour l'application des considérations de base pour l'exercice du pouvoir discrétionnaire autorisant une compensation pré-post. Pour interprétation de la majorité de l'article 21 LACC, voir par. 81. Concernant la dissidence sur l'article 21, voir par. 102 et 104. En ce qui a trait à la rigueur de l'application des critères de base et des facteurs, pour la majorité, voir le par. 20 et concernant la dissidence sur ces mêmes critères de base et facteurs, voir par. 101 et 140.

42 Jugement de la Cour d'appel, 22 décembre 2022, par. 49, **D.A.A., vol. I, p. 53-54.**

43 *Restructuration Deloitte,* préc. note 6, par. 86.

44 *Callidus,* préc. note 4, par. 40.

45 *Century Services,* préc. note 3, par. 60.

l'entreprise, le maintien des emplois[46] ou bien aux situations où la protection publique « *peut s'étendre à des considérations de moralité commerciale qui reflètent des normes sociales, comme des considérations liées au fait que nul ne devrait bénéficier d'activités frauduleuses auxquelles il a pris part* »[47];

48. Les situations d'application du facteur « *intérêt public* » exposées ci-haut ne s'appliquent pas au dossier en l'espèce, considérant qu'il s'agit d'un LACC de liquidation;

49. Dans une telle situation de LACC de liquidation où seulement la distribution des actifs demeure en jeu, l'intérêt public doit bénéficier d'un poids prépondérant pour l'exercice du pouvoir discrétionnaire du juge surveillant considérant que les lois fiscales sont d'ordre public;

50. Dans l'arrêt *Restructuration Deloitte*, cette Cour mentionne au sujet de l'intérêt public :

> « [89] (…) Dans chaque cas, le tribunal doit exercer son pouvoir discrétionnaire de la façon indiquée dans les arrêts *Callidus* et *Century Services,* et si d'aventure il est appelé à accorder un poids prépondérant à l'objectif de protection de l'intérêt public, il doit se garder de réduire l'intérêt public à l'intérêt d'un créancier ou d'un groupe de créanciers en particulier. »

51. Dans le présent LACC de liquidation, les seuls intérêts concurrents qui s'opposent sont limités à une allocation d'argent entre les créanciers en général et l'ARQ;

52. L'impact de la position de la Cour d'appel dans le présent dossier est critique. En hiérarchisant au premier plan les objectifs de « *maximiser le recouvrement* » et celui d'« *assurer une distribution équitable des actifs entre les créanciers* », sans égard au fait qu'il s'agit d'un LACC de liquidation ou de restructuration, aucun créancier ne pourra faire valoir la compensation pré-post puisque cette dernière affectera toujours nécessairement ces objectifs réparateurs;

---

46 *Id.,* par. 18 : « *(…) La réorganisation sert l'intérêt public en permettant la survie de compagnies qui fournissent des biens ou des services essentiels à la santé de l'économie ou en préservant un grand nombre d'emplois.* »; *Callidus*, préc. note 4, par. 40.

47 *Restructuration Deloitte,* préc. note 6, par. 89.

53. De plus, et sans limiter la généralité de ce qui précède, l'arrêt de la Cour d'appel, aurait un impact sur le plan national, car il créera des incongruités d'interprétation et d'application des trois considérations de base pour l'exercice de la discrétion d'accorder ou non une compensation pré-post en situation de LACC de liquidation;

54. Cette même question est d'autant plus déterminante et d'intérêt général pour les administrations fiscales qui, en matière de LACC de liquidation, sont des « *créanciers involontaires* »[48], qui ont pour mission de recouvrer les taxes en vue d'assurer le financement des programmes sociaux[49]. Ne pas autoriser la compensation pré-post dans de telles situations, où aucun intérêt public supérieur n'est présent ou mis en preuve, causera un préjudice à l'ensemble des citoyens québécois et canadiens;

PARTIE II – QUESTION EN LITIGE

55. Le pourvoi proposé soulève-t-il une question d'importance pour le public, conformément à l'article 40 (1) de la *Loi sur la Cour suprême*[50] :

- En situation de LACC de liquidation, où seulement la distribution du produit des actifs demeure en jeu, le juge surveillant, dans l'exercice de sa discrétion en vertu de l'article 11 LACC afin d'autoriser ou non la compensation pré-post, peut-il se limiter à ne considérer que deux des objectifs réparateurs soit « *maximiser le recouvrement* » et « *assurer une distribution équitable entre les créanciers* »?

---

48 *First Vancouver Finance* c. *M.R.N.,* 2002 CSC 49, au para 23.
49 *Loi sur l'Agence du revenu du Québec,* RLRQ c. A-7.003, art. 4. Voir également *R.* c. *McKinlay Transport Ltd.,* [1990] 1 RCS 627, à la page 636.
50 L.R.C. (1985), c. S-26.

PARTIE III – EXPOSÉ DES ARGUMENTS

L'ARQ, dans le présent dossier de LACC de liquidation où seule la distribution des actifs est en jeu, doit-elle être autorisée à compenser ses Preuves de réclamation ARQ 25 LAF-296 LTA (créance « *pré* ») et les remboursements CTI et RTI qu'elle doit à CQIM (dette « *post* »)?

56. L'ARQ rencontre toutes les considérations de base nécessaires pour qu'aux termes de l'exercice du pouvoir discrétionnaire prévu à l'article 11 LACC, la compensation pré-post soit autorisée;

57. Cette Cour dans *Restructuration Deloitte* a réitéré les trois considérations de base et une liste des facteurs qui doivent être appréciés dans le cadre de l'exercice du pouvoir discrétionnaire du juge surveillant pour autoriser ou non la compensation pré-post, en ces termes :

> « [85] Dans l'exercice du pouvoir discrétionnaire que lui confère la LACC, le tribunal doit garder à l'esprit trois considérations de base : (1) l'opportunité de l'ordonnance sollicitée (2) la diligence et (3) la bonne foi du demandeur (*Callidus,* par. 49; *Century Services,* par. 70).
>
> [86] La première considération, soit le caractère opportun de l'ordonnance sollicitée, vise tout autant l'ordonnance elle-même que les moyens utilisés (*Century Services,* par. 70). Elle s'évalue au regard des objectifs réparateurs de la LACC (*Callidus,* par. 49; *Century Services,* par. 70). Parmi ces objectifs réparateurs, mentionnons les suivants : **éviter les pertes sociales** et économiques résultant de la liquidation d'une compagnie insolvable; **maximiser le recouvrement au profit des créanciers**; assurer un **traitement juste et équitable des réclamations** déposées contre la compagnie débitrice; **préserver la valeur d'exploitation** dans la mesure du possible; **protéger les emplois et les collectivités** touchées par les difficultés financières de l'entreprise; **améliorer le système de crédit de manière générale** (*Callidus,* par. 40-42). **À ce chapitre, le contexte d'une restructuration par voie de liquidation, ainsi que les répercussions de la compensation pré-post sur son bon déroulement, peut être soupesé par le tribunal dans l'exercice de son pouvoir discrétionnaire.** De surcroît, bien qu'elle recoupe un certain nombre des objectifs réparateurs dont les tribunaux doivent tenir compte, **la protection de l'intérêt public doit elle aussi figurer sur cette liste** (*Callidus,* par. 40; *Century Services,* par. 60). »[51] (Nos soulignements; Notre emphase)

---

[51] *Restructuration Deloitte,* préc. note 6, par. 85-86. Dans cet arrêt, la Ville de Montréal considérant notamment « *(…) que la Ville ne s'est pas comportée conformément à la norme*

58. En l'espèce, l'ARQ rencontre les trois considérations de base et les facteurs ci-après mentionnés, ceux-ci étant :

<u>L'opportunité de l'ordonnance sollicitée</u> :

59. Les objectifs réparateurs doivent être analysés et pondérés en fonction des faits du dossier :

a) Maximiser le recouvrement et assurer un traitement juste et équitable des réclamations :

i. En l'espèce, l'équilibre entre créanciers cède le pas en faveur du créancier ARQ qui bénéficie de la compensation considérant que celle-ci crée une sorte de garantie sur l'actif lorsqu'elle trouve application[52];

ii. Si CQIM avait continué ses opérations, aucun de ses créanciers fournisseurs n'aurait pu bénéficier de paiements futurs de dividendes issus des CTI-RTI, soit le même résultat que si la compensation pré-post est autorisée;

b) LACC de liquidation[53] :

i. CQIM est dans un LACC de liquidation et est devenue une « *coquille vide* »[54];

ii. Les CTI-RTI (dettes post), en l'absence de compensation, ne serviraient qu'au paiement de dividendes aux créanciers et ne seraient pas utilisés pour maintenir l'exploitation de CQIM et mettre en œuvre une quelconque restructuration[55];

---

de diligence attendue dans le cadre d'une procédure fondée sur la LACC. (…). », et ce, « *(…) à un moment crucial des procédures de restructuration (…)* »; la Cour ajoute à ce sujet : « *En effet, en invoquant compensation, elle pouvait, ce faisant, obtenir des services sans les payer*. » (par. 92 et 94). Or, tel n'est pas le cas dans le présent dossier.

52 *Id.*, par. 71; *Husky Oil*, préc. note 35, par. 58 et 67; *Kitco*, préc. note 10, par. 70; *D.I.M.S.*, préc. note 36.

53 Argumentation de la demanderesse, par. 23, **D.A.A., vol. I, p. 59-60.**

54 *Id.*

55 Voir à cet effet la Liste des admissions communes, par. 14, **D.A.A., vol. I, p. 154**; Argumentation de la demanderesse, par. 23 e), **D.A.A., vol. I, p. 60.**

iii. CQIM ne perdrait aucun avantage concurrentiel;

iv. Les CTI-RTI ne seraient pas utilisés par CQIM pour produire des biens ou services et aucun consommateur final ne remettrait donc ultimement les taxes à l'ARQ (chaine de perception de taxes perturbée)[56];

c) L'intérêt public :

i. L'ARQ soumet qu'en l'absence d'un intérêt public favorisant CQIM, ses créanciers en général ou même des tiers, celui aux termes des lois fiscales subsiste;

ii. Dans une telle situation de LACC de liquidation où seulement la distribution des actifs demeure en jeu, l'intérêt public doit bénéficier d'un poids prépondérant pour l'exercice du pouvoir discrétionnaire du juge surveillant considérant que les lois fiscales sont d'ordre public;

<u>La diligence et la bonne foi</u> :

La diligence :

60. L'ARQ a informé le Contrôleur de son intention de compenser diligemment[57]. Par ailleurs, la position initiale de l'ARQ quant au CTI-RTI relatifs au paiement des dommages liés aux résiliations des contrats des Fournisseurs (en vertu des articles 182 LTA et 318 LTVQ) était à l'effet de reconnaitre la compensation pré-pré; la compensation pré-post constituant une position subsidiaire. Donc, la non-disponibilité des CTI-RTI pour le motif de compensation a été annoncé dès que possible et sans délai. En tout temps pertinent, les Preuves de réclamation ARQ 25 LAF-296 LTA étaient connues du Contrôleur et l'ARQ, en aucun temps, ne s'est enrichie par l'écoulement d'un délai. Aucune preuve contraire ne fut administrée démontrant que le Contrôleur ou des tiers auraient subi un préjudice d'un délai;

---

56 *Id.*; *Société Télé-mobile* c. *Canada,* 2013 CAF 149.

57 Argumentation de la demanderesse, voir les faits, par. 24, **D.A.A., vol. I, p. 60-61.**

La bonne foi du demandeur :

61. L'ARQ a agi de bonne foi, bénéficiant par ailleurs de la collaboration du Contrôleur dans le processus de vérification des crédits sur intrants et l'établissement des preuves de réclamation, aucune preuve au contraire n'a été administrée en première instance;

62. L'autorisation de compenser pré-post ne pourrait nuire à CQIM considérant que ses activités d'exploitation sont inexistantes depuis l'Ordonnance initiale et qu'au surplus, aucune preuve n'a été présentée en première instance concernant un possible effet perturbateur si une telle compensation était accordée;

---

63. Dans les circonstances propres au présent dossier, l'ARQ rencontre donc toutes les considérations de base pour être autorisée à opérer une compensation pré-post, que ce soit pour les CTI-RTI relatifs aux factures des Fournisseurs pour des périodes postérieures à l'Ordonnance initiale (234 755,16 $) ou pour les CTI-RTI relatifs aux dommages en résiliation (7 459 257,85 $) avec ses Preuves de réclamation ARQ 25 LAF-296 LTA (13 391 896,40 $);

64. Les faits relatifs à la présente situation de LACC de liquidation rencontrent les trois considérations de base (et les facteurs) et une compensation n'occasionnerait aucun effet perturbateur. Ne pas l'autoriser dans un tel contexte comme le conclut la Cour d'appel, créerait un précédent qui empêcherait de manière générale la compensation pré-post en situation de LACC tant de restructuration que de liquidation, ce qui va à l'encontre des enseignements de cette Cour : Aucun autre dossier ne permettrait une telle compensation[58];

---

[58] *Restructuration Deloitte*, préc. note 6, par. 20, la Cour reconnait, par ailleurs, que le caractère frauduleux, lorsque démontré, pourrait constituer un facteur pertinent dans l'exercice de la discrétion du juge surveillant.

PARTIE IV – ARGUMENT AU SUJET DES DÉPENS

65. L'ARQ soumet que les dépens de la demande doivent suivre le sort du pourvoi;

PARTIE V – ORDONNANCE DEMANDÉE

66. L'Agence du revenu du Québec demande d'autoriser le pourvoi à l'encontre du jugement de la Cour d'appel du Québec rendu le 22 décembre 2022 dans le dossier 500-09-029797-214, frais à suivre;

LE TOUT RESPECTUEUSEMENT SOUMIS.

Fait à Montréal, province de Québec,
le 16 février 2023

Me Daniel Cantin
Me Jean-Claude Gaudette
Me Henrick Lavoie
Larivière Meunier (Revenu Québec)
Secteur D221LC
3, Complexe Desjardins
Montréal (Québec)
H5B 1A7

Tél. : 514 287-8154 (Me Gaudette)
Tél. : 514 287-3759 (Me Lavoie)
Téléc. : 514 285-5348
jean-claude.gaudette@revenuquebec.ca
henrick.lavoie@revenuquebec.ca
Tél. : 418 652-5245 (Me Cantin)
Téléc. : 418 577-5327
danielcantin@revenuquebec.ca

Procureurs de la demanderesse

PARTIE VI – TABLE DES SOURCES

Législation **Paragraphe(s)**

Jurisprudence

Jurisprudence *(suite)* **Paragraphe(s)**

Autre document

DOCUMENTS À L'APPUI

PROCÉDURES

Motion by the monitor for directions with respect to setoff and damage payment input tax credits, 18 janvier 2021

C A N A D A

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. 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-

AGENCE DU REVENU DU QUEBEC

CANADA REVENUE AGENCY

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

MOTION BY THE MONITOR FOR DIRECTIONS
WITH RESPECT TO SETOFF AND DAMAGE PAYMENT INPUT TAX CREDITS
(Sections 11, 21 and 23(k) of the *Companies' Creditors Arrangement Act*)

TO MR. JUSTICE MICHEL A. PINSONNAULT, J.S.C. OR TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE MONITOR SUBMITS:

I. INTRODUCTION

1. On January 27, 2015, the Honourable Justice Martin Castonguay, J.S.C., issued an Order (as subsequently amended, rectified and/or restated, the **Bloom Lake Initial Order**) pursuant to the *Companies' Creditors Arrangement Act* (**CCAA**) in respect of the Petitioners Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, and Cliffs Québec Iron Mining ULC (**CQIM**), as well as Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited (collectively, the **Bloom Lake CCAA Parties**), as appears from the Court record. Copy of the Bloom Lake Initial Order dated January 27, 2015, as amended on February 20, 2015, is communicated herewith as **Exhibit R-1**;

2. Pursuant to the Bloom Lake Initial Order (R-1), *inter alia*, FTI Consulting Canada Inc. was appointed as monitor of the Bloom Lake CCAA Parties (the **Monitor**), and a stay of proceedings was granted in respect of the Bloom Lake CCAA Parties until February 26, 2015 (subsequently extended from time to time, and most recently until May 31, 2021 by Order dated November 27, 2020);

3. On May 20, 2015, the Honourable Justice Stephen W. Hamilton, J.S.C. (as he then was), issued an Order (as subsequently amended, rectified and/or restated, the **Wabush Initial Order**) extending the scope of these CCAA proceedings to the Petitioners Wabush Iron Co. Limited (**Wabush Iron**) and Wabush Resources Inc. (**Wabush Resources**), as well as Mises-en-cause Wabush Mines, an unincorporated contractual joint venture (**Wabush Mines**), Arnaud Railway Company (**Arnaud Railway**), and Wabush Lake Railway Company Limited (**Wabush Railway**) (collectively, the **Wabush CCAA Parties**, and together with the Bloom Lake CCAA Parties, the **CCAA Parties**), as appears from the Court record.

4. Pursuant to the Wabush Initial Order, *inter alia*, the Monitor was appointed as the monitor of the Wabush CCAA Parties, and a stay of proceedings was granted in respect of the Wabush CCAA Parties until June 19, 2015 (subsequently extended from time to time, and most recently until May 31, 2021 by Order dated November 27, 2020);

5. On November 5, 2015, Mr. Justice Hamilton, issued an order (as amended on November 16, 2015, the Claims Procedure Order), which approved and established a procedure for the filing of creditors' claims against the CCAA Parties and their directors and officers (the Claims Procedure), as appears from the Claims Procedure Order, a copy of which is communicated in support herewith as Exhibit R-2;

6. On May 18, 2018, Mr. Justice Hamilton issued an order which accepted the filing of the Amended and Restated Joint Plan of Compromise and Arrangement in respect of the

Participating CCAA Parties (as defined therein), dated May 16, 2018 (as further amended, restated or supplemented from time to time, the "**Plan**"). A copy of the latest version of the Plan amended on December 13, 2019 is communicated in support herewith as **Exhibit R-3.** Capitalized terms not otherwise defined herein have the meaning ascribed thereto in the Plan (R-3);

7. On June 18, 2018, the Plan was approved by the Classes of Affected Unsecured Creditors and on June 29, 2018, Mr. Justice Hamilton issued the Sanction Order dated June 29, 2018 (the "**Plan Sanction Order**"), a copy of which is communicated in support herewith as **Exhibit R-4**;

8. On July 31, 2018, the Monitor issued the Plan Implementation Date Certificate, confirming the implementation of the Plan on that date, the whole as appears from the Court record;

9. Starting in August, 2018, the Monitor commenced the first interim distributions to Affected Third Party Unsecured Creditors from each of the Unsecured Creditor Cash Pools and Pension Cash Pools, while interim distributions on account of the Salaried Late Employee Claims[1] and the USW Late Employee Claims[2] were made in January 2020, in accordance with the Order for leave to file late claims and authorization to make modifications to the Plan dated December 3, 2019 (together, the "**First Interim Distribution**");

II. GROUNDS AND RELIEF SOUGHT

10. Both the Bloom Lake Initial Order and the Wabush Initial Order provide that the Monitor assist the CCAA Parties in dealing with their creditors over the course of the Stay Period, and declare that the Monitor may apply to the Court for directions as becomes necessary in discharging its duties, the whole as appears from, *inter alia*, paragraphs 39 and 65 the Bloom Lake Initial Order (R-1);

11. Moreover, paragraphs 61 and 68 of the Claims Procedure Order (R-2) entitle the Monitor to apply to the Court for advice and directions in connection with the discharge or variation of its powers and duties thereunder;

12. Finally, paragraph 55 of the Plan Sanction Order (R-4), which reads as follows:

> [55] **DECLARES** that the Participating CCAA Parties and the Monitor may, from time to time, apply to this Court for any advice, directions or determinations concerning the exercise of their respective powers, duties and rights hereunder or in respect of resolving any matter or dispute relating to the Plan, the Amended and Restated Meetings Order or this Order, or to the subject matter thereof or the rights and benefits thereunder, including, without limitation, regarding the distribution mechanics under the Plan;

---

[1] As defined in the December 3, 2019 Order for leave to file late claims and authorization to make modifications to the Plan.

[2] As defined in the December 3, 2019 Order for leave to file late claims and authorization to make modifications to the Plan.

entitles the Monitor to apply to the Court for advice and directions in connection with the Plan and a purported right of setoff under the CCAA and the Plan (Section 5.13);

13. The Monitor hereby applies for directions with respect to the proposed offset by the Agence du revenu du Québec (**RQ**), acting on its behalf and on behalf of the Canada Revenue Agency (**CRA**), of CQIM's Damage Payment ITCs (as defined below) against RQ's 296 Claims (as defined below) against CQIM, on the basis that both claims are pre-filing claims that can be offset in accordance with section 21 CCAA, the whole as more fully explained below;

14. Specifically, the Monitor is asking the Court to issue an Order declaring that:

    a) the 296 Claims (as defined below) constitute pre-filing claims;

    b) the Damage Payment ITCs (as defined below) constitute post-filing amounts;

    c) RQ (acting on its behalf and on behalf of CRA) cannot setoff the 296 Claims against the Damage Payment ITCs (each as defined below) owed by RQ (and CRA) to CQIM;

    d) RQ (acting on its behalf and on behalf of CRA) shall without setoff of any kind pay to the Monitor, on behalf of the CCAA Parties and their creditors, all Damage Payment ITCs validly claimed by any of the CCAA Parties in respect of the First Interim Distribution, including without limitation the Damage Payment ITCs claimed by CQIM in the amount of $7,459,257.85, together with interest at the legal rate and the additional indemnity from and after the date at which each of the Damage Payment ITCs claimed became payable, until paid in full to the Monitor on behalf of the CCAA Parties;

    e) RQ (acting on its behalf and on behalf of CRA) shall without setoff of any kind pay to the Monitor, on behalf of the CCAA Parties and their creditors, all Damage Payment ITCs validly claimed by any of the CCAA Parties with respect to all future distributions under the Plan;

    the whole in the form of the draft Order communicated herewith as **Exhibit R-5**;

III. PROPOSED OFFSET BETWEEN THE 296 CLAIMS AND THE DAMAGE PAYMENT ITCS

A. Administration of the GST/QST in Quebec

15. Acting as agent for the Quebec Minister of Revenue, RQ is responsible for the administration of tax legislation in Quebec, including the *Act respecting the Québec sales tax*[3] (**QSTA**);

[3] C.Q.L.R., c. T-01.

16. Under an agreement between the federal and Quebec governments, RQ also administers on behalf of CRA in Quebec the goods and services tax (**GST**);

17. As a result, in this province RQ is responsible for the collection of Quebec sales taxes (**QST**) and GST, as well as the reimbursement of net tax refunds determined based on the amount of tax collected, minus input tax credits (**ITCs**) for the purpose of the GST and input tax refunds (**ITRs**) for the purpose of the QST (collectively, the **ITC Claims**);

B. The 296 Claims

18. On or about October 2, 2020, the Monitor issued a notice to RQ allowing its claim for an aggregate amount of $13,392,752.86 based on Section 25 of the *Act respecting fiscal administration*[4] (**FAA**) and Section 296(1) of the *Excise Tax Act*[5] (**ETA**) with respect to unpaid QST in the amount of $5,653,595.34 and unpaid GST in the amount of $7,739,157.52 on account of taxable supply of goods and services received by CQIM prior to the Filing Date where such tax amounts remained unpaid by CQIM as at the Filing Date, as it appears from a copy of the Notice of Allowance dated October 2, 2020 communicated herewith as **Exhibit R-6** (the "**296 Claims**")**;**

19. Neither the quantum of the 296 Claims nor its pre-filing nature are disputed by the parties;

20. Sections 25 FAA and 296(1) ETA read as follows:

25 FAA	**296 ETA**
The Minister may determine or redetermine the amount of the duties, interest and penalties owed by a person under a fiscal law as well as the amount of the refund to which a person is entitled under a fiscal law and send a notice of assessment to him in this regard. *However, no such assessment may be made* *(a) more than four years after the later of* *i. the date on which the duties should have been paid, and* *ii. the date on which the return was filed; or* *(b) more than four years after the application for a refund was filed.* *This section does not apply in respect of a repayment referred to in section 21.0.1.*	***(1)** The Minister may assess* ○ ***(a)** the net tax of a person under Division V for a reporting period of the person,* ○ ***(b)** **<u>any tax payable by a person under Division II, IV or IV.1,</u>*** ○ ***(c)** any penalty or interest payable by a person under this Part,* ○ ***(d)** any amount payable by a person under any of paragraphs 228(2.1)(b) and (2.3)(d), section 230.1 and paragraphs 232.01(5)(c) and 232.02(4)(c), and* ○ ***(e)** any amount which a person is liable to pay or remit under subsection 177(1.1) or Subdivision A or B.1 of Division VII,*

[4] C.Q.L.R., c. A-6.002.

[5] R.S.C. 1985, c. E-15.

	and may reassess or make an additional assessment of tax, net tax, penalty, interest or an amount referred to in paragraph (d) or (e). *[our emphasis]*

C. The Damage Payment ITCs

21. The gravamen of the dispute between the parties lies in the determination of the nature of the ITC Claims for QST and GST deemed paid in 2018 as part of the First Interim Distributions paid to certain creditors on account of their claims for damages arising from the disclaimer or resiliation of contracts pursuant to the CCAA (the **Damage Payments ITCs**) as pre-or post-filing amounts, which will in turn dictate whether they can validly be offset by RQ's 296 Claims;

22. In furtherance of the Bloom Lake Initial Order (R-1), CQIM decided to disclaim certain of its contracts, the whole in accordance with Section 32 CCAA, and as result each of Canadian Iron Ore Railcar Leasing LP, Quebec North Shore and Labrador Railway Company, Inc., The CSL Group Inc. and Western Labrador Rail Services, has asserted a damage claim against CQIM (the **Restructuring Claims**) in accordance with the Claims Procedure Order (R-2);

23. In its sales tax returns for the period ended November 30, 2018, CQIM claimed the Damage Payment ITCs in connection with the sales taxes deemed paid on the First Interim Distribution on account of the Restructuring Claims;

24. Based on its audit work, RQ assessed the Damage Payment ITCs (as they relate to partial payment of the Restructuring Claims) to be in the amount of $7,459,257.85;

25. The Damage Payment ITCs arose as of the date of payment of the First Interim Distribution pursuant to Sections 182(1) ETA and 318 QSTA. which read as follows:

182 ETA	**318 QSTA**
*182 (1) For the purposes of this Part, **where at any time**, as a consequence of the breach, modification or termination after 1990 of an agreement for the making of a taxable supply (other than a zero-rated supply) of property or a service in Canada by a registrant to a person, **an amount is paid or forfeited to the registrant otherwise than as consideration for the supply**, or a debt or other obligation of the registrant is reduced or extinguished without*	***318. Where at any time**, as a consequence of the breach, modification or termination, after 30 June 1992, of an agreement for the making of a taxable supply, other than a zero-rated supply, of property or a service in Québec by a registrant to a person, **an amount is paid or forfeited to the registrant otherwise than as consideration for the supply**, or a debt or other obligation of the registrant is reduced or extinguished without payment being made in respect of the debt or obligation,* *(1) **the person is deemed to have paid, at that time, an amount of consideration for the supply** equal to the amount determined*

payment on account of the debt or obligation, *(a) the **person is deemed to have paid, at that time, an amount of consideration for the supply** equal to the amount determined by the formula* *…* *(b) the registrant is deemed to have collected, and the **person is deemed to have paid, at that time, all tax in respect of the supply** that is calculated on that consideration, which is deemed to be equal to (…)* (our emphasis)	*by multiplying the amount paid or forfeited, or by which the debt or obligation was reduced or extinguished, as the case may be, by 100/109.975; and* *(2) the registrant is deemed to have collected, and **the person is deemed to have paid, at that time, all tax in respect of the supply** that is calculated on that consideration, which is deemed to be equal to tax under section 16 calculated on that consideration.* (our emphasis)

D. The Damage Payment ITCs are post-filing amounts and cannot be offset against pre-filing claims, including the 296 Claims

26. Sections 182(1) ETA and 318 QSTA deem only the payment on account of the Restructuring Claims (which occurred in 2018) to be consideration for a taxable supply. The Restructuring Claims themselves, before payment, are not deemed to be consideration payable for a taxable supply**.** Sections 182(1) ETA and 318 QSTA also deem such payment to include GST and QST. In the absence of those deeming rules, the payments made on account of the Restructuring Claims would not have been consideration for a taxable supply and would not have given rise to any obligation of the creditors to remit any GST/QST and no portion of the payments would have been considered to be GST/QST paid by CQIM;

27. Furthermore, the clear wording of Sections 182(1) ETA and 318 QSTA make it clear that these deeming rules only apply at the time of payment, which is in the post-filing period. These sections do not deem GST/QST to have been paid nor payable in the pre-filing period before the actual payment is made or at any time prior to the Bloom Lake Initial Order;

28. The Damage Payment ITCs were requested by CQIM in its sales tax returns for the period ended November 30, 2018 on the basis that GST/QST only arose and became payable upon payment of the First Interim Distribution. Indeed, CQIM's right to the Damage Payment ITCs only arises as a result of Sections 182(1) ETA and 318 QSTA deeming there to be, at the time of payment on account of the Restructuring Claims, GST/QST included in such partial payments. Those payments were all made in the post-filing period;

29. Pursuant to Sections 182(1) ETA and 318 QSTA, the tax obligation giving rise to the Damage Payment ITCs did not exist at the time of the (i) Bloom Lake Initial Order, (ii) disclaimer or resiliation of the contracts giving rise to the Restructuring Claims, (iii) filing of the Restructuring Claims by the relevant creditors, nor (iv) at the time the Restructuring Claims became Proven Claims under the Claims Procedure Order. Instead, pursuant to Sections 182(1) ETA and 318 QSTA, that tax obligation only arose when the First Interim Distribution was made in 2018 on account of the Restructuring Claims;

30. In our view, the clear wording of the relevant provisions of the ETA and QSTA are dispositive of the issue. The mere existence of the Restructuring Claims, or indeed any of the relevant pre-filing contracts for the supply of goods or services, does not give rise to GST and QST being paid or becoming payable and therefore cannot form the basis of the Damage Payment ITCs which are dependent upon GST and QST being payable or having been paid. The right to the Damage Payment ITCs arises from and at the time of the payment of distributions on account of the Restructuring Claims, which clearly occurred post-filing;

E. RQ's attempt to characterize the Restructuring Claims as pre-filing claims

31. RQ appears to suggest that the characterization of the Restructuring Claims as pre-or post-filing is relevant to the characterization of the Damage Payment ITCs as pre-or post-filing;

32. While we disagree with RQ's reasoning to the effect that the characterization of the Restructuring Claims as pre-or post-filing is relevant to the characterization of the Damage Payment ITCs as pre or post-filing based as explained above on the clear wording of Sections 182(1) ETA and 318 QSTA, we consider that the Restructuring Claims are clearly post-filing claims, the whole as further explained below;

33. We submit that RQ mistakenly characterizes Restructuring Claims as pre-filing claims by conflating the notions of "claims" that may be dealt with under a plan or arrangement pursuant to Section 19 CCAA and the claims for damages that can be asserted as a result of the disclaimer or resiliation of a contract pursuant to Subsection 32(7) CCAA and mistakenly takes the position that the only claims that may be compromised pursuant to a plan of arrangement under the CCAA are claims that existed prior to the commencement of the CCAA proceedings;

34. The determination of which claims can be compromised by way of a plan under the CCAA derives from Subsection 19(1) CCAA, which reads as follows:

> **19 (1)** Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are
>
> - (a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of
>
>   - (i) the day on which proceedings commenced under this Act, and
>
>   - (ii) if the company filed a notice of intention under section 50.4 of the *Bankruptcy and Insolvency Act* or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act*, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and

> o (b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).
>
> (our emphasis)

35. The fact that the Restructuring Claims can be compromised pursuant to Subsection 19(1) of the CCAA does not result from their qualification as pre-filing claims, which clearly they are not, but rather from the regime set out in Section 32 CCAA governing the termination of contracts;

36. Section 32 CCAA provides that contracts to which a debtor company is party as of the date of the initial order, can be terminated by way of notice that can be contested within 15 days (32(2) CCAA) and only takes effect 30 days later if not duly contested or when such contestation has been resolved (32(5) CCAA). Subsection 32(7) of the CCAA provides that "if an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim". Consequently, the Restructuring Claims are provable claims because they are deemed to be provable claims by the CCAA and not because they are pre-filing claims;

37. A claim in damages resulting from a breach or non-performance of a contract occuring prior to the applicable initial order would clearly amount to a pre-filing claim. A Restructuring Claim, which can only arise as a result of a disclaimer or resiliation after the issuance of an initial order under the CCAA in relation to a contract entered before that date[6], cannot be considered a pre-filing claim. Rather it can only be considered a post-filing claim, which is deemed by Subsection 32(7) CCAA to be a provable claim subject to compromise under a CCAA plan;

38. Paragraphs (a) and (b) of the definition of "Claim" of the Claims Procedure Order (R-2) provide as follows:

> 4.11 "**Claims**" means:
>
> a. Any right or claim of any Person that may be asserted or made in whole or in part against the CCAA Parties (or any of them), whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, in existence on, or which is based on, an event, fact, act or omission which occurred in whole or in part prior to the applicable Determination Date[7], at law or in equity, by reason of the commission of a tort (intentional or unintentional), any breach of contract, lease or other agreement (oral or written), any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty), any breach of extra-contractual obligation, any right of ownership of or title to property, employment, contract or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise) or for any reason whatsoever against any of the CCAA Parties or any of their property or assets, and whether or not any such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured (by guarantee, surety or otherwise), unsecured, present, future, known or unknown, and whether or not any such right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or

[6] Section 32(1) CCAA specifically provides that it can only apply to an "…agreement to which the company is a party on the day on which proceedings commence under this Act."

[7] With respect to the Bloom Lake CCAA Parties, including CQIM, the Determination Date is January 27, 2015, as provided by Section 4.23 of the Claims Procedure Order (R-2).

chose in action, whether existing at present or commenced in the future, together with any other rights or claims not referred to above that are or would be claims provable under the BIA had the CCAA Parties (or any one of them) become bankrupt on the applicable Determination Date, including, for greater certainty, any Tax Claim and any monetary claim in connection with any indebtedness, liability or obligation by reason of a breach of a collective bargaining agreement, including grievances in relation thereto, or by reason of a breach of a legal or statutory duty under any employment legislation or pay equity legislation; or

b. any Restructuring Claim;

(…)

(our emphasis)

39. Paragraph (b) would be superfluous if the Restructuring Claims were pre-filing claims as they would already be covered by paragraph (a) of the definition.

40. The definition of "Restructuring Claim" under the Claims Procedure Order (R-2) is also restricted to claims that arise after the filing date:

4.60 **"Restructuring Claim"** means any right or claim of any Person against the CCAA Parties (or any one of them) in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the CCAA Parties (or any one of them) to such Person, arising out of the restructuring, disclaimer, resiliation, termination or breach or suspension, on or after the Determination Date, of any contract, employment agreement, lease or other agreement or arrangement, whether written or oral, and whether such restructuring, disclaimer, resiliation, termination or breach took place or takes place before or after the date of this Claims Procedure Order, and, for greater certainty, includes any right or claim of an Employee of any of the CCAA Parties arising from a termination of its employment after the Determination Date, *provided, however,* that "Restructuring Claim" shall not include an Excluded Claim;

(our emphasis)

41. Echoing Subsection 32(7) of the CCAA, Subparagraph 33(e) of the Bloom Lake Initial Order (R-1) provides that that the Bloom Lake CCAA Parties can terminate contracts "and make provisions for the consequences thereof in the Plan". The Plan compromises "Affected Claims", not "pre-filing claims". The definition of Affected Claims is a "Claim other than an Unaffected Claim". A "Claim" includes both (i) claims "…in existence on, or which is based on, an event, fact, act or omission which occurred in whole or in part prior to the applicable Filing Date…" (i.e. a "pre-filing claim") and (ii) "Restructuring Claims". Thus, both the CCAA and the Plan clearly provide for the authority to compromise Restructuring Claims even though they are not pre-filing claims;

IV. CONCLUSIONS, CONSTITUTIONAL AND PROCEDURAL MATTERS

42. Based on discussions to date, the Monitor understands that RQ feels bound by the decision of the Quebec Court of Appeal in the *Kitco*[8] matter and accepts that it can only offset its pre-filing 296 Claims against the Damage Payments ITCs if the later are considered pre-filing claims, and that it does not rely on statutory provisions found in the FAA, QSTA or other tax legislation that would otherwise appear to allow the offset of pre-

[8] *Arrangement relatif à Métaux Kitco inc.*, 2017 QCCA 268.

fling and post-filing obligations, such that it is not necessary to have such statutory provisions declared inapplicable, invalid or inoperative;

43. The Monitor submits that the notices given of the presentation of the present Motion are proper and sufficient;

44. Based on the foregoing, the Monitor is asking the Court to issue an Order declaring that:

a) the 296 Claims constitute pre-filing claims;

b) the Damage Payment ITCs constitute post-filing claims;

c) RQ (acting on its on behalf and on behalf of CRA) cannot offset the 296 Claims against the Damage Payment ITCs;

d) RQ (acting on its on behalf and on behalf of CRA) shall without set-off pay to the Monitor, on behalf of the CCAA Parties and their creditors, all Damage Payment ITCs validly claimed by any of the CCAA Parties in respect of the First Interim Distribution, including, without limitation, the Damage Payment ITCs claimed by CQIM in the amount of $7,459,257.85, together with interest at the legal rate and the additional indemnity, from and after the date at which each of the ITRs claimed was payable, until payment in full to the Monitor;

e) upon receipt of the appropriate returns, RQ (acting on its on behalf and on behalf of CRA) shall without setoff pay to the Monitor, on behalf of the CCAA Parties and their creditors, all Damage Payment ITCs validly claimed by any of the CCAA Parties with respect to all future distributions under the Plan;

the whole substantially in the form of the draft Order communicated herewith as **Exhibit R-5**;

45. The CCAA Parties have been consulted by the Monitor and support the conclusions sought herein;

46. The present Motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Motion;

ISSUE an Order in the form of the draft communicated herewith as Exhibit R-5;

WITHOUT COST, save and except in case of contestation.

Montréal, January 18, 2021

Norton Rose Fulbright Canada LLP

NORTON ROSE FULBRIGHT CANADA, LLP
Mtre Sylvain Rigaud and Mtre Arad Mojtahedi
Attorneys of the Monitor FTI Consulting Canada Inc.

Suite 2500 - 1 Place Ville Marie
Montreal, Quebec H3B 1R1
Telephone : (514) 847-4702 and (514) 847-4582
Fax : (514) 514-286-5474
notifications-mtl@nortonrosefulbright.com
Our reference : 01028478-0001

Motion by the monitor for directions with respect to setoff and damage payment input tax credits, 18 janvier 2021

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the present *Motion by the Monitor for Directions with Respect to Setoff and Damage Payment ITCs* will be presented on *a pro forma* basis before the Honourable Michel A. Pinsonnault, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, at 9:00 on January 29, 2021.

The hearing is set to proceed virtually from room 12.61 at the Montreal Courthouse.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, January 18, 2021

Norton Rose Fulbright Canada LLP

NORTON ROSE FULBRIGHT CANADA, LLP
Mtre Sylvain Rigaud and Mtre Arad Mojtahedi
Attorneys of the Monitor FTI Canada Consulting Inc.

Suite 2500 - 1 Place Ville Marie
Montreal, Quebec H3B 1R1
Telephone : (514) 847-4702 and (514) 847-4582
Fax : (514) 514-286-5474
notifications-mtl@nortonrosefulbright.com
Our reference : 01028478-0001

C A N A D A

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. C-36, as amended)

N°: **500-11-048114-157**

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

BLOOM LAKE GENERAL PARTNER LIMITED *et al*

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP *et al*

Mises-en-cause

-and-

AGENCE DU REVENU DU QUEBEC

CANADA REVENUE AGENCY

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

LIST OF EXHIBITS IN SUPPORT OF THE MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO SETOFF AND DAMAGE PAYMENTS ITCS

Exhibit R-1	Bloom Lake Initial Order dated January 27, 2015, as amended on February 20, 2015;
Exhibit R-2	Claims Procedure Order dated November 5, 2015, as amended on November 16, 2015;
Exhibit R-3	Amended and Restated Joint Plan of Compromise and Arrangement (as last amended on December 13, 2019);
Exhibit R-4	Plan Sanction Order dated June 29, 2018;

Motion by the monitor for directions with respect to setoff and damage payment input tax credits, 18 janvier 2021

Exhibit R-5 Draft Order;

Montréal, January 18, 2021

Norton Rose Fulbright Canada LLP

NORTON ROSE FULBRIGHT CANADA, LLP
Mtre Sylvain Rigaud and Mtre Arad Mojtahedi
Attorneys of the Monitor
Suite 2500 - 1 Place Ville Marie
Montreal, Quebec H3B 1R1
Telephone : (514) 847-4702 and (514) 847-4582
Telecopieur : (514) 514-286-5474
Notifications-mtl@nortonrosefulbright.com
Our reference : 01028478-0001

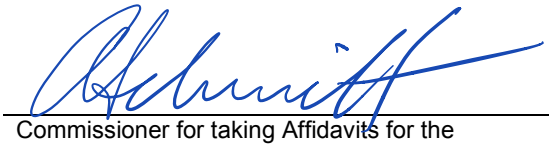
A F F I D A V I T

I, the undersigned, **NIGEL MEAKIN**, Senior Managing Director of FTI Consulting Canada Inc., acting in its capacity as Monitor to the CCAA Parties in these proceedings, solemnly affirm that all the facts alleged in the *Motion by the Monitor for Directions with Respect to Setoff and Damage Payment ITCs* dated January 18, 2021 are true.

AND I HAVE SIGNED:

NIGEL MEAKIN

SOLEMNLY DECLARED before me by videoconference on this 18th day of January, 2021, allowing me to recognize Nigel Meakin, as well as to confirm that he has signed this Affidavit. Both Nigel Meakin and the Commissioner were located in the City of Toronto, in the Province of Ontario. The Affidavit was commissioned remotely as a result of COVID-19



Commissioner for taking Affidavits for the Province of Ontario
Alexander Schmitt (LSO No.63068F)

CAN_DMS: \137452431\2

Motion by the monitor for directions with respect to setoff and damage payment input tax credits, 18 janvier 2021

ATTESTATION OF AUTHENTICITY
(Articles 113 and 133 C.C.P.)

I, the undersigned, **SYLVAIN RIGAUD**, lawyer, of the firm Norton Rose Fulbright Canada LLP, carrying on business at 1 Place Ville Marie, Suite 2500, in the City and District of Montreal, Province of Quebec, under my oath of office, declare:

1. On January 18, 2021, at 1:38 p.m., I have received by electronic mail from Alexander Schmitt, an Affidavit in support of the *Motion by the Monitor for Directions with Respect to Damage Payment ITCs,* before the Superior Court, District of Montreal;

2. The copy of the Affidavit attached hereto is a true copy of the Affidavit signed by Mr. Nigel Meakin received by electronic mail;

3. Alexander Schmitt's electronic mail address is alexander.schmitt@nortonrosefulbright.com;

4. The facts alleged herein are true.

Montreal, January 18, 2021

SYLVAIN RIGAUD

Solemnly affirmed before me in Montreal
this 18th day of January 2021

COMMISSAIRE À L'ASSERMENTATION POUR LE QUÉBEC
Javier Perez
184,869

Commissioner for oaths for the Province of Quebec

CAN_DMS: \137452431\2

NO: 500-11-048114-157

SUPERIOR COURT
DISTRICT OF MONTREAL

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

MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO DAMAGE PAYMENT INPUT TAX CREDITS AND EXHIBITS R-1 TO R-5

ORIGINAL

BO-0042 #1000149903
Mtre. Sylvain Rigaud and Mtre. Arad Mojtahedi
NORTON ROSE FULBRIGHT CANADA LLP
BARRISTERS & SOLICITORS
1 Place Ville Marie, Suite 2500
Montréal, Quebec H3B 1R1 CANADA
Telephone: 514-847-4702
Telephone: 514-847-4582
Fax: +1 514.286.5474

Notifications-mtl@nortonrosefulbright.com

C A N A D A

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. 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-

AGENCE DU REVENU DU QUEBEC

CANADA REVENUE AGENCY

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

AMENDED MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO SETOFF AND DAMAGE PAYMENT INPUT TAX CREDITS
(Sections 11, 21 and 23(k) of the *Companies' Creditors Arrangement Act*)

TO MR. JUSTICE MICHEL A. PINSONNAULT, J.S.C. OR TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE MONITOR SUBMITS:

I. INTRODUCTION

1. On January 27, 2015, the Honourable Justice Martin Castonguay, J.S.C., issued an Order (as subsequently amended, rectified and/or restated, the **Bloom Lake Initial Order**) pursuant to the *Companies' Creditors Arrangement Act* (**CCAA**) in respect of the Petitioners Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, and Cliffs Québec Iron Mining ULC (**CQIM**), as well as Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited (collectively, the **Bloom Lake CCAA Parties**), as appears from the Court record. Copy of the Bloom Lake Initial Order dated January 27, 2015, as amended on February 20, 2015, is communicated herewith as **Exhibit R-1**;

2. Pursuant to the Bloom Lake Initial Order (R-1), *inter alia*, FTI Consulting Canada Inc. was appointed as monitor of the Bloom Lake CCAA Parties (the **Monitor**), and a stay of proceedings was granted in respect of the Bloom Lake CCAA Parties until February 26, 2015 (subsequently extended from time to time, and most recently until May 31, 2021 by Order dated November 27, 2020);

3. On May 20, 2015, the Honourable Justice Stephen W. Hamilton, J.S.C. (as he then was), issued an Order (as subsequently amended, rectified and/or restated, the **Wabush Initial Order**) extending the scope of these CCAA proceedings to the Petitioners Wabush Iron Co. Limited (**Wabush Iron**) and Wabush Resources Inc. (**Wabush Resources**), as well as Mises-en-cause Wabush Mines, an unincorporated contractual joint venture (**Wabush Mines**), Arnaud Railway Company (**Arnaud Railway**), and Wabush Lake Railway Company Limited (**Wabush Railway**) (collectively, the **Wabush CCAA Parties**, and together with the Bloom Lake CCAA Parties, the **CCAA Parties**), as appears from the Court record;

4. Pursuant to the Wabush Initial Order, *inter alia*, the Monitor was appointed as the monitor of the Wabush CCAA Parties, and a stay of proceedings was granted in respect of the Wabush CCAA Parties until June 19, 2015 (subsequently extended from time to time, and most recently until May 31, 2021 by Order dated November 27, 2020);

5. On November 5, 2015, Mr. Justice Hamilton, issued an order (as amended on November 16, 2015, the Claims Procedure Order), which approved and established a procedure for the filing of creditors' claims against the CCAA Parties and their directors and officers (the Claims Procedure), as appears from the Claims Procedure Order, a copy of which is communicated in support herewith as Exhibit R-2;

6. On May 18, 2018, Mr. Justice Hamilton issued an order which accepted the filing of the Amended and Restated Joint Plan of Compromise and Arrangement in respect of the

Participating CCAA Parties (as defined therein), dated May 16, 2018 (as further amended, restated or supplemented from time to time, the "**Plan**"). A copy of the latest version of the Plan amended on December 13, 2019 is communicated in support herewith as **Exhibit R-3.** Capitalized terms not otherwise defined herein have the meaning ascribed thereto in the Plan (R-3);

7. On June 18, 2018, the Plan was approved by the Classes of Affected Unsecured Creditors and on June 29, 2018, Mr. Justice Hamilton issued the Sanction Order dated June 29, 2018 (the "**Plan Sanction Order**"), a copy of which is communicated in support herewith as **Exhibit R-4**;

8. On July 31, 2018, the Monitor issued the Plan Implementation Date Certificate, confirming the implementation of the Plan on that date, the whole as appears from the Court record;

9. Starting in August, 2018, the Monitor commenced the first interim distributions to Affected Third Party Unsecured Creditors from each of the Unsecured Creditor Cash Pools and Pension Cash Pools, while interim distributions on account of the Salaried Late Employee Claims[1] and the USW Late Employee Claims[2] were made in January 2020, in accordance with the Order for leave to file late claims and authorization to make modifications to the Plan dated December 3, 2019 (together, the "**First Interim Distribution**");

II. GROUNDS AND RELIEF SOUGHT

10. Both the Bloom Lake Initial Order and the Wabush Initial Order provide that the Monitor assist the CCAA Parties in dealing with their creditors over the course of the Stay Period, and declare that the Monitor may apply to the Court for directions as becomes necessary in discharging its duties, the whole as appears from, *inter alia*, paragraphs 39 and 65 the Bloom Lake Initial Order (R-1);

11. Moreover, paragraphs 61 and 68 of the Claims Procedure Order (R-2) entitle the Monitor to apply to the Court for advice and directions in connection with the discharge or variation of its powers and duties thereunder;

12. Finally, paragraph 55 of the Plan Sanction Order (R-4), which reads as follows:

> [55] **DECLARES** that the Participating CCAA Parties and the Monitor may, from time to time, apply to this Court for any advice, directions or determinations concerning the exercise of their respective powers, duties and rights hereunder or in respect of resolving any matter or dispute relating to the Plan, the Amended and Restated Meetings Order or this Order, or to the subject matter thereof or the rights and benefits thereunder, including, without limitation, regarding the distribution mechanics under the Plan;

[1] As defined in the December 3, 2019 Order for leave to file late claims and authorization to make modifications to the Plan.

[2] As defined in the December 3, 2019 Order for leave to file late claims and authorization to make modifications to the Plan.

entitles the Monitor to apply to the Court for advice and directions in connection with the Plan and a purported right of setoff under the CCAA and the Plan (Section 5.13);

13. The Monitor hereby applies for directions with respect to the proposed offset by the Agence du revenu du Québec (**RQ**), acting on its behalf and on behalf of the Canada Revenue Agency (**CRA**), of CQIM's Damage Payment ITCs (as defined below) against RQ's 296 Claims (as defined below) against CQIM, on the basis that both claims are pre-filing claims that can be offset in accordance with section 21 CCAA, the whole as more fully explained below;

14. Specifically, the Monitor is asking the Court to issue an Order declaring that:

    a) the 296 Claims (as defined below) constitute pre-filing claims;

    b) the Damage Payment ITCs (as defined below) constitute post-filing amounts;

    c) RQ (acting on its behalf and on behalf of CRA) cannot setoff the 296 Claims against the Damage Payment ITCs (each as defined below) owed by RQ (and CRA) to CQIM;

    d) RQ (acting on its behalf and on behalf of CRA) shall without setoff of any kind pay to the Monitor, on behalf of the CCAA Parties and their creditors, all Damage Payment ITCs validly claimed by any of the CCAA Parties in respect of the First Interim Distribution, including without limitation the Damage Payment ITCs claimed by CQIM in the amount of $7,459,257.85, together with interest at the legal rate and the additional indemnity from and after the date at which each of the Damage Payment ITCs claimed became payable, until paid in full to the Monitor on behalf of the CCAA Parties;

    e) RQ (acting on its behalf and on behalf of CRA) shall without setoff of any kind pay to the Monitor, on behalf of the CCAA Parties and their creditors, all Damage Payment ITCs validly claimed by any of the CCAA Parties with respect to all future distributions under the Plan;

    f) RQ (acting on its behalf and on behalf of CRA) shall without setoff of any kind pay to the Monitor, on behalf of the CCAA Parties and their creditors, additional ITCs in the amount of $ 234 755.16, the whole as set out more fully paragraphs 25.1 and 25.2 hereunder;

the whole in the form of the draft Order communicated herewith as **Exhibit R-5.1**;

III. PROPOSED OFFSET BETWEEN THE 296 CLAIMS AND THE DAMAGE PAYMENT ITCS

A. Administration of the GST/QST in Quebec

15. Acting as agent for the Quebec Minister of Revenue, RQ is responsible for the administration of tax legislation in Quebec, including the *Act respecting the Québec sales tax*[3] (**QSTA**);

16. Under an agreement between the federal and Quebec governments, RQ also administers on behalf of CRA in Quebec the goods and services tax (**GST**);

17. As a result, in this province RQ is responsible for the collection of Quebec sales taxes (**QST**) and GST, as well as the reimbursement of net tax refunds determined based on the amount of tax collected, minus input tax credits (**ITCs**) for the purpose of the GST and input tax refunds (**ITRs**) for the purpose of the QST (collectively, the **ITC Claims**);

B. The 296 Claims

18. On or about October 2, 2020, the Monitor issued a notice to RQ allowing its claim for an aggregate amount of $13,392,752.86 based on Section 25 of the *Act respecting fiscal administration*[4] (**FAA**) and Section 296(1) of the *Excise Tax Act*[5] (**ETA**) with respect to unpaid QST in the amount of $5,653,595.34 and unpaid GST in the amount of $7,739,157.52 on account of taxable supply of goods and services received by CQIM prior to the Filing Date where such tax amounts remained unpaid by CQIM as at the Filing Date, as it appears from a copy of the Notice of Allowance dated October 2, 2020 communicated herewith as **Exhibit R-6** (the "**296 Claims**")**;**

19. Neither the quantum of the 296 Claims nor its pre-filing nature are disputed by the parties;

20. Sections 25 FAA and 296(1) ETA read as follows:

25 FAA	**296 ETA**
The Minister may determine or redetermine the amount of the duties, interest and penalties owed by a person under a fiscal law as well as the amount of the refund to which a person is entitled under a fiscal law and send a notice of assessment to him in this regard. *However, no such assessment may be made* *(a) more than four years after the later of* *i. the date on which the duties should have been paid, and* *ii. the date on which the return was filed; or* *(b) more than four years after the application for a refund was filed.*	***(1)** The Minister may assess* ○ ***(a)** the net tax of a person under Division V for a reporting period of the person,* ○ ***(b)** **any tax payable by a person under Division II, IV or IV.1,*** ○ ***(c)** any penalty or interest payable by a person under this Part,* ○ ***(d)** any amount payable by a person under any of paragraphs 228(2.1)(b) and (2.3)(d), section 230.1 and paragraphs 232.01(5)(c) and 232.02(4)(c), and*

[3] C.Q.L.R., c. T-01.

[4] C.Q.L.R., c. A-6.002.

[5] R.S.C. 1985, c. E-15.

This section does not apply in respect of a repayment referred to in section 21.0.1.	○ ***(e)*** *any amount which a person is liable to pay or remit under subsection 177(1.1) or Subdivision A or B.1 of Division VII,* *and may reassess or make an additional assessment of tax, net tax, penalty, interest or an amount referred to in paragraph (d) or (e).* *[our emphasis]*

C. The Damage Payment ITCs

21. The gravamen of the dispute between the parties lies in the determination of the nature of the ITC Claims for QST and GST deemed paid in 2018 as part of the First Interim Distributions paid to certain creditors on account of their claims for damages arising from the disclaimer or resiliation of contracts pursuant to the CCAA (the **Damage Payments ITCs**) as pre-or post-filing amounts, which will in turn dictate whether they can validly be offset by RQ's 296 Claims;

22. In furtherance of the Bloom Lake Initial Order (R-1), CQIM decided to disclaim certain of its contracts, the whole in accordance with Section 32 CCAA, and as result each of Canadian Iron Ore Railcar Leasing LP, Quebec North Shore and Labrador Railway Company, Inc., The CSL Group Inc. and Western Labrador Rail Services, has asserted a damage claim against CQIM (the **Restructuring Claims**) in accordance with the Claims Procedure Order (R-2);

23. In its sales tax returns for the period ended November 30, 2018, CQIM claimed the Damage Payment ITCs in connection with the sales taxes deemed paid on the First Interim Distribution on account of the Restructuring Claims;

24. Based on its audit work, RQ assessed the Damage Payment ITCs (as they relate to partial payment of the Restructuring Claims) to be in the amount of $7,459,257.85;

C1. Other ITCs

25. The Damage Payment ITCs arose as of the date of payment of the First Interim Distribution pursuant to Sections 182(1) ETA and 318 QSTA. which read as follows:

182 ETA	**318 QSTA**
*182 (1) For the purposes of this Part, **where at any time**, as a consequence of the breach, modification or termination after 1990 of an agreement for the making of a taxable supply (other than a zero-rated supply) of*	***318. Where at any time**, as a consequence of the breach, modification or termination, after 30 June 1992, of an agreement for the making of a taxable supply, other than a zero-rated supply, of property or a service in Québec by a registrant to a person, **an amount is paid or forfeited to the***

*property or a service in Canada by a registrant to a person, **an amount is paid or forfeited to the registrant otherwise than as consideration for the supply**, or a debt or other obligation of the registrant is reduced or extinguished without payment on account of the debt or obligation,* *(a) the **person is deemed to have paid, at that time, an amount of consideration for the supply** equal to the amount determined by the formula* *…* *(b) the registrant is deemed to have collected, and the **person is deemed to have paid, at that time, all tax in respect of the supply** that is calculated on that consideration, which is deemed to be equal to (…)* (our emphasis)	***registrant otherwise than as consideration for the supply**, or a debt or other obligation of the registrant is reduced or extinguished without payment being made in respect of the debt or obligation,* *(1) **the person is deemed to have paid, at that time, an amount of consideration for the supply** equal to the amount determined by multiplying the amount paid or forfeited, or by which the debt or obligation was reduced or extinguished, as the case may be, by 100/109.975; and* *(2) the registrant is deemed to have collected, and **the person is deemed to have paid, at that time, all tax in respect of the supply** that is calculated on that consideration, which is deemed to be equal to tax under section 16 calculated on that consideration.* (our emphasis)

25.1 In addition to the Damage Payment ITCs, RQ is also in indebted to CQIM for an amount of $ 422 490.35 representing ITCs not in relation to Restructuring Claims, but rather in relation to supplier invoices which were not the subject of the 296 Claims and all of which were issued after the BloomLake Initial Order, including $ 234 755.16 in relation to the post-filing period, the whole as it appears from RQ's Contestation dated May 14, 2021 (at paragraphs 22-23, 24(c), 89-92 and 94 III);

25.2 The Monitor submits that the ITCs for the post-filing period in the amount of $ 234 755.16 cannot be offset against its pre-filing claims;

D. The Damage Payment ITCs are post-filing amounts and cannot be offset against pre-filing claims, including the 296 Claims

26. Sections 182(1) ETA and 318 QSTA deem only the payment on account of the Restructuring Claims (which occurred in 2018) to be consideration for a taxable supply. The Restructuring Claims themselves, before payment, are not deemed to be consideration payable for a taxable supply**.** Sections 182(1) ETA and 318 QSTA also deem such payment to include GST and QST. In the absence of those deeming rules, the payments made on account of the Restructuring Claims would not have been

consideration for a taxable supply and would not have given rise to any obligation of the creditors to remit any GST/QST and no portion of the payments would have been considered to be GST/QST paid by CQIM;

27. Furthermore, the clear wording of Sections 182(1) ETA and 318 QSTA make it clear that these deeming rules only apply at the time of payment, which is in the post-filing period. These sections do not deem GST/QST to have been paid nor payable in the pre-filing period before the actual payment is made or at any time prior to the Bloom Lake Initial Order;

28. The Damage Payment ITCs were requested by CQIM in its sales tax returns for the period ended November 30, 2018 on the basis that GST/QST only arose and became payable upon payment of the First Interim Distribution. Indeed, CQIM's right to the Damage Payment ITCs only arises as a result of Sections 182(1) ETA and 318 QSTA deeming there to be, at the time of payment on account of the Restructuring Claims, GST/QST included in such partial payments. Those payments were all made in the post-filing period;

29. Pursuant to Sections 182(1) ETA and 318 QSTA, the tax obligation giving rise to the Damage Payment ITCs did not exist at the time of the (i) Bloom Lake Initial Order, (ii) disclaimer or resiliation of the contracts giving rise to the Restructuring Claims, (iii) filing of the Restructuring Claims by the relevant creditors, nor (iv) at the time the Restructuring Claims became Proven Claims under the Claims Procedure Order. Instead, pursuant to Sections 182(1) ETA and 318 QSTA, that tax obligation only arose when the First Interim Distribution was made in 2018 on account of the Restructuring Claims;

30. In our view, the clear wording of the relevant provisions of the ETA and QSTA are dispositive of the issue. The mere existence of the Restructuring Claims, or indeed any of the relevant pre-filing contracts for the supply of goods or services, does not give rise to GST and QST being paid or becoming payable and therefore cannot form the basis of the Damage Payment ITCs which are dependent upon GST and QST being payable or having been paid. The right to the Damage Payment ITCs arises from and at the time of the payment of distributions on account of the Restructuring Claims, which clearly occurred post-filing;

E. RQ's attempt to characterize the Restructuring Claims as pre-filing claims

31. RQ appears to suggest that the characterization of the Restructuring Claims as pre-or post-filing is relevant to the characterization of the Damage Payment ITCs as pre-or post-filing;

32. While we disagree with RQ's reasoning to the effect that the characterization of the Restructuring Claims as pre-or post-filing is relevant to the characterization of the Damage Payment ITCs as pre or post-filing based as explained above on the clear wording of Sections 182(1) ETA and 318 QSTA, we consider that the Restructuring Claims are clearly post-filing claims, the whole as further explained below;

33. We submit that RQ mistakenly characterizes Restructuring Claims as pre-filing claims by conflating the notions of "claims" that may be dealt with under a plan or arrangement pursuant to Section 19 CCAA and the claims for damages that can be asserted as a result of the disclaimer or resiliation of a contract pursuant to Subsection 32(7) CCAA and mistakenly takes the position that the only claims that may be compromised pursuant to a

plan of arrangement under the CCAA are claims that existed prior to the commencement of the CCAA proceedings;

34. The determination of which claims can be compromised by way of a plan under the CCAA derives from Subsection 19(1) CCAA, which reads as follows:

> **19 (1)** Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are
>
> - (a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of
>
>   - (i) the day on which proceedings commenced under this Act, and
>
>   - (ii) if the company filed a notice of intention under section 50.4 of the *Bankruptcy and Insolvency Act* or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act*, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and
>
> - (b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).
>
> (our emphasis)

35. The fact that the Restructuring Claims can be compromised pursuant to Subsection 19(1) of the CCAA does not result from their qualification as pre-filing claims, which clearly they are not, but rather from the regime set out in Section 32 CCAA governing the termination of contracts;

36. Section 32 CCAA provides that contracts to which a debtor company is party as of the date of the initial order, can be terminated by way of notice that can be contested within 15 days (32(2) CCAA) and only takes effect 30 days later if not duly contested or when such contestation has been resolved (32(5) CCAA). Subsection 32(7) of the CCAA provides that "if an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim". Consequently, the Restructuring Claims are provable claims because they are deemed to be provable claims by the CCAA and not because they are pre-filing claims;

37. A claim in damages resulting from a breach or non-performance of a contract occuring prior to the applicable initial order would clearly amount to a pre-filing claim. A Restructuring Claim, which can only arise as a result of a disclaimer or resiliation after the issuance of an initial order under the CCAA in relation to a contract entered before that date[6], cannot be considered a pre-filing claim. Rather it can only be considered a post-filing claim, which is deemed by Subsection 32(7) CCAA to be a provable claim subject to compromise under a CCAA plan;

38. Paragraphs (a) and (b) of the definition of "Claim" of the Claims Procedure Order (R-2) provide as follows:

---

[6] Section 32(1) CCAA specifically provides that it can only apply to an "…agreement to which the company is a party on the day on which proceedings commence under this Act."

4.11 "**Claims**" means:

a. Any right or claim of any Person that may be asserted or made in whole or in part against the CCAA Parties (or any of them), whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, in existence on, or which is based on, an event, fact, act or omission which occurred in whole or in part prior to the applicable Determination Date[7], at law or in equity, by reason of the commission of a tort (intentional or unintentional), any breach of contract, lease or other agreement (oral or written), any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty), any breach of extra-contractual obligation, any right of ownership of or title to property, employment, contract or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise) or for any reason whatsoever against any of the CCAA Parties or any of their property or assets, and whether or not any such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured (by guarantee, surety or otherwise), unsecured, present, future, known or unknown, and whether or not any such right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, together with any other rights or claims not referred to above that are or would be claims provable under the BIA had the CCAA Parties (or any one of them) become bankrupt on the applicable Determination Date, including, for greater certainty, any Tax Claim and any monetary claim in connection with any indebtedness, liability or obligation by reason of a breach of a collective bargaining agreement, including grievances in relation thereto, or by reason of a breach of a legal or statutory duty under any employment legislation or pay equity legislation; or

b. any Restructuring Claim;

(…)

(our emphasis)

39. Paragraph (b) would be superfluous if the Restructuring Claims were pre-filing claims as they would already be covered by paragraph (a) of the definition.

40. The definition of "Restructuring Claim" under the Claims Procedure Order (R-2) is also restricted to claims that arise after the filing date:

4.60 **"Restructuring Claim"** means any right or claim of any Person against the CCAA Parties (or any one of them) in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the CCAA Parties (or any one of them) to such Person, arising out of the restructuring, disclaimer, resiliation, termination or breach or suspension, on or after the Determination Date, of any contract, employment agreement, lease or other agreement or arrangement, whether written or oral, and whether such restructuring, disclaimer, resiliation, termination or breach took place or takes place before or after the date of this Claims Procedure Order, and, for greater certainty, includes any right or claim of an Employee of any of the CCAA Parties arising from a termination of its employment after the Determination Date, *provided, however,* that "Restructuring Claim" shall not include an Excluded Claim;

(our emphasis)

41. Echoing Subsection 32(7) of the CCAA, Subparagraph 33(e) of the Bloom Lake Initial Order (R-1) provides that that the Bloom Lake CCAA Parties can terminate contracts "and make provisions for the consequences thereof in the Plan". The Plan compromises "Affected Claims", not "pre-filing claims". The definition of Affected Claims is a "Claim

[7] With respect to the Bloom Lake CCAA Parties, including CQIM, the Determination Date is January 27, 2015, as provided by Section 4.23 of the Claims Procedure Order (R-2).

other than an Unaffected Claim". A "Claim" includes both (i) claims "…in existence on, or which is based on, an event, fact, act or omission which occurred in whole or in part prior to the applicable Filing Date…" (i.e. a "pre-filing claim") and (ii) "Restructuring Claims". Thus, both the CCAA and the Plan clearly provide for the authority to compromise Restructuring Claims even though they are not pre-filing claims;

IV. CONCLUSIONS, CONSTITUTIONAL AND PROCEDURAL MATTERS

42. Based on discussions to date, the Monitor understands that RQ feels bound by the decision of the Quebec Court of Appeal in the *Kitco*[8] matter and accepts that it can only offset its pre-filing 296 Claims against the Damage Payments ITCs if the later are considered pre-filing claims, and that it does not rely on statutory provisions found in the FAA, QSTA or other tax legislation that would otherwise appear to allow the offset of pre-fling and post-filing obligations, such that it is not necessary to have such statutory provisions declared inapplicable, invalid or inoperative;

42.1 In its Contestation dated May 14, 2021, RQ is arguing on that pre/post setoff is available and is not prohibited by the CCAA based on its reading and interpretation of the *Kitco* decision, such that no declaration that certain statutory tax provisions be declared inapplicable, invalid or inoperative is necessary;

43. The Monitor submits that the notices given of the presentation of the present Amended Motion are proper and sufficient;

44. Based on the foregoing, the Monitor is asking the Court to issue an Order declaring that:

a) the 296 Claims constitute pre-filing claims;

b) the Damage Payment ITCs constitute post-filing claims;

c) RQ (acting on its on behalf and on behalf of CRA) cannot offset the 296 Claims against the Damage Payment ITCs;

d) RQ (acting on its on behalf and on behalf of CRA) shall without set-off pay to the Monitor, on behalf of the CCAA Parties and their creditors, all Damage Payment ITCs validly claimed by any of the CCAA Parties in respect of the First Interim Distribution, including, without limitation, the Damage Payment ITCs claimed by CQIM in the amount of $7,459,257.85, together with interest at the legal rate and the additional indemnity, from and after the date at which each of the ITRs claimed was payable, until payment in full to the Monitor;

e) upon receipt of the appropriate returns, RQ (acting on its on behalf and on behalf of CRA) shall without setoff pay to the Monitor, on behalf of the CCAA Parties and

[8] *Arrangement relatif à Métaux Kitco inc.*, 2017 QCCA 268.

their creditors, all Damage Payment ITCs validly claimed by any of the CCAA Parties with respect to all future distributions under the Plan;

f) RQ (acting on its behalf and on behalf of CRA) shall without setoff of any kind pay to the Monitor, on behalf of the CCAA Parties, and their creditors, $ 234 755.16 together with interest at the legal rate and the additional indemnity, from and after the dates at which each of the ITCs claimed was payable, until payment in full to the Monitor;

the whole substantially in the form of the draft Order communicated herewith as **Exhibit R-5.1**;

45. The CCAA Parties have been consulted by the Monitor and support the conclusions sought herein;

46. The present Amended Motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Amended Motion;

ISSUE an Order in the form of the draft communicated herewith as Exhibit R-5.1;

WITHOUT COST, save and except in case of contestation.

Montréal, June 18, 2021

Woods s.e.n.c.r.l./LLP

WOODS S.E.N.C.R.L. / LLP
Mtre Sylvain Rigaud and Mtre Alex Dobrota
Attorneys of the Monitor FTI Consulting Canada Inc.

2000 McGill College Avenue, Suite 1700
Montreal, Quebec H3A 3H3
Telephone : (514) 736-4871
Fax : (514) 514-284-2046
srigaud@woods.qc.ca
adobrota@woods.qc.ca
notification@woods.qc.ca
Code BW 0208 / Our File: 5956-4

Amended motion by the monitor for directions with respect to setoff and damage payment input tax credits, 18 juin 2021

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the present *Motion by the Monitor for Directions with Respect to Setoff and Damage Payment ITCs* will be presented on *a pro forma* basis before the Honourable Michel A. Pinsonnault, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, at 9:30 on August 19-20, 2021.

The hearing is set to proceed virtually from room 16.04 at the Montreal Courthouse.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, June 18, 2021

Woods s.e.n.c.r.l./LLP

WOODS S.E.N.C.R.L. / LLP
Mtre Sylvain Rigaud and Mtre Alex Dobrota
Attorneys of the Monitor FTI Consulting Canada Inc.

2000 McGill College Avenue, Suite 1700
Montreal, Quebec H3A 3H3
Telephone : (514) 736-4871
Fax : (514) 514-284-2046
srigaud@woods.qc.ca
adobrota@woods.qc.ca
notification@woods.qc.ca
Code BW 0208 / Our File: 5956-4

Amended motion by the monitor for directions with respect to setoff and damage payment input tax credits, 18 juin 2021

C A N A D A

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. C-36, as amended)

N°: **500-11-048114-157**

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

BLOOM LAKE GENERAL PARTNER LIMITED *et al*

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP *et al*

Mises-en-cause

-and-

AGENCE DU REVENU DU QUEBEC

CANADA REVENUE AGENCY

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

LIST OF EXHIBITS IN SUPPORT OF THE AMENDED MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO SETOFF AND DAMAGE PAYMENTS ITCS

Exhibit R-1	Bloom Lake Initial Order dated January 27, 2015, as amended on February 20, 2015;
Exhibit R-2	Claims Procedure Order dated November 5, 2015, as amended on November 16, 2015;
Exhibit R-3	Amended and Restated Joint Plan of Compromise and Arrangement (as last amended on December 13, 2019);
Exhibit R-4	Plan Sanction Order dated June 29, 2018;

Amended motion by the monitor for directions with respect to setoff and damage payment input tax credits, 18 juin 2021

Exhibit R-5 Draft Order;

Exhibit R-5.1 Draft Order (Amended Motion).

Montréal, June 18, 2021

Woods s.e.n.c.r.l./LLP

WOODS S.E.N.C.R.L. / LLP
Mtre Sylvain Rigaud and Mtre Alex Dobrota
Attorneys of the Monitor FTI Consulting Canada Inc.

2000 McGill College Avenue, Suite 1700
Montreal, Quebec H3A 3H3
Telephone : (514) 736-4871
Fax : (514) 514-284-2046
srigaud@woods.qc.ca
adobrota@woods.qc.ca
notification@woods.qc.ca
Code BW 0208 / Our File: 5956-4

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

Nº : 500-11-048114-157

COUR SUPÉRIEURE
(Chambre commerciale)

DANS L'AFFAIRE DE LA LOI SUR LES ARRANGEMENTS AVEC LES CRÉANCIERS DES COMPAGNIES :

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

Requérantes

et

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 causes

et

AGENCE DU REVENU DU QUEBEC
AGENCE DU REVENU DU CANADA

Mises-en-cause

et

FTI CONSULTING CANADA INC.

Contrôleur

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

CONTESTATION DE L'AGENCE DU REVENU DU QUÉBEC DE LA : « MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO SETOFF AND DAMAGE PAYMENT INPUT TAX CREDITS »

(Articles 11 et 21, *Loi sur les arrangements avec les créanciers des compagnies* (L.R.C. (1985), ch. C-36) (« **LACC** »))

À L'HONORABLE JUGE MICHEL PINSONNAULT DE LA COUR SUPÉRIEURE (CHAMBRE COMMERCIALE), SIÉGEANT EN MATIÈRE COMMERCIALE, DANS ET POUR LE DISTRICT DE MONTRÉAL, L'AGENCE DU REVENU DU QUÉBEC EXPOSE CE QUI SUIT :

INTRODUCTION

1. L'Agence du Revenu du Québec (« **ARQ** ») est responsable de l'application des lois fiscales au Québec;

2. L'ARQ agit au Québec à titre de mandataire de Sa Majesté du chef du Canada pour les fins de la perception de la TPS en vertu de la partie IX de la *Loi sur la taxe d'accise*[1] (« **LTA** »);

3. En réponse à la requête pour directives du contrôleur FTI Consulting Canada Inc. (« **Contrôleur** »), l'ARQ soumet les éléments suivants :

   - les dommages en résiliation des contrats de Quebec North Shore and Labrador Railway Company Inc. (« **QNSL**»), Western Labrador Rail Services (« **Western LRS** ») et The CSL Group Inc (« **CSL Group** ») (collectivement les « **Créanciers fournisseurs** ») (« **Dommages pour les résiliations des contrats des Créanciers fournisseurs** ») se sont cristallisés après l'ordonnance initiale du 27 janvier 2015 («**Ordonnance initiale** »), sont nés aux termes d'obligations auxquelles la compagnie (Cliffs Québec Mine de fer ULC (« **CQIM** ») était assujettie à la date des procédures intentées sous le régime de la LACC (contrats déjà intervenus) et constituent donc des obligations antérieures à l'Ordonnance initiale;

---

[1] *Loi sur la taxe d'accise*, LRC, 1985, c E-15.

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

3

- les dommages en résiliation du contrat de Canadian Iron Ore Railcar Leasing LP (« **Créancier fournisseur Canadian Iron Ore** ») (« **Dommages pour la résiliation du contrat du Créancier fournisseur Canadian Iron Ore** ») sont nés aux termes d'une obligation à laquelle la compagnie CQIM était assujettie à la date des procédures intentées sous le régime de la LACC (contrat déjà intervenu), étaient dus à la date de l'Ordonnance initiale, soit le 27 janvier 2015, ces dommages constituant donc des obligations antérieures à l'Ordonnance initiale;

- les CTI et RTI[2] (totalisant 7 459 257,85 $) réclamés par CQIM pour la période se terminant le 30 novembre 2018 suite au versement du Premier dividende affecté au paiement partiel des dommages précités indiqués aux preuves de réclamation des Créanciers fournisseurs et du Créancier fournisseur Canadian Iron Ore (« **CTI-RTI pour dommages des résiliations des contrats suite au Premier dividende** »), sont des accessoires des dommages;

    - Partant, ceux-ci ne se sont cristallisés qu'au moment du paiement du Premier dividende (16 août 2018), soit après l'Ordonnance initiale, mais, à l'instar des dommages, ceux-ci sont nés aux termes des contrats intervenus antérieurement à celle-ci; ces CTI et RTI constituant donc des obligations antérieures à l'Ordonnance initiale;

- Les CTI et RTI pour dommages des résiliations des contrats suite au Premier dividende réclamés par CQIM constituent des dettes de l'ARQ nées antérieurement à l'Ordonnance initiale;

- l'ARQ est en droit de compenser ses créances aux termes de ses preuves de réclamations (totalisant 13 391 896,40 $) avec les CTI-RTI pour dommages des résiliations des contrats suite au versement du Premier dividende, lesquels

[2] Pour référence seulement quant aux abréviations CTI et RTI : Les entreprises inscrites qui acquièrent des biens et services comme intrants dans leurs activités commerciales peuvent généralement demander des « crédits de taxes sur les intrants » (CTI) dans le régime de la TPS et « des remboursements de la taxe sur les intrants » (RTI) dans le régime de la TVQ.

intrants sont nés avant l'Ordonnance initiale jusqu'à concurrence du moindre des montants;

- Subsidiairement, l'ARQ soumet que si le tribunal conclut que les CTI et RTI pour dommages des résiliations des contrats suite au Premier dividende sont plutôt une dette de l'ARQ postérieure à l'Ordonnance initiale, celle-ci peut être compensée avec ses créances aux termes de ses preuves de réclamations jusqu'à concurrence du moindre des montants;

- Par ailleurs, aux termes de leurs preuves de réclamation, Western LRS, QNSL et CSL Group, outre lesdits dommages pour résiliation précités, allèguent être créancières aux termes de factures ou parties de factures pour des obligations qui concernent des périodes postérieures à l'Ordonnance initiale;

    - les CTI et RTI (totalisant 234 755,16 $[3])[4], relativement aux factures ou parties des factures de Western LRS, QNSL, et CSL Group pour des obligations de ces créanciers fournisseurs postérieures à l'Ordonnance initiale, dette de l'ARQ à l'égard de CQIM, peuvent être compensés avec les preuves de réclamation de l'ARQ jusqu'à concurrence du moindre des montants;

[3] CTI de 80 717,47 $ et RTI de 154 037,69 $.

[4] Il est à noter que d'autres CTI et RTI (totalisant 188 185,19 $) relatifs à la partie des factures de Western LRS, QNSL, et CSL Group pour des obligations antérieures à l'Ordonnance initiale qui figurent aux preuves de réclamation desdits créanciers ne sont pas, à moins d'avis contraire du Contrôleur, en litige dans le présent dossier. Ceux-ci seront donc compensés avec les créances énoncées aux Preuves de réclamation ARQ 25 LAF-296 LTA.

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

Table des matières

1. FAITS PERTINENTS

1.1. Ordonnance et résiliation des contrats

4. Le 27 janvier 2015, CQIM ainsi que The Bloom Lake Iron Ore Mine Limited Partnership (« **Bloom Lake LP** ») se sont placée sous la protection de la *Loi sur les arrangements avec les créanciers des compagnies* (L.R.C. 1985, c. C-36)[5] (« **LACC** »), tel qu'il appert de la pièce R-1 au soutien de la requête pour directives du Contrôleur;

5. Le 28 janvier 2015, des préavis de résiliation de contrat en vertu du paragraphe 32 (1) LACC sont transmis par Bloom Lake LP aux Créanciers fournisseurs ainsi qu'au Contrôleur, tel qu'il appert de copies de ces préavis jointes comme pièce **ARQ-1 en liasse**;

6. Aucune partie à ces contrats ni le contrôleur ne se sont adressés au tribunal dans les 15 jours suivants la date desdits préavis pour demander d'ordonner que ces contrats ne soient pas résiliés (paragraphe 32 (2) de la LACC);

7. Les contrats impliquant les Créanciers fournisseurs et pour lesquels CQIM est débitrice (lesquels sont ci-après plus amplement décrits) ont donc tous été résiliés, par l'effet de la loi, trente jours après la date à laquelle les préavis mentionnés au paragraphe 32 (1) de la LACC ont été donnés, soit le 27 février 2015;

8. Quant au Créancier fournisseur Canadian Iron Ore, son contrat a été résilié plutôt à la date de l'Ordonnance initiale, soit le 27 janvier 2015, tel qu'il appert plus amplement de ce qui a été allégué dans la preuve de réclamation de ce créancier (vu les sous-alinéas 15 (a) (vi) (vii) (insolvabilité de CQIM) du contrat du 12 février 2010 joint en annexe à cette preuve), dont copie est jointe comme pièce **ARQ-2**;

9. Postérieurement à la preuve de réclamation du Créancier fournisseur Canadian Iron Or, soit le 4 février 2016, le Contrôleur a transmis un préavis en vertu du paragraphe

[5] *Loi sur les arrangements avec les créanciers des compagnies*, LRC, 1985, c. C-36.

32 (1) LACC, lequel n'a pas occasionné la résiliation du contrat de ce créancier puisque cette dernière s'était, à cette date, déjà concrétisée au moment de l'Ordonnance initiale, tel qu'il appert de ladite preuve de réclamation, pièce ARQ-2 et de dudit préavis dont copie est jointe comme pièce **ARQ-3**;

1.2. Preuve de réclamations des Créanciers fournisseurs et du Créancier fournisseur Canadian Iron Or

10. Les Créanciers fournisseurs ont présenté des preuves de réclamation en vertu du paragraphe 32 (7) LACC relativement aux Dommages pour les résiliations des contrats des créanciers fournisseurs ainsi que, pour Western LRS, QNSL, et CSL Group, relativement à des factures impayées, tel qu'il appert de copies de ces preuves jointes comme étant :

a) Pièce **ARQ- 4** pour QSNL[6]
b) Pièce **ARQ- 5** pour Western LRS[7]
c) Pièce **ARQ- 6** pour CSL Group[8]

11. Le Créancier fournisseur Canadian Iron Ore a présenté une preuve de réclamation à titre de créancier ordinaire « Unsecured Claim » pour ses dommages suite à la résiliation de son contrat[9], laquelle résiliation est intervenue à la date de l'Ordonnance initiale, soit le 27 janvier 2015, tel qu'il appert de cette preuve déjà jointe comme pièce ARQ-2;

---

[6] Pour la preuve de réclamation de QSNL les dommages pour la résiliation de contrat (indiqués à la section « Restructuring Claim » sont pour 463 480 218 $ et cette preuve est dirigée à l'égard de CQIM, The Bloom Lake Iron Ore Mine Limited Partnership et Bloom Lake General Partner Limited vu une responsabilité solidaire de ces sociétés pour des obligations aux termes des contrats déjà exposés plus en détail dans la présente contestation. Par ailleurs, la réclamation pour des factures impayées tant « pré »que « post » se trouve à la section « Claim ».

[7] Pour la preuve de réclamation de Western LRS, la créance réclamée indique des dommages en résiliation de 2 825 000 $ et des factures impayées dans la section « Unsecured Claim » et aucune réclamation à la section « Restructuring Claim ».

[8] Pour la preuve de réclamation de CSL Group, les dommages pour la résiliation de contrat (indiqués à la section « Restructuring Claim » sont pour 25 510 000 $. Par ailleurs, la réclamation pour des factures impayées pré et post se trouve à la section « Claim ».

[9] Les dommages indiqués à cette preuve de réclamation sont de 64 750 744,52 USD $. L'avis d'acceptation du Contrôleur pour cette preuve est pour un montant de 72 353 169,69 $ CAD, voir pièce ARQ-7 en liasse.

12. Le Contrôleur a accepté lesdites preuves de réclamation des Créanciers fournisseurs et du Créancier fournisseur Canadian Iron Ore, tel qu'il appert des avis d'acceptation du Contrôleur joints comme pièce **ARQ-7 en liasse**;

1.3. Preuve de réclamation de l'ARQ

13. Le 11 août 2016, l'ARQ a complété une preuve de réclamation au montant de 7 738 301,02$ relativement à ses créances en vertu de l'alinéa 296 (1) b) de la LTA dans l'arrangement de CQIM (avis de cotisation en taxes TPS pour les périodes du 1er mai 2012 au 31 décembre 2014, soit des périodes antérieures à l'Ordonnance initiale), tel qu'il appert d'une copie de la preuve de réclamation de l'ARQ du 11 août 2016 jointe comme pièce **ARQ-8**;

14. Le 25 août 2020, l'ARQ a complété une preuve de réclamation au montant de 5 653 595,34$ relativement à ses créances découlant de l'article 25 de la *Loi sur l'administration fiscale*[10], de la *Loi sur la taxe de vente du* Québec [11] (« **LTVQ** ») et de la *Loi sur les impôts* [12] (« **LI** ») dans l'arrangement de CQIM (avis de cotisation en taxes TVQ pour les périodes du 1er octobre 2012 au 31 décembre 2014 et en impôts en vertu de la LI pour les années 2010 et 2011, soit des périodes et années antérieures à l'Ordonnance initiale), le tout tel qu'il appert d'une copie de la preuve de réclamation de l'ARQ du 25 août 2020 jointe comme pièce **ARQ-9**;

15. Le 2 octobre 2020, le Contrôleur a accepté intégralement lesdites preuves de réclamation (collectivement « **Preuves de réclamation ARQ 25 LAF-296 LTA** »), tel qu'il appert d'une copie d'un avis d'acceptation du Contrôleur déjà jointe au soutien de la requête pour directives du Contrôleur comme pièce R-6;

16. Les Preuves de réclamation ARQ 25 LAF-296 LTA sont admises quant à leurs montants ainsi qu'au fait qu'elles constituent des créances de l'ARQ antérieures à l'Ordonnance initiale (paragraphe 19 de la requête pour directives du Contrôleur);

---

[10] *Loi sur l'administration fiscale*, RLRQ, c. A-6.002.
[11] *Loi sur la taxe de vente du Québec*, RLRQ, c. T-0.1.
[12] *Loi sur les impôts*, RLRQ, c. I-3.

17. Les créances fiscales de l'ARQ antérieures à l'Ordonnance initiale, constatées par ses Preuves de réclamation ARQ 25 LAF-296 LTA, totalisent 13 391 896,40$;

1.4. Dividende

18. Le 16 août 2018, le Contrôleur a versé un dividende de 59 258 118 $ aux créanciers fournisseurs précités dans le cadre d'un premier versement de dividende (« **Premier dividende** »);

1.5. Demande d'intrants de CQIM et la vérification de L'ARQ

19. Faisant suite au versement du Premier dividende, CQIM a réclamé le remboursement de CTI et RTI quant aux dommages pour les résiliations des contrats pour sa période de taxe nette se terminant le 30 novembre 2018 [13];

20. L'ARQ a entrepris une vérification fiscale par l'intermédiaire de son vérificateur M. Guy Rivard pour la période du 1er décembre 2016 au 30 novembre 2018; une déclaration sous serment de ce vérificateur fiscal de l'ARQ est jointe comme pièce **ARQ-10**;

21. Cette vérification fiscale de l'ARQ a permis d'établir que les CTI-RTI pour dommages des résiliations des contrats suite au Premier dividende, soit ceux relatifs au paiement partiel des preuves de réclamation des créanciers fournisseurs totalisent 7 459 257,85 $[14], tel qu'il appert d'une copie du rapport de vérification jointe comme pièce **ARQ-11**;

---

[13] Pour référence générale seulement quant au concept de « taxe nette » : L'acquéreur qui est inscrit dans les régimes de la TPS et de la TVQ est tenu de produire périodiquement une déclaration dans laquelle il doit calculer sa taxe nette pour la période de déclaration visée. Essentiellement, la taxe nette correspond à la différence entre la TPS et la TVQ qu'un acquéreur a perçues ou devait percevoir de ses clients pour la période de déclaration donnée et ce qu'il réclame à titre de CTI ou de RTI payés à ses fournisseurs. Si la taxe nette correspond à un montant positif, il doit la verser au gouvernement alors que si le montant est négatif, il a droit à un remboursement.

[14] Ce montant n'est pas en litige.

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

1.6. Créance de Western LRS, QNSL et CSL Group pour des obligations de CQIM postérieures à l'Ordonnance initiale et les intrants générés

22. Aux termes de leurs preuves de réclamation, pièce ARQ-4, ARQ-5 et ARQ-6, QNSL, Western LRS, et CSL Group, et outre les dommages pour résiliation réclamés, ces créanciers réclament à titre de créanciers ordinaires des créances aux termes de factures pour des obligations qui concernent des périodes postérieures à l'Ordonnance initiale (« **Factures pour obligations postérieures faisant l'objet des preuves de réclamation** »);

23. Les CTI et RTI relatifs à la partie des factures de QNSL, Western LRS, et CSL Group pour des obligations postérieures à l'Ordonnance initiale, mais réclamées dans lesdites preuves de réclamation précitées, totalisent 234 755,16 $ (« **CTI-RTI pour obligations postérieures incluses aux preuves de réclamation** »)[15] ;

2. LES QUESTIONS EN LITIGE

24. Les questions en litige sont les suivantes :

a) Les CTI-RTI pour Dommages des résiliations des contrats suite au Premier dividende (dette de l'ARQ à l'égard de CQIM), constituent-ils des obligations antérieures à l'Ordonnance initiale qui peuvent être compensés avec les créances de l'ARQ indiquées à ses Preuves de réclamation ARQ 25 LAF- 296 LTA (compensation « pré-pré ») ?

b) Subsidiairement, si le tribunal conclut que les CTI-RTI pour Dommages des résiliations des contrats suite au Premier dividende (dette de l'ARQ à l'égard de CQIM), constituent plutôt des obligations postérieures à l'Ordonnance initiale, peuvent-ils alors être compensés avec les créances

[15] L'ARQ réitère qu'il est à noter que d'autres CTI et RTI (totalisant 188 185,19 $) relatifs à la partie des factures de Western LRS, QNSL, et CSL Group pour des obligations antérieures à l'Ordonnance initiale qui figurent aux preuves de réclamation desdits créanciers, à moins d'avis contraire du Contrôleur, ne sont pas en litige dans le présent dossier. Ceux-ci seront donc compensés avec les créances énoncées aux Preuves de réclamation ARQ 25 LAF-296 LTA

de l'ARQ indiquées à ses Preuves de réclamation ARQ25 LAF-296 LTA (compensation « post-pré ») ?

c) Les CTI et RTI relatifs aux factures ou parties des factures de Western LRS, QNSL et CSL Group pour des obligations postérieures de CQIM à l'Ordonnance initiale (dette de l'ARQ à l'égard de CQIM), peuvent-ils être compensés avec les créances de l'ARQ indiquées à ses Preuves de réclamation ARQ 25 LAF-296 LTA (compensation « post-pré ») ?

3. DROIT

3.1. La compensation dans un contexte d'insolvabilité

25. Le législateur a prévu la possibilité d'appliquer les règles de la compensation en contexte d'insolvabilité, et, plus particulièrement en matière d'arrangement, l'article 21 LACC énonce ce qui suit :

> Article 21 LACC :
>
> « Les *règles de compensation s'appliquent* <u>*à toutes les réclamations produites contre la compagnie débitrice*</u> et à toutes les actions intentées par elle en vue du recouvrement de ses créances, comme si elle était demanderesse ou défenderesse, selon le cas. »
>
> Notre souligné

26. Le créancier doit donc remplir les conditions de l'article 19 LACC préalablement à toute compensation effectuée dans un contexte d'insolvabilité. Cet article se lit comme suit :

> **Article 19 LACC**
>
> « 19. (1) Les seules réclamations qui peuvent être considérées dans le cadre d'une transaction ou d'un arrangement visant une compagnie débitrice sont :
>
> a) celles se rapportant aux dettes et obligations, présentes ou futures, auxquelles la compagnie est assujettie à celle des dates ci-après qui est antérieure à l'autre :
>
> (i) la date à laquelle une procédure a été intentée sous le régime de la présente loi à l'égard de la compagnie,

> (ii) la date d'ouverture de la faillite, au sens de l'article 2 de la Loi sur la faillite et l'insolvabilité, si elle a déposé un avis d'intention sous le régime de l'article 50.4 de cette loi ou qu'elle a intenté une procédure sous le régime de la présente loi avec le consentement des inspecteurs visés à l'article 116 de la Loi sur la faillite et l'insolvabilité;
>
> b) celles se rapportant aux dettes et obligations, présentes ou futures, auxquelles elle peut devenir assujettie avant l'acceptation de la transaction ou de l'arrangement, en raison d'une obligation contractée antérieurement à celle des dates mentionnées aux sous-alinéas a)(i) et (ii) qui est antérieure à l'autre. »

27. Afin de circonscrire le mécanisme de la compensation prévu à l'article 21 LACC, il faut également faire appel au droit provincial, comme droit supplétif en matière d'insolvabilité notamment au Code Civil du Québec qui prévoit un droit de compensation;

28. Le Code civil du Québec prévoit, à son article 1672, ce qui suit :

> « Lorsque deux personnes se trouvent réciproquement débitrices et créancières l'une de l'autre, les dettes auxquelles elles sont tenues s'éteignent par compensation jusqu'à concurrence de la moindre.
>
> La compensation ne peut être invoquée contre l'État, mais celui-ci peut s'en prévaloir. »
>
> Notre souligné

29. Selon cette disposition, les dettes réciproques sont éteintes jusqu'à concurrence de la moindre;

30. De plus, selon l'article 1673 du CCQ, lorsque les dettes sont certaines, liquides et exigibles, l'extinction mutuelle a lieu de plein droit;

31. Vu l'acceptation du contrôleur des Preuves de réclamation ARQ 25 LAF-296 LTA, les créances de l'ARQ sont certaines liquides et exigibles;

32. L'article 27.0.1 LAF établit que :

> « 27.0.1. Lorsqu'un avis de cotisation est envoyé à une personne, les droits, intérêts et pénalités mentionnés sur cet avis et encore impayés sont payables sans délai au ministre dès cet

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

> envoi, même si la cotisation fait l'objet d'une opposition, d'un appel ou d'un appel sommaire. »

33. Aux termes du paragraphe 2 de l'article 315 de la LTA, il est établit que :

> « 315 [...]
>
> (2) La partie impayée d'une cotisation visée par un avis de cotisation est payable immédiatement au receveur général. [...] »

34. Aux termes des articles 27.01 LAF et du paragraphe 2 de l'article 315 LTA, l'émission des avis de cotisation relatifs à la LTVQ et la LTA rend immédiatement la créance certaine, liquide et exigible permettant par ailleurs, l'opération de la compensation légale prévue à l'article 1673 CCQ;

3.1.1.La connexité des créances

35. Au surplus, les règles de la compensation de dettes connexes et réciproques se manifestent :

    a. Par un même rapport synallagmatique entre l'autorité fiscale (ARQ) et le contribuable (CQIM), en rapport avec le paiement et le remboursement de la taxe; et

    b. Par la réciprocité découlant d'une communauté d'objet et de cause, à savoir l'interaction entre le créancier et le débiteur d'une taxe[16];

3.1.2.La compensation post-ordonnance initiale

36. Contrairement aux prétentions de la Requérante au paragraphe 42 de la Requête pour Directives, l'arrêt Kitco n'a pas réglé la question de la compensation post-pré[17];

37. Le contexte factuel qui a donné lieu à l'arrêt Kitco ne trouve pas application et, partant, doit être distingué des faits en l'espèce d'où que la compensation post-pré trouve application; notamment en ce que :

---

[16] *Slater Steel Inc., Re*, 2004 CanLII 7971 (QC CS), aux paras 95-96 [Slater].
[17] Voir Louis Dumont and Michel Marleau, «Compensation and Set-Off in Insolvency Restructurings After Kitco: Are We Closer to Symmetry? », IIC Art. Vol. 7-6, Insolvency Institute of Canada (Articles).

a. CQIM a présenté et obtenu une ordonnance entérinant un plan d'arrangement qui consacre la cessation de ses activités commerciales[18];

b. CQIM ne subirait pas de préjudice quant à des activités commerciales usuelles malgré une compensation post-pré;

c. Le remboursement réclamé ne résulte pas des opérations de l'entreprise conduites depuis qu'elle est sous le régime de la LACC;

d. Les créances donnant lieu aux Preuves de réclamation ARQ 25 LAF- 296 LTA sont certaines, liquides et exigibles et aucune compensation « judiciaire » n'est requise;

38. Les tribunaux des autres provinces canadiennes n'ont pas trouvé dans la LACC une interdiction formelle, absolue à la compensation post-pré[19]; dans tous les cas, son exercice est assujetti au pouvoir discrétionnaire du juge;

39. Plus encore, la LACC ne prévoit tout simplement pas une telle interdiction;

40. Par ailleurs, la Cour Suprême du Canada dans l'affaire *Ville de Montréal c. Groupe SMI inc.*, et al, 2020 CanLII 81397 (CSC) entendra le 20 mai 2021 un litige qui portera, en outre, sur la question suivante relativement à la compensation post-pré :

> « En présence d'une réclamation pour fraude ne pouvant être compromise selon l'art. 19(2) LACC, l'art. 21 LACC permet-il à la victime de cette fraude d'opérer compensation avec une dette encourue après l'émission de l'ordonnance initiale? [...] »[20]
>
> Notre souligné

[18] Voir article 2.1 du Plan daté du 16 mai 2018, pièce R-4 au soutien de Requête pour Directives du Contrôleur.

[19] Entre autres, et non limitativement : *Air Canada (Re)*, 2003 CanLII 64234 (ON SC) et *North American Tungsten Corporation Ltd. (Re)*, 2015 BCSC 1382, demande de permission d'appeler rejetée, 2015 BCCA 390.

[20] Extrait cité du Sommaire du site internet de la Cour Suprême du Canada, à l'adresse suivante : https://www.scc-csc.ca/case-dossier/info/sum-som-fra.aspx?cas=39186 , consulté le 2021-05-04.

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

3.1.3. Le versement du Premier dividende est relatif aux paiements des dommages des créanciers fournisseurs qui résultent d'obligation antérieures à l'Ordonnance initiale

41. Les prétentions du Contrôleur sont à l'effet que les CTI-RTI pour dommages des résiliations suite au Premier dividende seraient une dette de l'ARQ postérieure à l'Ordonnance initiale (malgré le fait que les créanciers fournisseurs ont dû faire des preuves de réclamations), l'ARQ soumet qu'il s'agit plutôt d'une dette antérieure à l'Ordonnance initiale;

3.1.4. Les réclamations des Créanciers fournisseurs en vertu du paragraphe 32 (7) LACC sont pour des obligations antérieures à l'Ordonnance initiale

42. Les réclamations pour les dommages des Créanciers fournisseurs sont pour des obligations antérieures à l'Ordonnance initiale et elles n'ont été cristallisées qu'après l'événement d'insolvabilité que constitue l'Ordonnance initiale du 27 janvier 2015, puisque c'est justement cet événement qui a donné ouverture aux réclamations en dommages;

43. Rappelons que les préavis de résiliation en vertu du paragraphe 32 (1) LACC ont été expédiés aux Créanciers fournisseurs dès le lendemain de l'Ordonnance Initiale, soit le 28 janvier 2015 (Pièce ARQ-1);

44. Les Dommages pour les résiliations des contrats des Créanciers fournisseurs se sont cristallisés à cause de la résiliation des contrats unissant CQIM aux Créanciers Fournisseurs, lesquelles résiliations ont été faites en vertu du paragraphe 32 (1) LACC;

45. Les réclamations pour dommages des Créanciers fournisseurs, dans une telle situation, sont considérées par la LACC comme étant des obligations antérieures à l'Ordonnance initiale; à cet égard, le paragraphe 32 (7) LACC prévoit expressément :

> « 32 (7) En cas de résiliation du contrat, toute partie à celui-ci qui subit des pertes découlant de la résiliation est réputée avoir une réclamation prouvable »
>
> Notre souligné

46. Vu ce paragraphe, comme les Créanciers fournisseurs sont réputés avoir une réclamation prouvable, les obligations de CQIM liées à ces pertes doivent être considérées comme étant « pré » arrangement, soient antérieures à l'Ordonnance initiale, tout comme par ailleurs, les taxes réputées payées qui y seraient liées;

47. D'ailleurs, la corrélation expresse entre le paragraphe 32 (7) LACC et le paragraphe 19 (1) LACC prévoit quelles sont les réclamations qui peuvent être considérées dans le cadre d'un plan d'arrangement, aux termes de la loi, amène également à la conclusion que les dédommagements constituent des dettes de CQIM « pré » arrangement. Le paragraphe 19 (1) LACC se lit comme suit :

> « 19 (1) Les seules réclamations qui peuvent être considérées dans le cadre d'une transaction ou d'un arrangement visant une compagnie débitrice sont :
>
> a) celles se rapportant aux dettes et obligations, présentes ou futures, auxquelles la compagnie est assujettie à celle des dates ci-après qui est antérieure à l'autre :
>
> (i) la date à laquelle une procédure a été intentée sous le régime de la présente loi à l'égard de la compagnie,
> (ii) la date d'ouverture de la faillite, au sens de l'article 2 de la Loi sur la faillite et l'insolvabilité, si elle a déposé un avis d'intention sous le régime de l'article 50.4 de cette loi ou qu'elle a intenté une procédure sous le régime de la présente loi avec le consentement des inspecteurs visés à l'article 116 de la Loi sur la faillite et l'insolvabilité;
>
> b) celles se rapportant aux dettes et obligations, présentes ou futures, auxquelles elle peut devenir assujettie avant l'acceptation de la transaction ou de l'arrangement, en raison d'une obligation contractée antérieurement à celle des dates mentionnées aux sous-alinéas a)(i) et (ii) qui est antérieure à l'autre. »
>
> Notre souligné

48. La jurisprudence en vertu de l'article 32 LACC confirme que des réclamations en vertu du paragraphe 32 (7) LACC sont nécessairement relatives à des obligations antérieures à un arrangement, bien que ces dommages aient été cristallisés après un arrangement;

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

49. À titre d'illustration, dans l'affaire de l'arrangement *Aveos Fleet Performance*, la Cour mentionne, sous la plume du juge Mark Schrager, à ce sujet [21]:

> « Moreover taken to its logical conclusion, the argument is not really of any help to N.G.A. for the following reason. If Aveos could not rely on Section 32 C.C.A.A. and was obliged to rely on the cancellation for convenience clause in the G.M.S.A., the penalty of $501,381.00 would nonetheless constitute a provable claim payable under an eventual plan of arrangement or bankruptcy.
>
> "Claim" is defined in Section 2 of the C.C.A.A. by reference to the Bankruptcy and Insolvency Act ("B.I.A."). Section 19 C.C.A.A. introduced in the 2007 amendments which came into force in 2009, includes in claims that can be dealt with under a plan of arrangement the following:
>
> > "19.(1)(b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii)."
>
> This is precisely the situation with the cancellation indemnity claimed by N.G.A. in this case. Though Aveos may have triggered the cancellation penalty after the C.C.A.A. filing, the obligation stems from a contract to which it was bound pre-C.C.A.A. filing.
>
> The claim for the cancellation penalty would also be a claim provable in a bankruptcy (see Section 2 and Section 121 of the B.I.A. which are substantially similar to Section 19 C.C.A.A.).
>
> Accordingly, in any and all scenarios, the $501,381.00 claimed by N.G.A. for the cancellation indemnity would be a claim provable and would not have the status of a "post-filing claim" payable immediately, i.e. prior to the claims of other creditors.
>
> (...)
>
> Consequently, Section 32 C.C.A.A. is available to Aveos in order to cancel the G.M.S.A. The appropriate order will issue.»
>
> (références omises et notre souligné)

[21] *Aveos Fleet Performance Inc./Aveos Fleet performance aéronautique inc. (Arrangement relatif à)*, 2012 QCCS 6796 (CanLII), aux paras 56 à 59 et 63.

50. Plusieurs décisions des tribunaux sont au même effet[22];

51. Que le paiement via un dividende d'une réclamation en vertu du paragraphe 32 (7) survienne postérieurement à la date d'une ordonnance initiale, cela ne change rien quant à la qualification « pré » des obligations payées, en l'espèce les dommages des Créanciers fournisseurs;

3.1.5. La réclamation du Créancier fournisseur Canadian Iron Ore est pour une obligation antérieure vu la date de résiliation de son contrat

52. La preuve de réclamation de ce créancier, formulée à titre de créancier ordinaire, indique des dommages de résiliation d'un contrat intervenu le 12 février 2010 et mentionne en outre ce qui suit :

> « (...) The claim asssumes that the Railcar Leasing Agreement is terminated as of the Determination Date (...) »

53. Les mots « Determination Date » à la page 2 de la preuve de réclamation réfèrent à la date de l'Ordonnance initiale du 27 janvier 2015, tel qu'il appert de cette preuve de réclamation et de son contrat en annexe déjà jointe au soutien des présentes comme pièce ARQ-2;

54. Les sous alinéas 15 (a) (vi) et (vii) du contrat du 12 février 2010 indique que celui-ci pouvait être résilié, vu l'insolvabilité de CQIM :

> "Section 15. Defaults and Remedies
>
> « (a) Each of the following shall constitute and "Event of Default" under this Agreement and under each Lease:
>
> [...]
>
> (vi) Guarantor (as defined) or Lessee (each, a "Lease Party") becomes insolvent or unable to pay its obligations as they become due; or
>
> (vii) a petition in bankruptcy or any other insolvency law or a petition for a trustee or receiver is filed by or against any Lease

[22] Non exhaustivement : voir *Arrangement relatif à Nemaska Lithium inc.* 2020 QCCS 482 (CanLII); *Pine Valley Mining Corp.*, Re, 2008 BCSC 368.

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

> Party or any Lease Party makes an assignment for the benefits of creditors; …
>
> b) At any time following an Event of Default, Lessor at its election may:
>
> […]
>
> (iv) recover from Lessee, as a genuine pre-estimate of liquidated damages for a loss of a bargain and not as a penalty, the present value of the difference between the rentals stated in the applicable Rider and the market rate of rent for such Cars as of the date of the default […]"
>
> Notre souligné

55. Par ailleurs, la preuve de réclamation de ce créancier (pièce ARQ-2) a été complétée à titre de « Unsecured Claim » et ne réfère aucunement à une quelconque catégorie du Plan à l'effet qu'il s'agirait d'une preuve de « réclamation de restructuration », laquelle preuve a été acceptée par le Contrôleur ;

56. Postérieurement à la preuve de réclamation du Créancier fournisseur Canadian Iron Or, soit le 4 février 2016, le Contrôleur a transmis un préavis en vertu du paragraphe 32 (1) LACC, lequel n'a pas occasionné la résiliation du contrat de ce créancier puisque cette dernière s'était, à cette date, déjà concrétisée au moment de l'Ordonnance initiale, tel qu'il appert de ladite preuve de réclamation, pièce ARQ-2 et de dudit préavis pièce ARQ-3, tous deux déjà joints;

57. Il découle de ce qui précède que les Dommages du Créancier fournisseur Canadian Iron Ore sont antérieurs à l'Ordonnance initiale, puisqu'ils ont été occasionnés par l'insolvabilité de CQIM et, il va sans dire, ceux-ci sont en lien avec un contrat antérieur à l'Ordonnance initiale;

3.1.6. Les contrats qui constituent les obligations antérieures à l'Ordonnance initiale des créanciers fournisseurs

58. Au soutien des preuves de réclamation des créanciers fournisseurs, ces derniers ont produit des contrats qui ont tous été conclus antérieurement à l'Ordonnance initiale avec CQIM;

59. Ce sont ces contrats qui constituent les obligations antérieures à l'Ordonnance initiale *aux termes desquels les dommages desdits créanciers sont nés et ont été* déterminés;

60. Ces contrats comportent tous deux types d'obligations :

    i. soit une obligation principale, et;
    ii. une obligation accessoire pour des dommages, conditionnelle à la fin du contrat avant le terme ou en raison d'une clause de défaut;

61. Ces contrats entre les créanciers fournisseurs et CQMI se résument ainsi quant aux clauses pertinentes :

Parties aux contrats	**Date de signature**	**Obligation principale du contrat et droit applicable**	**Obligation accessoire qui a donné lieu au dommage suivant la fin des contrats** **(Réclamation en vertu du paragraphe 32 (7) LACC pour les Créanciers fournisseurs. Par ailleurs, pour le Créancier fournisseur Canadian Iron Ore, celui-ci a reçu un préavis en vertu du paragraphe 37 (1) LACC, toutefois, la résiliation s'est produite à la date de l'Ordonnance intiale).**	**Pièces ARQ**
QNSL et CQIM	Confidential Transport Agreement : 31 juillet 2008; Conveyance and Assumption Agreement : 20 juillet 2009 Mutual Acknowledgement Addendum Confidential Transport Agreement : 1er janvier 2010	Confidential Transport Agreement (Contrat de transport) **Clause 2.1** « Carriers Haulage Services Obligations » « Carrier agrees to provide the following Haulage Services, provided Shipper makes initial Lump Sum Payment in favor of Carrier and meets and respects all its obligations under Sections 2.2., 2.3. and 2.4.	Addendum - Confidential Transport Agreement (5 mars 2012) : **Clause 6**. Effective Date and term "This Addendum will be effective from the Effective Date of the Addemdum and will remain in effective until of the earlier of: [...] **Clause 6.3:** « the date which is 36 months following delivery by Carrier of prior written notice of Carrier's intention to terminate this Addendum, with prior written notice	**ARQ-4 (onglet C)**

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

21

	Addendum - Confidential Transport Agreement 5 mars 2012		may not be delivered prior to April 2020 The termination of this Addendum pursuant to this Section 6 shall not entail the termination of the Contract, which, following the termination of this Addendum, shall continue in force in accordance with its terms unamended by its terms of this Addendum, other than Section 7 hereof. The termination of this Addendum and the concurrent expiration of the Additional Haulage Services shall not relieve nor release either party from any liability or obligation which either may have incurred under any provisions of this Addendum, prior to the effective date of termination and expiry."(Nos soulignements)	
Western LRS et CQIM	12 février 2010	Railroad Operation and Maintenance Services Agreement (Contrat d'exploitation et de maintenance) **Section 2.1**. Railroad Facilities **Section 2.1.1.** Railroad Facilities construction "BLRC shall build and deliver the Railroad Facilities in such states that is adequate for providing the Railroad Services contemplated herein including other features ... "	Railroad Operation and Maintenance Services Agreement **Section 8.1.b) (i)** Term "BLRC elects not to renew this Agreement by giving a notice to such effect not less than one (1) year prior to the date of expiration of the Initial Term, then such notice shall be accompanied by a single non-renewal payment to WLR from BLRC of 2,500,000."	**ARQ-5 (onglet B)**
CSL Group et CQIM	13 octobre 2011	Time Charter Agreement (contrat d'affrètement) **Section 1** Duration "The Owners agrees to let and the Charterers agree to hire the Vessel for a period of five (5) consecutive years commencing from the time of delivery as per Clause 2 herein, within the below mentioned trading limits"	Time Charter Agreement **Section 44 alinéa 2** Default "If either Party is in default as provided in this Clause, then such other Party may at its option immediately suspend its obligation to perform under this Charter Party and/or terminate this Charter Party by giving the defaulting Party five Business Days notice, without prejudice to all its other rights and recourses under this Charter Party or	**ARQ-6 (onglet C)**

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

22

			in Law. On the date of termination, each Party shall pay to the other all amounts accrued due and unpaid at the time of termination. Notwithstanding anything contained herein to the contrary, the Parties hereby agree that the provisions of this Clause relate only to the right of the Parties to suspend or terminate this Charter Party and shall in no way affect or limit the right of either Party to exercise any other rights or remedies available to it upon breach of this Charter Party, including but not limited to any rights or remedies arising from maritime liens or possessory liens against Cargo." (Nos soulignements)	
Canadian Iron Ore et CQIM	12 février 2010	Railcar Leasing Agreement Ccontrat de bail de wagons) **Section 1** Lease of Cars « Persuant to the terms and conditions of this Agreement, Lessor agrees to furnish and lease do Lesse, and Lessee agrees to accept and lease from Lessor, the units of railroad rolling stock described in the riders attached hereto […]"	**Section 15.** Defaults and Remedies « (a) Each of the following shall constitute and "Event of Default" under this Agreement and under each Lease: […] (vi) Guarantor (as defined) or Lessee (each, a "Lease Party") becomes insolvent or unable to pay its obligations as they become due; or (vii) a petition in bankruptcy or any other insolvency law or a petition for a trustee or receiver is filed by or against any Lease Party or any Lease Party makes an assignment for the benefits of creditors; … b) At any time following an Event of Default, Lessor at its election may: […] (iv) recover from Lessee, as a genuine pre-estimate of liquidated damages for a loss of a bargain and not as a penalty, the present value of the difference between the rentals stated in the applicable Rider and the market rate of rent for such Cars as of the date of the default […]"	**ARQ-2 (onglet A)**

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

			Le contrat a donc été résilié par la clause 15 a) (vii) par le « défaut » d'insolvabilité. Une réclamation prouvable a donc été faite en vertu de l'article 15 b) (iv) en date du 27 janvier 2015, date de l'Ordonnance initiale.	

3.1.7. La réalisation des conditions suspensives des contrats donnant lieu aux dommages réclamés confirme l'antériorité des dommages

62. Les contrats précités prévoyaient des obligations suspensives quant aux clauses des dommages;

63. Les terminaisons avant les termes des contrats et les montants des dommages constituaient des événements futurs et incertains;

64. Lorsque les conditions suspensives de tels contrats se réalisent, par les terminaisons avant termes des contrats, les obligations, soient les dommages, deviennent purs et simples et le débiteur, en l'espèce, CQIM, doit alors exécuter ces obligations comme si elles avaient existées dès le premier jour des conclusions des contrats[23];

65. Les parties sont censées avoir été unies par les liens d'obligation depuis les jours des conclusions des contrats, et non aux jours des réalisations des conditions (le jour de l'Ordonnance initiale dans le cas du Créancier fournisseur Canadian Iron Ore et le 27 février 2015 pour les Créanciers fournisseurs qui ont reçu les préavis du paragraphe 32 (1) LACC);

66. À titre d'illustration, la Cour d'appel a retenu ce qui suit quant à la compensation en matière d'insolvabilité et l'application d'une condition suspensive dans l'arrêt *Limtech Carbonate inc. (Syndic de)*,[24]

> « [27] L'obligation a plutôt été contractée sous condition suspensive. Dans un tel cas, la naissance de l'obligation dépend de l'arrivée d'un événement, ici le non-respect de l'OMA, dont on

[23] Article 1507 CCQ.
[24] *Limtech Carbonate inc. (Syndic de)*, 2012 QCCA 619, aux paras 27-34.

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

ne pouvait fixer la date car sa réalisation était incertaine. Pierre-Gabriel Jobin écrit :

> **622 – Droits des parties *pendente conditione* dans l'obligation sous condition suspensive** – Avant l'arrivée de la condition, l'obligation sous condition suspensive n'existe *que potentiellement, mais pas encore réellement. Sa création* demeure une simple éventualité et aucun lien effectif ne lie encore le futur créancier et le futur débiteur. Le créancier *conditionnel n'a donc en principe aucun droit contre son* débiteur conditionnel. Le droit n'étant pas actualisé, il ne possède aucun intérêt juridique né et actuel qui lui permettrait de requérir, par exemple, l'exécution de l'obligation. La dette n'étant pas juridiquement née, le débiteur, de son côté, n'est pas tenu de payer et peut donc répéter l'objet d'un paiement indu. La prescription extinctive ne court naturellement pas contre le créancier conditionnel durant cette période.

[...]

[28] En revanche, lorsque la condition suspensive se réalise, l'obligation devient pure et simple, ce qui donne au créancier tous les droits du créancier ordinaire. Le débiteur doit alors exécuter l'obligation comme si elle avait existé dès le premier jour. La transformation de l'obligation s'opère rétroactivement, à l'égard des parties comme des tiers : « [c]réancier et débiteur engagés sous condition suspensive sont ainsi censés avoir été unis par le lien d'obligation dès le jour de la conclusion de l'engagement, et non simplement au jour de la réalisation de la condition ».

[29] Dans notre affaire, Gaz Métro a mis en oeuvre la *compensation à la suite de la faillite de Limtech soit, faut-il le* comprendre, de l'impossibilité pour sa débitrice de satisfaire à la condition de l'OMA. Le syndic, qui recherche l'annulation de la *compensation et en avait le fardeau, ne démontre pas les faits* qui permettraient de conclure que la faillie n'était pas en défaut sous ce rapport.

[30] Comme la condition suspensive s'est réalisée, l'obligation assumée par Limtech est devenue une obligation pure et simple, en date de la faillite. Les parties sont censées avoir été unies par le lien d'obligation depuis le jour de la conclusion de l'engagement, en avril 2003, et non au jour de la faillite qui a coïncidé avec la réalisation de la condition. Les parties se trouvant réciproquement créancières et débitrices l'une de l'autre et la créance de Gaz Métro étant certaine, liquide et exigible en date de la faillite, la compensation par l'effet de la loi a opéré.»

(Référence omise et notre souligné)

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

25

3.1.8.Les intrants sont des accessoires des dommages

67. Au niveau des montants payés par le Contrôleur, dans un cadre d'application de la LACC, au moment du Premier dividende aux créanciers pour leurs réclamations liées aux dédommagements occasionnés par les résiliations des contrats, bien que les articles 182 LTA et 318 LTVQ prévoient que la personne (CQIM) est réputée avoir payée la taxe au moment où un montant est payé à l'inscrit (les créanciers fournisseurs) par suite de l'inexécution des conventions relative à des fournitures taxables (résiliation des contrats et réclamations en dédommagement), ce n'est pas le moment où ce montant est payé (lequel inclut la taxe réputée payée) qui est déterminant, mais bien de savoir plutôt à quelle obligation il est rattaché (obligation antérieure ou postérieure à l'arrangement);

68. En l'espèce, les CTI-RTI pour dommages des résiliations suite au paiement du Premier dividende sont des accessoires des dommages et ne se sont que « cristallisés » au moment du paiement du Premier dividende, et, à l'instar des dommages, ceux-ci sont donc nés aux termes des contrats intervenus antérieurement à l'Ordonnance initiale;

69. À cet égard, il convient de citer le passage suivant de l'arrêt de la Cour d'appel dans *Arrangement relatif à Métaux Kitco inc.* (« Kitco »)[25] lequel vient appuyer *a contrario* nos prétentions :

> « [40] C'est un fait qu'au jour de l'Ouverture, Kitco n'a aucun droit au remboursement réclamé. Ce droit lui vient de la continuation de son entreprise et des taxes qu'elle paye à ses fournisseurs sur les intrants de son exploitation depuis l'Ouverture. Le remboursement constitue bien une dette post. »

70. Le moment donné du paiement dans la distribution des actifs ne change en rien la qualification (pré) des obligations dont les inexécutions sont visées aux articles 182

[25] *Arrangement relatif à Métaux Kitco inc.*, 2017 QCCA 268.

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

LTA et 318 LTVQ, lesquelles ont donné lieu aux réclamations prouvables du paragraphe 32 (7) LACC[26];

71. Le droit fiscal est un droit accessoire, il n'existe qu'au niveau des effets découlant des contrats déterminés par le droit civil; le droit fiscal intervient, mais seulement alors pour imposer des conséquences fiscales à des contrats;

72. Les taxes quant au paiement des dommages des créanciers fournisseurs, étant des accessoires au droit privé des contrats résiliés, doivent avoir la même qualification « pré » que les dommages qui résultent des contrats afin d'avoir une cohérence d'application puisqu'elles se « greffent » aux dommages et aux contrats antérieurs à l'Ordonnance initiale;

3.1.9.Les intrants, accessoires des dommages, ne concernent pas la continuation des activités de CQIM

73. En l'espèce, nous ne sommes pas en présence d'un droit au remboursement de CQIM qui résulte de la continuation de son entreprise, mais plutôt de l'application des articles 182 LTA et 318 LTVQ pour le montant payé via le versement du Premier dividende aux termes des réclamations liées aux dédommagements des créanciers fournisseurs, lesquels derniers font suite aux résiliations des contrats qui les unissaient à CQIM;

74. Suivant le passage précité de l'affaire Kitco, les intrants réclamés par CQIM ne sont donc pas postérieurs à l'arrangement, puisqu'ils ne proviennent pas de taxes payées aux créanciers fournisseurs sur les intrants de son exploitation depuis qu'elle s'est placée sous la protection de la LACC;

3.1.10.Mode d'interprétation des dispositions législatives pertinentes

75. Selon les principes de la LTA et de la LTVQ, la taxe est applicable sur une contrepartie de fourniture, mais elle peut aussi être reputée payée par la Loi;

---

[26] *Timminco Ltd Re*, 2012 ONSC 4471, au para 42.

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

27

76. En l'espèce, vu les articles 182 LTA et 318 LTVQ, le paiement des dommages pour les résiliations des contrats des créanciers fournisseurs inclus les taxes qui sont, suivant ces articles, « réputées » alors payées par CQIM;

77. Les articles 182 LTA et 318 LTA prévoient ce qui suit :

> **182 LTA :**
>
> « 182 (1) Pour l'application de la présente partie, dans le cas où, à un moment donné, par suite de l'inexécution, de la modification ou de la résiliation, après 1990, d'une convention portant sur la réalisation d'une fourniture taxable au Canada, sauf une fourniture détaxée, par un inscrit au profit d'une personne, un montant est payé à l'inscrit, ou fait l'objet d'une renonciation en sa faveur, autrement qu'à titre de contrepartie de la fourniture, ou encore une dette ou autre obligation de l'inscrit est réduite ou *remise sans paiement au titre de la dette ou de l'obligation, les* présomptions suivantes s'appliquent :
>
> a) la personne est réputée avoir payé, au moment donné, un montant de contrepartie pour la fourniture égal au résultat du calcul suivant :
>
> (A/B) × C
>
> où :
>
> A
>
> représente 100 %,
>
> B
>
> le pourcentage suivant :
>
> (i) si la taxe prévue au paragraphe 165(2) était payable relativement à la fourniture, la somme de 100 %, du taux fixé au paragraphe 165(1) et du taux de taxe applicable à la province participante où la fourniture a été effectuée,
>
> (ii) dans les autres cas, la somme de 100 % et du taux fixé au paragraphe 165(1),
>
> C
>
> le montant payé, ayant fait l'objet de la renonciation ou remis, ou le montant dont la dette ou l'obligation a été réduite;

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

b) la personne est réputée avoir payé, et l'inscrit avoir perçu, au *moment donné*, *la totalité de la taxe relative à la fourniture qui* est calculée sur cette contrepartie, laquelle taxe est réputée égale au montant suivant :

(i) si la taxe prévue au paragraphe 165(2) était payable relativement à la fourniture, le total des taxes prévues à ce paragraphe et au paragraphe 165(1) calculées sur cette contrepartie,

(ii) dans les autres cas, la taxe prévue au paragraphe 165(1), calculée sur cette contrepartie.

Note marginale :Convention conclue avant 1991

(2) L'alinéa (1)b) ne s'applique pas aux montants payés ou ayant fait l'objet d'une renonciation, ou aux dettes ou autres obligations réduites ou remises, par suite de l'inexécution, de la modification ou de la résiliation d'une convention, dans le cas où, à la fois :

a) *la convention a été conclue par écrit avant* 1991;

b) le montant est payé ou fait l'objet d'une renonciation, ou la dette ou l'obligation est réduite ou remise, après 1992;

c) la convention ne tenait pas compte de la taxe relative au montant payé, remis ou ayant fait l'objet d'une renonciation, ni de celle relative au montant dont la dette ou l'obligation a été réduite.

Note marginale :Exception — section IX

(2.1) La section IX ne s'applique pas dans le cadre du paragraphe (1) »

318 LTVQ

« 318. Dans le cas où, à un moment quelconque, par suite de l'inexécution, de la modification ou de l'expiration, après le 30 *juin 1992, d'une convention relative à une fourniture taxable*, autre qu'une fourniture détaxée, d'un bien ou d'un service au Québec qui doit être effectuée par un inscrit à une personne, un montant est payé à l'inscrit ou fait l'objet d'une renonciation en faveur de celui-ci autrement qu'à titre de contrepartie de la fourniture, ou une dette ou autre obligation de l'inscrit est éteinte ou réduite sans qu'un paiement ne soit effectué à l'égard de la dette ou de l'obligation, les règles suivantes s'appliquent:

1° la personne est réputée avoir payée, à ce moment, un montant de contrepartie pour la fourniture égal au résultat obtenu en multipliant le montant payé, ayant fait l'objet d'une

> renonciation ou par lequel la dette ou l'obligation a été éteinte ou réduite, selon le cas, par 100/109,975;
>
> 2° l'inscrit est réputé avoir perçu et la personne est réputée avoir payé, à ce moment, la totalité de la taxe relative à la fourniture qui est calculée sur cette contrepartie, laquelle taxe est réputée égale à la taxe prévue à l'article 16 calculée sur cette contrepartie. »

78. La théorie d'interprétation du Contrôleur pour l'application de articles 182 LTA et 318 LTVQ est restrictive et littérale, se résumant à retenir que l'obligation taxable serait présumée « naître », sans aucun rapport avec les contrats antérieurs, qu'au « moment donné » du paiement des dommages suite aux résiliations des contrats des fournisseurs;

79. Une interprétation contextuelle doit être retenue pour que les articles 182 LTA et 318 LTVQ soient plutôt interprétés en harmonie avec les articles 19, 21 et 32 LACC, le tout pour déterminer à quel moment l'obligation taxable a pris naissance;

80. Par ailleurs, dans la cause *Alberta Repsol Canada Energy v. Delphi Corp*[27], la Cour d'appel de l'Alberta mentionne:

> «16. In determining whether something is a pre-filing claim under the CCAA, regard must be had to the wording of the CCAA itself. Analysis of the issue in the context of the Limitations Act of a particular jurisdiction, while interesting, cannot provide guidance if it is directly in contradiction to what the CCAA provides. The specific provisions of s 19 were designed to capture claims that are broader than crystallized causes of action [...] »
>
> Notre souligné

3.1.11. L'article 4.60 du Plan ne peut qualifier les dommages d'obligations post

81. L'article 4.60 du Plan concernant la définition de « Réclamation de restructuration » mentionne (version en anglais et en français) :

[27] *Alberta Repsol Canada Energy v. Delphi Corp*, 2020 ABCA 364, au para 16.

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

30

Version anglaise	Version en français
4.60 « Restructuring claim » means any right of claim of any Person against the CCAA Parties (or any one of them) in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the CCAA Parties (or any one of them) to such Person, arising out of the restructuring, disclaimer, resiliation, termination or breach or suspension, on or after the Determination Date, of any contract, employment agreement, lease or other agreement or arrangement, whether written or oral, and whether the restructuring, disclaimer, resiliation termination or breach took place, or takes place before or after the date of this Claims Procedure Order, and, for greater certainty, includes any right or claim of an Employee of any of the CCAA Parties arising from a termination of tits employment after the Determination Date, provided, however, that "Restructuring Claim shall not include an Excluded Claim;	**4.60 « Réclamation de restructuration»** désigne le droit ou la réclamation d'une Personne à l'encontre des Parties LACC (ou de l'une d'entre elles) relativement à toute dette ou à toute obligation, de quelque nature que ce soit, due par les Parties LACC (ou l'une d'entre elles) à cette Personne, découlant de la restructuration, résiliation, résolution ou suspension d'un contrat, d'un contrat d'emploi, d'un bail ou d'une autre entente ou d'un autre arrangement, écrit ou verbal, ou de toute violation de ceux-ci, à compter de la Date de détermination, que cette restructuration, cette résiliation ou cette violation ait eu lieu ou ait lieu avant ou après la date de la présente Ordonnance sur la Procédure de Réclamations et, pour fins de précision, comprend tout droit ou toute réclamation d'un Employé de toute Partie LACC découlant de la cessation de son emploi après la Date de détermination; étant entendu, toutefois, que l'expression « Réclamation de restructuration » ne comprend pas une Réclamation exclue; Notre souligné

82. Cette définition prévue à l'article 4.60 n'a pas pour but de qualifier ou déterminer si des réclamations pour dommages, suite à des résiliations de contrats, constituent des obligations antérieures ou postérieures à l'Ordonnance initiale[28];

[28] Une deuxième procédure de réclamations a été mise en place ultérieurement le 26 mars 2018 concernant une « procédure de réclamation postérieure au dépôt », tel qu'il appert d'une copie de la Requête du Contrôleur et d'une ordonnance jointes comme pièce **ARQ-12 en liasse**.

3.1.12. Exemple de cas d'application quant à la compensation pour des obligations fiscales cristallisées après l'Ordonnance initiale

83. Les tribunaux, par analogie, ont déjà retenu des compensations en matière fiscale en présence d'éléments de cristallisation qui surviennent après une ordonnance initiale ou une date d'ouverture[29];

3.1.13. Conclusion quant à la compensation des intrants CTI-RTI sur le paiement des dommages

84. Il découle de ce qui précède que les réponses aux deux premières questions en litige sont les suivantes :

a. Les Dommages pour les résiliations des contrats des créanciers fournisseurs se sont cristallisés après l'Ordonnance initiale du 27 janvier 2015, sont nés aux termes des contrats intervenus antérieurement à celle-ci et ces dommages constituent donc des obligations antérieures à l'Ordonnance initiale;

b. Les Dommages pour la résiliation du contrat du Créancier fournisseur Canadian Iron Ore sont devenus dus à la date de l'Ordonnance initiale, soit le 27 janvier 2015, sont nés aux termes d'un contrat intervenu antérieurement à celle-ci et ceux-ci constituent donc des obligations antérieures à l'Ordonnance initiale;

c. Les CTI-RTI pour dommages des résiliations suite au Premier dividende, sont des accessoires des dommages;

i. Partant, ceux-ci ne se sont cristallisés qu'au moment du paiement du Premier dividende (16 août 2018), soit après l'Ordonnance initiale, mais, à l'instar des dommages, ceux-ci sont nés aux termes des contrats intervenus antérieurement à celle-ci;

---

[29] *Modes Clockwise Ite c.Canada*, 2015 QCCS 5116, *Syndic de Ferti-val inc*, 2017 QCCS 2057, Slater *supra* note 16.

ii. Ces CTI et RTI constituent donc des obligations antérieures à l'Ordonnance initiale;

d. Les CTI et RTI pour dommages des résiliations suite au Premier dividende réclamés par CQIM constituent des dettes de l'ARQ nées antérieurement à l'Ordonnance initiale;

85. Les créances de l'ARQ indiquées aux Preuves de réclamation ARQ 25 LAF - 296 LTA constituent des créances antérieures à l'Ordonnance initiale;

86. Les conditions d'application de la compensation en matière d'insolvabilité sont réunies et, en outre, il existe une connexité entre les CTI-RTI pour dommages des résiliations suite au Premier dividende et les créances de l'ARQ indiquées aux Preuves de réclamation ARQ25 LAF - 296 LTA, permettant en l'espèce l'application de l'article 21 LACC;

87. Par conséquent, l'ARQ est en droit de compenser les CTI-RTI pour dommages des résiliations suite au versement du Premier dividende avec ses créances indiquées aux Preuves de réclamation ARQ 25 LAF - 296 LTA jusqu'à concurrence de la moindre des sommes de ces dette et créance;

88. Et subsidiairement, advenant que le tribunal conclut que les CTI-RTI pour dommages des résiliations suite au premier dividende étaient plutôt nés postérieurement à l'ordonnance initiale, ceux-ci peuvent être compensés avec les preuves de réclamation ARQ 25 LAF - 296 LTA vu l'état du droit;

3.2. Les factures des créanciers fournisseurs Western LRS, QNSL et CLS Group, constituent des obligations postérieures et peuvent être compensées

89. Les CTI et RTI correspondant à ces factures ou parties de factures pour la période postérieure à l'Ordonnance (27 janvier 2015) totalisent 234 755,16 $;

90. Lesdites factures sont pour des obligations distinctes des dommages pour les résiliations des contrats précités et sont plutôt relatives à des obligations nées pour des services postérieurs à l'Ordonnance initiale;

91. Les CTI et RTI relatifs aux factures ou parties des factures de Western LRS, QNSL et CSL Group pour des obligations postérieures de CQIM à l'Ordonnance initiale, dette de l'ARQ à l'égard de CQIM, peuvent être compensés avec les créances de l'ARQ indiquées à ses Preuves de réclamation ARQ-25 LAF -296 LTA vu l'état du droit;

4. CONCLUSIONS

92. L'ARQ joint au soutien de la présente contestation les tableaux synthèses suivants :

a) Tableau synthèse concernant les CTI-RTI pour dommages des résiliations suite au Premier dividende, **pièce ARQ-13**;

b) Tableau synthèse concernant les CTI-RTI réclamés (234 755,16$) sur les factures postérieurement à l'Ordonnance initiale des Créanciers fournisseurs suite au Premier dividende, **pièce ARQ-14**;

93. Le Contrôleur n'est pas fondé à réclamer (dans son projet d'ordonnance pièce R-5) l'exécution du jugement à intervenir nonobstant appel puisqu'il n'invoque aucun motif donnant ouverture à l'application de l'article 660 du *Code de procédure civile* C-25.01;

94. Les directives de cette honorable Cour au Contrôleur, selon l'ARQ, devraient être les suivantes :

I. Les CTI-RTI pour Dommages des résiliations des contrats faisant suite au Premier dividende au montant de 7 459 257,85 $ (dette de l'ARQ à l'égard de CQIM) peuvent être compensés avec les créances de l'ARQ indiquées à ses Preuves de réclamation ARQ 25 LAF - 296 LTA totalisant 13 391 896,40 $, jusqu'à concurrence de 7 459 257,85 $ (compensation « pré-pré »);

II. Subsidiairement, si le tribunal conclut que les CTI-RTI pour Dommages des résiliations des contrats suite au Premier dividende au montant de 7 459 257,85 $ (dette de l'ARQ à l'égard de CQIM), constituent des obligations postérieures à l'Ordonnance initiale, ceux-ci peuvent être

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

compensés avec les créances de l'ARQ indiquées à ses Preuves de réclamation ARQ 25 LAF - 296 LTA totalisant 13 391 896,40 $, jusqu'à concurrence de 7 459 257,85 $ (compensation « post-pré »);

III. Les CTI et RTI relatifs aux factures ou parties des factures de Western LRS, QNSL et CSL Group pour des obligations postérieures de CQIM à l'Ordonnance initiale totalisant 234 755,16 $ (dette de l'ARQ à l'égard de CQIM), peuvent être compensés avec les créances de l'ARQ indiquées à ses Preuves de réclamation ARQ 25 LAF - 296 LTA totalisant 13 391 896,40 $, jusqu'à concurrence de 234 755,16 $ (compensation « post-pré »);

LE TOUT avec les frais de justice.

Montréal, le 14 mai 2021

LARIVIÈRE MEUNIER
Procureurs de l'Agence du revenu du Québec

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

COUR SUPÉRIEURE
(chambre commerciale)

N° : 500-11-048114-157

DANS L'AFFAIRE DE LA LOI SUR LES ARRANGEMENTS AVEC LES CRÉANCIERS DES COMPAGNIES :

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

Requérantes

et

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 causes

et

AGENCE DU REVENU DU QUEBEC
AGENCE DU REVENU DU CANADA

Mises-en-cause

et

FTI CONSULTING CANADA INC.

Contrôleur

LISTE DES PIÈCES

Contestation de l'Agence du revenu du Québec de la : « Motion by the monitor for directions with respect to setoff and damage payment input tax credits », 14 mai 2021

2

PIÈCE ARQ-1 :	En liasse, copies des préavis de résiliation de contrat en vertu du paragraphe 32 (1) LACC transmis par Bloom Lake LP aux Créanciers fournisseurs le 28 janvier 2015;
PIÈCE ARQ-2 :	Copie de la preuve de réclamation pour Canadian Iron Ore du 12 février 2010;
PIÈCE ARQ-3 :	Copie du préavis en vertu du paragraphe 32 (1) LACC transmis au Créancier fournisseur Canadian Iron Ore le 4 février 2016;
PIÈCE ARQ-4 :	Copie de la preuve de réclamation pour QSNL;
PIÈCE ARQ-5 :	Copie de la preuve de réclamation pour Western LRS;
PIÈCE ARQ-6 :	Copie de la preuve de réclamation pour CSL Group;
PIÈCE ARQ-7 :	En liasse, copies des avis d'acceptation des preuves de réclamation des créanciers fournisseurs;
PIÈCE ARQ-8 :	Copie de la preuve de réclamation de l'ARQ au montant de 7 738 301,02 $ en TPS pour les périodes du 1er mai 2012 au 31 décembre 2014 du 11 août 2016;
PIÈCE ARQ-9 :	Copie de la preuve de réclamation de l'ARQ au montant de 5 653 595,34 $ en TVQ et LI pour les périodes du 1er octobre 2012 au 31 décembre 2014 du 25 août 2020;
PIÈCE ARQ-10 :	Copie de la déclaration sous serment du vérificateur fiscal de l'ARQ, Monsieur Guy Rivard;
PIÈCE ARQ-11 :	Copie du rapport de vérification de l'ARQ;
PIÈCE ARQ-12 :	Copie de l'Ordonnance rendue le 26 mars 2018 relative à la procédure de réclamation postérieure au Dépôt;
PIÈCE ARQ-13 :	Copie du tableau synthèse concernant les CTI-RTI pour dommages des résiliations suite au Premier dividende;
PIÈCE ARQ-14 :	Copie du tableau synthèse concernant les CTI-RTI réclamés (234 755,16 $) sur les factures postérieurement à l'Ordonnance initiale des Créanciers fournisseurs suite au Premier dividende.

Montréal, le 14 mai 2021

Larivière Meunier

LARIVIÈRE MEUNIER
Avocats de l'Agence du revenu du Québec

CANADA	PROCÈS-VERBAL D'AUDIENCE			COUR SUPÉRIEURE
PROVINCE DE QUÉBEC	Pratique			Chambre commerciale
DISTRICT DE MONTRÉAL		Référée de	Salle prévue 12.61 (virtuelle)	Date Le 21 mai 2021
No : 500-11-048114-157				
Juge : L'Honorable Michel A. Pinsonnault, j.c.s.				Code : JP1736

Partie débitrice		**Procureur(s)**
BLOOM LAKE LIMITED *et al*.	Absente	Me Bernard Boucher bernard.boucher@blakes.com Me Milly Chow milly.chow@blakes.com **Blake, Cassels & Graydon s.e.n.c.r.l.**

Contrôleur		**Procureur(s)**
FTI CONSULTING CANADA INC. M. Nigel Meakin	Présent	Me Sylvain Rigaud srigaud@woods.qc.ca Me Alex Dobrota adobrota@woods.qc.ca **Woods s.e.n.c.r.l.**

Mise en cause

QUEBEC NORTH SHORE & LABRADOR RAILWAY COMPANY/ IRON ORE CORP	Absente	Me Gerry Apostolatos gerry.apostolatos@langlois.ca **Langlois avocats, s.e.n.c.r.l.**
EMPLOYÉS SALARIÉS NON SYNDIQUÉS	Absente	Me Nicolas Brochu nbrochu@ffmp.ca **Fishman Flanz Meland Paquin s.e.n.c.r.l.**
AGENCE DE REVENU DU QUEBEC (ARQ)	Absente	Me Daniel Cantin danielcantin@revenuquebec.ca Me Jean-Claude Gaudette jean-claude.gaudette@revenuquebec.ca **Revenu Québec**
SYNDICAT DES MÉTALLOS SECTION LOCALE 6254 ET 6285	Absente	Gabrielle Leblanc gleblanc@plba.ca **Philion, Leblanc, Beaudry, avocats, S.A.**
CHURCHILL FALLS LABRADOR LIMITED	Absente	Me Nathalie Nouvet nnouvet@stikeman.com Me Guy P. Martel gmartel@stikeman.com **Stikeman Elliott s.e.n.c.r.l., s.r.l.** Me Douglas Mitchell IMK s.e.n.c.r.l/IMK L.L.P.

Nature de la cause
Loi sur les arrangements avec les créanciers des compagnies C-36

Montant : $

Cote(s)	Requête (s)
750	Motion to extend the stay period
734	Motion for the winding up and dissolution, distribution of assets, reimbursement of monies and additional relief
738	Motion by Twin Falls Power Corporation to dismiss the Application for lack of jurisdiction and for *forum non-conveniens*
741	Motion by the Monitor for directions with respect to setoff and damage payment input tax credits
749	Motion for the expansion of Monitor's Powers

CANADA	PROCÈS-VERBAL D'AUDIENCE			COUR SUPÉRIEURE
PROVINCE DE QUÉBEC	Pratique			Chambre commerciale
DISTRICT DE MONTRÉAL		Référée de	Salle prévue 12.61 (virtuelle)	Date Le 21 mai 2021
No : 500-11-048114-157				
Juge : L'Honorable Michel A. Pinsonnault, j.c.s.				Code : JP1736

Greffier(ière)	Interprète	Sténographe
Kristina Tremblay	N/A	N/A

ENREGISTREMENT NUMÉRIQUE

Audition AM :	Début	Fin	Audition PM :	Début	Fin
	09 :30	10 :20			

HEURE

09 :30	**OUVERTURE DE L'AUDIENCE** Identification des procureurs.
09 :32	Le Tribunal s'adresse brièvement à Me Boucher pour clarifier les Demandes qui sont à traiter aujourd'hui.
09 :33	Représentation de Me Boucher qui débute avec la Demande (#750) *Motion to extend the stay period*. Le Tribunal désire entendre le représentant du Contrôleur au sujet de son dernier rapport.
09 :34	Assermentation du témoin (anglais) : **Nigel Meakin** 79 Wellington Street West Toronto, Ontario
09 :34	Interrogatoire du témoin par Me Boucher qui réfère le Tribunal au 56e Rapport du Contrôleur (non côté).
09 :47	Le Tribunal libère le témoin.
09 :48	Représentations de Me Boucher. Le Tribunal **ACCUEILLE** la Demande de prolongation du sursis (#750) et un jugement sera signé numériquement en date de ce jour et sera transmis au courant de la journée.
09 :49	Représentations de Me Boucher.
09 :50	Représentations de Me Nouvet relativement à la *Motion for the expansion of Monitor's Powers* (#749).
09 :51	Le Tribunal s'adresse à Me Nouvet. Un échange s'ensuit.
09 :54	Le Tribunal s'adresse à Me Boucher.
09 :55	Représentations de Me Rigaud.
09 :57	Représentations de Me Mitchell.
09 :59	Représentations de Me Boucher.
10 :00	Le Tribunal propose le 3 juin 2021 pour entendre la Demande (#749) *Motion for the expansion of Monitor's Powers*. Échanges de part et d'autres.
10 :03	La date du **3 juin 2021** est retenue pour entendre la Demande (#749), soit *Motion for the expansion of Monitor's Powers* dans une salle virtuelle pour laquelle les coordonnées seront communiquées ultérieurement.
10 :06	Le Tribunal confirme auprès des avocats que les dates du **19 et 20 août 2021** sont toujours réservées en salle virtuelle 16.04 pour entendre la Demande (#741) *Motion by the Monitor for directions with respect to setoff and damage payment input tax credits* et de la Contestation de l'Agence du Revenu du Québec (#753).

CANADA	PROCÈS-VERBAL D'AUDIENCE			COUR SUPÉRIEURE
PROVINCE DE QUÉBEC	Pratique			Chambre commerciale
DISTRICT DE MONTRÉAL		Référée de	Salle prévue 12.61 (virtuelle)	Date Le 21 mai 2021
No : 500-11-048114-157				
Juge : L'Honorable Michel A. Pinsonnault, j.c.s.				Code : JP1736

10 :07	Échanges de part et d'autre.
10 :10	La date du **6 août 2021** est retenue pour entendre en salle virtuelle 16.04 la Demande (#734) *Motion for the winding up and dissolution, distribution of assets, reimbursement of monies and additional relief* et la Demande (#738) *Motion by Twin Falls Power Corporation to dismiss the Application for lack of jurisdiction and for forum non-conveniens* Représentations de Me Rigaud concernant la contestation de l'Agence de Revenu Québec (#753). Il informe le Tribunal qu'un élément dans la contestation n'est pas présent dans la demande, mais que sa cliente soumettra une version modifiée de la Demande *Motion by the Monitor for directions with respect to setoff and damage payment input tax credits* au plus tard le **18 juin 2021**, le cas échéant.
10 :13	Représentations de Me Cantin qui corrobore les propos de Me Rigaud et ajoute un souci possible de confidentialité des pièces **ARQ-2**, **ARQ -4**, **ARQ-5** et **ARQ -6**. Le Tribunal s'adresse à Me Cantin.
10 :14	Représentations de Me Gaudette concernant les pièces en questions.
10 :16	Le Tribunal **ORDONNE** la mise sous scellés des pièces **ARQ-2**, **ARQ -4**, **ARQ-5** et **ARQ -6** lesquelles devront demeurer confidentielles jusqu'à nouvel ordre de la Cour. Quant à la Demande (#741) *Motion by the Monitor for directions with respect to setoff and damage payment input tax credits,* Me Rigaud réitère les dates convenues entre les parties concernées relativement aux délais applicables à la soumission des documents suivants : -D'ici au **18 juin 2021**: Communication par le Contrôleur de son projet de liste d'admissions et sa Demande modifiée; -D'ici au **9 juillet 2021** : Délai pour la production d'une réplique par l'Agence de Revenu du Québec ou d'une contestation re-amendée suite à la Demande modifiée, le cas échéant. -D'ici au **6 août 2021**: Échanges des plans d'argumentation et autorités.
10 :17	Intenvention de Me Gaudette, qui confirme le 9 juillet comme étant le délai pour la production le cas échéant d'une réplique de l'ARQ.
10 :19	Me Gaudette s'adresse brièvement au Tribunal pour confirmer les dates au fond du 19 et 20 août 2021 pour entendre la Demande (#741) *Motion by the Monitor for directions with respect to setoff and damage payment input tax credits* et la contestation de l'ARQ. Le Tribunal confirme la tenue d'audiences aux dates suivantes : - **3 juin 2021** à 9h30 en salle virtuelle à déterminer : *Motion for the expansion of Monitor's Powers* (#749) - **6 août 2021** à 9h30 en salle virtuelle 16.04: la Demande (#734) *Motion for the winding up and dissolution, distribution of assets, reimbursement of monies and additional relief* et la Demande (#738) *Motion by Twin Falls Power Corporation to dismiss the Application for lack of jurisdiction and for forum non-conveniens;* - **19 et 20 août 2021** à 9h30 en salle virtuelle 16.04 : la Demande (#741) *Motion by the Monitor for directions with respect to setoff and damage payment input tax credits* et la Contestation de l'Agence du Revenu du Québec (#753).
10 :20	L'audience est terminée.

Michel A. Pinsonnault, j.c.s.

CANADA	PROCÈS-VERBAL D'AUDIENCE			COUR SUPÉRIEURE
PROVINCE DE QUÉBEC	Pratique			Chambre commerciale
DISTRICT DE MONTRÉAL		Référée de	Salle prévue 12.61 (virtuelle)	Date Le 21 mai 2021
No : 500-11-048114-157				
Juge : L'Honorable Michel A. Pinsonnault, j.c.s.				Code : JP1736

_____
Kristina Tremblay g.a.c.s.

C A N A D A

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

COUR SUPÉRIEURE
(Chambre commerciale)

N° : 500-11-048114-157

DANS L'AFFAIRE DE LA *LOI SUR LES ARRANGEMENTS AVEC LES CRÉANCIERS DES COMPAGNIES* :

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

Requérantes

ET

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 causes

ET

AGENCE DU REVENU DU QUEBEC
AGENCE DU REVENU DU CANADA

Mises-en-cause

ET

FTI CONSULTING CANADA INC.

Contrôleur

LISTE DES ADMISSIONS COMMUNES QUANT À LA : « AMENDED MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO SETOFF AND DAMAGE PAYMENT INPUT TAX CREDITS »

CHRONOLOGIE

Résiliations des contrats et compensation

1. Le 27 janvier 2015 est la date de l'Ordonnance initiale pour CQIM ;

2. Les preuves de réclamation de l'ARQ dans l'affaire du Plan de CQIM totalisent 13 391 896, 40 $ (Pièces ARQ-8 et ARQ-9) et celles-ci ont été acceptées par le Contrôleur (Pièce R-6). Il s'agit de créances de l'ARQ antérieures à l'Ordonnance initiale de CQIM, donc de créances «pré» ;

3. Les créances de l'ARQ composant les preuves de réclamation sont des avis de cotisation qui n'ont pas fait l'objet d'opposition d'où que ces créances sont certaines, liquides et exigibles;

4. Le 28 janvier 2015, des préavis de résiliation de contrats en vertu du paragraphe 32 (1) LACC sont transmis par Bloom Lake LP à QNSL, Western LRS et CSL, créanciers fournisseurs de CQIM ainsi qu'au Contrôleur (pièce ARQ-1 en liasse);

5. Les contrats impliquant les créanciers fournisseurs Western LRS, QNSL, et CSL Group pour lesquels CQIM est débitrice ont tous été résiliés par l'effet de la loi le 27 février 2015, soit trente jours après la date à laquelle les préavis mentionnés au paragraphe 32 (1) de la LACC ont été donnés;

6. Le 4 février 2016, le Contrôleur a transmis un préavis en vertu du paragraphe 32 (1) LACC au créancier fournisseur Canadian Iron Ore (pièce ARQ-3);

7. Les créanciers fournisseurs QNSL, et CSL Group ont soumis des preuves de réclamation en vertu du paragraphe 32 (7) LACC relativement aux dommages pour les résiliations de leurs contrats (Pièces ARQ- 4 et ARQ- 6);

8. Les créanciers fournisseurs Canadian Iron Ore et Western LRS ont présenté des preuves de réclamation à titre de créancier ordinaire « Unsecured Claim » pour leurs dommages suite à la résiliation de son contrat (ARQ-2 et ARQ-5);

9. Le Contrôleur a transmis aux créanciers Western LRS, QNSL, CSL Group et Canadian Iron Ore les différents avis d'admission ou de rejets partiel (ARQ-7 en liasse);

10. Le 16 août 2018, le Contrôleur a versé un dividende de 59 258 118 $, lequel a été distribué en outre aux créanciers fournisseurs Western LRS, QNSL, CSL Group et Canadian Iron Ore;

11. CQIM a réclamé à l'ARQ le remboursement de CTI et RTI suite au paiement dudit dividende ayant servi à payer partiellement les réclamations en dommages pour les résiliations de contrats en cause pour sa période de taxe nette se terminant le 30 novembre 2018 ;

12. L'ARQ a établi que les CTI et RTI pour dommages des résiliations des contrats des quatre (4) créanciers fournisseurs précités totalisent 7 459 257, 85 $. Inclus dans ce montant, se trouvent des CTI et RTI qui totalisent 977 346,96 $, lesquels sont attribuables au paiement des dommages pour résiliation du contrat de Canadian Iron Ore (ARQ-10, page 3);

Factures incluses dans certaines preuves de réclamations et compensation

13. Quant aux factures incluses dans certaines preuves de réclamation des créanciers fournisseurs auxquelles il est fait référence au paragraphe 25.1 de la requête modifiée du contrôleur :

a) Les preuves de réclamation des créanciers fournisseurs QNSL, Western LRS et CSL Group réfèrent à des factures pour des obligations postérieures à l'Ordonnance initiale qui génèrent des CTI et RTI totalisant 234 755,16 $ («post») ;

b) Les preuves de réclamation des créanciers fournisseurs QNSL, Western LRS et CSL Group réfèrent à des factures pour des obligations antérieures à l'Ordonnance initiale qui génèrent des CTI et RTI totalisant 188 185,19 $ («pré»), lesquels intrants ne sont pas en litige dans le présent dossier et seront donc compensés avec les preuves de réclamation de l'ARQ (Pièces ARQ-8 et ARQ-9) ;

c) Un document Excel, Pièce ARQ-15, expose la détermination des obligations «pré» ou «post» en fonction de la date de l'Ordonnance initiale (27 janvier 2015) quant aux factures précitées dans lesdites preuves de réclamation des créanciers fournisseurs;

AUTRES ADMISSIONS

14. Dans l'hypothèse où les intrants (objets du présent litige) étaient remis, ceux-ci serviraient exclusivement au paiement de dividendes futurs en faveur des créanciers de CQIM, le tout conformément au Plan;

15. Les faits énoncés aux paragraphes 1 à 9, 15 à 19 et, 21, à 24 de la requête modifiée du Contrôleur sont admis ;

16. Revenu Québec ne conteste pas le dépôt des pièces R-1 à R-6 ainsi que R-5.1, toutefois, quant aux pièces R-5 et R-5.1, elles ne devraient pas être retenues, selon elle, par le Tribunal;

17. Les Requérants ne contestent pas le dépôt des pièces ARQ-1 à ARQ-15 sujet aux réserves suivantes qu'ils formulent unilatéralement et qu'ils ont portées à l'attention de l'ARQ :

a) ARQ-10 et 11 : seules les allégations factuelles de cet affidavit doivent être retenues selon le Contrôleur; les conclusions contenues aux paragraphes 25 à 35 de l'affidavit de M. Guy Rivard sont de la nature d'une opinion juridique et sont inadmissibles. La Cour devrait uniquement considérer les allégations factuelles contenues à cet affidavit;

b) ARQ-11 : seuls les tableaux (et leurs contenus) mentionnés aux pages 7-21 et 17-21 sont admis par le Contrôleur ce rapport de vérification est inadmissible en l'espèce puisqu'il a été complété (15 avril 2021) et approuvé (30 avril 2021) après la conclusion de la vérification en question et le dépôt de la requête du Contrôleur soit le ou vers le 18 janvier 2021. Ce rapport est par ailleurs non pertinent dans la mesure ou le quantum de la réclamation pre-filing de RQ et le quantum des CTI et RTI relatifs au paiement des réclamations en dommages sont admis. Qui plus est, ce rapport de vérification contient des analyses et opinions juridiques concernant la légalité d'opérer compensation en vertu de la LACC, qui est la question à être tranchée par cette Cour;

Montréal, 12 août 2021

Woods s.e.n.c.r.l./LLP

WOODS S.E.N.C.R.L. / LLP
Me Sylvain Rigaud et Me Alex Dobrota
Avocats du Contrôleur FTI Consulting Canada Inc.

Larivière Meunier

LARIÈRE MEUNIER
Me Daniel Cantin, Me Jean-Claude Gaudette et Me Henrick Lavoie
Avocats de L'Agence du revenu du Québec

Blake, Cassels & Graydon SENCRL/SRL

Blake, Cassels & Graydon S.E.N.C.R.L./s.r.l.
Me Bernard Boucher
Avocat de CQIM Québec Iron Mining Corporation

PIÈCES

ARQ-1 Copies des préavis de résiliation de contrat en vertu du paragraphe 32 (1) LACC transmis par Bloom Lake LP aux Créanciers fournisseurs le 28 janvier 2015, *en liasse*

Bloom Lake Iron Ore Mine

The Bloom Lake Iron Ore
Mine Limited Partnership
1155 Rue University, Suite 508
Montreal, Quebec
H3B 3A7

January 28, 2015

BY COURIER AND EMAIL

Quebec North Shore and Labrador Railway Company Inc.
1 Retty Street
Sept-Îles, Québec G4R 3C7
Attention: General Manager, Product Delivery
Email: louis.gravel@ironore.ca

BY COURIER AND EMAIL

Quebec North Shore and Labrador Railway Company Inc.
1 Retty Street
Sept-Îles, Québec G4R 3C7
Attention: Vice President Legal Services & Company Secretary
Email: manon.beauchemin@ironore.ca

BY COURIER AND FACSIMILE

Quebec North Shore and Labrador Railway Company Inc.
1000 Sherbrooke Street West, Suite 1920
Montréal, Québec H3A 3G4
Attention: Maurice McClure, Acting Vice President, Finance and Strategy
Fax: 514-285-8412

Dear Sirs:

Re: In the matter of the Plan of Compromise or Arrangement of Bloom Lake General Partner Limited ("**Bloom Lake GP**"), Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC, as Petitioners, and The Bloom Lake Iron Ore Mine Limited Partnership ("**Bloom Lake LP**") and Bloom Lake Railway Company Limited, as Mises-en-Cause, Court File No. 500-11-048114-157.

And Re: Confidential Transportation Agreement, Contract No. 001, dated July 31, 2008 between Consolidated Thompson Iron Mines Limited and Quebec North Shore and Labrador Railway Company Inc., as assigned by Consolidated Thompson Iron Mines Limited to Bloom Lake LP on January 1, 2010 (as amended by First Addendum dated March 5, 2012 and as may be further amended, restated, supplemented or modified, the "**Agreement**")

On January 27, 2015, Bloom Lake GP and certain of its affiliates filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C., c. 36, as amended (the "**CCAA**") in the above-named proceedings (the "**CCAA Proceedings**"). Bloom Lake LP is a mise-en-cause in the CCAA Proceedings and pursuant to the initial order granted therein, Bloom LP has obtained protections and authorizations in the CCAA

ARQ-1 Copies des préavis de résiliation de contrat en vertu du paragraphe 32 (1) LACC transmis par Bloom Lake LP aux Créanciers fournisseurs le 28 janvier 2015, *en liasse (suite)*

Proceedings. FTI Consulting Canada Inc. has been appointed as Monitor in the CCAA Proceedings (the "**Monitor**").

This letter, along with the enclosed Form 4 *Notice by Debtor Company to Disclaim or Resiliate an Agreement*, constitutes notice to you of Bloom Lake LP's intention to disclaim the above-noted Agreement pursuant to section 32(1) of the CCAA. The disclaimer is effective 30 days from the date of this notice, being February 27, 2015.

Copies of the initial order and other court materials in respect of the CCAA Proceedings are available on the Monitor's website at: http://cfcanada.fticonsulting.com/bloomlake.

Yours truly,

Clifford T. Smith
Executive Vice President
The Bloom Lake Iron Ore Mine Limited Partnership

encl.

cc: Nigel Meakin, FTI Consulting Canada Inc. (by email)

ARQ-1 Copies des préavis de résiliation de contrat en vertu du paragraphe 32 (1) LACC transmis par Bloom Lake LP aux Créanciers fournisseurs le 28 janvier 2015, *en liasse (suite)*

FORM 4
NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIATE AN AGREEMENT

TO: Quebec North Shore and Labrador Railway Company Inc.
AND TO: FTI Consulting Canada Inc., in its capacity as Monitor to The Bloom Lake Iron Ore Mine Limited Partnership

Take notice that:

1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of The Bloom Lake Iron Ore Mine Limited Partnership ("**Bloom Lake LP**") were commenced on the 27th day of January, 2015.

2. In accordance with subsection 32(1) of the Act, Bloom Lake LP gives you notice of its intention to disclaim or resiliate the following agreement:

> Confidential Transportation Agreement, Contract No: 001, dated July 31, 2008 between Consolidated Thompson Iron Mines Limited and Quebec North Shore and Labrador Railway Company Inc., as assigned by Consolidated Thompson Iron Mines Limited to The Bloom Lake Iron Ore Mine Limited Partnership on January 1, 2010, as amended by First Addendum dated March 5, 2012 and as may be further amended, restated, supplemented or modified

3. In accordance with subsection 32(2) of the Act, any party to the agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the monitor, apply to court for an order that the agreement is not to be disclaimed or resiliated.

4. In accordance with paragraph 32(5)(*a*) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the agreement is disclaimed or resiliated on the 27th day of February, 2015, being 30 days after the day on which this notice has been given.

Dated at Montréal, Québec, on January 28, 2015.

Clifford T. Smith, Executive Vice President
The Bloom Lake Iron Ore Mine Limited Partnership

The Monitor approves the proposed disclaimer or resiliation.

Dated at Montréal, Québec, on January 28, 2015.

Nigel Meakin, Senior Managing Director
FTI Consulting Canada Inc.,
in its capacity as Monitor of
The Bloom Lake Iron Ore Mine Limited Partnership

ARQ-1 Copies des préavis de résiliation de contrat en vertu du paragraphe 32 (1) LACC transmis par Bloom Lake LP aux Créanciers fournisseurs le 28 janvier 2015, *en liasse (suite)*

Bloom Lake Railway

Bloom Lake Railway
Company Limited
1155 Rue University, Suite 508
Montreal, Quebec
H3B 3A7

January 28, 2015

BY COURIER AND FACSIMILE

Western Labrador Rail Services Inc.
6700, avenue du Parc
Montréal, Québec H2V 4H9
Attention: The President
Fax : 514-948-6988

BY REGISTERED MAIL AND EMAIL

Genesee & Wyoming Inc.
66 Field Point Road
Greenwich, Connecticut 06830
Attention: General Counsel
Fax: 203-661-4106
Email: afergus@GWRR.com

Dear Sirs:

Re: In the matter of the Plan of Compromise or Arrangement of Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC (formerly Consolidated Thompson Iron Mines Limited) ("**CQIM**"), as Petitioners, and The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited ("**Bloom Lake Railway Co**"), as Mises-en-Cause, Court File No. 500-11-048114-157

And Re: Railroad Operation and Maintenance Services Agreement dated February 12, 2010 between Western Labrador Rail Services Inc. and Bloom Lake Railway Co, and guaranteed by Genesee & Wyoming Inc. and Consolidated Thompson Iron Mines Limited (as amended by Railroad Operation and Maintenance Services Amendment Agreement dated December 7, 2010, and as may be further amended, restated, supplemented or modified, the "**Agreement**")

On January 27, 2015, CQIM and certain of its affiliates filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C., c. 36, as amended (the "**CCAA**") in the above-named proceedings (the "**CCAA Proceedings**"). Bloom Lake Railway Co is a mise-en-cause in the CCAA Proceedings and pursuant to the initial order granted therein, Bloom Lake Railway Co has obtained protections and authorizations in the CCAA Proceedings. FTI Consulting Canada Inc. has been appointed as Monitor in the CCAA Proceedings (the "**Monitor**").

ARQ-1 Copies des préavis de résiliation de contrat en vertu du paragraphe 32 (1) LACC transmis par Bloom Lake LP aux Créanciers fournisseurs le 28 janvier 2015, *en liasse (suite)*

This letter, along with the enclosed Form 4 *Notice by Debtor Company to Disclaim or Resiliate an Agreement*, constitutes notice to you of Bloom Lake Railway Co's intention to disclaim the above-noted Agreement pursuant to section 32(1) of the CCAA. The disclaimer is effective 30 days from the date of this notice, being February 27, 2015.

Copies of the initial order and other court materials in respect of the CCAA Proceedings are available on the Monitor's website at: http://cfcanada.fticonsulting.com/bloomlake.

Yours truly,

Clifford T. Smith
Executive Vice President
Bloom Lake Railway Company Limited

encl.

cc: Nigel Meakin, FTI Consulting Canada Inc. (by email)

ARQ-1 Copies des préavis de résiliation de contrat en vertu du paragraphe 32 (1) LACC transmis par Bloom Lake LP aux Créanciers fournisseurs le 28 janvier 2015, *en liasse (suite)*

FORM 4
NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIATE AN AGREEMENT

TO: Western Labrador Rail Services Inc.
AND TO: Genesee & Wyoming Inc.
AND TO: FTI Consulting Canada Inc., in its capacity as Monitor to Bloom Lake Railway Company Limited

Take notice that:

1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of Bloom Lake Railway Company Limited ("**Bloom Lake Railway Co**") were commenced on the 27th day of January, 2015.

2. In accordance with subsection 32(1) of the Act, Bloom Lake Railway Co gives you notice of its intention to disclaim or resiliate the following agreement:

> Railroad Operation and Maintenance Services Agreement dated February 12, 2010 between Western Labrador Rail Services Inc. and Bloom Lake Railway Company Limited, and guaranteed by Genesee & Wyoming Inc. and Consolidated Thompson Iron Mines Limited, as amended by Railroad Operation and Maintenance Services Amendment Agreement dated December 7, 2010, and as may be further amended, restated, supplemented or modified

3. In accordance with subsection 32(2) of the Act, any party to the agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the monitor, apply to court for an order that the agreement is not to be disclaimed or resiliated.

4. In accordance with paragraph 32(5)(*a*) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the agreement is disclaimed or resiliated on the 27th day of February, 2015, being 30 days after the day on which this notice has been given.

Dated at Montréal, Québec, on January 28, 2015.

Clifford T. Smith, Executive Vice President
Bloom Lake Railway Company Limited

The Monitor approves the proposed disclaimer or resiliation.

Dated at Montréal, Québec, on January 28, 2015.

Nigel Meakin, Senior Managing Director
FTI Consulting Canada Inc., in its capacity as
Monitor of Bloom Lake Railway Company Limited

ARQ-1 Copies des préavis de résiliation de contrat en vertu du paragraphe 32 (1) LACC transmis par Bloom Lake LP aux Créanciers fournisseurs le 28 janvier 2015, *en liasse (suite)*

Cliffs Québec Iron Mining

Cliffs Québec Iron Mining ULC
1155 Rue University, Suite 508
Montreal, Quebec
H3B 3A7

January 28, 2015

BY COURIER AND FACSIMILE

Canada Steamship Lines, a division of The CSL Group Inc.
759, Victoria Square, suite 600
Montreal, Quebec H2Y 2K3
Attention : Director, Contract Administration and Customer Service
Fax: (514) 982-3910

Dear Sirs:

Re: In the matter of the Plan of Compromise or Arrangement of Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC ("**CQIM**"), as Petitioners, and The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited, as Mises-en-Cause, Court File No. 500-11-048114-157

And Re: Time Charter Agreement dated October 13, 2011 between Canada Steamship Lines, a division of The CSL Group Inc., and Cliffs Québec Iron Mining Limited (as may be amended, restated, supplemented or modified, the "**Agreement**")

On January 27, 2015, CQIM (formerly Cliffs Québec Iron Mining Limited) and certain of its affiliates filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C., c. 36, as amended (the "**CCAA**") in the above-named proceedings (the "**CCAA Proceedings**"). FTI Consulting Canada Inc. has been appointed as Monitor in the CCAA Proceedings (the "**Monitor**").

This letter, along with the enclosed Form 4 *Notice by Debtor Company to Disclaim or Resiliate an Agreement*, constitutes notice to you of CQIM's intention to disclaim the above-noted Agreement pursuant to section 32(1) of the CCAA. The disclaimer is effective 30 days from the date of this notice, being February 27, 2015.

Copies of the initial order and other court materials in respect of the CCAA Proceedings are available on the Monitor's website at: http://cfcanada.fticonsulting.com/bloomlake.

Yours truly,

Clifford T. Smith
Executive Vice President
Cliffs Québec Iron Mining ULC

encl.
cc: Nigel Meakin, FTI Consulting Canada Inc. (by email)

ARQ-1 Copies des préavis de résiliation de contrat en vertu du paragraphe 32 (1) LACC transmis par Bloom Lake LP aux Créanciers fournisseurs le 28 janvier 2015, *en liasse (suite)*

FORM 4
NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIATE AN AGREEMENT

TO: Canada Steamship Lines, a division of The CSL Group Inc.
AND TO: FTI Consulting Canada Inc., in its capacity as Monitor to Cliffs Québec Iron Mining ULC

Take notice that:

1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of Cliffs Québec Iron Mining ULC (formerly Cliffs Québec Iron Mining Limited) were commenced on the 27th day of January, 2015.

2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement:

> Time Charter Agreement dated October 13, 2011 between Canada Steamship Lines, a division of The CSL Group Inc., and Cliffs Québec Iron Mining Limited, as may be amended, restated, supplemented or modified

3. In accordance with subsection 32(2) of the Act, any party to the agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the monitor, apply to court for an order that the agreement is not to be disclaimed or resiliated.

4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the agreement is disclaimed or resiliated on the 27th day of February, 2015, being 30 days after the day on which this notice has been given.

Dated at Montréal, Québec, on January 28, 2015.

Clifford T. Smith, Executive Vice President
Cliffs Québec Iron Mining ULC

The Monitor approves the proposed disclaimer or resiliation.

Dated at Montréal, Québec, on January 28, 2015.

Nigel Meakin, Senior Managing Director
FTI Consulting Canada Inc.,
in its capacity as Monitor of
Cliffs Québec Iron Mining ULC