

CANADA

COURT OF APPEAL

PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.
C-36, AS AMENDED:**

S.C.: 500-11-048114-157

C.A.: 500-09-

**MICHAEL KEEP, TERENCE WATT, DAMIEN
LEBEL AND NEIL JOHNSON, AS
REPRESENTATIVES OF THE SALARIED/NON-
UNION EMPLOYEES AND RETIREES**

APPLICANTS (Objecting Party)

v.

**BLOOM LAKE GENERAL PARTNER LIMITED, *ET
AL.***

RESPONDENTS (Defendants)

and

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, *ET AL.***

Mises-en-cause

and

FTI CONSULTING CANADA INC.

Monitor

and

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND
AND LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS, *ET AL.***

Objecting Parties

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(article 146.0.2 C.C.P.)

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Salaried/Non-Union Employees and Retirees)'s *Motion for Leave to Appeal from an Interlocutory
Decision & to Suspend Provisional Execution, Affidavit, Notice of Presentation & List of
Schedules*

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ET AL.

RESPONDENTS (Defendants)

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PARTNERSHIP, QUINTO MINING
CORPORATION, 8568391 CANADA LIMITED,
CLIFFS QUEBEC IRON MINING ULC,
WABUSH IRON CO. LIMITED, WABUSH
RESOURCES INC.

Mises-en-cause

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HER MAJESTY IN RIGHT OF NEWFOUNDLAND
AND LABRADOR, AS REPRESENTED BY THE
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Objecting Parties

MOTION FOR LEAVE TO APPEAL FROM AN INTERLOCUTORY DECISION
AND TO SUSPEND PROVISIONAL EXECUTION

(Section 13 and 14 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36
and Sections 29, 494, 511, 549 & 550 *C.C.P.*)

TO ONE OF THE HONOURABLE JUSTICES OF THE COURT OF APPEAL SITTING IN AND FOR THE REGISTRY OF MONTREAL, THE APPLICANTS MICHAEL KEEPER, TERENCE WATT, DAMIEN LABEL AND NEIL JOHNSON, IN THEIR CAPACITY AS COURT-APPOINTED REPRESENTATIVES OF THE SALARIED/ NON-UNION EMPLOYEES AND RETIREES OF THE “WABUSH CCAA PARTIES” (COLLECTIVELY, THE “**SALARIED MEMBERS**”), RESPECTFULLY SUBMIT:

I. INTRODUCTION

1. On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company, and Wabush Lake Railway Company Limited (collectively, the “**Wabush CCAA Parties**”) obtained protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCAA**”);

2. This is a motion for leave to appeal by the Salaried Members from the decision of the Honourable Mr. Justice Stephen Hamilton (the “**CCAA Judge**”) dated June 26, 2015 (the “**Benefits Resiliation Order**”). A copy of the Benefits Resiliation Order is attached to this Motion (See **Schedule [1]**)¹;

3. The Salaried Members seek leave to appeal only certain parts of the Benefits Resiliation Order, specifically, with respect to the CCAA Judge’s approval of the company’s motion to terminate its contractual obligations to provide: (a) health and life insurance benefits (hereinafter, “**Health Benefits**”; referred to as “**OPEBs**” in the CCAA Judge’s decision), and (b) supplemental pension benefits. In addition, the Salaried Members seek leave to appeal with

¹ “Judgment on the Motion of the Wabush CCAA Parties to Grant Priority to the Interim Lender Charge and to Suspend the Payment of Certain Pension Amortization Payments and Post-Retirement Employee Benefits (#144), and Related Matters”, in the *Matter of the Plan of Compromise or Arrangement of Bloom Lake General Partner Limited et al*, 500-11-048114-157.

respect to the broad reasons of the CCAA Judge where he stated that the statutory deemed trust priority in favour of pension plan beneficiaries in the *Pension Benefits Standards Act*, 1985, R.S.C., 1985, c. 32 (2nd Supp.) (“**PBSA**”) is effectively inapplicable in CCAA proceedings (and the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (“**BIA**”)) on a wholesale basis, thereby impairing the PBSA statutory deemed trust for priority claims and future distributions (after the DIP priority and other CCAA-ordered priorities) for those Salaried Members whose pension benefits are subject to the PBSA. This issue was not before the CCAA Judge and is premature in any event. The Salaried Members did not oppose the specific priority granted to the DIP lender over such statutory pension trusts in this case. Certain relevant paragraphs of the Benefits Resiliation Order from which leave to appeal is sought and are reproduced below:

[78] For all of these reasons, the Court concludes that Parliament’s intent is that federal pension claims are protected in insolvency and restructurings only to the limited extent set out in the BIA and the CCAA, notwithstanding the potentially broader language in the PBSA.

[79] In the alternative, the Court could conclude that a liquidation under the CCAA does not fall within the term “liquidation” in Section 8(2) PBSA such that there has been no triggering event.

...

[146] ORDERS the suspension of payment by the Wabush CCAA Parties of other post-retirement benefits to former hourly and salaried employees of their Canadian subsidiaries hired before January 1, 2013, including without limitation payments for life insurance, health care and a supplemental retirement arrangement plan, nunc pro tunc to the Wabush Filing Date.

4. The Applicants respectfully request that this Court:
 - (a) grant leave to appeal from the Benefits Resiliation Order with respect to the above-noted issues;

- (b) suspend the provisional execution of the approval granted by the CCAA Judge to the Wabush CCAA Parties in paragraph 146 of the Benefits Resiliation Order (reproduced above), with the result that none of the actions in that paragraph may be undertaken by the Wabush CCAA Parties pending determination on the merits of the appeal; and
 - (c) such further and other relief as to this Honourable Court seems just;
5. If leave to appeal is granted, the Appellants will ask the Court of Appeal to:
- (a) Reverse the CCAA Judge's approval of the termination of Health Benefits and termination of payment of supplemental pension benefits by the Wabush CCAA Parties, and require the Wabush CCAA Parties to continue to provide Health Benefits for a period of six months or until such other time as may be agreed between the Wabush CCAA Parties and Representative Counsel, either directly or through its current insurer, Sun Life Financial; and
 - (b) Reverse that part of the CCAA Judge's reasons (summarized in paragraphs 78 and 79 of the Benefits Resiliation Order) that have the effect of rendering the PBSA deemed trust priority in favour of pension plan beneficiaries for certain amounts owing by an employer to a pension plan of no force or effect in CCAA proceedings on a wholesale basis, and which priority should continue to apply for the benefit of affected Salaried Members over the assets of the company in future priority distributions (after the DIP and other CCAA-ordered priorities);
6. The undersigned are the Court-appointed Representative Counsel to the Applicants/Objecting Parties in the latter's capacity as Court-appointed Representatives of all

salaried and non-union active and retired employees of the Wabush CCAA Parties. The CCAA Judge made these orders (the “**Representation Order**”), on June 22, 2015, a copy of which is attached to this Motion (**Schedule [2]**; *Order Appointing Representatives and Representative Counsel*). The Representation Order was made further to a Motion by the Applicants for such Order dated June 15, 2015 (see **Schedule [4]**, *Motion for an Order Appointing the Petitioners-Mises-en-cause as Representatives of Non-union and Retired Employees of the Wabush CCAA Parties*);

II. THE GROUNDS FOR THIS MOTION

7. The CCAA proceedings were commenced as of May 20, 2015 as they relate to the Wabush CCAA Parties, further to the issuance of an Initial Order by the CCAA Judge on May 20, 2015 and the “rectification” of such Initial Order on May 28 by the CCAA Judge, a copy of the latter of which is attached to this Motion (**Schedule [5]**]; hereinafter “**Initial Order**”). The Wabush CCAA proceedings proceeded in an unorthodox way, by being joined onto the pre-existing CCAA proceeding of Bloom Lake, which filed for CCAA protection four months earlier on January 27, 2015;

8. The Wabush CCAA Parties are currently involved in a court-ordered sales process that was originally commenced in the Bloom Lake CCAA proceeding, to sell their assets with a view to either concluding a plan of compromise with their creditors, including the Salaried Members, or a liquidation of the company’s assets and the future distribution of the sale proceeds to creditors, including the Salaried Members;

9. The Wabush CCAA Parties arranged for interim financing (a “DIP” Loan) provided by Cliffs Mining Company, which is a non-arm’s length party, being a wholly-owned subsidiary of

Cliffs Natural Resources Inc., the ultimate parent of the Wabush CCAA Parties (see Monitor's 5th Report, at para. 18, **Schedule [15]**);

10. Pursuant to the Representation Order (Schedule [2]), four retirees of the Wabush CCAA Parties, namely the Applicants, Michael Keeper, Terence Watt, Damien Lebel, and Neil Johnson, were appointed by the CCAA Judge as "Representatives" for all the Salaried Members in the Wabush CCAA Proceedings. There are approximately 1,000 Salaried Members. The firm of Koskie Minsky LLP (Toronto) and Scheib Law (Montréal) were appointed by the CCAA Judge as representative counsel to the salaried/ non-union employees and retirees ("**Representative Counsel**");

11. Through their years of employment service for the Wabush CCAA Parties, the Salaried Members earned entitlement to be paid pension benefits, Health Benefits, and, for certain salaried employees, supplemental pension benefits;

12. The Salaried Members are a significant and vulnerable stakeholder group in the Wabush CCAA Proceedings (as appears from a copy of the affidavit of the Appellant Michael Keeper sworn on June 15, 2015 attached to this Motion (**Schedule [6]**, hereinafter "**Keeper Affidavit**") previously filed in support of the Representation Motion (**Schedule [4]** and see also the Affidavit of Ari N. Kaplan accompanying the within leave to appeal motion);

13. The Wabush registered pension plans are a critical source of monthly income for the Salaried Members. As the CCAA Judge acknowledged at para. 106 of his decision citing the Supreme Court of Canada in *IBM Canada Limited v. Waterman*, 2013 SCC 70: "Pension benefits are deferred compensation for services that were provided by the retiree while he or she was an employee";

14. The Wabush pension plans are significantly underfunded. If the plans are wound up in an underfunded state, it will result in monthly pension benefit losses to pension plan members;

15. Health Benefits are also a very important benefit for the Salaried Members to cover medical and prescription drug costs and provide life insurance. The CCAA Judge effectively acknowledged that these are also valuable benefits by pointing out that their termination will also cause hardship to the Salaried Members (see paragraphs 126 and 133 of the Benefits Resiliation Order);

III. THE TERMINATION OF HEALTH BENEFITS WITHOUT NOTICE CAUSED IMMEDIATE HARDSHIP TO THE SALARIED MEMBERS, AND FOR NO RESTRUCTURING PURPOSE

16. After obtaining CCAA protection on May 20, 2015, Wabush Mines sent a letter by regular mail on May 29, 2015 to the Salaried Members (the “**Benefits Termination Letter**”), which was received by individuals on or about June 3, 2015 (see Keeper Affidavit (**Schedule [6]**) and a copy of the Benefits Termination Letter which is attached to this Motion (**Schedule [8]**));

17. The Benefits Termination Letter states that the company is terminating Health Benefits as of May 31, 2015. Therefore, by the time the letter was received by the Salaried Members, the Health Benefits *had already been cancelled*. In other words, the Wabush CCAA Parties *did not provide any prior notice of the termination of Health Benefits*;

18. The Benefits Termination Letter also stated that the Respondents will be seeking the approval of the CCAA Judge to approve the termination of Health Benefits and payments in their motion entitled “*Motion granting priority to certain CCAA charges, approving a sales and*

investor solicitation process, authorizing the engagement of a sale advisor, amending the sale and investor solicitation process, suspending the payment of certain pension amortization payments and post-retirement employee benefits, extending the stay of proceeding, and amending the Wabush Initial Order” that was filed on the same day as the May 29, 2015 letter.

The motion sought approval of the CCAA Judge to:

- (a) suspend making payments respecting:
 - i) the registered supplemental pension plan for the benefit of Salaried Members (the “**Salaried Plan**”) and another company registered pension plan (the hourly bargaining plan) (together, the “**Pension Plans**”) during the Wabush CCAA proceedings in respect of payments intended to fund the current deficiencies in the Pension Plans plus catch-up and pension amortization payments owing to both Pension Plans; and
 - ii) other post-retirement benefits, which were understand to be the same benefits described in the May 29, 2015 letter (i.e. the Health Benefits) that the company was proposing to suspend and cease effective May 31, 2015; and

- (b) authorize that an interim financing facility of \$10 million and superpriority charges of \$15 million in favour of the interim financier be permitted to “rank in priority to all trusts, deemed trusts (statutory or otherwise) including any deemed trust created under the *Pension Benefits Act, 1997* (Newfoundland and Labrador)”;

the whole as appears from the Benefits Termination Letter (**Schedule [8]**) and from a copy of the Termination Approval Motion attached to this Motion (**Schedule [7]**);

19. Upon reviewing the May 29 letter, the four Representatives, through their counsel, quickly filed a limited objection to the relief sought by the Respondents, objecting to the termination of Health Benefits and the termination of supplemental pension benefits (they also objected to the non-payment of other amounts owing by Wabush to the pension plans, but given the available cashflow and the amount of such pension payments, did not pursue this objection at the motion hearing). As noted above, the Salaried Members, did not oppose the granting of a priority to the DIP lender over the statutory deemed trust priority in the PBSA and Newfoundland *Pension Benefits Act* in favour of pension plan beneficiaries for amounts owing to the pension plans that have not been paid by an employer, as appears from a copy of the June 8, 2015 *Notice of Objection* by the Applicants included herewith (**Schedule [9]**);

20. The monthly cost required to continue providing Health Benefits is only \$182,000 per month, a very modest amount. The Wabush CCAA Parties are contractually obligated to the Salaried Members to pay the cost of this coverage. The company elected to fulfill this promise by paying premiums to Sun Life, the insurance company engaged by Wabush to provide Health Benefits to the Salaried Members;

21. The monthly cost to the company required to continue paying supplemental pension benefits is also very low – it is only \$7,094 per month. These benefits are paid directly by the Wabush CCAA Parties to the eligible Salaried Members;

22. The evidence presented before the CCAA Judge, both in written and oral argument, is that the Wabush CCAA Parties had sufficient access to cash to pay the above amounts without

any significant impact on cashflow. The cashflow of the company as exhibited in the Respondents' Initial Order Motion (**Schedule [3]**) and as described in the relevant Monitor's Reports that were before the CCAA Judge (**Schedules [11], [12], and [13]**) was as follows:

- (a) Wabush has secured a \$12.6 million (\$10 million US) Interim Facility (the "Facility");
- (b) The Facility is secured by charge of \$15 million over the company's assets; and
- (c) By August 14, 2015 the Company is projecting to have used:
 - i) approximately \$3.6 million for operating costs; and
 - ii) approximately \$2.7 million for professional fees;

This means there is approximately *\$6.3 million in cash available to the Wabush CCAA Parties*, the whole as appears from the Respondents' Initial Order Motion (see **Schedule [3]**) and in the cashflow projections produced as Exhibit R-15 to such Initial Order Motion (see **Schedule [14]**);

The decision of the CCAA Judge

23. The Benefits Resiliation Motion proceeded on June 22, 2015. The CCAA Judge released his decision on June 26, 2015, *inter alia*, approving the company's termination of Health Benefits and the termination of supplemental pension benefits;

IV. QUESTIONS PROPOSED TO BE ANSWERED BY THE COURT OF APPEAL

24. As noted above, the proposed appeal does not take issue with the CCAA Judge's approval of a specific priority to the DIP lender over the statutory deemed trusts in favour of pension plan beneficiaries in the PBSA and Newfoundland *Pension Benefits Act*, 1997,

S.N.L.1996, c. P-4.01. For the purposes of the proposed appeal, the Salaried Members seek leave to appeal only the following errors by the CCAA Judge:

- (a) **Error #1:** The CCAA Judge erred in his interpretation and application of section 32 of the CCAA that sets out a protocol for a CCAA court to follow when dealing with the termination and resiliation of “Agreements”. The CCAA Judge erred in concluding that the employment contracts between the Wabush CCAA Parties and the Salaried Members to provide Health Benefits is a “tri-partite” contract involving the company’s insurance provider, Sun Life. The Salaried members do not have any contractual relationship whatsoever with Sun Life. Instead of applying the criteria in section 32 of the CCAA to the employer-employee contract, the CCAA Judge further erred by basing his decision on the term of the interim financing DIP term sheet between the Wabush CCAA Parties and the current DIP lender, which stipulates that no DIP funds are to be used toward the provision of Health Benefits. The CCAA Judge thereby erred by concluding that the Wabush CCAA Parties “do not have funds” to pay \$182,000 per month for Health Benefits and supplemental pension benefits. By misinterpreting and misapplying section 32 of the CCAA, he erred further by instead relying on the DIP term sheet to dictate the legal result in this case and in so doing he allowed the term sheet to oust his jurisdiction and abrogate his role as a supervising CCAA Judge;

- (b) **Error #2:** The CCAA Judge erred in his interpretation of subsections 6(6) and 36(7) of the CCAA (and the counterpart sections of the BIA) and gave broad reasons that were beyond what is necessary on the motion before him (to approve

a specific priority to the DIP lender) to conclude that the PBSA deemed trust priority is of no force or effect in the CCAA proceeding on a wholesale basis and secondly, that the PBSA does not apply to CCAA proceedings based on his interpretation of the term “liquidation” in the PBSA, both of which are errors of statutory interpretation. His overly broad reasons can impair the future effectiveness of PBSA statutory deemed trust priority for affected Salaried Members which was not an issue before the CCAA Judge and is premature in any event and is independent of the DIP and other CCAA-ordered priorities;

V. THE TEST FOR LEAVE TO APPEAL IN CCAA CASES IS MET

The test for granting leave to appeal in CCAA is met

25. The test for granting leave to appeal in CCAA cases is well established and set out below.

The criteria for leave to appeal have been met:

- (a) The point on appeal is of significance to the practice;
- (b) The point raised is of significance to the action;
- (c) The appeal is *prima facie* meritorious and is not frivolous; and
- (d) The appeal will not unduly hinder the progress of the action;

a) *The proposed appeal involves issues that are significant to the practice*

26. The issues in the proposed appeal are significant to insolvency practice in Québec, Newfoundland, and across Canada. The interpretation of section 32 of the CCAA cases has been inconsistent in Québec CCAA cases. The termination of Health Benefits and supplemental pension benefits without prior notice to the Salaried Members, and the interpretation of the PBSA and the CCAA (aside from the DIP and other CCAA-ordered priorities) are important issues that are applicable to many CCAA cases. The decision of this court would assist insolvency practice and settle the law;

b) *The point raised on the appeal is of significance to the action*

27. The CCAA Judge acknowledged in the Benefits Resiliation Order that the termination of Health Benefits “will cause hardship to the retirees” (**Schedule [1]** at paras. 126 and 133). The Wabush CCAA Parties terminated Health Benefits and supplemental pension benefits without any effective prior notice, thus immediately prejudicing the Salaried Members;

28. Moreover, the above-noted issues need to be addressed to prevent the Benefits Resiliation Order from prematurely determining the issues in a prejudicial manner that cannot be rectified later. The points raised are therefore very significant to the action;

c) *The proposed appeal is meritorious and not frivolous*

29. The above-noted errors and the misinterpretation of the CCAA and PBSA (and BIA) are palpable and overriding errors and have merit. The issues for the proposed appeal are clearly not frivolous;

d) The appeal will not hinder the progress of the action

30. The Wabush CCAA Parties are undergoing a court-supervised sales process in accordance with timelines and procedures that are overseen by the CCAA Judge and the Monitor. The proposed appeal will not hinder or impede the progress of the sales process in any way;

VI. LEAVE TO APPEAL OUGHT TO BE GRANTED

31. For all of the foregoing reasons, the Applicants respectfully submit that this Court should grant the request for leave to appeal the above-noted issues in the Benefits Resiliation Order;

VII. A STAY OF PROVISIONAL EXECUTION IS WARRANTED

32. Should the relevant provisions in the Benefits Resiliation Order be allowed to stand, and the termination of Health Benefits be permitted and the misinterpretation of the PBSA and CCAA stand, then serious or irreparable hardship will be caused to the Salaried Members;

33. Given the actual harm that has now occurred to Salaried Members, the modest cost of rectifying such harm, and the Respondents' \$6.3 million in cash, the balance of inconvenience strongly favours the suspension of the provisional execution of the Benefits Resiliation Order pending final adjudication of the issues by this Court;

VIII. ANY DELAYS FOR SERVICE, FILING AND PRESENTING THIS MOTION SHOULD BE ABRIDGED

34. Given the gravity of the hardship of the relevant parts of the Benefits Resiliation Order on the Salaried Members and the need for all stakeholders in the Wabush CCAA Parties to have

proper direction on the state of the law applicable to the many issues raised in this appeal, any delays for service, filing and presenting this Motion should be abridged;

35. Further, should this Court grant leave to appeal, it is anticipated that all interested parties in the Wabush CCAA Proceedings would cooperate to request case management from this Court to facilitate a fast track appeal hearing of the merits to ensure that the issues are adjudicated quickly and thereby ensure there is no material delay or impairment to the CCAA process;

THEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

- [A] **GRANT** the present Motion;
- [B] **ABRIDGE** the delays for serving, filing and presenting the Applicants' Motion for Leave to Appeal and from an Interlocutory Decision and to Suspend Provisional Execution;
- [C] **AUTHORIZE** the Applicants to appeal from the judgment (the "**Judgment**") issued by the Honourable Stephen W. Hamilton, JSC on June 26, 2015 granting the Respondents' *Motion granting priority to certain CCAA charges, approving a sales and investor solicitation process, authorizing the engagement of a sale advisor, amending the sale and investor solicitation process, suspending the payment of certain pension amortization payments and post-retirement employee benefits, extending the stay of proceeding, and amending the Wabush Initial Order (the "**Termination Motion**")*;
- [D] **SUSPEND** the provisional execution notwithstanding appeal of the following portion of the Judgment (contained in paragraph 146 thereof), until such time as judgment has been rendered on the present appeal:

ORDERS the suspension of payment by the Wabush CCAA Parties of other post-retirement benefits to former hourly and salaried employees of their Canadian subsidiaries hired before January 1, 2013, including without limitation payments for life insurance, health care and a supplemental retirement arrangement plan, nunc pro tunc to the Wabush Filing Date.

- [E] **FIX** a date for hearing the appeal of the Applicants;

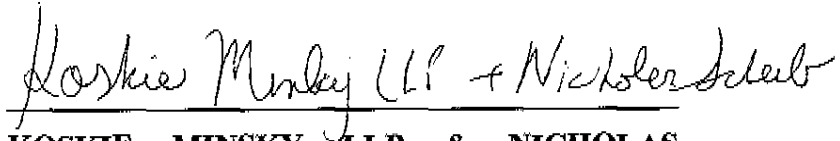
AT THE APPROPRIATE TIME AND PLACE, MAY IT PLEASE THIS HONOURABLE COURT TO:

- [1] **GRANT** the appeal of the Applicants with costs;
- [2] **DISMISS** the Respondents' Termination Motion insofar as it relates to the following paragraphs thereof:

....
- [3] **DISMISS** the finding in the Judgment to the effect that the employment contracts between the Wabush CCAA Parties and the Salaried Members to provide Supplemental Benefits (as defined hereafter) is a "tri-partite" contract involving the company, the beneficiaries and the company's insurance provider, Sun Life, and further **DECLARE** that such contracts are contracts to which the provisions of section 32 of the CCAA apply;
- [4] **ORDER** the Respondents to continue to provide post-retirement benefits to former hourly and salaried employees of their Canadian subsidiaries hired before January 1, 2013 (collectively, "**Supplemental Benefits**"), including without limitation payments for life insurance, health care and a supplemental retirement arrangement plan, nunc pro tunc to May 20, 2015 and for a period of six months from the date of this Motion or until such other time as may be agreed between the Respondents and the undersigned Representative Counsel, either directly or through the pay by the Respondents of required premiums for the provision of such benefits to the Respondents' current insurer, Sun Life Financial;
- [5] **DECLARE** that for all purposes of the CCAA proceedings affecting the Respondents, that part of the Judgment (summarized in paragraphs 78 and 79 of the Judgment) – that has or may be deemed to have the effect of rendering the deemed trust priority arising under the *Pension Benefits Standards Act*, 1985, R.S.C., 1985, c. 32 (2nd Supp.) ("**PBSA**") in favour of pension plan beneficiaries for certain amounts owing by an employer to a pension plan to be of no force or effect in CCAA proceedings on a wholesale basis – shall be considered to have no force and effect, and further **DECLARE** that the priority of such PBSA deemed trust should continue to apply for the benefit of affected Salaried Members over the assets of the Respondents in future priority distributions (ranking only after the priorities granted to the Interim Lending and other CCAA Charges ordered by the Superior Court in the current CCAA proceedings affecting the Respondents);

[6] **ORDER** such further and other relief as to this Honourable Court seems just.

MONTREAL and TORONTO, July 16, 2015



**KOSKIE MINSKY LLP & NICHOLAS
SCHEIB**

*Attorneys for the Applicants Michael Keeper, Terence
Watt, Damien Lebel and Neil Johnson (as
Representatives of the Salaried/Non-Union Employees
and Retirees)*

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REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS, ET AL.**

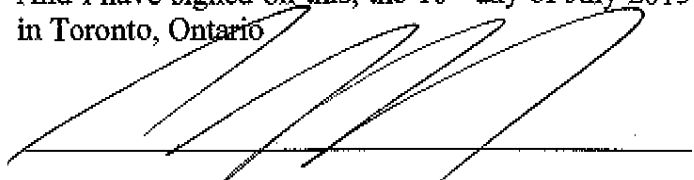
Objecting Parties

AFFIDAVIT OF ARI N. KAPLAN
(July 16, 2015)

I, ARI NATHAN KAPLAN, attorney, practicing law at KOSKIE MINSKY LLP, 20 Queen Street, Suite 900, Toronto, Ontario, M5H 3R3, solemnly affirm:

1. I am a partner at the law firm Koskie Minsky LLP. We are the court-appointed representative counsel to approximately 1,000 salaried/non-union employees and retirees (the "Salaried Members") of the respondent Wabush CCAA Parties, pursuant to an order of the CCAA Judge on June 22, 2015 (the "Representation Order") (see Schedule 2). We are counsel to the Applicants (Objecting parties) Messrs. Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, who are court-appointed representatives of the Salaried Members, pursuant to the Representation Order;
2. I and my law partner Mr. Andrew Hatnay have been involved in this CCAA proceeding since June 8, 2015, when we were retained by the Applicants to file a Notice of Objection (Schedule 9) to the motion (Schedule 7) that resulted in the June 26, 2015 order of the CCAA Judge (Schedule 1) from which leave to appeal is now sought;
3. All the facts alleged in the within *Motion for Leave to Appeal from an Interlocutory Decision & to Suspend Provisional Execution* are true and correct to the best of my knowledge. The facts give rise to important questions of law and equity, inter-provincial jurisdiction and the interpretation and application of constitutional law.
4. The CCAA Judge states that he "accepts that this [the cancellation of people's post-retirement health benefits] will cause hardship to the retirees." (Schedule 1, para. 126). Nevertheless, the CCAA Judge authorized the suspension and termination of Salaried Members' health benefits, with no advance notice to them. Many Salaried Members are elderly and ineligible for replacement insurance coverage. As representative counsel, I attest that Salaried Members are extremely prejudiced by that part of the order below. There are also public costs to this order.

And I have signed on this, the 16th day of July 2015
in Toronto, Ontario



Solemnly affirmed before me on this the 16th day of
July 2015 in Toronto, Ontario



Commissioner for Oaths

CLIO GODKEWITSCH

LIST OF SCHEDULES

(In support of the Applicants, Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson (as Representatives of the Salaried/Non-Union Employees and Retirees)'s *Motion for Leave to Appeal from an Interlocutory Decision & to Suspend Provisional Execution*)

Schedule 1	June 26, 2015 Judgment on the Motion of the Wabush CCAA Parties to Grant Priority to the Interim Lender Charge and to Suspend the Payment of Certain Pension Amortization Payments and Post-Retirement Employee Benefits (#144), and Related Matters, rendered by the Honourable Stephen W. Hamilton, J.S.C. in Superior Court file no. 500-11-048114-157.
Schedule 2	June 22, 2015 Order Appointing Representatives and Representative Counsel, rendered by the Honourable Stephen W. Hamilton, J.S.C. in Superior Court file no. 500-11-048114-157
Schedule 3	May 19, 2015 <i>Motion of Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Québec Iron Mining ULC, Wabush Iron Co. Limited & Wabush Resources Inc. for the Issuance of an Initial Order</i>
Schedule 4	June 15, 2015 <i>Motion of Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson (as Representatives of the Salaried/Non-Union Employees and Retirees) for an Order Appointing the Petitioners-Mises-en-Cause as Representatives of Salaried/Non-Union and Retired Employees of the Wabush CCAA Parties</i>
Schedule 5	May 28, 2015 Rectified Initial Order rendered by the Honourable Stephen W. Hamilton, J.S.C. in Superior Court file no. 500-11-048114-157
Schedule 6	Affidavit of Michael E. Keeper in support of the June 15, 2015 <i>Motion of Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson (as Representatives of the Salaried/Non-Union Employees and Retirees) for an Order Appointing the Petitioners-Mises-en-Cause as Representatives of Salaried/Non-Union and Retired Employees of the Wabush CCAA Parties</i>
Schedule 7	May 29, 2015 <i>Motion of Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Québec Iron Mining ULC, Wabush Iron Co. Limited & Wabush Resources Inc. for the Issuance of an Order in Respect of the Wabush CCAA Parties Granting Priority to Certain CCAA Charges, Approving a Sales and Investor Solicitation Process nunc pro tunc, Authorizing the Engagement of a Sale Advisor nunc pro tunc, Granting a Sale Advisor Charge, Amending the Sale and Investor Solicitation Process, Suspending the Payment of Certain Pension Amortization Payments and Post-Retirement Employee Benefits, Extending the Stay of Proceeding, and Amending the Wabush Initial Order Accordingly</i>
Schedule 8	May 29, 2015 Benefits Termination Letter

Schedule 9	June 8, 2015 Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson (as Representatives of the Salaried/Non-Union Employees and Retirees)'s <i>Notice of Objection</i>
Schedule 10	June 26, 2015 Letter from M ^{re} Andrew Hatnay, attorney of record for Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson (as representatives of the Salaried/Non-Union Employees and Retirees) to the Honourable Stephen W. Hamilton, J.S.C. in Superior Court file no. 500-11-048114-157
Schedule 11	May 20, 2015 FTI Consulting Canada Inc.'s <i>Fifth Report to the Court submitted by FTI Consulting Canada Inc., in its Capacity as Monitor</i>
Schedule 12	June 1, 2015 FTI Consulting Canada Inc.'s <i>Sixth Report to the Court submitted by FTI Consulting Canada Inc., in its Capacity as Monitor</i>
Schedule 13	May 19, 2015 FTI Consulting Canada Inc.'s <i>Seventh Report to the Court submitted by FTI Consulting Canada Inc., in its Capacity as Monitor</i>
Schedule 14	Wabush CCAA Parties Cash Flow Projection (produced as Exhibit R-15 in support of the May 19, 2015 <i>Motion of Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Québec Iron Mining ULC, Wabush Iron Co. Limited & Wabush Resources Inc. for the Issuance of an Initial Order</i> in first instance proceedings)
Schedule 15	Wabush CCAA Parties' Corporate Organization Chart (produced as Exhibit R-9 in support of the May 19, 2015 <i>Motion of Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Québec Iron Mining ULC, Wabush Iron Co. Limited & Wabush Resources Inc. for the Issuance of an Initial Order</i> in first instance proceedings)
Schedule 16	List of Bloom Lake General Partner Limited's current and former employees
Schedule 17	June 15, 2015 Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson (as Representatives of the Salaried/Non-Union Employees and Retirees)'s Table of Contents of the Book of Authorities in support of their June 15, 2015 Factum in Support of their Notice of Objection to the Wabush CCAA Parties' Motion for the Issuance of an Order Dated May 29, 2015
Schedule 18	June 15, 2015 Attorney General of Canada's <i>Plan d'argumentation au soutien de la contestation par le Procureur général du Canada, agissant aux droits du surintendant des institutions financières, à la Requête des débitrices demandant entre autres choses la suspension des paiements spéciaux et de rattrapage et une priorité à certaines charges prévues à la Loi sur les arrangements avec les créanciers de compagnies</i>

Schedule 19	June 15, 2015 Syndicat des Métallos, Section locale 6254, Syndicat des Métallos, Section locale 6285's <i>Plan d'argumentation des parties intéressées au soutien de l'Avis d'objection quant à la Motion for the Issuance of an Order in Respect of the Wabush CCAA Parties et Requête en modification de l'ordonnance initiale</i>
Schedule 20	June 15, 2015 Her Majesty in Right of Newfoundland and Labrador (as represented by the Superintendent of pensions)'s <i>Plan of Argument in Support of its objection to the Motion for the Issuance of an Order in Respect of the Wabush CCAA Parties, dated May 29, 2015</i>
Schedule 21	June 5, 2015 Attorney General of Canada's <i>Constestation de la requête des requérantes intitulée : Motion for the Issuance of an Order in Respect of the Wabush CCAA Parties Granting Priority to Certain CCAA Charges, Approving a Sales and Investor Solicitation Process nunc pro tunc, Authorizing the Engagement of a Sale Advisor nunc pro tunc, Granting a Sale Advisor Charge, Amending the Sale and Investor Solicitation Process, Suspending the Payment of Certain Pension Amortization Payments and Post-Retirement Employee Benefits, Extending the Stay of Proceeding, and Amending the Wabush Initial Order Accordingly</i>
Schedule 22	June 5, 2015 Her Majesty in Right of Newfoundland and Labrador, as represented by the Superintendent of Pensions' <i>Notice of Objection to the Motion for the Issuance of an Order in Respect of the Wabush CCAA Parties, dated May 29, 2015</i>
Schedule 23	June 5, 2015 Syndicat des Métallos, Section locale 6254, Syndicat des Métallos, Section locale 6285's <i>Avis d'objection quant à la Motion for the Issuance of an Order in Respect of the Wabush CCAA Parties et Requête en modification de l'ordonnance initiale</i>

MONTREAL and TORONTO, July 17, 2015

Koskie Minsky LLP + Nick Scheib

KOSKIE MINSKY LLP & NICHOLAS SCHEIB
Attorneys for the Applicants Michael Keeper, Terence Watt,
Damien Lebel and Neil Johnson (as Representatives of the
Salaried/Non-Union Employees and Retirees)

NOTICE OF PRESENTATION

- TO: M^{re} Bernard Boucher**
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- TO: M^{re} Matthew Gottlieb**
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- TO: M^{re} Sylvain Rigaud**
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Attorney for FTI Consulting Canada Inc., Monitor
- TO: M^{re} Chrystal Ashby**
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- TO: M^{re} Douglas Mitchell**
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TO: M^{re} Gerry Apostolatos
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TO: M^{re} Louis Dumont
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Attorney for Cliffs Quebec Iron Mining ULC, Mise-en-cause

NOTICE IS HEREBY GIVEN that the *Applicants' Motion for Leave to Appeal from an Interlocutory Decision & To Suspend Provisional Execution* will be presented before a judge of the Court of Appeal sitting at Édifice Ernest-Cormier, located at 100 Notre-Dame Street East, in Montreal, on **Wednesday, 5 August, 2015, at 9:30 a.m.** in Courtroom RC-18.

PLEASE ACT ACCORDINGLY.

MONTREAL and TORONTO, July 17, 2015

Koskie Minsky LLP + Nick Scheib

KOSKIE MINSKY-LLP & NICHOLAS SCHEIB

Attorneys for the Applicants Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson (as Representatives of the Salaried/Non-Union Employees and Retirees)