

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

No: 500-11-048114-157

**SUPERIOR COURT
(Commercial Division)**

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

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

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

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

PETITIONERS-Mises-en-cause

-and-

**UNITED STEELWORKERS, LOCAL 6254,
UNITED STEELWORKERS, LOCAL 6285**

Mises-en-cause

-and-

MORNEAU SHEPELL
Mise-en-cause

**MOTION FOR AN ORDER FOR LEGAL COSTS OF SALARIED/NON-UNION
EMPLOYEES AND RETIREES**
(Sections 11 and 11.52 of the *Companies' Creditors Arrangement Act*)

TO THE HONOURABLE MR. JUSTICE STEPHEN W. HAMILTON, J.S.C., OR TO ONE OF THE HONOURABLE JUDGES SITTING IN THE COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONERS-MISES-EN-CAUSE RESPECTFULLY SUBMIT THE FOLLOWING:

INTRODUCTION

1. Pursuant to the Order of the Honourable Mr. Stephen W. Hamilton dated June 22, 2015, Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson are the court-appointed representatives of all Salaried/Non-union employees and retirees of the Wabush CCAA Parties and other "Salaried Members" as defined in such Order (the "**Representatives**"). Through their Representative Counsel, the Representatives hereby request that this Honourable Court exercise its discretion under section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. c. C-36, as amended (the "**CCAA**") to approve the legal costs of Representative Counsel in the amount as set out in the schedule attached hereto as **Schedule "A"** that have been incurred in excess of the amount ordered in the June 22, 2015 Court order.

BACKGROUND

2. On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company, and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**") obtained protection from their creditors under the CCAA (the "**Wabush CCAA Proceedings**"). FTI Consulting Inc. was appointed as Monitor.

3. On June 22, 2015, by Order of Mr. Justice Hamilton (the “**Representation Order**”), Michael Keeper, Terence Watt, Damien Lebel, and Neil Johnson were appointed as Representatives of all Non-Union Active Employees and Retirees in the Wabush Parties’ CCAA Proceedings, and Koskie Minsky LLP and Scheib Legal were appointed as Representative Counsel to the Salaried Members (as such term is defined in such Order), including with respect to all matters pertaining to any recovery, compromise of rights or entitlements of said individuals under the Wabush pension plans and other benefit plans.

THE ACTIVITIES OF REPRESENTATIVE COUNSEL

4. Since the appointment of Representatives and Representative Counsel, a number of events have occurred in which the Representatives and Representative Counsel have played a significant role, including:
 - (a) the Wabush CCAA Parties have commenced a sales and investment solicitation process (“**SISP**”) to sell the assets of the Wabush CCAA Parties;
 - (b) the Wabush CCAA Parties have commenced a claims process; and
 - (c) the Newfoundland Superintendent of Pensions appointed the actuarial consulting firm of Morneau Shepell to wind up the pension plans.

The SISP, claims process, and pension wind up process are currently ongoing.

5. Representative Counsel have been actively involved in the following:
 - (a) reviewing motions and Monitor's Reports and advising on issues in the SISP;

- (b) representing Salaried Members in the motion to the CCAA court and a motion for leave to appeal to the Québec Court of Appeal regarding opposing the termination of health and life insurance benefits by the company (“OPEBs”);
- (c) preparing employee and retiree claims for losses to their OPEBs and monthly pension benefits, including assertion of deemed trust priorities for Salaried Plan beneficiaries pursuant to the Newfoundland *Pension Benefits Act* 1996 S.N.L. 1996, c. P-4.01 for submission in the claims process;
- (d) attending on-site meetings in Sept-Iles and Wabush to give presentations to Salaried Members regarding the status of the CCAA proceedings, and in particular answering questions about the terminated OPEBs and pension plan wind up process;
- (e) conducting a webinar for those members who were not able to attend the on-site meetings in Sept-Iles and Wabush due to the distance some members would have to travel and posting the recording on Koskie Minsky's website;
- (f) in July 2016, we were asked by the Representatives to, and in fact did, attend additional meetings in Sept-Iles and Wabush organized by Morneau Shepell, the pension plan administrator, to explain the pension plan wind up process; and
- (g) dealing with a large number of employee and retiree issues with respect to their claims, the ongoing employment of the remaining active employees, and reporting to large number of employees and retirees on a number of individual issues relating to the CCAA proceedings.

6. The Salaried Members have incurred costs in excess of the amount initially mentioned in the Representation Order, given that the Representatives and the Representative Counsel have been working for over 15 months on the matter. As a consequence of the on-going CCAA proceedings and its direct impact on the Salaried Members' pensions and benefits, the Representatives require and seek funding of their reasonable legal costs from the Wabush CCAA Parties in connection with the Representation Order as contemplated by Section 11.52(1)(b) and (c) of the CCAA and as further set out in **Schedule "A"** attached hereto in respect of fees and expenses incurred to date.
7. The Representatives have reviewed these motion materials and they have indicated that they approve and support the relief sought herein. Representative Counsel has provided them with regular reporting and an understanding and opportunity to participate in the CCAA proceedings in an organized, efficient and consistent manner for all the Salaried Members. Representative Counsel has also ensured the Representatives understand the various complex motions as well as ensured that their interests are represented where appropriate, and have also responded to a large number of inquiries from individual employees and retirees on various issue that impact them in the CCAA proceedings.
8. The presence of representation and funding for the Salaried Members has ensured, and will continue to ensure, that the Salaried Members' rights and claims in respect of the Pension Plans and Benefit Plans are protected and advanced throughout these proceedings, thereby helping to mitigate the on-going adverse effects in the Wabush CCAA Parties' CCAA proceeding.

9. Further, the effective participation of the Representatives, and Representative Counsel, ensures that any harm that may have already occurred due to the conflict of interest that had been acknowledged by the Wabush CCAA Parties in relation to the administration of the pension plans has been contained and prevented going forward.
10. Moreover, the ongoing presence of Representative Counsel has ensured the uniformity of claims submissions and avoided an inefficient multiplicity of proceedings. Going forward, this will ensure that the Salaried Members' submissions about their relative priority of such claims, vis-à-vis other creditors in these CCAA proceedings, are put before the Court in a uniform, time efficient and cost-effective manner.. Representative Counsel provides a single voice for Salaried Members in the CCAA proceedings (including in any plan of arrangement discussions that may transpire), ensuring that the potentially single largest voting bloc of creditors is effectively represented.
11. Consistent with the Representation Order and, in accordance with sections 11.52(b) and 11.52(c) of the CCAA, the funding for the next tranche of legal costs of the Salaried Members as set out in Schedule "A" should also come from the Wabush CCAA Parties, and future legal costs of the Salaried Members should be paid on a monthly basis 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, and in each case be subject to a priority charge in the amount of \$450,000 in respect of all of the property of the Wabush CCAA Parties, with the same rank as the Directors' Charge ordered in these CCAA Proceedings, and ahead of other pre-filing Encumbrances.

**FOR THESE REASONS THE PETITIONERS-MISES-EN-CAUSE ASK THAT THIS
HONOURABLE COURT:**

- [A] **GRANT** the present Motion;
- [B] **ISSUE** an Order in the form of the Draft Order communicated herewith as Exhibit P-1;
- [C] **DECLARE** that service and notice of this motion was good and sufficient; and
- [D] **THE WHOLE** without costs, save and except in case of contestation.

Montreal and Toronto, October 11, 2016

(Signed)

KOSKIE MINSKY LLP & NICHOLAS SCHEIB
Co-attorneys for the Petitioners-Mises-en-cause
Michael Keeper, Terence Watt, Damien Lebel and Neil
Johnson

SCHEDULE "A"

KOSKIE MINSKY LLP				
	Fees	Disb	Taxes	TOTAL
January 2016	22,995.00	234.98	3,019.90	\$26,249.88
February 2016	23,189.00	3,105.53	3,418.29	\$29,712.82
March 2016	62,292.00	6,483.39	8,936.35	\$77,711.74
April 2016	24,413.00	270.79	3,338.37	\$29,022.16
May 2016	19,708.00	301.63	2,601.25	\$22,610.88
June 2016	14,412.00	2,317.20	2,174.80	\$18,904.00
July 2016	40,792.00	3,114.57	5,707.85	\$49,614.42
August 2016	37,305.00	478.37	4,911.84	\$42,695.21
September 2016	25,657.00	212.78	3,363.07	\$29,232.85
TOTAL				<u>\$325,787.32</u>
NICK SCHEIB				
	Fees	Disb	Taxes	TOTAL
Oct 2015 – July 2016	29,360.00	2,093.13	4,710.00	\$36,163.24
August – Sept 2016	8,040.00	139.70	1,217.43	\$9,397.13
Outstanding balance due on invoice #20150826-01				\$8,203.47
TOTAL				<u>\$53,763.84</u>

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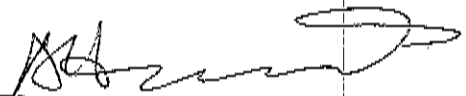
MORNEAU SHEPELL
Mise-en-cause

AFFIDAVIT

I, the undersigned Barbara Walancik, resident for the purposes hereof at 20 Queen Street West, Suite 900, in the City of Toronto, Province of Ontario, M5H 3R3, hereby solemnly declare and make oath and say the following:

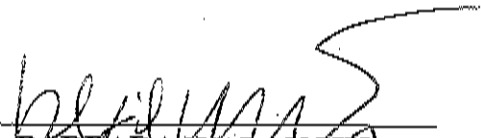
1. I am an associate lawyer with the firm of Koskie Minsky LLP. I work with Andrew J. Hatnay, a partner of the firm. Koskie Minsky LLP, along with Québec counsel, Nicholas Scheib, are the court-appointed Representative Counsel to all the non-union employees and retirees of the Wabush CCAA Parties;
2. All of the facts alleged in the present *Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees* are true.

SWORN BEFORE ME at Toronto,
in the Province of Ontario, on
October 11, 2016.



 A Commissioner Oaths/Justice of the
 Peace

Andrew Hatnay



BARBARA WALANCIK
Barbara Walancik

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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-and-

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Mise-en-cause

ATTESTATION OF AUTHENTICITY

I, the undersigned, **NICHOLAS SCHEIB**, Advocate, practicing my profession at 600, de Maisonneuve Street West, 17th floor, in the City and District of Montréal, Province of Québec, under my oath of office declare as follows:

1. THAT the attached Affidavit of Barbara Walancik is an authentic copy of the facsimile received at my office's fax number. This facsimile was received at Montréal, Québec on October 11, 2016 at 15:47, and the number of the transmitting fax machine is 416-977-3316;
2. THAT the attached Affidavit constitutes a document which forms part of the court file number 500-11-048114-157 and is filed on behalf of my clients, the PETITIONERS-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson.

MONTRÉAL, October 11, 2016

(Signed)

NICHOLAS SCHEIB

NOTICE OF PRESENTATION

in support of Petitioners-Mise-en-causes' Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees

TO: **Me Bernard Boucher** (bernard.boucher@blakes.com)
Me Sébastien Guy (sebastien.guy@blakes.com)
BLAKE, CASSELS & GRAYDON LLP
600 de Maisonneuve West, Suite 2200
Montreal, Quebec H3A 3J2
Counsel for the Petitioners and the Mises-en-cause (i.e., Wabush CCAA Parties)

AND TO: **Me Sylvain Rigaud** (sylvain.rigaud@nortonrosefulbright.com)
NORTON ROSE FULBRIGHT CANADA LLP
1 Place Ville Marie, Suite #2500
Montreal, Quebec H3B 1R1
Counsel for the Monitor

AND TO: SERVICE LIST

TAKE NOTICE that the present *Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees* will be presented for adjudication before The Honourable Mr. Justice 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 Montreal, at the Montreal Courthouse located at 1 Notre-Dame Street East, Montreal, Québec, on **October 21, 2016** at a room and at a time to be determined.

GOVERN YOURSELF ACCORDINGLY.

MONTREAL, October 11, 2016

(Signed)

NICHOLAS SCHEIB & KOSKIE MINSKY LLP
*Co-attorneys for the Petitioners-Mises-en-cause
Michael Keeper, Terence Watt, Damien Lebel and
Neil Johnson*

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-and-

MORNEAU SHEPELL
Mise-en-cause

LIST OF EXHIBITS

(In support of the *Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees*)

Exhibit P-1

Draft Order for Legal Costs of Salaried/Non-Union Employees and Retirees

MONTREAL, October 11, 2016

(Signed)

NICHOLAS SCHEIB & KOSKIE MINSKY LLP

Co-attorneys for the Petitioners-Mises-en-cause

Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson