

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

File: No: 500-11-048114-157

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

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED, CLIFFS QUÉBEC 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 -

FTI CONSULTING CANADA INC.

Monitor

**FIFTY-FIRST REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. On January 27, 2015, Bloom Lake General Partner Limited (“**BLGP**”), Quinto Mining Corporation (“**Quinto**”), 8568391 Canada Limited (“**856**”) and Cliffs Québec Iron Mining ULC (“**CQIM**”) (collectively, the “**Bloom Lake Petitioners**”) sought and obtained an initial order (as amended, restated or rectified from time to time, the “**Bloom Lake Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) from the Superior Court of Québec (the “**Court**”), providing for, *inter alia*, a stay of proceedings against the Bloom Lake Petitioners until February 26, 2015, (the “**Bloom Lake Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor (the “**Monitor**”). The relief granted in the Bloom Lake Initial Order was also extended to The Bloom Lake Iron Ore Mine Limited Partnership (“**BLLP**”) and Bloom Lake Railway Company Limited (“**BLRC**” and, together with BLLP, the “**Bloom Lake Mises-en-Cause**” and together with the Bloom Lake Petitioners, the “**Bloom Lake CCAA Parties**”). The proceedings commenced under the CCAA by the Bloom Lake CCAA Parties will be referred to herein as the “**CCAA Proceedings**”.

2. On May 20, 2015, the CCAA Proceedings were extended to include Wabush Iron Co. Limited (“**WICL**”), Wabush Resources Inc. (“**WRI**” and together with WICL, the “**Wabush Petitioners**”), Wabush Mines, Arnaud Railway Company (“**Arnaud**”) and Wabush Lake Railway Company Limited (“**Wabush Railway**”) and, collectively with Arnaud and Wabush Mines, the “**Wabush Mises-en-Cause**” and together with the Wabush Petitioners, the “**Wabush CCAA Parties**”) pursuant to an initial order (as amended, restated or rectified from time to time, the “**Wabush Initial Order**”) providing for, *inter alia*, a stay of proceedings against the Wabush CCAA Parties until June 19, 2015, (the “**Wabush Stay Period**”). The Bloom Lake CCAA Parties and the Wabush CCAA Parties will be referred to collectively herein as the “**CCAA Parties**”.
3. The Bloom Lake Stay Period and the Wabush Stay Period (together, the “**Stay Period**”) have been extended from time to time and currently expire on February 28, 2020.
4. On June 22, 2015, Mr. Justice Hamilton J.S.C. (as he then was) granted an Order (the “**June 22 Rep Order**”) *inter alia*:
 - (a) Appointing Michael Keeper, Terence Watt, Damin Lebel and Neil Johnson as representatives (the “**Representatives**”) of the Salaried Members (as defined in the June 22 Rep Order); and
 - (b) Appointing Koskie Minsky LLP (“**KM**”) and Nicholas Scheib¹ (collectively “**Representative Counsel**”) as legal counsel to the Representatives.

¹ Nicholas Scheib subsequently resigned and was replaced by Fishman Flanz Meland Paquin LLP (“**FFMP**”) as Québec co-counsel pursuant to the Fifth Rep Fee Order dated December 21, 2017.

5. On November 5, 2015, Mr. Justice Hamilton J.S.C. (as he then was) granted an Order (the “**Claims Procedure Order**”) approving a procedure for the submission, evaluation and adjudication of claims against the CCAA Parties and their current and former directors and officers (as amended, the “**Claims Procedure**”).
6. On June 29, 2018, Mr. Justice Hamilton J.S.C. (as he then was) granted an Order (the “**Sanction Order**”), *inter alia*, sanctioning the amended and restated joint plan of compromise and arrangement of the Participating CCAA Parties dated May 16, 2018 (as amended from time to time, the “**Plan**”).
7. On July 31, 2018, the Monitor issued and filed the Plan Implementation Date Certificate, *inter alia* certifying that:
 - (a) The Monitor had received from each of the Participating CCAA Parties and the Parent, the applicable Conditions Certificate confirming fulfilment or waiver of the conditions precedent to implementation of the Plan as set out in Section 11.3 of the Plan, and in accordance with the Sanction Order, and
 - (b) The Plan Implementation Date had occurred in accordance with the Plan.
8. The first interim distributions to Affected Third Party Unsecured Creditors were made from each of the Unsecured Creditor Cash Pools and Pension Cash Pools in August and September 2018, with approximately \$132.4 million being distributed to Affected Third Party Unsecured Creditors pursuant to the Plan.
9. To date, the Monitor has filed fifty reports in respect of various aspects of the CCAA Proceedings. The purpose of this, the Monitor’s Fifty-First Report (this “**Report**”), is to provide information to the Court with respect to Representative Counsel’s request for an Order directing payment by the Wabush CCAA Parties, subject to approval of invoices by the Monitor of:

- (a) Fees of Representative Counsel in the amount of \$93,500.15 incurred in the period December 1, 2018, to August 31, 2019, in excess of the previously authorized limits (the “**Excess Fees**”);
- (b) Fees and expenses of The Segal Company (“**Segal**”) in the amount of \$25,830.11² incurred in the period of January 1, 2019 to February 28, 2019 in respect of actuarial work relating to the wind-up of the Wabush Pension Plans (the “**Segal Fees**”);
- (c) Legal fees, taxes and disbursements to be incurred by Representative Counsel on behalf of the Representatives and Salaried Members for the period from September 1, 2019, to the earlier of the discharge of Representative Counsel or the termination of the CCAA Proceedings, up to an aggregate fee cap of \$75,000 in legal fees (the “**Completion Fee Limit**”);

(collectively, the “**September 2019 Rep Fee Motion**”), and the Monitor’s recommendation thereon.

TERMS OF REFERENCE

- 10. In preparing this Report, the Monitor has relied upon unaudited financial information of the CCAA Parties, the CCAA Parties’ books and records, certain financial information prepared by the CCAA Parties and discussions with various parties (the “**Information**”).
- 11. Except as described in this Report:

² The amount of \$25,830.11 includes applicable sales taxes. The amount of fees and expenses is actually \$22,858.30.

- (a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
12. The Monitor has prepared this Report in connection with the September 2019 Rep Fee Motion, which is scheduled to be heard September 23, 2019, and this Report should not be relied on for other purposes.
13. Future oriented financial information reported or relied on in preparing this Report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
14. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the previous reports of the Monitor or the Plan.

EXECUTIVE SUMMARY

15. In summary, and for the reasons set out in this Report:
- (a) The Monitor takes no position with respect to Representative Counsel's request for approval of the Excess Fees, but brings to the attention of the Court comments made previously by Mr. Justice Hamilton J.S.C. (as he then was)³ in respect of the timeliness of such requests by Representative Counsel;

³ Throughout this Report, references to Mr. Justice Hamilton shall be taken to be "as he then was".

- (b) The Monitor could not approve the Segal Fees as the Monitor is of the view that the Segal Fees are for work that was:
 - (i) Not within the mandate of the Representatives or Representative Counsel; and
 - (ii) The responsibility of the independent Pension Administrator, Morneau Shepell;
- (c) Even if the Segal Fees were for work within the mandate of the Representatives and Representative Counsel, payment of the Segal Fees would breach the limit of \$175,000, plus taxes, on the amount that, in June 2016, Representative Counsel agreed would be contributed by the CCAA Parties to the reasonable fees and expenses of Segal; and
- (d) The Monitor has no objection to Representative Counsel's request for approval of the Completion Fee Limit, subject to invoices for fees actually incurred being approved by the Monitor.

BACKGROUND

16. As noted above, Representative Counsel was appointed pursuant to the June 22 Rep Order. The June 22 Rep Order provided, *inter alia*, that:

“subject to an agreement among the Representatives, Representative Counsel and the Wabush CCAA Parties (the "Representative Counsel Letter"), all reasonable legal fees, taxes and disbursements that may be incurred on or after the Filing Date by the Representatives and by Representative Counsel in these CCAA proceedings only shall be paid by the Wabush CCAA Parties on a monthly basis, forthwith upon the rendering of sufficiently detailed accounts (subject to reasonable redaction due to solicitor-client privilege) to

the Wabush CCAA Parties and subject to the invoices being approved by the Monitor, in the following amounts: \$45,000 (CDN) in respect of legal fees of the Salaried Members as an initial payment in respect of the legal fees incurred by the Salaried Members from the inception of these CCAA proceedings to the date of this order; an amount of up to \$30,000 per month for the legal fees of the Salaried Members thereafter commencing for and including the month of June, 2015 for a total cap for legal fees of \$150,000.”

17. Mr. Justice Hamilton J.S.C. made six further Orders in the CCAA Proceedings in respect of the payment of the fees of Representative Counsel (each a “**Rep Fee Order**”). Each Rep Fee Order provided a limit on the fees of Representative Counsel (the “**Fee Cap**”) and required that payment of such fees was subject to the approval of invoices by the Monitor. Certain of the Rep Fee Orders also approved the payment of fees incurred in excess of the then applicable Fee Cap, again subject to the approval of invoices by the Monitor.
18. The most recent Rep Fee Order, granted June 29, 2018 (the “**Seventh Rep Fee Order**”), provided, *inter alia*, for a Fee Cap of \$100,000 for the period from June 30, 2018, until the discharge of Representative Counsel or the termination of the CCAA Proceedings.
19. Representative Counsel legal fees to date, excluding disbursements and taxes, are summarized as follows:

Period	KM	Québec Co-Counsel	Total	Cap
June 22, 2015 to September 2016	\$507,331.50	\$96,728.00	\$604,059.50	\$195,000.00
October 2016 to January 2017	\$125,355.00	\$28,810.00	\$154,165.00	\$140,000.00
February to June 2017	\$180,665.00	\$10,390.00	\$191,055.00	\$200,000.00
July to November 2017	\$148,421.00	\$0.00	\$148,421.00	\$200,000.00
December 2017 to March 2018	\$150,977.00	\$108,679.50	\$259,656.50	\$260,000.00
April to June 2018	\$161,764.00	\$159,405.00	\$321,169.00	\$255,000.00
July 2018 to August 2019	\$144,422.00	\$49,077.00	\$193,499.00	\$100,000.00
Total	\$1,418,935.50	\$453,089.50	\$1,872,025.00	\$1,350,000.00
Monthly Average				
June 22, 2015 to September 2016	\$33,822.10	\$6,448.53	\$40,270.63	\$13,000.00
October 2016 to January 2017	\$31,338.75	\$7,202.50	\$38,541.25	\$35,000.00
February to June 2017	\$36,133.00	\$2,078.00	\$38,211.00	\$40,000.00
July to November 2017	\$29,684.20	\$0.00	\$29,684.20	\$40,000.00
December 2017 to March 2018	\$37,744.25	\$27,169.88	\$64,914.13	\$65,000.00
April to June 2018	\$53,921.33	\$53,135.00	\$107,056.33	\$85,000.00
July 2018 to August 2019	\$10,315.86	\$3,505.50	\$13,821.36	n/a
Total	\$28,378.71	\$9,061.79	\$37,440.50	n/a

EXCESS FEES

20. As noted earlier in this Report, the Seventh Rep Fee Order set a Fee Cap of \$100,000 for the period from June 30, 2018, until the discharge of Representative Counsel or the termination of the CCAA Proceedings. The Fee Cap was reached in December 2018. Representative Counsel fees for the period June 30, 2018, to August 31, 2019, total \$193,500.15. Accordingly, Representative Counsel now seek an Order directing payment of the Excess Fees of \$93,500.15, subject to approval of invoices by the Monitor.
21. While the Monitor takes no position with respect to the request in respect of Excess Fees, the Monitor does wish to bring to the attention of the Court comments made by Mr. Justice Hamilton at earlier hearings where Representative Counsel sought approval of the payment of fees in excess of the Fee Cap in place at the time.

22. In particular, at a hearing of a motion for approval of legal costs brought by Representative Counsel held on October 28, 2016 (the “**October 2016 Hearing**”), Mr. Justice Hamilton expressed great displeasure that he was being asked to approve costs far in excess of the Fee Cap well after those excess costs had already been incurred. He also indicated that if such excesses arose in the future, he expected to be informed when those excesses occurred and not after the fact. Representative Counsel assured Justice Hamilton that he would be. An extract of the unofficial transcript of the October 2016 Hearing is attached hereto as **Appendix A**, with the pertinent exchanges highlighted.
23. At a hearing on May 31, 2017 (the “**May 2017 Hearing**”), Representative Counsel again sought approval of, *inter alia*, fees in excess of the Fee Cap then in place. Mr. Justice Hamilton again expressed his displeasure that such motion was presented after the fact, and not before the fees were incurred. An extract of the unofficial transcript of the May 2017 Hearing is attached hereto as **Appendix B**, with the pertinent exchanges highlighted.
24. The current Fee Cap, which was to apply for the period from June 30, 2018, to the discharge of Representative Counsel or the termination of the CCAA Proceedings, is \$100,000. Representative Counsel have submitted invoices periodically during the period since June 30, 2018. By November 30, 2018, Representative Counsel had submitted invoices for the period from June 30 to October 31, 2018, with aggregate fees totalling \$79,505.
25. The FFMP invoice for November 2018 was received on December 10, 2018, and the KM invoice for November 2018 was received on January 4, 2019. The addition of these November invoices brought the aggregate fees of Representative Counsel to \$99,351, essentially fully utilizing the Fee Cap of \$100,000 to the completion of the case.
26. The Monitor received FFMP’s invoice for December 2018 on January 8, 2019, which invoice exceeded the remaining Fee Cap availability.

27. On March 4, 2019, having still not received the December invoice from KM, the Monitor asked KM whether a further invoice would be rendered. On March 12, 2019, KM responded that they were checking whether Representative Counsel costs now exceeded the Fee Cap.
28. Having had no further response from KM, the Monitor followed up on March 26, 2019, and confirmed to KM that the Monitor's records showed that with the FFMP invoice for December, the Fee Cap had been exceeded. KM responded on March 27, 2019, and informed the Monitor that it intended to propose a further Fee Cap.
29. On May 21, 2019, KM asked the Monitor to approve excess fees incurred between December 2018 and April 2019 in the amount of \$48,370. In addition, KM requested approval of an additional \$75,000 for Representative Counsel legal fees for the period May 2019 to October 31, 2019.
30. The Monitor responded on May 22, 2019, stating:

“As you should be aware, the Monitor has no authority or discretion to approve payment of Representative Counsel fees in excess of the cap set out in the Seventh Order for Legal Costs dated June 29, 2018. Accordingly, any payment of such costs incurred to date or in the future would require Rep Counsel to file a motion (on not less than ten days' notice) and obtain an order from the Court providing for such payment. I do note that Justice Hamilton stated repeatedly that the Court expects that any motion by Representative Counsel for an increase in the fee cap be brought on a timely basis and before, not after, excess fees are incurred.”
31. An initial draft of a motion seeking approval for the payment of the excess fees was provided to the Monitor by Representative Counsel on June 11, 2019.
32. In summary, the Monitor notes for the Court that:

- (a) Mr. Justice Hamilton told Representative Counsel that he expected that he would be informed when fees in excess of the Fee Cap occurred and not after the fact and that any fee motions should be brought by Representative Counsel on a timely basis;
- (b) Representative Counsel informed the Court that they would do so;
- (c) Representative Counsel knew, or should have known, by the end of November 2018 that the Fee Cap was going to be insufficient and, based on the earlier assurances given the Court, should have brought a motion to increase the Fee Cap on a timely basis and before excess fees were incurred; and
- (d) Notwithstanding, Representative Counsel did not start the preparation of its motion until late May or early June of 2019.

SEGAL FEES

- 33. The September 2019 Rep Fee Motion seeks an Order directing the payment of the actuarial fees of the Salaried Members in the amount of \$25,830.11 for Segal, for work performed on behalf of the Salaried Members during the period of January 1, 2019 to February 28, 2019, provided that sufficiently detailed accounts shall be rendered (subject to reasonable redaction due to solicitor-client privilege) to the Wabush CCAA Parties and subject to the invoices being approved by the Monitor.
- 34. The work performed by Segal during the period of January 1, 2019 to February 28, 2019, is described in the September 2019 Rep Fee Motion as providing assistance and advice to the Salaried Members in respect of the purchase of annuity contracts with insurance companies with the pension fund assets to continue the payment of regular monthly pension benefits.
- 35. The Monitor has to date not made payment of the Segal Fees because, as further described below:

- (a) The Segal Fees are for work that is, in the Monitor's view, not within the mandate of the Representatives or Representative Counsel;
 - (b) The Segal Fees are for work that was the responsibility of the independent Pension Administrator, Morneau Shepell, who has fiduciary duties in respect of the wind-up of the Salaried Plan;
 - (c) Even if the Segal Fees were for work within the mandate of the Representatives and Representative Counsel, payment of the Segal Fees would breach the limit of \$175,000, plus taxes, on the amount that, in June 2016, Representative Counsel agreed would be contributed by the CCAA Parties to the reasonable fees and expenses of Segal (the "**Segal Fee Contribution Limit**").
36. Paragraphs 5 and 6 of the June 22 Rep Order set the mandate of the Representatives and Representative Counsel:

"5. GRANTS the motion of the Petitioners-Mises-en-cause (the "Representatives") appointing them as representatives of all salaried/non-Union employees and retirees of the Wabush CCAA Parties (namely, Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway company and Wabush Lake Railway Company Limited) or any person claiming an interest under or on behalf of such employees or former employees or pensioners and surviving spouses, or group or class of them (excluding Opt-Out Individuals, as defined below, if any), (collectively, the "Salaried Members"), in these CCAA proceedings, for the purpose of representing the Salaried Members in these CCAA proceedings and in particular with respect to proving, settling or compromising the rights and claims of the Salaried Members in these CCAA proceedings, who shall be

bound by the actions of the Representatives and Representative Counsel (as defined below) in these CCAA proceedings;

6. GRANTS the appointment of Koskie Minsky LLP and Nicholas Scheib (collectively, "Representative Counsel") as legal counsel to the Representatives in their capacity as representatives for the Salaried Members in these CCAA proceedings with the mandate to provide assistance to the Salaried Members so that the Salaried Members are able to participate in the CCAA proceedings and the restructuring process in a more efficient manner, including to assist the Salaried Members in the evaluation of their entitlements and claims in a cost-effective and timely manner;"

37. As described in the September 2019 Rep Fee Motion and supporting materials, the Segal Fees were incurred in respect of annuity purchases that were an integral part of the wind-up of the Salaried Plan by the Pension Administrator.
38. The June 22 Rep Order limits the mandate of the Representatives to "representing the Salaried Members in these CCAA proceedings and in particular with respect to proving, settling or compromising the rights and claims of the Salaried Members in these CCAA proceedings". The mandate of Representative Counsel is to "provide assistance to the Salaried Members so that the Salaried Members are able to participate in the CCAA proceedings".

39. The wind-up of the Salaried Plan is not part of the CCAA Proceedings. The wind-up of the Salaried Plan was ordered by the Pension Regulator by letter dated December 16, 2015. The Salaried Plan was not terminated because of the CCAA Proceedings, it was terminated because of its financial position, the cessation of business operations and the Salaried Plan's future prospects. Given that the business operations ceased prior to the Wabush CCAA Proceedings and no buyer of the assets would assume the Salaried Plan, it was inevitable that the Salaried Plan would be wound-up, regardless of whether the Wabush CCAA Proceedings had commenced.
40. The Salaried Members have no claim in the CCAA Proceedings in respect of the Salaried Plan. Such claims are claims against the Salaried Plan assets, which are not part of the Wabush CCAA Proceedings. The claim asserted against the Wabush CCAA Parties in respect of Salaried Plan deficit was a claim of the Pension Administrator and the Salaried Plan itself. That claim was agreed between the Monitor and the Plan Administrator through the Claims Procedure and the negotiation of the Plan. The distribution entitlement under the Plan in respect of such claim was fully paid on August 13, 2018, and the balance of the claim was extinguished on implementation of the Plan on July 31, 2018.
41. Accordingly, the Segal Fees are for work that is, in the Monitor's view, not within the mandate of the Representatives or Representative Counsel.
42. Furthermore, annuity purchases are an integral part of the wind-up of the Salaried Plan by the Pension Administrator, and the Pension Administrator has fiduciary responsibilities with respect to the wind-up of the Salaried Plan. The Pension Administrator is a well-respected actuarial firm and is well-qualified to undertake its fiduciary duties. Nothing in the September 2019 Rep Fee Motion or the supporting materials provides an explanation as to why Representative Counsel or Segal believed that the Pension Administrator would not appropriately exercise those duties without their involvement.

43. Regardless, even if such involvement was believed to be necessary by the Representatives and Representative Counsel, it was outside the mandate of the Representatives and Representative Counsel for the reasons explained earlier in this Report.
44. In addition, the parameters of the engagement of Segal were subject to negotiation and agreement amongst Representative Counsel, USW Counsel⁴ and the CCAA Parties, with the concurrence of the Monitor. As part of that negotiation, Representative Counsel and USW Counsel⁵ agreed to the Segal Fee Contribution Limit of \$175,000 plus taxes for the reasonable fees and expenses of Segal.
45. The September 2019 Rep Fee Motion states:

“Representative Counsel and counsel to the USW advised the Monitor in email at the time of the negotiations that the budgeted amount may need to be adjusted in the future “to reflect any variation that we did not anticipate in this file’s process”.”

⁴ USW Counsel was involved as it was agreed that Segal would provide actuarial advice jointly to both the Representatives and the USW in connection with the CCAA Proceedings.

⁵ The original estimate for Segal fees and expenses provided by Representative Counsel and USW Counsel was \$100,000, which estimate was subsequently increased to \$175,000.

46. That statement was made in an email to the Monitor dated May 10, 2016, one month before the completion of the negotiations over the Segal Fee Contribution Limit. Potential future adjustments of the Segal budget were not a component of the agreement. At no time did the CCAA Parties agree to pay the actuarial costs; they agreed to contribute to such costs to the Segal Fee Contribution Limit. It should also be noted that the agreement between the CCAA Parties, Representative Counsel and USW Counsel on the Segal Fee Contribution Limit did not limit the amount that Representative Counsel and USW Counsel could spend on actuarial advice; it simply limited the amount that would be paid by the CCAA Parties and, consequently, by the creditors of the CCAA Parties as a whole.
47. The Segal Fees consist of an invoice dated February 6, 2019 in the amount of \$24,762.26 and an invoice dated March 18, 2019, in the amount of \$1,067.85, each inclusive of taxes (together, the “**Segal Fee Invoices**”). The fees and expenses on these two invoices total \$22,858.50 excluding taxes.
48. Prior to being provided the Segal Fee Invoices by Representative Counsel, the Wabush CCAA Parties had already contributed \$169,148.58 in respect of Segal’s fees and expenses, before taxes. The addition of the Segal Fees, assuming they were in fact properly part of the Representative Counsel mandate, would result in the aggregate fees and expenses of Segal exceeding the Segal Fee Contribution Limit by \$17,007.08. Accordingly, even if the Segal Fees were properly incurred, the Wabush CCAA Parties obligation to pay is limited to the remaining balance up to the Segal Fee Contribution Limit, being \$5,851.42.

COMPLETION FEE LIMIT

49. The September 2019 Rep Fee Motion seeks approval of the Completion Fee Limit in the amount of \$75,000 in respect of fees of Representative Counsel that may be incurred from September 1, 2019 to the earlier of the termination of the CCAA Proceedings or the discharge of Representative Counsel.

50. The Monitor is of the view that the future work necessary to be undertaken by Representative Counsel will be *de minimis*. The proposed Order in respect of the Completion Fee Limit provides that Representative Counsel must render sufficiently detailed accounts (subject to reasonable redaction due to solicitor-client privilege) and that payment of future fees is subject to the invoices being approved by the Monitor. Accordingly, the Monitor has no objection to the Order being sought in respect of the Completion Fee Limit.

The Monitor respectfully submits to the Court this, its Fifty-First Report.

Dated this 19th day of September, 2019.

FTI Consulting Canada Inc.
In its capacity as Monitor of
Bloom Lake General Partner Limited, Quinto Mining Corporation,
8568391 Canada Limited, Cliffs 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



Nigel D. Meakin
Senior Managing Director

Appendix A

Unofficial Transcript of October 2016 Hearing

**Superior Court of Québec
District of Montreal**

In the Matter of the Plan of Compromise or Arrangement of:
Bloom Lake General Partner Limited et al
500-11-048114-157

Hearing of the *Motion for an Order for Legal Costs (No. 400)**
October 28, 2016
Presided by the Honourable Stephen W. Hamilton, J.S.C.

Mtre Bernard Boucher (**BB**)
Mtre Steven Weisz (**SW**), via telephone conference
Mtre Ilia Kravstov
Blake Cassels & Graydon LLP

Mtre Sylvain Rigaud (**SR**)
Mtre Chrystal Ashby
Norton Rose Fulbright Canada LLP
Mr. Nigel Meakin (**NM**), via telephone conference
FTI Consulting Canada Inc.

Mtre Andrew Hatnay (**AH**)
Mtre Barbara Walancik
Koskie Minsky LLP
Mtre Nicholas Scheib (**NS**)

*The Court heard several motions on October 28, 2016. Not all counsel in attendance are listed above.

Speaker	Narrative	Time Stamp
Clerk	Procès dans le dossier de Bloom Lake General Partner Limited et autres. Identification des procureurs.	00.00.36.1
BB	Pour les CCAA Parties et les Wabush CCAA Parties, Me Bernard Boucher, Ilia Kravstov, Me Steven Weisz, Blake, Cassels & Graydon.	
SR	Sylvain Rigaud, pour FTI Consulting Canada Inc.	
NS	Good morning Mr. Justice Hamilton, Mtre Scheib for the Representatives of the Non-Unionized Salaried Employees and Retirees. My colleague Barbara Walancik from Koskie Minsky here, and Andrew Hatnay is due to arrive to the Court, he's late. Air Canada's flight is late, so... As a result, we've asked if we could look at the... order that Mtre Rigaud had proposed this morning and I believe with the ones in agreement that, if possible, we could begin with the Funding Motion so as to have the last... part motion, the discussion about the... scheduling, etc. on the...	

Speaker	Narrative	Time Stamp
Judge	Ok. There are a couple of...	
NS	Indeed, it's the Ritchie Motion, I am happy to... to argue, I suggest I go first. And I believe this one other motion that was on tap which Mtre Rigaud mentioned had been settled, but I can ask him to speak to that. Whatever you think is best. Thank you.	
Judge	Before going further...	
Man	Exactly, and there was also one of my colleague from Toronto was asked joined at the hearing by conference call. So I don't know if we should do this right now or a little bit later. I have already provided the information to...	
Judge	On peut le faire maintenant si c'est...	00.02.59.0
Clerk	Elle voulait participer pour quelle partie du dossier.	
SR	Essentiellement, je pense que c'était en relation avec la question de la Requête du Contrôleur en ce qui concerne le traitement des fonds de pension, les réclamations qui sont rattachées aux fonds de pension, mais écoutez, on peut peut-être continuer à prendre tout au moins les présences des parties présentes.	
Judge	Je ne sais pas si Madame a pris les présences.	
Man	Ah, d'accord. Vous avez soulevé dans votre courriel les difficultés de la technologie. Je comprends que Toronto c'est une ville étrangère, c'est pas trop complexe.	
Man	Weisz	
Man	Il va répondre pareil.	
Clerk	Ah c'est Weisz. Il est au courant. Oui. Ok. Merci beaucoup.	
Judge	Parfait.	
Clerk	Merci.	
Juge	On va continuer les présences.	
Man	Un appel téléphonique c'est compliqué dans le 450... c'est pas...	
Man	Pierre Lecavalier pour le Procureur général du Canada.	

Speaker	Narrative	Time Stamp
Juge	Oui.	
Man	Daniel Boudreault, Philion, Leblanc, Beaudry pour les sections locales du syndicat des métallos	
Man	Ronald Pink on behalf of...	
Judge	Good morning.	
Woman	Sophie Vaillancourt pour Retraite Québec, régisseur au droit de la Régie des rentes du Québec.	
Man	Roberto Clocchiatti du même bureau. C L O C C H I A T T I.	
Judge	Bonjour. Ok, I'll switch back to English for now. Each person is free to choose the language of their choice as we go forward.	
Clerk	Bonjour, ça va. Ok. Bonjour. Good morning, juste un instant.	
Judge	Mr. Weisz? Mr. Weisz.	
SW	Good morning guys.	
Judge	Good morning.	
SW	Bonjour. Steven Weisz from Blakes in Toronto.	
Judge	Ok, everybody is here.	
SW	Thank you.	

Speaker	Narrative	Time Stamp
Judge	Ok, so there are four motions I believe on tap for this morning. The first, so just let's get this one out of the way. Alors vous pouvez noter au procès-verbal que c'est la Requête dans sa forme amendée. C'est la Requête 405 au plumitif: Amended Motion to Lift the Stay of Proceedings with respect to Wabush Iron Co Limited by Royal Bank of Canada. Cette Requête est remise de consentement au 10 novembre 2016 en salle 15.09 à 9h30. Ok, that was the easy one. And the three remaining motions are the Motion for the approval... in order with respect to the sale of certain assets to Ritchie Brothers, requête 407 au plumitif. The trustee's... the Monitor's Motion for Directions with respect to the Pension Claims, Requête 385 au plumitif. And the Motion for Order for Legal Costs of Salaried/Non-Union Employees and Retirees, Requête 400 au plumitif. Is there anything else that is on...	
BB	Nothing special. I suggest that we take a few seconds perhaps to discuss new hearing dates, we'll informed the Court of some potential other motions I'll eventually file. But they will not necessary add to the heard.... years, so that's a good thing.	
Judge	Okay, you would ask about dates of November 28 and December 22.	
BB	Yes...	
Judge	... with respect to the...	
BB	... hearing the starting arrangement.	
Judge	Those dates are available.	
BB	Thank you.	
Juge	So 9:30, 15.09.	
BB	Oui, je vais m'en occuper.	00.09.58.9
Judge	Other dates you want to discuss?	
BB	Perhaps November 15 to present another motion to obtain the authorization to sell some assets. I expect that this motion will be uncontested.	

Speaker	Narrative	Time Stamp
Judge	Ok. Hum. I am sitting in this room in a trial on November 15. If it is uncontested, we can do it...	
BB	Ok.	
Judge	... in the morning.	
BB	Ok. It should not be... It should not take that long. We sincerely expect that it's not being to be contested. So, we are going to line it up for let's say 9 or 8:30 a.m. of the 15 th ? What would be the right moment to put on the note of presentation?	
Judge	Let's call it for 8:30.	
BB	8:30.	
Judge	If there is a problem, we'll...	
BB	Ok. Thank you. And one other date, we had discussion about the moment where we could hear in connection with the Motion that had been filed by MFC. A Motion to obtain a... a lifting of the stay. That's under discussion which was related to the availabilities of some witnesses and we're talking about December 9 th . If this date is still available and both of Mr. Smith, Cliff Smith and Michael Smith are available on December 9 th , and we can then go on with this Motion.	
Judge	Yeah. Ok. Does that need to be noted in the procès-verbal or in the notes of presentation?	
BB	As you wish. It could be either issued in the presentation or it can be simply noted in the procès-verbal. It doesn't make any difference. In any case, what I will do, is that I will inform Mtre Rivard. Mtre Rivard was supposed to write to you in order to inform you that December 9 th was a date that was appropriate to hear this motion. So I am just a shortcut in the process in some way. I will inform Mtre Rivard that I mentioned to the Court that we will go ahead on the 9 th . I can simply confirm with Me Rivard that this is going to be the date. I don't believe that there is need to have a formal Notice of Presentation be sent. But I will let it to the Court, I mean...	
Juge	Ok, on peut le noter au procès-verbal, mais je me suis... je ne sais pas si j'ai... le numéro au plumitif de cette Requête-	

Speaker	Narrative	Time Stamp
	là. Ok, peut-être qu'on le complètera par la suite. C'est seulement la Requête pour lever le sursis.	
BB	C'est exactement ça. Donc, c'est une requête intitulée Motion to Obtain a Lift of the Stay. It's a Motion that was served by a company named MFC Bancorp. They are the one in the Court record.	
Judge	Alors on peut noter au procès-verbal que c'est fixé pour le 9 décembre 2016, salle 15.09 à 9h30. On complètera avec les numéros au plume de la procédure par la suite. Ok, so with respect to the three motions, is there an order that has been agreed upon?	
BB	Yes, we would like to start by the Motion that was served by Mtre Scheib, which is the motion entitled Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees.	
Judge	Hum, hum.	
BB	So Mtre Scheib will inform you... in fact, we had some discussions. We'll inform you of the outcome of our discussion. In light of the amendment that would be made to the draft Order that had been suggested to the Court, we... have... the representations to you on behalf of the Companies, so, let Mtre Scheib explain to you what's the... in respect of this Motion, and I'll extend then our discussion.	
Judge	Ok. Alors pour les fins du procès-verbal, c'est : the Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees, numéro 400. Mr. Scheib.	
NS	Thank you your Lordship. This is a Motion as my confrère mentioned for... legal costs for our clients, the Salaried Non-Unionized Employees and Retirees, and in particular for Representatives that were appointed by this Court last summer. That we have been ordered on June 22. This is a motion that we served from a service list on October 11, as Mtre Boucher indicated, we've had subsequent discussions with the Monitor, with Monitor's counsel, with the Company. We have not heard of any other contestation nor Notice of Objection have been filed. In light of the discussions that we've had with the Company counsel, with the Monitor and the Monitor's counsel, we come up, I believe is agreed language, proposed language amendments to the form of draft that we'd submitted as Exhibit 1... What I am handing up	

Speaker	Narrative	Time Stamp
<p>....NS</p>	<p>is a blackline compared to the form of the Exhibit 1 that was served with the Motion – showing changes, and a clean copy. I am happy to go right into that, the substance of the Motion, but in essence what the changes speak to a couple of things. It speaks to the fact that, whereas we're requesting two things in particular, the payment of fees incurred to date and provisions for fees going forward, on the latter point – a provision for fees going forward, what the proposal is, is that there be a budget of \$35,000 per month to a cap of \$140,000 for the period up to the end of January of 2017, which is concurrent with the current stay period in cash flow submitted to the Company, and, all that of course, subject to the same conditions that applied in our Representation Motion which is that we put in sufficiently detailed accounts to both the CCAA Parties, the Wabush CCAA Parties and the Monitor, and that obviously if anyone has any issue, we would have to come back to this Court and justify those fees. In the same light, we'd also proposed that there be a charge that would guarantee the payment of those fees, the... has this been a change in the proposed amount in the relative ranking of that charge which is in section 8 of the proposed Order, such that the proposed Charge would be for \$150,000, which in the fact matches the future fees that we are requesting. It is a Charge obviously only for the fees that we are entitled to incur so if we exceed the amount of fees that would be approved by this Court, we can't come back and say well, we've exceeded the amount that we were allowed to charge, so we want coverage for the rest. I think it's implicit in the idea that, for only authorized to incur a certain amount, the charge only relates to that – to that amount. And then in terms of the relative rankings, originally we proposed that... with the Directors' Charge, now we're fine with the idea that proposing a common behind the Directors' Charge. And before the... charge, which lot a charge may not... be incorporated, but it allows, from my understanding, of the relative ranking that was established in the Initial Order where Initial Order provided for the Administration Charge then for the Directors' Charge, then for the Interim Lender's Charge. So those are the proposed changes that I believe are agreeable or at least are not subject to any contestation from any party. The Motion itself, again, is to approve legal costs that had been incurred to date and to provide for those going forward. As you recall, your Lordship, there was the Motion of Order that came about last June which provided for the nomination of four Representatives. Messrs. Keeper, Watt, Lebel and Johnson, as well as myself, and Koskie Minsky in Toronto as Representatives' Counsel to those Representatives to in turn represent Non-Union Employees and Retirees all on the Wabush side. And the idea would be that our representation</p>	

Speaker	Narrative	Time Stamp
...NS	<p>was for all matters pertaining to recovery, compromise of rights, entitlement of individuals under the Pension Plans and other non-registered pension plans. So since our appointments last summer, we've been involved, or at least been reviewing and explaining to our clients the various elements of how the Sale and Solicitation Process and Vesting Orders and the like unfolded, particularly involved in the Claims Process, both in terms of submitting Claims for the OPEB, the other pension employee benefits [sic], the non-registered ones. And in particular involved Koskie Minsky side on discussions with the company and with the Monitor on how to properly ascribe the present value to those Claims. It's a pretty complicated process of figuring out the actuarial considerations to take in hand. There is a number of those and there has been, I believe, good faith dispute on that, but the parties have worked together to at least, we... we know those down. We've also been involved with preparing various Claims in relation to... as well as advising our clients on the elements of the registered Pension Plan that deemed trust... etc. Advising our clients has been by way of a number of different means. We had frequent phone calls, email exchanges with the four Representatives, who in turn are also in touch with the number of the other parties in the constituting group. We had a couple of different occasions to go up and had been requested to go up to Sept-Îles and to Wabush – both times concurrently with the Union representatives – went up and the latter of the two times, concurrently with when Morneau Shepell, Mtre Pink's client, went up to describe to the various parties what is happening in this proceeding to try to explain to them what in lay terms are pretty complicated issued in terms of both the OPEB as well as the Pension Plans. And for those members who were not available... of those meetings Koskie Minsky prepared and posted to their website a webinar to try to explain these matters, and we've obviously been available to all the parties to answer questions as and when they arise. We have been dealing with a bunch of those issues. This Motion exists because we've incurred costs in excess of what your Lordship ordered be paid in June, and we seek to acquire funding for both excess costs as well as going forward costs, to ensure the ongoing presence of our constituent, client constituent group in this matter. The various details about why they need funding, why they need representation, the factual context about how the Pension Plan was administered, etc. are all the subject matter of the Motion for Representation as well as the factum and the very detailed affidavit at the time last year. Those facts remained, I believe, to be the case. It continues to be the case that these employees represent something like over a thousand with the</p>	

Speaker	Narrative	Time Stamp
	<p>Union side and over 1000 of the 1200 Claims submitted in this process, so, numerically, it is not a majority in dollar value, but in number of creditors, it certainly is. So I think it's an important creditor group. It's a creditor group that, were they to all engage their own counsel, create an efficiency of process, so we believe there's an efficiency and it continue to be efficiencies for the process with having a single point of contact in us.</p>	
Judge	<p>I have certainly agreed with that when I issued the initial Order and I continue to think that it's the proper way to go. My only concern, I guess, is that the initial Order provided for certain amounts, which were obviously spent a long time ago.</p>	00.23.30.7
NS	<p>It did.</p>	
Judge	<p>And you've been going forward without any kind of order for...</p>	
NS	<p>Yes.</p>	
Judge	<p>... about ten months now.</p>	
NS	<p>Yes.</p>	
Judge	<p>Hum... Then, I would certainly prefer that you not do incur the legal fees and then come to me afterwards.</p>	
NS	<p>By the way, your Order...</p>	
Judge	<p>You spent that money a long... long... time ago. And now you need more. I mean it certainly... The process remains. It's an appropriate one. But I think that if we are going to set orders with limits and so on – that I should be advised sooner in the process when there is an issue, as opposed of being told about \$400,000 later that there is a problem. So I am not sure... I mean you... you sort of set up the same process of monthly amounts in caps and so on. Can I expect that, if there is an issue with this cap, that I will hear about it when the issue arises and not...</p>	
NS	<p>You will my Lord.</p>	
Judge	<p>Ok... Ok, because the amounts spent are more or less consistent with what was anticipated when the Order was put into place. It's just that the... there is a cap here of \$150,000.</p>	

Speaker	Narrative	Time Stamp
	I assume that that was spent and put is... being that request is over and above that amount.	
NS	It is. It is.	
Judge	Ok. Ok, anything else?	
NS	With respect to the Charge that we're requesting, as we mentioned, we did... we significantly... we propose a significantly lesser amount, which corresponds to the amount – and it's a back-end protection, should any bankruptcy process ensue in the intervening period – we hope that, we don't expect that being incurred. The Monitor and all parties appear to have been paying their counsel and other counsel on a prompt basis, so we don't have major concerns about that, but it's... I believe it's consistent, it's consistent with the provisions set out at..., and there is a jurisprudence on this point to the extent that the fees are required in the process such as this. So, that is... those are our representations your Honor.	
Judge	Thank you. Any comments on...?	
BB	A very short comment. We've had of course discussions about the charge and also about the past, and the fact that we are now seeking authorization or payments of amounts well in excess of the previous cap, and this is done almost nine months after the cap was exceeded. So... and that was really a discussion we had, a very open discussion, trying to not address the past, but really fix the future. And specifically in relation a Charge and the need for a Charge. So, we... I think we've had discussions to address the situation going forward, and certainly the expectation is that invoices will be submitted on a regular basis, and if the cap is exceeded for any reason, this should be brought sooner – well, immediately I would say, with the Court. So that was our message that was conveyed, not so much in relation to the past but certainly in relation to the future. Also, with the fact of the proposed language of the Charge, there is a relation... there is a reference at paragraph 8 that it shall rank before the ... Charge. I think that language is... is not necessary. I think it's... it may lead to confusion. The Interim Lender Charge... well the Interim Lender had been fully repaid. So there is no more Interim Lender Charge. So I don't think that	

Speaker	Narrative	Time Stamp
	there has to be a reference to the Interim Lender Charge. Because it had been fully repaid as reported in the previous reports of the Monitor. So, I don't know... and certainly that was... that was not provided for, that was not permissible under the DIP Term Sheet. I... so, I think it's... it may be confusing and I don't think it's necessary, so I would say that it rank behind the ref of charge. That should be fine for Mtre Scheib.	
NS	So for the confusion, we are fine to have the idea that it rank after the Interim Lender Charge. The point in drafting is that when one describes a before, it's very difficult to understand what the before means, only you know an after. And the idea is to track it back to the Initial Order.	
Judge	Immediately behind is... Immediately behind I think is clear.	
NS	Clear enough. Thank you.	
Judge	That's...	
NS	I agree.	
Judge	Ok, anything else?	
BB	We're done.	
Judge	Ok, so I... Mtre Rigaud, can you look at the language in paragraph 8. I don't have the rectified Initial Order. On May 28, is the language at the end of paragraph 8 is set out in paragraphs 46 and 47 of the rectified Initial Order? That we first correct these Charges, does that mean that for the Interim Lender first?	
SR	Which one of the exhibits?	
BB	That's the May 20, 2015 Initial Order, is Exhibit R-3 in support of the Motion for the Issuance of an Approval and Vesting Order in the Ritchie Brothers Motion. So you have...	
Judge	I was going to say, it was actually necessary to produce so every single time, but that is useful to... so...	
BB	R-3, it's paragraph 46 that provides for the order of the charges. And it's the... and then Directors' Charge referred to the Interim Lender Charge. So saying that it ranks immediately after the Directors' Charge as provided.	

Speaker	Narrative	Time Stamp
Judge	Ok. The reference is still...	
BB	Yes, the reference is this one.	
Judge	Ok, so I will strike the words "for the Interim Lender Charge". With that, I will grant the Order. Ok, thank you.	
NS	Thank you your Honor.	

Appendix B

Unofficial Transcript of May 2017 Hearing

**Superior Court of Québec
District of Montreal**

In the Matter of the Plan of Compromise or Arrangement of:
Bloom Lake General Partner Limited et al
500-11-048114-157

Hearing of *Motion for an Order for Legal Costs of Salaried/Non-Union Employees & Retirees (No. 519)**
May 31, 2017

Presided by the Honorable Stephen W. Hamilton S.C.J.

Mtre Bernard Boucher (**BB**)
Mtre Milly Chow, via conference call
Mtre Steven Weisz, via conference call
Blake Cassels & Graydon LLP

Mtre Sylvain Rigaud (**SR**)
Norton Rose Fulbright Canada LLP
Mr. Nigel Meakin (**NM**), via conference call (?)
FTI Consulting Canada Inc.

Mtre Nicholas Scheib (**NS**)
Scheib Legal

Mtre Andrew Hatnay (**AH**), via conference call
Koskie Minsky LLP

* On that same date, the Court also heard and/or held case-management sessions in respect of several other motions. Not all counsel in attendance are listed above.

Speaker	Narrative	Time Stamp
	Extracts from 9:43 to 10:43 – Motion 519	00.00.00.0
Judge	I guess we will deal with your motion.	00.05.11.8
NS	Thank you my Lord. This is a motion...	
Judge	Just for the record, it's a motion... Motion for Legal Costs of Salaried/Non-Union Employees and Retirees, and it's motion 5-1-9 in the plunitif. Ok.	
NS	Thank you my Lord. This is a Motion for an Order for Legal Costs incurred by our clients, the Representatives of the Salaried Employees and Retirees in the Wabush side of the matter. This motion comes up after our last motion of the same effect. I personally recall that you clearly indicated to us that this motion was presentable earlier in the piece or given... and it has been presented.	
Judge	Hum. Hum.	

Speaker	Narrative	Time Stamp
NS	<p>I don't believe the Court needs to get into the specifics about how this all unfolded. My personal apologies are provided and this matter was in... and was discussed with parties along the way and I don't need to get into the reasons why, I don't believe it would be constructive. It is the way it is and I pass... your Lordship. We ask your graces to take care of the following. We're asking for this Court at the discretion of section 11 of CCAA to approve legal cost. We're speaking of the period of the current stay. So that is the period from February 1 past to June 30th, the end of next month. It also covers some overage fees for the period of the month of January. It's in the order of about fifteen thousand dollars of fees that exceeded the last Order of fees. And we're submitting that those fees, we consider this part of the fees to be approved or not by yourself for this current period. So a bit of background on this motion. This proceeding began in May of 2015 in the perspective of the Wasbush side. And our first fees motion came, I mentioned at the end of October 2016. Myself and my co-counsel Andrew Hatnay and his team at Koskie Minsky were appointed as Representatives pursuant to an Order of this Court on June 22, 2015. Since our appointments, and that of course of our clients for Representatives... have been the contact points for the greater body of .. of parties affected by this process some four of five hundred retirees and employees on the salaried side. We submit that we played a significant role in representing the interest of that whole body of parties. We've been involved and looking at the SISP process in understanding on how it affects the Pension Claims of parties. We've been involved on comment on the shaping of the Claims Process. Obviously, we've been present for a number of numerous motions and reported back to our clients about numerous motions throughout these proceedings. At the very... of the proceedings, we were here to oppose the termination of health, life insurance benefits by the company and, in the course of last summer, we attended a number of... last summer, onsite meetings at Wabush to explain these proceedings to our clients. The typical clients based there are retirees, not necessarily familiar with all legal process where there is a restructuring process work. What they know is, that they were promised moneys for retirement. They were promised health benefits and retirement. And what they're hearing now is that those aren't available to them. And they don't understand why. So having us as a point of contact to try to explain that to them is both useful to avoid the multiplicity of submissions by hundreds of different people. And also hopefully them understand the process because they are significant groups of stakeholders where there's a</p>	

Speaker	Narrative	Time Stamp
	regular CCAA. With the CCAA that have gone five or ten years ago... we'd be talking about how to put together a plan as opposed to simply do a liquidating CCAA. In the context of putting together a plan... This.. would be by far a veto block at any point. So I believe these are significant stakeholders in these proceedings. Over the period from October 1 st of last year, effectively up to the present, the specific items that we've been doing are preparing Claims for the Salaried Members in terms of terminated health and other insured benefits, including working with the... company, the Monitor... the company's actuary, an actuary retained on behalf of the Salaried Parties to try to understand the proper valuation of all of these claims...	
Judge	Ok. Where does that stand? The process is completed as this point?	00.10.14.3
NS	I would defer to my colleague, Andrew Hatnay on the telephone. I've tried to limit my personal involvement to ensuring that I'm local counsel. I'm... a second perspective on the whole process, my co-counsel Andrew Hatnay could speak to that. Andrew, do you want to say a word on that?	
AH	Good morning your Lordship.	
Judge	Good morning.	
AH	With respect to the Pension Claim, the Pension Claim has been submitted by the Pension Plan Administrator in the Court of the claim to process order. That was done by Morneau.	
Judge	Hum, hum.	
AH	The Pension Claim can potentially be wound up before the Salaried... We don't expect to be much controversy over those figures. With respect to the... we've had number of discussions with the Monitor... to the Claim. I would estimate the Claim with respect to OPEB, pension and health benefits, supplemental pension... It's ninety percent done out of ninety-five percent. They're few actuarial debates ongoing with the valuation, but I don't think those are insurmountable and they should be concluded very soon. We need to focus over the past month or two. Several... has been brought to the Monitor's Pension Motion in materials. The way we focus on that, I believe the Monitor well... taking the OPEB calculations... knowing as well are being finalized. It sort of answers ninety-five percent.	

Speaker	Narrative	Time Stamp
Judge	Ok.	
NS	<p>Mr. Meakin will go on. As Mr. Hatnay mentioned, a lot of the work got late. As being in dealing in addressing procedural substantive questions in respect of the Monitor's Pension Motion for Directions. Obviously that involves researching legal and factual issues, principally legal issues involved, in that trying to discuss... five other pension stakeholders parties... Specifically the Plan is administrated by Morneau Shepell... Superintendent of the pensions in Newfoundland... They're still workers to locals... The Office of Superintendent of Financial Institution... Retraite Québec... in order to determine whether they're commonalities of positions. Each party has submitted their own submissions in these matters. Perhaps each one of the stakes is slightly different... on the different elements of it. But I believe it comes clear that there are degrees of commonalities of interest. And it's the product of all parties on the pension side of it are working together. Obviously precursor of that is we're trying to work and correspond with the Monitor, its counsel... the CCAA parties, to try to set up a procedural framework to resolve the procedural and substantive issues that go with that in making submissions on both of those points.</p> <p>And then more recently, there has a... the Reference in Newfoundland, and they have been some modest discussions by Mr. Hatnay with lawyers to the Department of Justice, the Government of Newfoundland, regarding the status of that Reference. Hum.. and in that respect, Exhibits P-1 and P-2 are some exhibits describing what the status is, or at least the submissions in those proceedings. In the light of all this, we respectfully submitted that the Representatives require and seek funding for reasonable legal costs in the proceedings, again, covering the period from February 1 to June 30th and also addressing, retrospectively, but within the same allocated budget for that five-month period, the overage in the month of January, which totals forty thousand, but the fees of which are only fifteen thousand. We submit again that our representation on the funding allows for that and insures that the rights and claims in respect of our clients under the plan are protected... advances for adversarial proceedings... and actually seemed to be protected. Protection is important, especially when stakeholder groups aren't necessarily familiar with the process. And this all comes about from the early process where the administration of the Pension Plan was such that Morneau Shepell is a party that only came in May. The process, which... conflict of interest, having the company people administer the Plan up to the up point. So</p>	

Speaker	Narrative	Time Stamp
...NS	consequently... the formality of claim submissions in a cost-effective manner and try to work with all the parties in this matter and seek funding under section 11.52 of the CCAA. In terms of the... the requested Order, there are... the Order that was submitted or the way it was submitted was in the form of the Fees Approval Order. But also in the form of a submission of schedules. Proposed schedules to that Order that addresses the Newfoundland funding question as it works, and does so by proposing amendment to the Appointment Order. So what is being asked for today, is an Approval Order for Funding on the scale of forty thousand dollars a month of fees for a five-month period rolling as it were in the same way we have the last session, together with an amendment to the existing Rep Order to address the impact of involvement in the Newfoundland Reference process. To that extent last night, my colleague Andrew Hatnay submitted to the services of the counsel of the company, of the Monitor, a proposed rectification of what was originally submitted by way of a motion. So if I may hand that up. And what I am handing up is the email of yesterday from Andrew where in paragraph five of the Schedule A to the Order, what was originally circulated stating that the purpose of the representatives' involvement was stated...	
Judge	I was wondering about that...	
NS	I'm sorry?	
Judge	I was wondering about that.	
NS	Certainly, certainly. And then what was added was the words, and in particular, with respect to the reporting to Salaried Members and the Reference proper to the Newfoundland Government. Now it's stating, in light of a typo and in particular with representing the Salaried Members in the Reference... Discussions have unfolded, as I understand, between Mr. Hatnay and the Monitor discussing estimates of what that work would cost and statements of what the current amounts are... that can be spent in respect of that work. So they can speak to that if you'd like. And...	00.17.49.1
Judge	Ok. So let me tell you my understanding of where things stand. June 22, 2015 was the initial Order setting up the... appointing the... the individual Representatives and appointing you and Mr. Hatnay as counsel to this group. At that time, there was a forty-five thousand dollars amount which was an initial payment for legal fees incurred up to that day. And on a going forward basis, it was thirty thousand per month up to a total of a hundred and fifty thousand dollars.	

Speaker	Narrative	Time Stamp
...Judge	<p>Which covers roughly the period from June 1st, 2015 up to October 2015. The next Order was made in October 2016. At that point that was three hundred eighty thousand dollars outstanding. Roughly for the period of January to September 2016. But some amounts went back as far as October 2015 or earlier. And I as recall I expressed some displeasure with the fact that things had been done and you were asking for payment after the fact as opposed to the initial Order where an estimated amount of fees had been approved. For an ongoing period for October 1st, 2016 to January 31st, 2017, it was thirty-five thousand dollars per month and the cap was thirty-five thousand dollars per month up to a total of a hundred and forty thousand dollars. Now, the current status is that the amount that the amount that has been paid to date by my account is about seven hundred and fifteen thousand dollars. You're asking for forty thousand dollars for January 2017. Then for the period of February the 1st, 2017 to June 30th, 2017, it's up to forty thousand dollars a month up to a total of two hundred thousand dollars. And there is no estimate on the going forward basis, except with respect to the Newfoundland Reference where there is an estimate of twenty thousand dollars. I have a few issues with the way we're doing this. First of all, when you come to me after the fact, I'm being asked to approve fees, but I'm not given any bills. I'm not given any material, I'm just asked approve this amount, which I have a great deal of difficulty doing it. My understanding of the way it's going to work is I was setting some limits on fees. A count would then be submitted to the Monitor and it was up to the Monitor to decide whether or not these were reasonable amounts and the Monitor to decide whether to pay them. Now you're asking me to approve invoices, bills or amounts that I've never seen and have not way of... judging. For the period from February 1st to June 30th, I mean it looks like the Motion was meant to be presented February the 1st because it's speaking to the future. It's now the past, and I'm asked to approve amounts and we don't have actual numbers. I have forty thousand dollars per month up to two hundred thousand dollars. The only request that's on a going forward basis, it's for the Newfoundland Reference, where I have an estimate of twenty thousand dollars, which appears to me to be completely unrealistic. I also have problem with the Newfoundland Reference. The Newfoundland Reference is as currently, as currently stands, is very broad. And clearly infringes upon my jurisdiction. It's not up to me to call the Newfoundland Court path, but the Newfoundland Court, the current Reference in my view is far too broad. And the result of how that's going to be... that after I hear the parties in June, I have the choice. I can either render my judgment without waiting for Newfoundland to</p>	

Speaker	Narrative	Time Stamp
... Judge	<p>render its judgement, or I can wait for the Newfoundland judgment. And if the Newfoundland judgment is going to deal with issues that are within my jurisdiction, I have absolutely no interest in waiting for their judgment because then I'm going to be told Newfoundland has already decided these issues and if there's going to be a contradiction between the two judgments, I just assume that their judgement be the contradicted one, not mine. So the result of all of that is that unless the Newfoundland Court narrows its focus to what in my view would be an appropriate focus, I have absolutely no interest in waiting for their judgement and therefore, I'm not sure what... I'm not sure on what basis I would be authorizing a broader mandate for the employees to participate in the process which is not going to have much use to anybody because they'll render a judgement that will come after mine and that would be of no essence to me. It will have no effect with respect to these proceedings. So, those are some thoughts I have on this subject. How do you react to some or all of that?</p>	
NS	<p>If I could. I'll try to summarize. I think you've raised three points your Lordship. The first point is for the fees incurred to date. I am sorry, I don't have an accounting in front of me. And I am not sure it changes the point that's being made implicitly but I believe a good chunk of those fees is our disbursements and taxes. But again, for the record, and I don't know your numbers, so forgive me because I can't give you a concrete statement of what they are...</p>	
Judge	<p>Neither can I... because I have such limited numbers that have been provided to me. I'm just looking at amounts that have been authorized. I have no idea I haven't seen a single account.</p>	
NS	<p>Understood my Lord. Which leads to the second point which I'll speak to, and the third point being the Newfoundland point, which I'll ask my colleague Andrew to speak to. But on the second point of how the Fees Motions are structured, I don't take issue with your description of them, but I would highlight one additional element which is that the way these Orders work, a part of this Order is that the fees are subject, obviously, to this Court's authorization of fees and creation of a cap on the fees and a third element which is of that fees be submitted to the Monitor and the Company, which had been the case in the past with the other Orders, and has been the case in fact with the fees accrued to date, so in my respect, of up to few days ago, today's appearance has changed that fee, other than a few hundred dollars, and in respect of Koskie Minsky up to the end of April. So, the mechanism was</p>	

Speaker	Narrative	Time Stamp
	<p>created was, I believe, that there would be a prospective authorization of fees subject to a cap and subject to the, if you will, ex post facto, review by the Monitor and the Company as the reasonableness of those fees. We can't deal with the fact that this is an ex post facto Motion. I've heard you loud and clear then. I've heard you loud and clear today. I wish I had a better answer on that part, but there is the mechanism, it exists, for fees to be submitted to the Company and to the Monitor.</p>	
...NS	<p>And on the third point about the segue between these proceedings and Newfoundland, I'd asked my colleague Andrew Hatnay to speak to that. Andrew?</p>	
AH	<p>Good morning my Lordship. I'd like to speak actually to all the points.</p>	
Judge	<p>Hum, hum.</p>	00.25.59.2
AH	<p>The positional background for clarity is virtually helpful. Do you happen to have the Monitor Thirty-sixth Report. Do you my Lord?</p>	
Judge	<p>I do.</p>	
AH	<p>Thirty-sixth Report. Do you my Lord?</p>	
Judge	<p>I do.</p>	
AH	<p>Before I turn to the text of this, just to add some additional factors for the approval. We can certainly provide you a copy of our invoices, there's not issue with that. The nature of the fee arrangement in this case, is such as we dialogue with the Monitor and the Company very extensively about the fees incurred, the caps, the work being done, responding to a large number of questions that the Monitor poses to us as to the work, including the mass mailing, that we responded to the Monitor about and to the company. But it's on an ongoing dialogue and we have included in a motion material the extent of that dialogue because we believe the dialogue was ultimately quite productive and resulted in a motion that proceed before you on relatively consents subject to your questions of course. So in paragraph sixty, what I'd like to highlight is that all the work we do and has done, and all the invoices that have been scrutinised to a very high level by the Monitor, in paragraph sixty: the Court's officer states that the Monitor continues to be of the view that the involvement of Representative Counsel is beneficial. The Monitor has no objection to a cap on legal fees proposed and the Rep</p>	

Speaker	Narrative	Time Stamp
...AH	<p>Counsel Fee and supports the Motion for Legal Costs... Order. So we are certainly able to respond to any questions you have and provide any documents to the Court including our invoices but our gateway to this has been the Monitor. I can tell you as Rep Counsel that the Monitor has been extremely diligent and accepting what we are doing and reviewing our fees, reviewing the small amount of work we had to do with the Newfoundland Reference shall... about the moment. So I assume that you can derive very significant confidence that the process has proven properly an appropriately fairly to... specially will impact on the retirees with the involvement of the Monitor. As I said earlier, we're certainly able to provide you with copies of our invoices. The dialogue with the Monitor originating back in February and is ongoing since. We didn't include all the email traffic on the fees. We didn't think it was necessary to burden the Court with that little detail. And I believe we arrived at a consensual solution for presentation to the Court today. For anything you require, we can certainly provide. Let me shift, if I may, to the Newfoundland Reference. And what our involvement and concerns are about that Reference. The Newfoundland Government has initiated a Reference Procedure to its Court of Appeal. The Reference is pursuant to an Order in counsel, which as you know is the force of law from the Cabinet of Newfoundland Government. They have posed certain questions on their own... and we've had discussions with the Monitor on the scope of those questions. And we've had also a discussion with the other pension parties on the scope of those questions. We hear the Monitor's concerns about the scope of those questions and again, there are questions to the government. They are the government's questions.</p>	
Judge	Well they actually are your questions as I recall.	00.30.10.1
AH	Pardon me your...	
Judge	They are actually your questions, aren't they? I know the government has adopted and submitted them to the Newfoundland Court of Appeal. Are those your questions?	
AH	Yes. So, the...	
Judge	Ok.	
AH	<p>... the... of that is they were our questions that we have put into our motion material before you for the Pension Motion in December 2016. And the Newfoundland Government happened to adopt them. But there are still, because I said to the Monitor, we did not tell the Newfoundland Government to</p>	

Speaker	Narrative	Time Stamp
...AH	<p>adopt our questions. They did... they did. But we are in discussion with the Monitor and the other Pension Parties to deal with the issues raised in the Monitor's report about the scope of those questions, which are similar to... There's a hearing next Friday before Newfoundland Court of Appeal. A procedural case management hearing. And I took... I take the scope of those questions will be discussed at that hearing. We're going to... I can tell you how further discussions with the Monitor about the scope of those questions. In terms of our involvement, as Representative of the terminated employees and retirees, we do need to keep an eye on what is happening in Newfoundland for the benefit of our client. Part of our work with the Monitor, we identified exactly what we had been doing to make sure we adequately fulfil our obligations to make sure that we are aware of a process in another court and we can inform our clients properly. To date we spent only six hours monitoring the correspondence and the filing by the Monitor in that Court. We prepare and... the Monitor to stand to that Court. But the work has been relatively minimal. With respect to the future work, the Monitor raised the question that the original Rep Order does not specifically mention anything but the Newfoundland Reference, nor should it because... exists at the time of the Rep Order. We then proposed to make an amendment just to be clear that if the Court finds it appropriate that we come to be paid for fees monitoring and being involved with the Newfoundland Reference... the proposed line of which you see before you...</p>	
Judge	<p>Well, actually, that's why I was interested in the initial language which did talk about reporting on the proceedings. But you've now changed that to representing the Salaried Members in the proceedings. So is it your intention to appear in the Newfoundland court record and to attend the hearings in Newfoundland and participate in the hearings, file a factum and so on in Newfoundland?</p>	
AH	<p>No. The way we have discussed this with the Monitor is a little bit of a step-by-step approach. The next event in the Reference is next Friday, the case management hearing. I believe the Monitor will make certain submissions about the content of the questions and it may well be that we'll have a discussion and be able to proceed on a... basis but I don't want to establish any assurance that that's going to happen. We think there's a good chance that you will deal with... have a discussion to iron out some of the issues raised in the proposed questions, which are the same issues you just raised in Court. I think the approach is we're not asking for authority to file a factum today, proceed in that Court. We're</p>	

Speaker	Narrative	Time Stamp
...AH	<p>asking for some authority in the Order to allow these costs to be paid if they are approved by the Monitor and by you, this Court. But we're not approaching you today to file a full-blown factum because we are waiting to see what happens before in the case management conference of next Friday. Now, the original Representation Order in paragraph 7, or rather paragraph 11, which is the same provision that is contained in all of the Representations issued by this Court. You authorized us to represent employees and retirees – and I will quote you – I'm looking at paragraph 11 of the initial Representation Order which flows through to the other Orders – authorizes Representatives and Representatives' Counsel to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry department or... So, this is a provision of the existing Order already, but we heard the Monitor's concerns about the Newfoundland Reference in particular and that's why we need to make a specific amendment to the Order to make it absolutely clear, should you decide to approve it, that we do have approval to have some... with respect to the Newfoundland Reference. Currently, it is only 6.1 hours over the past 2½ months. There will be in attendance next Friday, which is also discussed in the Monitor's Report. I understand the Monitor has no objection to us attending to see how the Newfoundland Reference is going to play out. Then, after that, I believe we will be in some position to assess what work needs to be done, if any, with respect to the Newfoundland Reference with a discussed step-by-step approach. Our approach is simply the ethical obligations to our clients to be able to advise them and report on... development ...being competently, so they understand what is happening in Newfoundland and how it may or may not impact the proceedings before your Court.</p>	
Judge	<p>OK. In what way are you asking me to authorize a step-by-step process? Where are the steps in what I'm being asked to sign off on today?</p>	00:36:30
NS	<p>My Lord, this is a Motion for a given period, until the end of June. So...</p>	
AH	<p>If I may answer that question. The gatekeeper for the Newfoundland work is the Monitor. The Monitor has been very diligent monitoring our work, very diligent asking the exact same questions you just did. So, I would... and there's actually a note from... we exchanged late last night and this morning... about these issues. So I believe, from our perspective, we fully expect the Monitor to be very actively</p>	

Speaker	Narrative	Time Stamp
	involved in the review of what work we would propose to do. I think the first step, as I mentioned, is the case conference next Friday, which I do not believe the Monitor has objection to, as noted in the Report. And then after that, I believe we will have to regroup with the Monitor... what is happening with the reference what work may or may not need to be done and then proceed. So...	
Judge	OK, because if I authorize you to...	
AH	... a blanket go-forward carte blanche with respect to the Newfoundland Reference.	
Judge	But that's what it is. I mean, if I authorize you to act on behalf of the Salaried Members in the Newfoundland Reference, how does the Monitor get then to say well, you filed a factum, that wasn't a useful proceeding, and therefore I'm not going to pay for that. If I authorize you to represent, how does the trustee, how does the Monitor get to draw a line after that? Because I am being to ask to sign an open-ended... give an OK to whatever goes on in Newfoundland and Labrador, you can... you can represent. And I'm not comfortable with that, because I have issues with the Newfoundland proceedings.	
AH	I would suggest that there are two ways to solve that. One is, again, hear the submissions of the Monitor about the step-by-step approach and that the next step would be the case conference, after which we would be approaching the Monitor and having discussions about what the next step is, about the Reference, before we do any further work. We've not done any work on that and other than monitoring and reading most of the submissions back and forth, but if you are... if that remains insufficient to give you comfort, then we can amend the Order to, for example, put a temporal limit that fees would be incurred to date, which is about six hours. And then the work with respect to the case conference next Friday. And after that, you would not be authorizing any additional work. Would that... I believe that would give you the comfort you're looking for that you would not be ordering anything beyond next Friday.	
Judge	OK. So what language puts that temporal...	
AH	Sure.	
SR	Could we suggest that Andrew, at the end of paragraph 5, after the definition of NL Reference, we could put the	

Speaker	Narrative	Time Stamp
	temporal limitation, up until June 9, 2017, subject to further Order of this Court. So, there's the temporal limit and going forward, there would be a further Order of this Court, presumably that could be discussed next time we're before Justice Hamilton. Of course, following discussions with the CCAA Parties and the Monitor, and we would hopefully come to a common understanding of the reasonableness and appropriateness of the Rep Counsel being involved in the Reference, given the scope... the narrow or the wide scope... of the NL Reference.	
AH	I believe that should work. Your Lordship, does that kind of language to give the proposed amendment making it the temporal limit of up to and including the June 9 case conference?	
Judge	OK. Is there a copy of this...	
AH	... subject to further authorization from you.	
Judge	... without the additional shading?	
NS	There is, yes, one moment. And I have a digital copy that I can generate. Here is... there is that. And to the extent that the date on Day 1 has to reflect today's date as opposed to the original date, in terms of public interest, this is...	00:41:40
AH	... all the underlining that you should be seeing amending your original Order would remain and we would be adding a temporal limit.	
SR	I would also, Andrew, in the preamble, I would also make reference... the Order, the draft Order makes reference to the Seventh Report of the Monitor. I think the order should make specific reference to the Monitor's Thirty-sixth Report as well, as it expresses views and recommendation to the Court with respect to the Newfoundland Reference. So I think there should be reference to the Thirty-sixth Report specifically in the preamble of the draft Order.	
AH	I'm looking at paragraph 3 of the proposed draft Order. So it would read, given the Monitor's Seventh Report and Thirty-sixth Report, then the rest would continue.	
Judge	OK. Then at the end of paragraph 5...	
AH	Did I explain that, My Lord?	

Speaker	Narrative	Time Stamp
Judge	Pardon me?	
AH	Did I explain that clearly, My Lord?	
Judge	What, adding the words “and Thirty-sixth Report”?	
AH	Yes.	
Judge	Yes, I think I’d rather...	
AH	... to the rest of the Order for Legal Costs should you issue it?	
Judge	Hmm mmm. Then the language at the end of 5 is “up to and including June 9 th ”.	
AH	Yes.	
SR	And I would add as well “subject to further Orders of this Court”.	
BB	If I may?	
Judge	Hmm mmm.	
BB	On that point, perhaps... and depending on what will be the modification that would be made to the draft Order here... perhaps I’m ahead of my time, perhaps it will be for the next hearing, if indeed any... limit in time, up to June 8, the amount that may become payable... Representative, but the issue we’ve got with the questions that have been asked in the Newfoundland Court, which as you have noted, are the exact same questions that were asked to this Court by the... Representative while we were before you on December 20 th , is that these questions are way too broad. There was an open door in your judgment issued on June 30 to the effect that the Reference would be made, if I’m right, this is a Reference is made at paragraph 82 of your judgment of January 30, 2017, stating that the Reference was a possibility. But the way I see it is that this Reference could have or should have been limited to what is potentially the endback of Section 32 of the Newfoundland PBA.	
Judge	I have absolutely no issue; if the Government of Newfoundland wants to ask Newfoundland Court of Appeal for the proper interpretation of section 32 of the Newfoundland-Labrador Pension Benefits Act, not only would I not have a problem with that, depending on where I’m going	

Speaker	Narrative	Time Stamp
	in my judgment, I might well wait for their judgment to see what they have to say about Section 32.	
BB	We believe also that this is something that will be in fact proper. The issue we've got is that when we have a look at Exhibit P-1 which is the Order in Counsel and the list of questions, when we jump to sections 2 and 3 of the questions that have been sent by the Representative of Newfoundland to the Newfoundland Court of Appeal, I believe that these questions are clearly questions that should be addressed by the CCAA Court and in fact, you have already indicated in your judgment of June 30 that you intend to do so.	
Judge	Hmm mmm.	
BB	And that's the issue. Moreover, if you have a look even at the wording of the first question when we state, "What is the scope of Section 32?", perhaps the wording is not that proper and this is something we may address when we are before the Newfoundland Court of Appeal – what could be defined here, what is the extent of the charge created by Section 32 of the Newfoundland PBA would be more proper. And this will avoid that the question that may be touched on by the Newfoundland Court of Appeal, extend to the applicability or the effect of Section 32 in a CCAA context. So, if it is more narrowly defined, this will be something that would be perhaps correct. The Newfoundland Court of Appeal has the choice to address one or all the questions that will be addressed to it. We will definitely address this when we're going to be before the Court of Appeal next week that the Newfoundland Court of Appeal should inform the parties that it intends to exercise discretion and only address some of the questions being part of question 1. If such is the case and if such is the answer we're giving for the Newfoundland Court of Appeal, there's going to be no indication in the work that will be performed.	
Judge	I agree.	
BB	And then, perhaps, it may make sense that parties may decide to go there, because I mean, we're not going to be playing on two fields at the same time. And perhaps what may even happen then is that yes, we may state that the answer that should be provided to the first question is an answer that	

Speaker	Narrative	Time Stamp
	<p>we already know and that indeed, this section creates a... for us and lien and charge pursuant to Section 32(4), we may put any on the ground and state this, this is the question we're going to say to you, what is the answer and there's going to be no need to have this Reference, we're going to save a lot of time for the Court. So, this is pretty much where we stand, this is what we're going to try to achieve before the Court of Appeal. Within trying, I must say that through some discussions that we have had in the past few weeks, there have been numerous occasions to narrow the focus of the questions that should have been addressed to the Court. The first Order that was obtained from you was, according to you, on an ex parte basis. We're not there to argue and debate what should be a proper question and properly inform the Newfoundland Court of Appeal. But that's what we'll attempt to do, attempt to... how can I say... put some limits on what should be done, that's going to be our goal.</p>	
Judge	<p>OK. And again, as I indicated, it will have an impact on how I approach the issues and I can certainly see it having an impact on whether I actually wait for the decision of the Newfoundland Court of Appeal. If they're going to deal with all of my issues, I'm not looking at things right now, I'm not particularly inclined to sit back and wait while they do that and then render a judgment which will... where I'll have to explain why I don't agree with the Newfoundland Court of Appeal on CCAA issues. I would be more inclined to simply render my judgment and let them explain why they don't agree with me, not that it will matter because my judgment will be enforceable and theirs will not be. But anyways... that's their issue, that's not my issue. So I think that if we put the limitation to June 9th and we'll see after that where things stand. For the balance of this, if I look at the order that I'm being asked to sign, I'm not sure if I'm being asked to approve the \$40,000 overage for the January 2017... it's in the Motion, I don't see it in the Order. And again, I've been asked to set caps on things that have already happened which I find a little bit odd. But I'd rather set caps... things that have happened and approved things that have happened that I haven't seen. But I don't think I have any issue with the Order as drafted.</p>	00:49:12
AH	<p>Your Lordship, I'm just looking at paragraph 8 of our draft Order I believe there was an intention to have discussions with the Monitor specifically to reference the overage for January in this Order, that there is... you would be asked to</p>	

Speaker	Narrative	Time Stamp
	expressly approve that number. If we can simply add that in to paragraph 8 to make that an express provision.	
Judge	OK, but how do I approve that overage when I don't know what it is or where it comes from or I haven't seen any invoices?	
AH	It is in the Motion to...	
Judge	Yeah, it's mentioned in the Motion.	
AH	At paragraph 10 of the Motion, that's the overage.	
Judge	Hmm mmm.	
AH	We can certainly mention the... actually, \$15,483 in fees... We can certainly add that to the draft Order at paragraph 8.	00:52:45
Judge	But you're asking me to approve a payment of \$40,000 based on a footnote in a Motion.	
AH	It would be coming out of the \$200 cap, My Lord, ... additional amount, within the cap we're asking you to approve today. So, it's a... question. It is mentioned in paragraph 10 of the Motion. So perhaps if something like after the first sentence of paragraph 8, including a... fees in the amount of \$15,483 for the month of January 20, 2017. But that is... it is not an additional amount.	
SR	With your permission, Mr. Justice...	
Judge	Hmm mmm?	
SR	First, Andrew, may I ask you a question: you're suggesting adding wording to paragraph 8 of the draft Order that does not seem really applicable to what you're asking for. My paragraph 8 deals with this agreement regarding the legal fees.	
Judge	I think you're in the wrong Order.	
SR	Sorry...	
AH	That's OK. So you're looking at the actual Order presented to His Honour today at paragraph 8.	

Speaker	Narrative	Time Stamp
SR	<p>On this issue, maybe it would be of assistance to the Court maybe to have a better understanding of footnote. We did receive the invoice and we did ask questions about that overage. So, maybe if Mr. Meakin could explain to the Court the process and we did receive the invoices for the last three months albeit only very recently, but maybe Mr. Meakin for the benefit of the Court, you could... because indeed the invoices are not being submitted to this Court, maybe it would be helpful for the Court to understand what degree of disclosure has been afforded to the Monitor and what degree of review of these invoices has been made, allowing the Monitor to make its recommendation in its Thirty-sixty Report.</p>	
<p>NM</p> <p>...NM</p>	<p>Certainly. So, periodically, Rep Counsel submits its invoicing. These invoices include the summary of the time incurred, the rates being charged as well as docket descriptions of the time that it is incurred. When we receive those invoices, we review the docket information, the descriptions of the time as to the work incurred so we can form a view as to whether the work is recently necessary and whether the time incurred appears to be reasonable from our knowledge of what's going on. By way of example, for the January invoice of... confirms, we did have some questions on some of the elements that reference, in particular, to the... and whether that was related to the Reference itself or other things. And there was also a large disbursement on that invoice dealing with the mailing to the Represented Employees and we asked a number of questions regarding the need for that mailing as well as the actual cost incurred. So, there is, in my view, a reasonable review of these costs and certainly... be forthcoming in responding to your questions that we have had. I will say that of that overage, I would just refer Your Honour to paragraph 53 of the Thirty-sixth Report. Of the overage, there's reference to..., \$14,000 approximately relates to fees, the balance relates to disbursements and taxes, including the large disbursement of the mailing that I just mentioned.</p>	
Judge	<p>OK. Because what I would be prepared to do is to amend paragraph 8 so that it orders that the legal fees, taxes and disbursements by the Representatives and by Represented Counsel for the period of February 1st, 2017 to June 30, 2017 inclusive and any overage for the period prior to February 1st, 2017 shall be paid up to an amount of \$40,000 per month with a cap of \$200,000. Because the whole is subject to the invoices being approved by the Monitor, because someone has to approve them and it's obviously not me because I've never seen one. So I'm not going to order the Monitor to pay the \$40,000 because I have no idea if the Monitor is satisfied</p>	00:59:13

Speaker	Narrative	Time Stamp
	with the \$40,000. And the Monitor thinks it's reasonable, I can authorize him to pay those amounts, but I'm not going to order anybody to pay an amount that I have no idea, that I've never seen. It's not... but I think that if we inserted into paragraph 8 that it is subject to the invoices being approved by the Monitor. I guess that deals with my concerns.	
SR	Another point, with your permission, and this in an invitation made to Rep Counsel to present their next Fee Motion on June 26 th , as it should be...	
Judge	In advance.	
SR	In advance for the next period, so it should go hand in hand with the next extension and it should be approved in advance and the construct would be the same, it would be subject to review and approval by the Monitor as to appropriateness and if there's an issue, of course, it would be referred back to this Court. But I think to avoid having the same discussion maybe in December, we should get the Motion before this Court end of June.	
AH	... understood, My Lord, my co-counsel can speak to that if he'd like.	
Judge	Well, I thought that I had made that quite clear on October 26 th .	
AH	You did, My Lord.	
Judge	OK.	
AH	My Lord, we can certainly do that. As I did mention, we are in a very close dialogue with Mr. Meakin about our fees. We've... as informed as we possibly can about the numbers so that there's no prejudice to the accounting or the estates, but there's no... have another Motion prepared for the end of June for prospective approval.	
Judge	Well, in any event, we need to discuss the Newfoundland Reference after... So it would be appropriate that there be a Motion on June 26 th to deal with the fees on a going-forward basis, including the fees related to the Newfoundland Reference.	
AH	Certainly.	
Judge	OK, so is there a clean copy of the draft Order?	

Speaker	Narrative	Time Stamp
NS	There is, My Lord. If you like, I can add this wording in digitally and bring it back to you. Or I've got a copy if you'd like.	
Judge	We can either deal with them now in a handwritten edition, or you can...	
NS	Yes.	
Judge	Is the language "and any overage for the period prior to February 1 st , 2017", is that sufficiently clear?	
NS	It is to us.	
SR	I understand that the same reference to the Thirty-sixth Report would be made in the third paragraph of the preamble.	
Judge	OK. So it's up to you: I can either sign these with the handwritten editions.	
NS	That would suffice. Thank you, My Lord.	
Judge	OK. Just have a quick look, so how it reads.	
NS	Thank you.	
Judge	It works?	01:05:36
NS	It does.	
Judge	OK. So that deals with that Motion and we'll see you on June 26 th with the next one.	
AH	Thank you, My Lord.	
Judge	Thank you.	
SR	Mr. Justice Hamilton, as we proceed with the Cami Motion and also the case management with respect to MFC, I don't know... Mr. Meakin certainly can continue to attend. I'm not sure if that's necessary for this Court, so I would ask permission for Mr. Meakin to be relieved, unless you see the need...	
Judge	No, you're welcome to stay or not, as you like.	

Speaker	Narrative	Time Stamp
NM	Perhaps, Your Honour, I'll stay for the discussion of the Cami Motion if there are questions in that regard. But perhaps... off the court case management portion of this morning's...	
Judge	OK, that's fine.	01:07:00