

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-11-048114-157

SUPERIOR COURT  
(Commercial Division)

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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 LEBEL AND NEIL JOHNSON

OBJECTING PARTIES-Mises-en-cause

-and-

UNITED STEELWORKERS, LOCAL 6254,  
UNITED STEELWORKERS, LOCAL 6285

Mises-en-cause

-and-

MORNEAU SHEPELL  
Mise-en-cause

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**NOTICE OF OBJECTION BY THE REPRESENTATIVES OF THE SALARIED  
EMPLOYEES AND RETIREES TO THE MOTION BY THE MONITOR FOR  
DIRECTIONS WITH RESPECT TO PENSION CLAIMS**  
(Sections 11 and 23(k) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

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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 OBJECTING PARTIES-MISES-EN-CAUSE RESPECTFULLY SUBMIT THE FOLLOWING:

The court-appointed Representatives to the non-union employees and retirees (the "**Salaried Members**") of the Wabush CCAA Parties object to the Motion by the Monitor for Directions with respect to Pension Claims dated September 20, 2016 ("**Motion for Directions**") on the following basis:

***Background***

1. The Wabush CCAA Entities are under CCAA protection but are not restructuring. The Wabush CCAA Entities have shut down operations, terminated the vast majority of the employees, and are selling their assets in a sales process in the CCAA proceedings. The shutdown of Wabush Mines is part of the disengagement by Cliffs Natural Resources based in Cleveland, Ohio, the parent company of Wabush Mines (and Bloom Lake), from its mining operations in Eastern Canada.
2. The Wabush Salaried Plan (and Union plans) are registered in Newfoundland and regulated under the Newfoundland *Pension Benefits Act*, S.N.L. 1996 c. P-4.01 ("**Newfoundland PBA**"). The Plans are significantly underfunded. They are in the process of being wound up by Morneau Shepell who was appointed as the replacement pension plan administrator by the Newfoundland Superintendent of Pensions.
3. As a result of the underfunding of the pension plans, the monthly pension benefits of the Salaried Members have been significantly reduced by 25%. Coupled with the loss of their earned health and life insurance benefits that occurred in June, 2015 at the

commencement of the Wabush CCAA proceedings, the Salaried Members are suffering significant financial losses and hardship in the course of this CCAA proceeding. The Salaried Members are a very significant creditor group.

***The Newfoundland PBA deemed trust priority for pension plan beneficiaries***

4. On August 14, 2015, Representative Counsel wrote to the company and other parties asserting that the deemed trust priority provisions in the Newfoundland PBA (the "**Newfoundland PBA Deemed Trust**") apply as a priority claim in favour of the beneficiaries of the Wabush Salaried Plan. A copy of the letter is communicated herewith as **Exhibit OP-1**.
5. On November 16, 2015, at the hearing of the motion by the Monitor for approval of the Claims Procedure Order, Representative Counsel advised the Monitor and this Honourable Court that it is the Representatives' position that any issue(s) regarding the interpretation of the Newfoundland PBA Deemed Trust should be referred to the Supreme Court of Newfoundland and Labrador for adjudication.
6. Despite the previously communicated position of Representative Counsel, the Motion for Directions seeks to have such questions put before by this Court. Further, Representative Counsel does not agree with the relevance and/or the formulation of certain of the Monitor's proposed questions in its Motion for Directions.
7. In the event of dispute on the issue of transferring the Newfoundland PBA Deemed Trust question to the Newfoundland Court, that issue should be addressed first and scheduled for a hearing. There are a number of reasons that support such a transfer, including, but not limited to, the following:
  - a) The Wabush pension plans are registered in Newfoundland and Labrador and have been funded, administered and regulated in accordance with the Newfoundland PBA since their inception. The pension plans have been,

and continue to be, regulated by the Newfoundland Superintendent of Pensions pursuant to the provisions of Newfoundland PBA;

- b) The Québec Superior Court is a court of civil jurisdiction. The Newfoundland court is a court of common law jurisdiction. The Newfoundland PBA is a statute of a common law jurisdiction. It is respectfully submitted that it is more appropriate for a common law court to interpret a common law statute than a civil court interpreting a common law statute;
- c) It is more efficient and cost-effective for the Newfoundland Court to interpret the Newfoundland PBA Deemed Trust rather than the Québec CCAA court. Respectfully, this court does not have expertise in interpreting the Newfoundland PBA Deemed Trust. The adjudication of the Newfoundland PBA Deemed Trust will therefore require expert evidence to be adduced before the Québec court. That process involves the identification, retainer, and payment of suitable expert(s) by the adversarial parties who will be required to prepare expert affidavits on the interpretation of the Newfoundland PBA. The process to retain such expert(s) is time-consuming and costly and will contribute to delay and costs to the estate. Such delay and costs can be avoided by transferring the issue to a Newfoundland court which, as a court of competent jurisdiction to interpret Newfoundland statute law, does not require expert evidence;
- d) There is precedent authority directly on point supporting the transfer of a pension issue to the jurisdiction where the pension plan is registered and has been administered, where that jurisdiction is different from the jurisdiction of the court where the company filed for CCAA protection. For example, in the CCAA proceeding of *Timminco*, the company obtained CCAA protection in the Ontario Superior Court of Justice (Commercial List). An issue arose in the course of that proceeding on the

interpretation of the deemed trust priority provisions in the Québec *Supplemental Pension Plan Act*, chapter R-15.1 ("SPPA") which regulated one of the Timminco pension plans. The CCAA judge supervising Timminco ordered adjudication of those issues to be transferred to the Québec Superior Court. The monitor of Timminco (FTI Consulting), and counsel to the company (Blakes LLP) did not oppose the transfer in that case. A decision was ultimately released by Mr. Justice Mongeon of the Quebec court interpreting the provisions of the deemed trust provisions of the Quebec SPPA to the Québec Timminco Plan. A copy of the order of Mr. Justice Morawetz dated October 18, 2012 ordering the transfer is communicated herewith as **Exhibit OP-2**;

- e) Section 17 of the CCAA contemplates the possibility of a transfer of an issue that arises in a CCAA proceeding to another Canadian court from the CCAA court to "act in aid of and be auxiliary to each other". Accordingly, the transfer of the Newfoundland PBA Deemed Trust to the Newfoundland court is readily permissible by the CCAA;
  - f) The Monitor states in its Motion for Directions that it believes another issue on which it needs direction is whether the proceeds derived from the sale of assets located in Quebec could be used toward the payment of a valid Newfoundland PBA Deemed Trust claim, should the court hold that the Newfoundland PBA Deemed Trust priority is valid. As a Québec *property* issue, that is not a factor to consider in transferring the Newfoundland PBA Deemed Trust *priority* issue to the Newfoundland court. The issue of whether Quebec property laws apply in the manner suggested by the Monitor may only arise, if at all, if the Newfoundland PBA Deemed Trust priority applies in favour of the pension plan beneficiaries. The Québec property issue may not arise at all.
8. The process to determine disputed claims in the Claims Process was extensively negotiated by Representative Counsel and USW and other affected parties and

culminated in the Claims Procedure Order of November 5, 2015. The Motion for Directions proposes an alternate process – a motion for directions – without prior consultation or agreement of Representative Counsel (nor other parties). Moreover, the Motion for Directions is in substance largely an advocacy piece and not a neutral document. Representative Counsel requests the opportunity to consult with the Monitor as to the appropriateness of a motion for directions instead of the Claims Process and on the questions to be proposed to the applicable court prior to the Motion for Directions proceeding further.

9. Representative Counsel agrees with the Objection of Morneau Shepell, concurrently filed herein.

***Disagreement as to substance of questions and arguments in the Motion for Directions and reservation of rights***

10. The Representatives disagree with the position adopted by the Monitor.
11. At the appropriate time, Representative Counsel will submit substantive arguments to such effect that all of the deficits in the Salaried Pension Plan should benefit from the priority deemed trust provisions set out in the Newfoundland PBA, in priority to all other claims against the Wabush CCAA Parties (other than the CCAA-ordered charges).
12. Representative Counsel reserve their rights to raise all other grounds for opposition of the matters raised in the Motion for Directions.
13. This Notice of Objection is well founded in fact and in law.

**FOR THESE REASONS THE OBJECTING PARTIES-MISES-EN-CAUSE ASKS THAT THIS HONOURABLE COURT:**

- [A] **GRANT** the present Notice of Objection;
- [B] **DISMISS** the Motion for Directions in respect of the Pension Claims;

- [C] **REQUIRE:** (1) the Monitor to consult with the affected parties and make best efforts to reach agreement on a procedure for the adjudication of the Newfoundland PBA Deemed Trust claims, including: the issues to be adjudicated, the appropriate forum for adjudication, the evidence on which the issues are to be adjudicated or the manner in which such evidence is to be tendered, and an appropriate timeline for adjudication; and (2) a motion be brought to amend the Amended Claims Procedure Order;

**IN THE ALTERNATIVE:**

- [D] **RESERVE** the rights of the Representatives to file a further Notice of Objection as to the specific issues raised in the Motion for Directions in respect of the Pension Claims no later than ten (10) business days after final adjudication of their present Notice of Objection;

**IN THE FURTHER ALTERNATIVE**

- [E] **DECLARE** the deemed trusts provided in section 52 of the Newfoundland PBA is applicable to the entirety of the deficits in the Wabush Salaried Plan in favour of the pension plan beneficiaries.

**THE WHOLE WITHOUT COSTS, EXCEPT IN THE CASE OF CONTESTATION.**

Toronto, October 7, 2016



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**KOSKIE MINSKY LLP**

*Court-appointed Representative Counsel for the  
OBJECTING PARTIES-Mises-en-cause Michael Keeper,  
Terence Watt, Damien Lebel and Neil Johnson*



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**NICHOLAS SCHEIB**

*Court-appointed Representative Counsel for the  
OBJECTING PARTIES-Mises-en-cause Michael Keeper,  
Terence Watt, Damien Lebel and Neil Johnson*

**NOTICE OF PRESENTATION**

**IN SUPPORT OF NOTICE OF OBJECTION BY THE REPRESENTATIVES OF THE SALARIED EMPLOYEES AND RETIREES TO THE MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO PENSION CLAIMS**

**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 *Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims* 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 12, 2016** at a room and at a time to be determined (or such other date to be determined by the Court for hearing of the *Motion by the Monitor for Directions with Respect to Pension Claims*).

**GOVERN YOURSELF ACCORDINGLY.**

MONTREAL and TORONTO, October 7, 2016

  
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**KOSKIE MINSKY LLP & NICHOLAS SCHEIB**

*Attorneys for the OBJECTING PARTIES-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson*



CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Commercial Division)

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No.: 500-11-048114-157

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 LEBEL AND NEIL JOHNSON  
OBJECTING PARTIES-Mises-en-cause

-and-

UNITED STEELWORKERS, LOCAL 6254,  
UNITED STEELWORKERS, LOCAL 6285  
Mises-en-cause

-and-

MORNEAU SHEPELL  
Misc-en-cause

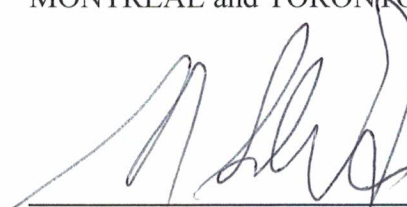
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**LIST OF EXHIBITS**

(In support of the *Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims*)

<b>Exhibit OP-1</b>	Letter dated August 24, 2015 from Representative Counsel to counsel for the Wabush CCAA Parties
<b>Exhibit OP-2</b>	Copy of the Order (Approval of Priority Claim Adjudication Protocol) of Mr Justice Morawetz, J.S.C., of the Ontario Superior Court of Justice (Commercial List) dated October 18, 2015 in The Matter of the Plan of Compromise or Arrangement of Timminco Limited <i>et al</i>

MONTREAL and TORONTO, October 7, 2016



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**KOSKIE MINSKY LLP & NICHOLAS SCHEIB**  
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N° / 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 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 -  
MICHAEL KEEPER, TERENCE WATT, DAMIEN LABEL & NEIL JOHNSON

OBJECTING PARTIES-Mises-en-cause

- and -  
UNITED STEELWORKERS, LOCAL 6254, UNITED STEELWORKERS, LOCAL 6285

Mises-en-cause

- and -  
MORNEAU SHEPELL

Mise-en-cause

*“Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for  
Directions with Respect to Pension Claims”, Notice of Presentation, List of Exhibits and Exhibits OP-1 and OP-2*

M<sup>es</sup> NICHOLAS SCHEIB, ANDREW HATNAY AND BARBARA WALANCIK

Co-Attorneys for the Objecting Parties-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson

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