

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: 500-11-048114-157

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to
the *Companies' Creditors Arrangement Act*,
R.S.C., c. 36, as amended)

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

**BLOOM LAKE GENERAL PARTNER
LIMITED,
QUINTO MINING CORPORATION,
8568391 CANADA LIMITED, CLIFFS
QUEBEC IRON MINING ULC, WABUSH
IRON CO. LIMITED AND WABUSH
RESOURCES INC.**

Petitioners

-and-

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

Mises-en-cause

-and-

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR, AS
REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

**THE ATTORNEY GENERAL OF CANADA,
ACTING ON BEHALF OF THE OFFICE OF
THE SUPERINTENDENT OF FINANCIAL
INSTITUTIONS**

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON**

**UNITED STEEL WORKERS, LOCALS
6254 AND 6285**

RÉGIE DES RENTES DU QUÉBEC

**MORNEAU SHEPELL LTD., IN ITS
CAPACITY AS REPLACEMENT PENSION
PLAN ADMINISTRATOR**

Mis-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**NOTICE OF OBJECTION BY THE SUPERINTENDENT OF PENSIONS
OF NEWFOUNDLAND & LABRADOR TO THE MOTION BY THE MONITOR
FOR DIRECTIONS WITH RESPECT TO PENSION CLAIMS**
(Sections 11 and 23(k), *Companies' Creditors Arrangement Act*, RSC 1985, c C-36)

**TO MR. JUSTICE STEPHEN W. HAMILTON, 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
SUPERINTENDENT OF PENSIONS OF NEWFOUNDLAND & LABRADOR
RESPECTFULLY SUBMITS AS FOLLOWS:**

1. The Superintendent of Pensions of Newfoundland & Labrador objects to the Motion by the Monitor for Directions with Respect to Pension Claims dated September 20, 2016 ("Motion for Directions").
2. The Superintendent of Pensions first objects to a number of the Monitor's conclusions on questions of law. Having reviewed the relevant statutes and applicable case-law, the Superintendent of Pensions is of the view that:
 - a. A liquidation deemed trust did arise pursuant to subsection 32(2) of the *Pension Benefits Act*, SNL 1996, c. P-4.01 ("*PBA*"), and that it is inconsequential that the triggering event – in this case, a "liquidation" – would have occurred after the Wabush Initial Order;
 - b. As such, all unpaid and accrued normal costs and special costs up to the date the pension plans were terminated are subject to a deemed trust, in priority to all other claims against the Wabush CCAA Parties (excepting the CCAA-ordered charges);

- c. Interpreting the relevant provisions of the *PBA*, the full amount of the wind-up deficit would either be subject to a deemed trust, in priority to all other claims against the Wabush CCAA Parties (excepting the CCAA-ordered charges), or subject to a lien and charge held by the Plan Administrator;
 - d. The deemed trusts and liens created pursuant to Newfoundland & Labrador's *PBA* charge the sale proceeds of assets formerly located in Quebec and currently held by the Monitor; or,
 - e. In the alternative, this Court ought to give effect, in Quebec, to the provisions of Newfoundland & Labrador's *PBA* pursuant to article 3079 of the *Civil Code of Quebec*, CQLR c. CCQ-1991.
3. The Superintendent notes that these objections have all been previously raised with the Monitor, with the Wabush CCAA parties, and with various counsel representing the pension interests at this Court's *pro forma* hearing on October 28th, 2016.
4. Furthermore, the Superintendent of Pensions objects to two assertions relating to issues of fact, or mixed fact and law, set out in the Monitor's Motion for Directions.
5. First, in the Superintendent of Pensions' view, the Monitor has erred in calculating the catch-up special payments that accrued pre-filing. A number of catch-up special payments were created by a January 1, 2015 actuarial report that was not filed until after the CCAA filing date. These catch-up payments covered, *inter alia*, the months of January, February, March and April 2015, the period before the CCAA filing date. While the amounts due for these months only became known with certainty when the actuarial report was completed and filed in July 2015, these payments "accrued" at the point at which they were completely constituted, before the CCAA filing date: on this point, see e.g. *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271, at paras. 34-36.
6. For the Union Plan, the catch-up special payments that accrued pre-filing for the months of January, February, March and April 2015 amount to \$1,175,040. This would reduce the amount of catch-up special payments currently classified as "post-filing" in the Monitor's Motion for Directions from \$3,525,120 to \$2,350,080.
7. Second, there is an additional amount of \$21,462 of normal costs for December 2015 that was never contributed to the Union Plan. Based on the terms of the Union Plan, members who worked the partial month of December, up until the termination date of December 16th, 2015, must receive credited service for the entire month. Therefore, the normal costs

for December 2015 should not have been pro-rated, as the Monitor suggests in paragraph 32 of its Motion for Directions.

8. Finally, for the reasons detailed in a Plan of Argument dated December 15th, 2016, the Superintendent of Pensions is also of the view that certain questions that relate solely to the interpretation and application of Newfoundland & Labrador law ought to be determined by the Supreme Court of Newfoundland & Labrador, pursuant to section 17 of the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.
9. The Superintendent of Pension reserves its right to raise all other grounds for opposition to the matters raised in the Motion for Directions.
10. At the appropriate time, the Superintendent of Pensions will outline its substantive arguments in further detail.
11. This Notice of Objection is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Notice of Objection;

DISMISS the Motion for Directions in Respect of the Pension Claims;

ORDER that the adjudication of the aforementioned issues be referred to the Supreme Court of Newfoundland & Labrador for determination.

THE WHOLE WITHOUT COSTS, EXCEPT IN CASE OF CONTESTATION

MONTREAL, December 15, 2016

Irving Mitchell Kalichman.

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Lawyers for the Mis-en-cause

SUPERINTENDENT OF PENSIONS OF

NEWFOUNDLAND & LABRADOR

Our file: 1606-4 | BI0080

NOTICE OF PRESENTATION

TO: *Service List*

TAKE NOTICE that the present *Notice of Objection to the Monitor's Motion for Directions* will be presented for adjudication before The Honourable Mr. Justice Stephen W. Hamilton, J.C.S., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, at the Montréal Courthouse located at 1, Notre-Dame Street, East, Montréal, Québec, on **December 20th, 2016, at room 15.09 at 9:30am** (a room and at a time to be determined).

GOVERN YOURSELF ACCORDINGLY.

MONTREAL, December 15, 2016

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SUPERIOR COURT
DISTRICT OF MONTRÉAL
PROVINCE OF QUÉBEC

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

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HER MAJESTY IN RIGHT OF NEWFOUNDLAND &
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SUPERINTENDENT OF PENSIONS

THE ATTORNEY GENERAL OF CANADA, ACTING ON
BEHALF OF THE OFFICE OF THE SUPERINTENDENT OF
FINANCIAL INSTITUTIONS *et al.*

Mis-en-cause

ET AL.

NOTICE OF OBJECTION BY THE SUPERINTENDENT OF
PENSIONS OF NEWFOUNDLAND & LABRADOR TO THE
MOTION BY THE MONITOR FOR DIRECTIONS WITH
RESPECT TO PENSION CLAIMS

ORIGINAL

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