

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

Commercial Division

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

N^o: 500-11-048114-157

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

WABUSH RESOURCES INC.

-and-

WABUSH IRON CO. LIMITED

Petitioners

-and-

TOROMONT INDUSTRIES LTD.

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**MOTION FOR THE ISSUANCE OF AN APPROVAL AND VESTING ORDER
WITH RESPECT TO THE SALE OF CERTAIN ASSETS**

(Sections 11 and 36 *ff.* of the *Companies' Creditors Arrangement Act*)

**TO THE HONOURABLE STEPHEN W. HAMILTON, J.S.C. OR ONE OF THE HONOURABLE
JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR
THE DISTRICT OF MONTRÉAL, THE PETITIONER SUBMITS:**

1. BACKGROUND

1. On January 27, 2015, Mr. Justice Martin Castonguay, J.S.C., issued an Initial Order (the "**Bloom Lake Initial Order**") commencing these proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Québec Iron Mining ULC, The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited (together, the "**Bloom Lake CCAA Parties**"), as appears from the Bloom Lake Initial Order, which forms part of the Court record and is communicated herewith for convenience as **Exhibit R-1**.
2. Pursuant to the Bloom Lake Initial Order, *inter alia*, FTI Consulting Canada Inc. was appointed as monitor of the Bloom Lake CCAA Parties (the "**Monitor**").

3. On April 17, 2015, Mr. Justice Hamilton issued, *inter alia*, an Order (the “**SISP Order**”), *inter alia*, approving sale and investor solicitation procedures (the “**Initial SISP**”) in respect of the Bloom Lake CCAA Parties, as appears from a copy of the SISP Order, which forms part of the Court record and is communicated herewith as **Exhibit R-2**.
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 Petitioners Wabush Iron Co. Limited (“**Wabush Iron**”) and Wabush Resources Inc. (“**Wabush Resources**”) 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**”; collectively with the Bloom Lake CCAA Parties, the “**CCAA Parties**”), as appears from the Initial Order dated May 20, 2015, which forms part of the Court record and is communicated herewith for convenience as **Exhibit R-3**.
5. Pursuant to the Wabush Initial Order, *inter alia*:
 - a) the Monitor was appointed as the monitor of the Wabush CCAA Parties (para. 39 of the Wabush Initial Order) and a stay of proceedings was granted to the Wabush CCAA Parties until June 19, 2015 (the “**Wabush Stay Period**”) (para. 7 *ff.* of the Wabush Initial Order); and
 - b) the Wabush CCAA Parties were authorized, subject to approval of the Monitor, sections 11.3 and 36 of the CCAA and further order of the Court, to pursue all avenues to, *inter alia*, market, convey, transfer, assign or in any other manner dispose of the Business or Property (as such terms are defined in the Wabush Initial Order), in whole or part (para. 33(b) of the Wabush Initial Order).
6. On June 9, 2015, Mr. Justice Hamilton, issued an order (the “**Wabush Comeback Order**”), *inter alia*:
 - a) extending the Wabush Stay Period to July 31, 2015; and
 - b) approving the Initial SISP as it relates to the Wabush CCAA Parties, authorizing the amendment and restatement of the Initial SISP *nunc pro tunc*, and approving an amended and restated sale and investor solicitation process in respect of all CCAA Parties (the “**SISP**”), a copy of which is communicated herewith as **Exhibit R-4**;

the whole as appears from the Wabush Comeback Order, which forms part of the Court record and is communicated herewith for convenience as **Exhibit R-5**.

7. The Wabush Stay Period has been extended by order of the Court from time to time, most recently on April 20, 2016, and currently expires on September 30, 2016, as appears from the Court record.

2. **ORDERS SOUGHT**

8. Wabush Iron and Wabush Resources (collectively, the “**Petitioners**”) hereby seek the issuance of an Approval and Vesting Order substantially in the form of the draft Approval

and Vesting Order communicated herewith as **Exhibit R-6** (the “**Draft Approval and Vesting Order**”), which provides, *inter alia*, for:

- b) the Court’s approval of the proposed transaction (the “**Transaction**”) contemplated by the Asset Purchase Agreement dated as of June 30, 2016 (the “**Asset Purchase Agreement**”) by and between the Petitioners, as vendors, and the Mise-en-cause Toromont Industries Ltd., as purchaser (the “**Purchaser**”); and
- c) the vesting of all of Petitioners’ right, title and interest in and to the Purchased Assets (as defined below) in the Purchaser, free and clear of all encumbrances (the “**Encumbrances**”), upon the issuance to Petitioners and the Purchaser of a certificate by the Monitor in the form of Schedule “A” to the Draft Approval and Vesting Order (the “**Monitor’s Certificate**”), the whole as provided in the Asset Purchase Agreement and as further detailed herein below.

9. A copy of the Asset Purchase Agreement is communicated herewith as **Exhibit R-7**.

10. Unless otherwise defined herein, all initially capitalized terms used in this Motion shall have the meaning given to them in the Asset Purchase Agreement.

3. OVERVIEW OF THE PROPOSED TRANSACTION

11. The Petitioners used to operate, among others, the business of the iron ore mine and processing facility located north of the Town of Wabush in Newfoundland and Labrador, known as the Wabush Mine or the Scully Mine (the “**Scully Mine**”).

12. Mining operations at the Scully Mine were suspended in March 2014 and it was permanently idled in November 2014.

13. The Transaction contemplates the sale of all applicable Petitioners’ right, title and interest in three (3) Caterpillar XQ2000 generator sets located at the Scully Mine (the “**Purchased Assets**” which are more fully described at Schedule “B” to the Asset Purchase Agreement).

4. THE SISP

14. As outlined above, Mr. Justice Hamilton approved the SISP in respect of the Wabush CCAA Parties in June 2015.

15. The SISP contemplated two phases:

- a) the first phase of the SISP contemplated delivery of non-binding letters of intent (“**LOIs**”) by 5:00 p.m. (Montréal time) May 19, 2015 (the “**LOI Deadline**”); and
- b) a subset of bidders with LOIs that met certain criteria would be invited to submit binding offers in the second phase by July 16, 2015 at 5:00 p.m. (Montréal time) (the “**Bid Deadline**”), written notice of which was provided to all such qualified bidders and posted on the Monitor’s Website.

16. No going concern offers were received for the Scully Mine by such Bid Deadline.

17. The CCAA Parties, in consultation with the Monitor therefore endeavoured to negotiate definitive agreements for the liquidation of the equipment located at the Scully Mine.
18. On December 23, 2015, the Monitor was introduced to a party interested in the acquisition of the Scully mine. That party executed a non-disclosure agreement and has undertaken a due diligence process.
19. On January 20, 2016, a letter of intent was submitted by the interested party and was considered by the Wabush CCAA Parties in consultation with the Monitor.
20. On May 19, 2016, the Monitor informed the Wabush CCAA Parties and the service list that the interested party decided to not proceed with the transaction for the acquisition of the Scully Mine and that the Wabush CCAA Parties and the Monitor are once again pursuing the liquidation of the equipment located at the Scully Mine.
21. In consultation with the Monitor, the Petitioners have negotiated the Asset Purchase Agreement with respect to the Purchased Assets with the Purchaser, subject to Court approval.
22. The Monitor was consulted on and approved the steps taken to solicit proposals for the Purchased Assets, and the Petitioners understand that the Monitor is satisfied that the efforts to sell the Purchased Assets are reasonable in the circumstances.

5. THE ASSET PURCHASE AGREEMENT

5.1 The Purchaser

23. Toromont Industries Ltd. is a supplier of new and used construction equipment, new power generation equipment, marine and industrial power units, refrigeration and process systems. It exploits, among others, a business of resale of used power generators and other electrical equipment.

5.2 Purchase Price

24. The Asset Purchase Agreement contemplates the sale of the Purchased Assets for a purchase price of CDN \$425,000.00 (the "**Purchase Price**").
25. The Purchased Assets are being sold on an "as is, where is" basis without legal warranty and at the risk of the Purchaser.

5.3 Conditions to Closing

26. The Closing of the Transaction contemplated by the Asset Purchase Agreement is conditional on certain conditions, set forth in Section 8.1 and Section 8.2 thereof, including Court approval of the Asset Purchase Agreement, as contemplated by the Draft Approval and Vesting Order sought herein.
27. In addition to Court approval of the Draft Approval and Vesting Order, the Petitioners and the Purchaser require, among other things, the following customary closing conditions to be satisfied on or before the Closing of the Transaction:

- a) both the Purchaser and the Petitioners will have executed and delivered (or caused to be excluded and delivered) all closing documents required in connection with the Transaction;
- b) during the interim period from execution of the Asset Purchase Agreement until Closing, no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable Order or Law which has the effect of (i) making the proposed Transaction illegal, or (ii) otherwise prohibiting, preventing or restraining the consummation of the proposed Transaction;
- c) both the Petitioners and the Purchaser shall have performed, in all material respects, all covenants, obligations and agreements required of them, respectively; and
- d) each of the representations and warranties made by the Petitioners and Purchaser contained in the Asset Purchase Agreement shall be true and correct in all material respects (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.

5.4 Closing Mechanics

- 28. Pursuant to the Asset Purchase Agreement, the Purchaser paid a Deposit in the amount of \$21,250.00 to the Monitor in trust on behalf of the Petitioners on July 7, 2016 (the "**Deposit**").
- 29. Pursuant to the Asset Purchase Agreement, the Deposit will be applied against the Purchase Price upon Closing.
- 30. The Asset Purchase Agreement also provides that payment of the balance of the Purchase Price and applicable Transfer Taxes which are payable upon Closing, shall be paid in full by the Purchaser to the Monitor at Closing.
- 31. Upon receipt of payment in full of the Purchase Price and applicable Transfer Taxes on Closing, as well as receipt by the Monitor of the Conditions Certificates contemplated in Section 8.3 of the Asset Purchase Agreement, the Monitor shall issue its Monitor's Certificate forthwith concurrently to the Petitioners and the Purchaser, at which time Closing shall be deemed to have occurred. The Monitor shall then file, as soon as practicable, a copy of the Monitor's Certificate with the Court (and shall thereafter provide a true copy of such filed certificate to the Petitioners and the Purchaser).
- 32. The Draft Approval and Vesting Order, among other things:
 - a) directs the Monitor to remit the Transfer Taxes received by it (if any are payable) from the Purchaser to the Petitioners, who will then remit those Transfer Taxes in accordance with Applicable Law;
 - b) directs the Monitor, in connection with amounts payable to Wabush Iron that are withheld for the satisfaction of Section 116 of the ITA in accordance with Section 3.4 of the Asset Purchase Agreement, when required by Section 3.4 of the Asset Purchase Agreement, to remit any amounts held in trust pursuant to Section

3.4(7) of the Asset Purchase Agreement to the Receiver General for Canada for the account of Wabush Iron; and

- c) directs the Monitor to receive and hold the Proceeds (as defined therein) on behalf of the Petitioners pending further order of the Court, subject to deduction for the remittance of Transfer Taxes and the remittance of any amounts to the Receiver General for Canada in accordance with section 3.4 therein.
33. The Transaction is targeted to close by the date which is 3 Business Days following issuance by the Court of the Approval and Vesting Order, and must close no later than 5 Business Days after the date of the issuance by the Court of the Approval and Vesting Order, in each case subject to such extensions as may be mutually agreed upon by the Petitioners and the Purchaser.
34. Within 10 Business Days following the Closing, the Purchaser will remove and transport the Purchased Assets from Scully Mine site, pursuant to and in accordance with Section 5.2 of the Asset Purchase Agreement.

5.5 Overall Assessment

35. The Petitioners are satisfied that the Purchase Price for the sale of the Purchased Assets is reasonable and fair in the circumstances.
36. The Petitioners are satisfied that the conditions to closing and the closing mechanics should lead to the closing of the proposed Transaction on an expedited basis should this Court approve this Motion and that the closing risks are minimal.
37. Furthermore, the following notable aspects of the Asset Purchase Agreement support the approval by the Court of the Asset Purchase Agreement and of the Transaction contemplated therein:
- a) if the Transaction is terminated by the Petitioners due to a material breach by the Purchaser of any representation, warranty or covenant contained in the Asset Purchase Agreement, which breach has not been waived by the Petitioners, and (i) such breach is not curable and has rendered the satisfaction of any condition in section 8.1 of the Asset Purchase Agreement impossible to satisfy by the Outside Date; or (ii) if such breach is curable, the Petitioners have provided written notice of such breach to the Purchaser and such breach has not been cured within 10 days of receipt of such notice, then the Monitor will retain the Deposit for the benefit of the Petitioners;
 - b) if the Transaction is terminated for any other reason, the Deposit is returned to the Purchaser; however, the return of the Deposit will be the Purchaser's sole and exclusive remedy for any termination of the Asset Purchase Agreement;
 - c) the Purchased Assets are being sold on an "as is, where is" basis, without legal warranty;
 - d) within 10 Business Days following the Closing, the Purchaser will remove and transport the Purchased Assets from Scully Mine site;

- e) the Purchaser is entirely responsible for removing the Purchased Assets from the Scully Mine site, transporting the Purchased Assets offsite and supplying all equipment, personnel and materials required to carry out the foregoing, all at the Purchaser's own risk and peril and at the Purchaser's sole cost and expense, without liability of any kind or nature in respect thereof to the Petitioners; and
 - f) the Purchaser has also indemnified the Petitioners, the Petitioners' Affiliates and their respective Representatives for any Damages in connection with or related in any manner whatsoever to (i) the payment of any Taxes payable by the Purchaser (including Transfer Taxes) which may be assessed against the Petitioners, (ii) the Purchaser's access to the Scully Mine site and (iii) the Purchaser's removal and transportation or any use or resale of the Purchased Assets by the Purchaser.
38. The Petitioners are satisfied that the criteria set out in section 36 of the CCAA have been met and understand that the Monitor supports the Transaction and will file a report in respect thereof.

6. PROCEDURAL MATTERS

39. The CCAA Parties submit that the notices given of the presentation of the present Motion are proper and sufficient.
40. Pursuant to paragraph 56 of the Wabush Initial Order, all motions in these CCAA Proceedings are to be brought on not less than ten (10) calendar days' notice to all Persons on the service list. Each motion must specify a date (the "**Initial Return Date**") and time for the hearing.
41. The service of the present Motion serves as notice pursuant to paragraphs 47 and 56 of the Wabush Initial Order.
42. Paragraph 57 of the Wabush Initial Order requires that any Person wishing to object to the relief sought on a motion in the CCAA Proceedings must serve responding motion materials or a notice stating the objection to the motion and grounds for such objection (a "**Notice of Objection**") in writing to the moving party and the Monitor, with a copy to all persons on the service list, no later than 5 p.m. Montréal time on the date that is four (4) calendar days prior to the Initial Return Date (the "**Objection Deadline**"). Accordingly, any parties wishing to object to the relief sought on this Motion must serve responding motion materials or a Notice of Objection by no later than 5 p.m. Montréal time on July 15, 2016.
43. Paragraph 58 of the Wabush Initial Order further provides that if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of the motion may determine whether a hearing is necessary, whether such hearing will be in person, by telephone or in writing and the parties from whom submissions are required (collectively, the "**Hearing Details**").
44. Paragraph 59 of the Wabush Initial Order provides that the Monitor shall communicate with the Judge and the service list with respect to the Hearing Details.

7. CONCLUSIONS

45. In light of the foregoing, the Petitioners hereby respectfully seek the issuance of an Order substantially in the form of the Draft Approval and Vesting Order (Exhibit R-6), which provides for the Court's approval of the Asset Purchase Agreement and of the Transaction contemplated therein.
46. The Petitioners further submit that the notices given of the presentation of the present Motion are proper and sufficient because:
- a) other than Cliffs Mining Company, the charges created by the Orders issued in these Proceedings, and the liens and deemed trusts claims asserted in the claim process established by the CCAA Parties in these CCAA Proceedings against the assets of the Petitioners, among others, in respect of the estimated windup deficits, including outstanding amortization payments, under the Contribution Pension Plan for Salaried Employees and Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway and Wabush Lake Railway Company, the Petitioners are not aware of any third parties having asserted a lien or charge over the Purchased Assets; and
 - b) searches conducted at the Personal Property Registry of Newfoundland and Labrador against the Petitioners did not disclose any third parties having registered a security interest over the Petitioners' interest in the Purchased Assets, as appears from the search results, communicated herewith as **Exhibit R-8**.
47. 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 an order substantially in the form of the Draft Approval and Vesting Order (Exhibit R-6) communicated in support hereof;

WITHOUT COSTS, save and except in case of contestation.

Montréal, July 8, 2016


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Petitioners

AFFIDAVIT

I, the undersigned, **CLIFFORD T. SMITH**, the President of Wabush Resources Inc. and the President and a Director of Wabush Iron Co. Limited, having a place of business at 1 Place Ville Marie, Bureau 3000, Montréal, Québec, H3B 4N8, solemnly affirm that all the facts alleged in the present *Motion for the Issuance of an Approval and Vesting Order with respect to the Sale of Certain Assets* are true.

AND I HAVE SIGNED:



CLIFFORD T. SMITH

SOLEMNLY DECLARED before me at
Cleveland, Ohio, on this 8th day of
July, 2016



Notary Public



ADAM D. MUNSON, Atty.
NOTARY PUBLIC
STATE OF OHIO
My Commission Has No
Expiration Date
Section 147.03 R.C.

NOTICE OF PRESENTATION

TO: Service List

AND: Toromont Industries Ltd.
c/o David C. Wetherald
VP, HR & Legal, Corporate Secretary
3131 Hwy 7 West
Concord, Ontario
L4K 1B7

DWetherald@toromont.com

Toromont CAT
c/o Pat McCart
Global Purchasing and Sales Consultant
2344 Bowman Street
Innisfil, Ontario
L9S 3V7

PMccart@toromont.com

TAKE NOTICE that the present *Motion for the Issuance of an Approval and Vesting Order with respect to the Sale of Certain Assets* will be presented for adjudication 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 **July 20, 2016**, at 14:15 in room 16.12.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, July 8, 2016


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Petitioners

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF **MONTREAL**

SUPERIOR COURT

Commercial Division

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

N^o: 500-11-048114-157

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

WABUSH RESOURCES INC.

-and-

WABUSH IRON CO. LIMITED

Petitioners

-and-

TOROMONT INDUSTRIES LTD.

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

LIST OF EXHIBITS

(In support of the *Motion for the Issuance of an Approval Order*
with respect to the Sale of Certain Assets)

R-1 Bloom Lake Initial Order, dated January 27, 2015

R-2 SISP Order, dated April 17, 2015

R-3 Wabush Initial Order, dated May 20, 2015

R-4 SISP

R-5 Wabush Comeback Order, dated June 9, 2015

R-6 Draft Approval and Vesting Order

R-7 Asset Purchase Agreement

R-8 PPRS search results reports

The exhibits are available at the following link:

<https://blakes.sharefile.com/d-scd90df6f37b41499>

Montréal, July 8, 2016



BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Petitioners

N°: 500-11-048114-157

**SUPERIOR COURT
DISTRICT OF MONTREAL**
(Commercial Division)

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

WABUSH RESOURCES INC. & AL

Petitioners

and-

TOROMONT INDUSTRIES LTD..

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**MOTION FOR THE ISSUANCE OF AN APPROVAL
AND VESTING ORDER WITH RESPECT TO THE
SALE OF CERTAIN ASSETS, AFFIDAVIT, NOTICE
OF PRESENTATION ET EXHIBITS R-1 TO R-8**
(Sections 11 and 36 ff. CCAA)

ORIGINAL

M^{re} Bernard Boucher

BB-8098

BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors

1 Place Ville Marie, Suite 3000
Montréal, Québec H3B 4N8
Telephone: 514-982-4006
Fax: 514-982-4099

Email: bernard.boucher@blakes.com

Our File: 11573-371

