

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-048114-157

SUPERIOR COURT

Commercial Division

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

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

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

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

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

MFC INDUSTRIAL LTD.

Respondent

MOTION FOR DIRECTIONS AND THE ISSUANCE OF A SAFEGUARD ORDER
(Paragraph 65 of the Rectified Wabush Initial Order dated May 28, 2015)

TO MR. JUSTICE STEPHEN W. HAMILTON, J.S.C. OR ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE WABUSH CCAA PARTIES (AS DEFINED BELOW) SUBMIT:

1. **BACKGROUND**

1.1 **The Bloom Lake CCAA Parties**

1. On January 27, 2015, Mr. Justice Martin Castonguay, J.S.C., issued an Initial Order (as subsequently amended, rectified and/or restated, the "Bloom Lake Initial Order") commencing these proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of the Petitioners Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC, and the Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited (collectively, the "**Bloom Lake CCAA Parties**"), as appears from the Initial Order dated January 27, 2015, which forms part of the Court record and is filed herewith for convenience as **Exhibit R-1**.

1.2 **The Wabush CCAA Parties**

2. The Petitioners, Wabush Iron Co. Limited ("**Wabush Iron**") and Wabush Resources Inc. ("**Wabush Resources**") (collectively, the "**Wabush Petitioners**"), are debtor companies under the CCAA.
3. Wabush Mines ("**Wabush Mines JV**") is an unincorporated contractual joint venture of Wabush Iron and Wabush Resources. Like the Bloom Lake Mises-en-cause, it is not a petitioner in these CCAA Proceedings. However, it forms an integral part of the business, operations and/or assets of certain of the Wabush Petitioners and more specifically, the iron ore mine and processing facility located near the Town of Wabush and Labrador City, Newfoundland and Labrador (the "**Wabush Mine**") and the Pointe-Noire Port (both as defined and described more fully below).
4. On May 20, 2015, Mr. Justice Hamilton, issued an Initial Order (as subsequently amended, rectified and/or restated the "**Wabush Initial Order**") extending the scope of the CCAA Proceedings to the Wabush Petitioners and the Mises-en-cause Wabush Mines, an unincorporated contractual joint venture, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**"), as appears from the Wabush Initial Order which forms part of the Court record and is filed herewith for convenience as **Exhibit R-2**.
5. The Wabush Initial Order was rectified on May 28, 2015, as appears from the Rectified Wabush Initial Order which forms part of the Court record and is filed herewith for convenience as **Exhibit R-3**.
6. Various market and economic factors, such as the significant fall in global commodity prices, have affected the value and feasibility of the Wabush Mine.

2. THE WABUSH CCAA PARTIES' BUSINESSES AND AFFAIRS

7. The Wabush Mine is an iron ore mine and processing facility located near Wabush City and Labrador City, Newfoundland and Labrador in the Labrador Trough. A map showing the geographical location of the Wabush Mine and the site is filed herewith as **Exhibit R-4**.
8. The Wabush Mine had been in operation since 1965. Since 2009 until it was idled in 2014, the Wabush Mine had annual productions of between 2.7 million and 3.9 million metric tonnes of iron ore pellets and concentrate.
9. Cliffs Natural Resources Inc. ("**CNR**"), the ultimate parent of the Wabush Petitioners, has indirectly invested approximately USD \$221.2 million in the Wabush Mine since February 2010.
10. As a result of the depressed global market for steel, particularly in Asia, the corresponding significant decline in the price for iron ore, and the high cost structure of the Wabush Mine, operations at the Wabush Mine were not economically sustainable. Therefore, mining operations at the Wabush Mine were suspended in March 2014.
11. Subsequently, the Wabush Mines JV moved to permanently idle the Wabush Mine. This process was completed in November 2014 and a Wabush Mine closure plan has been filed with and accepted by the Newfoundland and Labrador Department of Natural Resources, the implementation of which is subject to an environmental assessment review process.
12. The right of Wabush Mines JV to conduct mining operations at the Wabush Mine arises primarily under a mining sub-sublease with the Respondent, MFC Industrial Ltd. ("**MFC**"). That sub-sublease is the September 2, 1959 Amendment and Consolidation of Mining Leases made between Canadian Javelin Limited, as lessor (now MFC) and Wabush Iron, as lessee, as amended (the "**Wabush Sublease**"), copy of the Wabush Sublease is filed as **Exhibit R-5**.
13. Operations at the Wabush Mine consisted of an open pit truck and shovel mine and a concentrator that utilizes single stage crushing, autogenous grinding mills and gravity separation to produce iron ore concentrate.
14. Similar to the Bloom Lake Mine, iron ore concentrate from the Wabush Mine was transported by rail by the Wabush Lake Railway, and then transferred to the Northern Land Railway, the QNS&L Railway and the Arnaud Railway for delivery to and shipment from the Pointe-Noire Port.

3. HISTORY AND DETAIL OF MFC INDUSTRIAL LTD.'s CONTRACTUAL RIGHTS

15. MFC's rights include contractual rights stemming from various Indentures, Agreements and Amendments thereto, being collectively the Mining Lease Documents (the "**Mining Lease Documents**") which include the following, among others:
 - a) Indenture made and entered into on May 26, 1956 between the Lieutenant-Governor of the Province of Newfoundland ("**Newfoundland**") as Lessor and

the Newfoundland and Labrador Corporation Limited ("**Nalco**") as Lessee (the "**Mining Lease**") regarding a certain parcel of land occasionally referred to as Lot 1 of the Wabush iron ore mine (the "**Demised Premises**") which is described as follows:

"Beginning at a point being the intersection of Meridian sixty-six degrees fifty-four minutes thirty seconds West Longitude and the south shore of Little Wabush Lake, thence running south along the said Meridian sixty-six degrees fifty-four minutes thirty seconds of West Longitude to its intersection with the south shore of Knoll Lake; thence running by a line south seventy-two degrees thirty minutes west to its intersection with the eastern shore of Long Lake at the mouth of a small stream flowing from a small lake; thence running along the said western shore of Long Lake and a river flowing north from Long Lake in a general northwesterly direction to a point being the intersection of parallel fifty-two degrees fifty-four minutes thirty seconds north Latitude with the Meridian sixty-six degrees fifty-nine minutes of West Longitude; thence running by a line north seventy degrees east to a point on the western shore of Little Wabush Lake at the mouth of a small stream; thence running along the said western shore of Little Wabush Lake in a general southeasterly direction to the point of beginning, all bearings being referred to the True Meridian and containing an area of approximately five square miles; and being more particularly described and delineated in red upon the plan annexed to this Indenture: Excepting nevertheless from the above described land the right of way of Wabush Lake Railway Company Limited."

as appears from a copy of said Indenture (Mining Lease) filed as **Exhibit R-6**;

- b) Indenture made and entered into on May 26, 1956 between Nalco as Lessor and Canadian Javelin as Lessee regarding the Demised Premises, as appears from a copy of said Indenture filed as **Exhibit R-7**;
- c) Indenture R-5 (Amendment and Consolidation of Mining Leases) made and entered into on September 2, 1959, between Canadian Javelin as Lessor and WIC as Lessee, effecting a consolidation of (eases regarding *inter alia* the Demised Premises) and to which reference has already been made above;
- d) Statutory Agreement dated September 4, 1959 between Newfoundland, Nalco, Canadian Javelin and WIC, as appears from a copy thereof filed as **Exhibit R-8**;
- e) Statutory Lease Agreement dated June 28, 1960 between Newfoundland, Nalco, Canadian Javelin, WIC and other parties, as appears from a copy thereof filed as **Exhibit R-9**;
- f) Agreement between Canadian Javelin and WIC dated July 19, 1960, as appears from a copy thereof filed as **Exhibit R-10**;

- g) Amendment of Amendment and Consolidation of Mining Lease dated August 8, 1961 between Canadian Javelin and WIC, as appears from a copy thereof filed as **Exhibit R-11**;
 - h) Statutory Partition Agreement dated June 17, 1964 between Newfoundland, Nalco, Knoll Lake Minerals Limited and Canadian Javelin, as appears from a copy thereof filed as **Exhibit R-12**;
 - i) Memorandum of Agreement entered into in 1987, between Javelin International Limited (formerly Canadian Javelin), WIC and others, as appears from a copy thereof filed as **Exhibit R-13**; and
 - j) First Amendment to Memorandum of Agreement dated 1988 between Naicap Holdings Inc. (formerly Canadian Javelin), WIC and others, as appears from a copy thereof filed as **Exhibit R-14**.
16. MFC's contractual rights by virtue of the Mining Lease Documents remain in full force and have not been re-amended since 1988;

4. CURRENT DIFFICULTY WITH RESPECT TO THE AMOUNT PAYABLE TO MFC BY THE WABUSH CCAA PARTIES AS MINIMUM ROYALTY PAYMENT

17. Section A.1 of the Wabush Sublease R-5 creates for Wabush Iron the obligation to pay to MFC, on a quarterly basis, a minimum royalty payment (the "**Minimum Royalty Payment**").
18. On August 24, 2015, within thirty days of the payment date, the Wabush CCAA Parties made payments in the aggregate amount of \$750,000 in respect of the Minimum Royalty Payment purportedly owing under the Wabush Sublease. Such payments were made on a without prejudice basis with the Wabush CCAA Parties reserving their rights and remedies to assert or claim that all or some of the Minimum Royalty Payment was not due and owing.
19. On September 3, 2015, MFC issued a notice of default with respect to the Wabush Sublease (the "**MFC Notice of Default**") alleging that the Minimum Royalty Payment had not been paid in full, as appears from a copy of said notice filed as **Exhibit R-15**. The MFC Notice of Default was disputed by the Wabush CCAA Parties by way of a letter from counsel to the Wabush CCAA Parties to counsel to MFC dated September 10, 2015, as appears from said letter a copy of which is filed as **Exhibit R-16**.
20. On September 11, 2015, counsel to the Monitor requested that MFC confirm the amount of the Minimum Royalty Payment allegedly outstanding and provide the justification or particulars of that position.
21. Counsel to MFC responded to that request on September 18, 2015 asserting that under the terms of the Wabush Sublease, the minimum tonnage used to calculate the Minimum Royalty Payment and mentioned in Section A.1 of the Wabush Sublease R-5 had increased in 1973 from 10,000,000 gross tons per year to 10,833,000 gross tons per year and, accordingly, the Minimum Royalty Payment payable on July 25, 2015 was \$812,250 (i.e. 3% of \$10,833,000 instead of 3% of \$10,000,000) and not \$750,000, as appears from a copy of the letter dated September 18, 2015 filed as **Exhibit R-17**.

22. On October 1, 2015, counsel to the Monitor replied to the letter dated September 18, 2015 noting that notwithstanding that mining activities at Wabush Mine had ceased in February 14, 2014 (and which would therefore be the latest date that the minimum tonnage provisions came into effect), MFC had never alleged prior to September 18, 2015 that there had been an underpayment in any of the quarterly Minimum Royalty Payments since that time. An offer was made on a without prejudice basis for the Wabush CCAA Parties to pay the alleged underpayment of \$62,250 in consideration of MFC confirming that there was no continuing or post-filing default under the Mining Sublease, as appears from a copy the letter dated October 1, 2015 filed as **Exhibit R-18**.
23. To date, no response has been received to the letter dated October 1, 2015.
24. Despite the obligation created by Section A.1 of the Wabush Sublease R-5, it is the view of the Wabush CCAA Parties that this obligation is subject to various conditions, including the one set out in paragraph A.1(f) of the Wabush Sublease which reads as follows:

"A.1(f) When the Lessee shall have paid to the Lessor Minimum for which it has not taken credit, and such payments equal or exceed that figure determined by multiplying the tonnage of Iron Ore Products which can be produced from the *remaining proven ore* in the Demised Premises by the rate of thirty cents (30¢) per Gross Ton thereof, then, and in that event, the Lessee shall be under no further obligation to pay Minimum to the Lessor. The quantity of the remaining proven ore will be established in accordance with operating estimates customary in the iron ore industry. Any dispute which may arise hereunder with respect to the rights and limitations herein set forth, shall be submitted to arbitration as hereafter provided."
25. With respect to the terms "remaining proven ore", to which reference is made in the above section A.1(f) of the Wabush Sublease R-5, it shall be understood as referring only to those mining resources that could be extracted in an economically viable or profitable manner.
26. To date, it is Wabush CCAA Parties' view that there is no "remaining proven ore" which can be extracted at the Wabush Mine on a profitable basis.
27. It is this situation that led CNR to requalify the description of this asset in its 2013 Annual Report, as appears from pages 36 and 38 of the CNR 2013 Annual Report filed as **Exhibit R-19**. At that time, the Wabush Mine ore which was initially described as forming mineral reserves (reserves being defined by SEC Industry Standard Guide 7 as that part of a mineral deposit that could be economically and legally extracted and produced at the time of the reserve determination), were declassified to be included in the mineralized material estimates.
28. This point of view is clearly shared by MFC as appears from a press release issued by MFC on November 16, 2015, a copy of which is filed as **Exhibit R-20**, where it states the following while disclosing its intent with respect to the Wabush Mine:

"As such, we have initiated a rationalization process and, therefore, have reclassified the mine and our interest in another iron ore property as discontinued operations."

29. As appears from Section A.1 of the Wabush Sublease, the calculation of the Minimum Royalty Payment was based on the fact that there should be at least 10,000,000 gross tons of proven iron ore at the Wabush Mine, which entails that the Minimum Royalty Payment was to be \$3,000,000.
30. In light of the above, and since the payment that is to be made, i.e. \$3,000,000 per year, equals or exceeds the figure determined by multiplying the tonnage of iron ore which can be produced from the remaining proven ore in the demised premises by the rate of thirty cents (30¢) per gross ton thereof, the Wabush CCAA Parties shall be under no further obligation to pay the Minimum Royalty Payment to MFC.

5. CONCLUSIONS

31. The Petitioners are well founded to ask this Court to declare that no amount whatsoever is payable as Minimum Royalty Payment to MFC pursuant to the Wabush Sublease R-5 in light of the wording of Section A.1(f) of the Wabush Sublease.
32. The Wabush Sublease (C.5) provides that whenever the amount of rents or royalties is in dispute between the parties, that such rents or royalties shall only be deemed due and payable within sixty (60) days of a third-party determination of the dispute. The Wabush Sublease (C.5 and C.7) provides that such a dispute is to be resolved by way of arbitration. Despite the fact that such is the case, and given the current CCAA Proceedings, the Wabush CCAA Parties submit that this dispute is properly subject to the jurisdiction of this Court.
33. In light of the foregoing, the Petitioners hereby seek the issuance of an Order substantially in the form of the draft Order a copy of which is filed as **Exhibit R-21**.
34. The present Motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Motion;

ISSUE a safeguard order stating that the non-payment by Wabush Iron to the Respondent of the Minimum Royalty Payment that would have been otherwise payable pursuant to the Wabush Sublease shall not be deemed to constitute an event of default pursuant to said agreement until 21 days after the issuance by this Court of the order that will establish the amount payable by Wabush Iron to MFC pursuant to the Wabush Sublease R-5, if any;

DECLARE that the terms "remaining proven ore" used in Section C.5 of the Wabush Sublease shall mean:

"Iron ore that could be extracted in an economically viable or profitable manner"

DECLARE that in light of the current market condition and subject to any further order of this Court, there is no "remaining proven iron ore" at the Wabush Mine;

DECLARE that, until further order of this Court, Wabush Iron shall be entitled not to pay the Minimum Royalty Payment set forth in the Wabush Sublease R-5;

THE WHOLE WITHOUT COSTS save and except in case of contestation.

Montréal, November 23, 2015

A handwritten signature in blue ink, appearing to read "Blake, Cassels & Graydon", is written over a horizontal line.

BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Wabush CCAA Parties

AFFIDAVIT

I, the undersigned, **CLIFFORD T. SMITH**, the Executive Vice-President and a director of Bloom Lake General Partner Limited and Cliffs Québec Iron Mining ULC, the President of Wabush Resources Inc. and Wabush Iron Co. Limited, and Vice-President of Arnaud Railway Company and Wabush Lake Railway Company Limited, each having a place of business at 1155 Robert-Bourassa Blvd. (formerly Rue University), Suite 508, in the city and district of Montréal, Québec, solemnly affirm that all the facts alleged in the present *Motion for Directions and the Issuance of a Safeguard Order*, are true.

AND I HAVE SIGNED:



CLIFFORD T. SMITH

SOLEMNLY DECLARED before me
at Cleveland, Ohio,
this 24th day of November, 2015



Notary Public

Irene Sisamls
Notary Public
State of Ohio
My Commission Expires
September 14, 2019

NOTICE OF PRESENTATION

TO: Service List

TAKE NOTICE that the present *Motion for Directions and the Issuance of a Safeguard Order* will be presented before the Honourable Stephen W. Hamilton, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on **December 4, 2015** at a time and in a room to be determined.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, November 23, 2015



BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Wabush CCAA Parties

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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Respondent

and

FTI CONSULTING CANADA INC.

Monitor

LIST OF EXHIBITS

(In support of the *Motion for Directions and the Issuance of a Safeguard Order*)

-
- R-1 Initial Order in respect of the Bloom Lake CCAA Parties dated January 27, 2015;
 - R-2 Wabush Initial Order dated May 20, 2015;
 - R-3 Rectified Wabush Initial Order dated May 28, 2015;
 - R-4 Geographical location of the Wabush Mine;
 - R-5 Amendment and Consolidation of Mining Leases dated September 2, 1959;

- R-6 Indenture entered into between the Lieutenant-Governor of the Province of Newfoundland and Labrador and Newfoundland and Labrador Corporation on May 26, 1956;
- R-7 Indenture made and entered into between Nalco and Canadian Javelin on May 26, 1956;
- R-8 Statutory Agreement dated September 4, 1959;
- R-9 Statutory Lease Agreement dated June 28, 1960;
- R-10 Agreement between Canadian Javelin and WIC dated July 19, 1960;
- R-11 Amendment of Amendment and Consolidation of Mining Lease dated August 8, 1961;
- R-12 Statutory Partition Agreement dated June 17, 1964;
- R-13 Memorandum of Agreement entered into in 1987;
- R-14 First Amendment to Memorandum of Agreement dated 1988;
- R-15 MFC Notice of Default dated September 3, 2015;
- R-16 Letter to MFC dated September 10, 2015;
- R-17 Letter from MFC dated September 18, 2015;
- R-18 Letter to MFC dated October 1, 2015;
- R-19 CNR 2013 Annual Report;
- R-20 Press release issued by MFC on November 16, 2015;
- R-21 Draft order.

The exhibits are available at the following link:

<https://blakes.sharefile.com/d-scf4e85bad414336a>

Montréal, November 23, 2015


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Wabush CCAA Parties

N°: 500-11-048114-157

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**MOTION FOR DIRECTIONS AND THE ISSUANCE
OF A SAFEGUARD ORDER**
(Paragraph 65 of the Rectified Wabush Initial Order)

ORIGINAL

M^{re} Bernard Boucher

BB-8098

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