

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION AND  
12334992 CANADA INC.**

**COMPENDIUM OF THE FIRST SECURED LENDERS  
(Returnable June 10, 2026)**

June 10, 2026

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**ONTARIO  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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**TAB 1**

Court File No. CL-26-00000219-0000

**ONTARIO  
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NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION,  
AND 12334992 CANADA INC.**

Applicants

**JOINT CROSS-MOTION RECORD  
(DIP Financing)  
(Returnable June 5, 2026)**

June 4, 2026

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

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NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION,  
AND 12334992 CANADA INC.**

Applicants

**NOTICE OF JOINT CROSS-MOTION  
(DIP Financing)**

Oaktree Capital Management, L.P. and Hartree Partners, LP (together, the "**First Secured Lenders**") and the ad hoc committee of the 8.750% senior secured notes due 2026 (the "**Ad Hoc Committee**") and together with the First Secured Lenders, the "**Senior Secured Lenders**") will make a motion to the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on June 5, 2026 at 11:00 a.m., or as soon after that time as the Motion can be heard.

**PROPOSED METHOD OF HEARING:** The cross-motion is to be heard heard in person at 330 University Avenue, Toronto, Ontario in Courtroom 8-1 and by video conference via Zoom at a link to be provided by the Court.

**THE CROSS-MOTION IS FOR:**

1. An Order:
  - (a) adjourning the DIP Motion (as defined below) and setting a litigation schedule for the DIP Motion as set out in Schedule "A" hereto;
  - (b) if the Debtors require interim financing before the disposition of the DIP Motion, authorizing the Debtors (as defined below) to enter into the Senior Secured

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Lenders' DIP (as defined below) and borrow the amounts actually required and provided for in the cash flow forecast filed by the Monitor, until the disposition of the DIP Motion and granting a charge in favour of the Senior Secured Lenders, securing the Debtors' obligations under the Senior Secured Lenders' DIP; and

- (c) if there is a dispute with respect to the appropriate interim lender pending disposition of the DIP Motion, scheduling a case conference or hearing the week of June 8, 2026 at the Court's earliest convenience to determine this issue.

#### **THE GROUNDS FOR THE CROSS-MOTION ARE:**

##### ***Background***

2. On May 15, 2026, the Applicants obtained an Order (the "**Initial Order**"), under the *Companies' Creditors Arrangement Act* (the "**CCA**"), among other things: (i) extending benefits of the protections and authorizations of the Initial Order to Baffinland Iron Mines LP (together with the Applicants, the "**Debtors**"); and (ii) appointing FTI Consulting Canada Inc. as Court-appointed Monitor (in such capacity, the "**Monitor**").

3. The Debtors' secured creditors are: (i) the First Secured Lenders with a claim in the asserted amount of \$183 million under a Credit Agreement dated May 26, 2017; (ii) the holders (the "**Senior Secured Noteholders**") of the 8.750% senior secured notes due 2026 (the "**Senior Secured Notes**") in the approximate principal amount of \$575 million; and (iii) Export Development Canada ("**EDC**") in the approximate principal amount of \$75 million. The First Secured Lenders and the Senior Secured Noteholders cumulatively hold over \$750 million of the Debtors' secured debt, representing in excess of 90% of the total secured debt; the remaining approximately 10% is held by EDC.

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4. The First Secured Lenders hold first-ranking security. The Senior Secured Noteholders and EDC hold *pari passu* second-ranking security.
5. The Ad Hoc Committee represents over 70% of the Senior Secured Notes.
6. The Senior Secured Lenders have worked together to provide the Debtors with a binding and actionable signed joint commitment to provide DIP financing in connection with the DIP Solicitation Process (as defined below), including an interim bridge financing of \$110 million (the “**Bridge Facility**”).
7. At the Debtors’ application for the Initial Order, the Monitor advised the Court that the Monitor intended to immediately commence a process to solicit DIP financing proposals for the Debtors (the “**DIP Solicitation Process**”), with such DIP proposals due on May 20, 2026 (the “**DIP Solicitation Deadline**”).
8. On May 19, 2026, the DIP Solicitation Deadline was extended to May 25, 2026.
9. On May 25, 2025, the Senior Secured Lenders jointly submitted a binding and actionable signed joint commitment to provide \$300 million of DIP financing – the exact amount the Debtors requested – including the Bridge Facility.
10. On May 30, 2026, the Senior Secured Lenders submitted a revised DIP commitment to address comments received from the Debtors and the Monitor over the prior five days and accommodate the Debtors’ requests in the DIP Solicitation Process (the “**Senior Secured Lenders’ DIP**”). This DIP commitment includes no commitment or funding fee payable in respect of the Bridge Facility if it is refinanced at anytime within 60 days of the first advance.
11. On June 4, 2026 at 12:13 a.m., the Debtors served motion materials for a motion returnable on June 5, 2026 (the “**DIP Motion**”). The motion materials disclosed that the Debtors

**TAB 2**



**Companies' Creditors Arrangement Act (R.S.C. (Revised Statutes of Canada), 1985, c. C-36)**

Act current to 2026-05-26 and on 2024-12-12.

**Interim financing**

**11.2 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

**Priority — secured creditors**

**(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

**Priority — other orders**

**(3)** The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

**Factors to be considered**

**(4)** In deciding whether to make an order, the court is to consider, among other things,

- (a)** the period during which the company is expected to be subject to proceedings under this Act;

**(b)** how the company's business and financial affairs are to be managed during the proceedings;

**(c)** whether the company's management has the confidence of its major creditors;

**(d)** whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

**(e)** the nature and value of the company's property;

**(f)** whether any creditor would be materially prejudiced as a result of the security or charge; and

**(g)** the monitor's report referred to in paragraph 23(1)(b), if any.

**Additional factor — initial application**

**(5)** When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

1997, c. 12, s. 124; 2005, c. 47, s. 128; 2007, c. 36, s. 65; 2019, c. 29, s. 138.

**Date modified:**

2026-06-05

**TAB 3**

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Quest University Canada (Re)*,  
2020 BCSC 318

Date: 20200306  
Docket: S200586  
Registry: Vancouver

In the Matter of the **COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.  
1985, c. C-36, as amended**

- and -

In the Matter of the **SEA TO SKY UNIVERSITY ACT, S.B.C. 2002, C. 54**

- and -

In the Matter of **A PLAN OF COMPROMISE AND ARRANGEMENT OF QUEST  
UNIVERSITY CANADA**

Petitioner

Before: The Honourable Madam Justice Fitzpatrick

## Reasons for Judgment

Counsel for the Petitioner:	J.R. Sandrelli V.L. Cross
Counsel for the Monitor PricewaterhouseCoopers Inc.:	V.L. Tickle
Counsel for Capilano University:	K. Mak
Counsel for SESA-BC Holding Ltd. and RCM Capital Management Ltd.:	K.M. Jackson
Counsel for Vanchorverve Foundation:	W.W. MacLeod
Counsel for Bank of Montreal:	S.A. Poisson
Counsel for The Toronto Dominion Bank:	B. Dumanowski, A/S

[94] The Monitor does not support the Burley proposal, essentially echoing my own concerns as to the independence of Burley/Mr. Trouton from Mr. Bromley and Quest. In addition, on the matter of the replacement of the four governors, the Monitor disagrees with that relief, stating that the Board is very focussed on the task ahead, including improving enrollment and addressing the cash deficits.

[95] The Monitor states in its First Report that removal of the governors may significantly impair the ability of Quest to put forward any restructuring proposal:

6.7.3 ... In this case, Burley is stipulating who the new board members would be and is effectively seeking control of the board. Further, Burley is seeking the replacement of specific board members: Mary Jo Larson, Claude Rinfret, Stuart Louie and Chief Dale Harry. The Monitor notes that the first three of these board members have significant legal and financial training which is in contrast to the composition of the remaining board members. Removal of these board members seems counter-productive to the interests of Quest and appears would be potentially crippling at a time when Quest requires this expertise to navigate these CCAA proceedings. The Monitor also notes that these are the same four governors that Mr. Bromley had requested be replaced in November 2019.

[96] The Monitor recommends that the Court approve the RCM financing as representing the best option in terms of pursuing a successful restructuring. It is the Monitor's view that the interim financing facility should be provided by an independent lender with no association to VF/Mr. Bromley or Quest.

### **The Court as Gatekeeper**

[97] In *Great Basin Gold Ltd.*, I also addressed the situation where there were competing applications to approve interim financing. In that case, I commented on the need to consider financing proposals carefully to ensure that they are reasonable and appropriate. The court must closely scrutinize any such proposal that it put forward as a means to advance the interests of one particular stakeholder, or which may have that effect. I stated:

[179] I recognize that in some restructuring proceedings, certain stakeholders may use existing leverage, to the extent that they have it, to take advantage of the chaos and uncertainty that are inherent in these situations. Strategies might be employed to secure for themselves advantages that they would not otherwise obtain. These advantages inevitably come at the expense of other stakeholders in the proceedings.

These advantages are also almost always court approved so that they cannot be later revisited. In those circumstances, the court must be constantly vigilant against such strategies. ...

...

[181] Even so, the Court remains the gatekeeper in terms of ensuring that the terms of any such agreements are reasonable and appropriate in the circumstances. Input from stakeholders participating in the process will be critical although the entire stakeholder group must be considered. Critical to the court's analysis will be evidence of the debtor company's actions in the face of these proposals. What is the underlying reason for these transactions? What due diligence was done in the face of these proposals? What negotiations took place? What are the true consequences of not obtaining this relief? What alternatives, if any, are available?

[98] To similar effect are the comments of Newbould J. in *Crystallex*:

[63] The noteholders also contend that Tenor has been given control over Crystallex and the restructuring process by reason of the changes in the corporate governance required by the Tenor DIP facility. There is no doubt that Tenor has been given substantial governance rights, including the right to name two of the five directors and the right to agree on who the independent director shall be. An issue is whether the governance provisions are too intrusive for a DIP loan, which according to the case law relied on by the noteholders should not be excessive or inappropriate. ...

[99] I readily conclude that VF's motivation in making its application to approve Burley's financing proposal is a not-so-transparent attempt to seize control of Quest's Board. While not supported by any direct evidence, there is sufficient evidence here to support a reasonable inference that those efforts are at least intended to secure control of the future sale and development of Quest's development lands for VF's own benefit or the benefit of other organizations with which VF or Mr. Bromley are involved.

[100] In my view, such a strategy is unreasonable and inappropriate in the circumstances and it may significantly disadvantage others' interests in this proceeding. Quest clearly has other options, namely with RCM, which will better serve its interests and the interests of its stakeholders as a whole. I agree with the Monitor that the RCM financing represents the most appropriate option here.

[101] I approve the RCM financing proposal, on the terms sought.

**TAB 4**

# Court of Queen's Bench of Alberta

**Citation: Temple City Housing Inc. (Companies' Creditors Arrangement Act), 2007 ABQB 786**

**Date:** 20071221  
**Docket:** 0701 12190  
**Registry:** Calgary

In the Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, As Amended  
And In The Matter of Temple City Housing Inc.

**Temple City Housing Inc.**

Applicant

**Corrected judgment:** A corrigendum was issued on January 8, 2008; the corrections have been made to the text and the corrigendum is appended to this judgment.

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**Reasons for Judgment  
of the  
Honourable Madam Justice B.E. Romaine**

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## **Introduction**

[1] Temple City Housing Inc. ("Temple") filed a petition seeking protection from its creditors under the *Companies' Creditors Arrangement Act*, including an interim stay, the appointment of a Monitor and a Debtor-In-Possession credit facility ("DIPCharge"). Temple's major creditor is the Canada Revenue Agency ("CRA"), which opposed the priority of the DIP Charge sought in the order. I granted an Initial Order which included a super priority DIP Charge in the amount of \$300,000 despite the objection of the CRA, and these are my reasons.

## **Facts**

language of the relevant section implied that “Parliament has contemplated a fluidity with respect to the assets of the debtor to which the trust attacks”: para. 32. He commented that, since the deemed trust is a statutory creation, it is not subject to the “restraints imposed by ordinary principles of trust law”; para. 34. Thus, while conceptually it could be considered that the source deductions themselves are the corpus of the trust, according to the language of the section, “property of the person . . . equal in value to the amount so deemed to be held in trust is deemed” to be held in trust. As the Court noted, this saves the CRA from having to trace specific assets to the funds originally deducted for source deductions. Iacobucci, J. referenced the comments of Gonthier, J. in *Royal Bank v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411 (SCC) at para. 31 that the “trust is not in truth a real one, as the subject matter of the trust cannot be identified from the date of creation of the trust. . .”

[12] Following logically from this characterization of the statutory trust, Iacobucci, J. found on the issue of whether the deemed trust continued to operate on property that had been sold to third parties that “the deemed trust is in principle similar to a floating charge over all the assets of the tax debtor in the amount of the default”: para. 40. He thus found that while the trust has priority, it does not attach specifically to particular assets, and that the debtor is thus free to alienate property in the ordinary course of business. The Court noted that, from the language of the section, “it is anticipated that the character of the tax debtor’s property will change over time.” This interpretation allows the tax debtor to carry on business without the uncertainty that would be created if the CRA’s claim was allowed to follow an asset that had been sold to innocent third parties, and prevents a situation where the deemed trust, in effect, freezes the debtor’s assets and prevents it from carrying on business, “clearly not a result intended by Parliament”: para. 45.

[13] This interpretation of the deemed trust provision is inconsistent with the CRA’s argument that it creates a property interest that cannot be superceded by a DIP Charge, despite the concluding words of s. 227(4.1). As pointed out by counsel for the proposed DIP lender, the characterization of the deemed trust claim as a security interest, albeit one that takes priority over other secured interests, is supported by the definition of “security interest” in the *Income Tax Act* itself, which includes reference to a “deemed or actual trust.”

[14] It is clear that a court in a CCAA proceeding is able to grant a super-priority over existing security interests for DIP financing. If it were otherwise, and if super-priority could not be granted without the consent of secured creditors, “the protection of the CCAA effectively would be denied a debtor company in many cases”: *Hunters Trailers & Marine Ltd.*, at para. 32. It is also undoubtedly true that, since DIP financing may erode the security of creditors, the Court should be cautious in exercising its inherent jurisdiction to order priority for a DIP Charge over the objection of a secured creditor. I am satisfied that, in this case, Temple requires the protection of the CCAA if there is to be any possibility that it will be able to continue in business for the benefit of its creditors, employees and other stakeholders. I am also satisfied that granting a limited DIP Charge to take the company through the first crucial weeks of the process is necessary and in the best interests of the company’s stakeholders generally. For this reason, I allowed a DIP Charge in the amount of \$300,000.

# TAB 5

**CITATION:** Tacora Resources Inc. (Re), 2023 ONSC 6126  
**COURT FILE NO.:** CV-23-00707394-00CL  
**DATE:** 20231030

**SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)**

**RE:** **IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF TACORA RESOURCES INC.**

**BEFORE:** KIMMEL J.

**COUNSEL:** *Ashley Taylor, Eliot Kolers, Lee Nicholson, Natasha Rambaran and RJ Reid*, for the Applicant, Tacora Resources Inc.

*Alan Merskey, Jane Dietrich and Ryan Jacobs*, for the Monitor (FTI Consulting Canada Inc.)

*Robert Chadwick, Caroline Descours, Peter Kolla and Carlie Fox*, for Cargill, Incorporated and Cargill International Trading Pte Ltd.

*Richard Swan, Sean Zweig and Alexander Payne*, for the Ad Hoc Group of Senior Noteholders and the Indenture Trustee

*Natasha MacParland*, for Crossingbridge Advisors, LLC

*Joe Thorne*, for 1128349 B.C. Ltd.

**HEARD:** October 24, 2023

**ENDORSEMENT – COME-BACK HEARING**  
**(ARIO AND SOLICITATION ORDER)**

**The Come-Back Motion**

[1] The court made an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") in respect of Tacora Resources Inc. ("Tacora" or the "company") on October 10, 2023 (the "Initial Order"). The come-back hearing was originally scheduled for October 19, 2023, but was adjourned to October 24, 2023 by order dated October 13, 2023 to afford the company and the participating stakeholders additional time to address certain issues of disagreement among them, and in particular their disagreement over the terms and source of debtor in possession ("DIP") financing that the company needs to carry out its intended restructuring efforts.

[2] The court's October 13, 2023 order adjourning the come-back hearing also extended the expiry of the stay of proceedings provided for in the Initial Order from October 20, 2023 to October 27, 2023 (the "Stay Period"). A further stay extension order was granted on October 27, 2023

project plan to ramp up to 6 Mtpa capacity. Tacora anticipates enlisting PIP's continued support throughout its planned restructuring process.

[26] Cargill also provides on-site consultancy support to Tacora, historically at no cost to Tacora.

[27] Tacora is a critical customer for several businesses in Wabush who provide it goods and services and who in turn, provide employment to the local community. Tacora is also party to various equipment leases.

[28] Tacora has contracts with the Wabush Lake Railway, owned by Tacora and operated by Western Labrador Rail Services Inc. ("WLRs"), and with the QNS&L Railway, owned and operated by Quebec North Shore and Labrador Railway Company, Inc ("QNS&L"). QNS&L is a wholly owned subsidiary of the Iron Ore Company of Canada, a competitor that operates another mine in the Labrador iron ore trough. WLRs and QNS&L are needed for the transportation of Tacora's iron ore concentrate from the Scully Mine to the Port.

[29] Société Ferroviaire et Portuaire de Pointe Noire s.e.c. ("SFPPN") operates the Port used by Tacora (which is the multi-user port located in Sept-Îles, Quebec) that provides facilities to unload iron ore concentrate from trains delivered from the QNS&L Railway. The use of the Port and the provision of services by SFPPN is set out in a long-term operational agreement with an effective date of December 22, 2022.

[30] On November 17, 2017, Tacora entered into an amendment and restatement of consolidation of mining leases (the "MFC Royalty") with 0778539 B.C. Ltd. (formerly MFC Bancorp Ltd.) ("MFC"), pursuant to which the parties agreed to amend and restate a lease which provided Tacora with tenure and mining rights to certain premises constituting the Scully Mine in exchange for an ongoing royalty payment based on production.

[31] Tacora has various unsecured debt obligations to the Atlantic Canada Opportunities Agency in respect of financial assistance that has been provided to it through contribution agreements entered into as part of a national initiative to support regional recovery and stimulus. Tacora also has unsecured debt obligations to the Innu Nation pursuant to an impact and benefit agreement.

[32] It is evident that there are a number of unsecured creditors and parties with whom Tacora does business who have a stake in the outcome of Tacora's restructuring efforts. None of these other stakeholders appeared or took any position in respect of the relief sought by Tacora under the proposed ARIO and Solicitation Order.

### **Summary of Outcome**

[33] The relief requested by Tacora under the proposed ARIO and Solicitation Order (with the one change requested by the AHG) is granted. Tacora has satisfied the court of the necessary requirements for these orders to be made and the requested relief to be granted. The AHG's Cross-Motion is dismissed.

[39] For the reasons that follow, I have found the terms of the proposed ARIO and Solicitation Order to be fair and reasonably necessary for the continued operations of Tacora in the ordinary course of business to provide stability for the company and to allow it the breathing room that it needs to try to restructure its affairs so that it can continue as a going concern. These orders are approved.

## **The Issues**

[40] In general terms, what the court is concerned with on this come-back motion is whether the applicant has satisfied it of the requirements necessary to grant the ARIO (that includes the approval of the Cargill DIP Facility and DIP Charge) and the Solicitation Order.

[41] The issues raised for the court's consideration by the AHG cross-motion are whether the court should decline to approve the Cargill DIP Facility and replace it with the AHG DIP Proposal (under the AHG ARIO); or, whether the Alternative Relief should be ordered with corresponding amendments to the ARIO as proposed by Tacora. The issues relating to the DIP financing to be approved will be addressed first since they were the primary focus of the written and oral submissions.

## **Analysis**

### *Should the Cargill DIP Financing be Approved?*

[42] This *de novo* come-back hearing requires the court to consider whether the Cargill DIP Facility ought to be approved. Tacora bears the burden of the relief it seeks in this regard. Part of that burden involves dispelling the criticisms to the Cargill DIP Facility that the AHG has raised.

[43] The AHG submits that: (a) the process leading to the company's approval of the Cargill DIP Facility was inherently flawed and unfair; (b) the Cargill DIP Facility does not meet the factors in s. 11.2(4) of the CCAA, in that it seriously prejudices the senior secured noteholders; (c) the Cargill DIP Facility is being used for an improper purpose, to further leverage Cargill's own commercial interests, rather than benefit Tacora; and, in these circumstances, (d) the AHG asks the court to approve its proposed form of ARIO that includes the approval of the AHG DIP Proposal *in lieu* of the Cargill DIP Facility.

[44] These submissions will be addressed in turn. The second submission of the AHG requires the court to consider more broadly whether the applicant has satisfied its onus to demonstrate that it is appropriate for the court to approve the Cargill DIP Facility and Charge, having regard to s. 11.2 of the CCAA, in the context of which any prejudice to the only other secured creditors is one of the relevant factors.

#### a) The DIP Process

**TAB 6**

**CITATION:** Re Crystallex International Corporation, 2012 ONSC 2125  
**COURT FILE NO.:** CV-11-9532-00CL  
**DATE:** 20120416

**SUPERIOR COURT OF JUSTICE - ONTARIO  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
CRYSTALLEX INTERNATIONAL CORPORATION

**BEFORE:** Newbould J.

**COUNSEL:** Markus Koehnen, Andrew J.F. Kent and Jeffrey Levine, for Crystallex  
International Corporation

Richard B. Swan, S. Richard Orzy and Emrys Davis, for Computershare Trust  
Company of Canada

David R. Byers and Maria Konyukhova, for Ernst & Young Inc., Monitor

Shayne Kukulowicz, for Tenor Special Situations Fund LP

John T. Porter, for Juan Antonio Reyes

Robert Frank, for Forbes & Manhattan Inc. and Aberdeen International Inc.

**DATE HEARD:** April 5, 2012

**ENDORSEMENT**

[1] Crystallex moves for four orders, the first being an order approving DIP financing pursuant to a credit agreement between Crystallex and Tenor Special Situation I, LLC (“Tenor”), the second being an order extending the stay referred to in paragraph 16 of the Initial Order dated

under the MOC. Neither the CVG nor the Government of Venezuela raised any material concerns about lack of compliance. The CVG confirmed on several occasions that the MOC was in good standing and that Crystallex was in compliance with it.

[8] The Ministry of the Environment advised Crystallex in writing in April 2007 that Crystallex had completed all steps necessary to obtain the required environmental permit. Crystallex was shown a draft of the permit and was told that it would obtain the permit as soon as it had paid certain stamp duties and posted an insurance bond. Crystallex paid the duties, negotiated the bond with the Ministry and posted the bond.

[9] On February 3, 2011, despite confirming on several occasions that Crystallex's right to mine the Las Cristinas property continued unchallenged, CVG purported to "unilaterally rescind" the MOC.

[10] CVG rationalized its termination of the contract for reasons of "expediency and convenience" and because Crystallex had allegedly "ceased activities for over a year" on the project. Crystallex did not cease activities. It was maintaining the mining site in a shovel-ready state and was awaiting receipt of an environmental permit. Because of Venezuela's refusal to allow Crystallex to exploit Las Cristinas, Crystallex became unable to pay its debts as they became due effective December 23, 2011.

[11] Crystallex has a number of liabilities, the most of significant of which is a liability of approximately \$100 million in senior unsecured notes that were issued pursuant to a Trust Indenture dated December 23, 2004. The notes were due on December 23, 2011. In addition, Crystallex has other liabilities of approximately CAD\$1.2 million and approximately US\$8 million.

[12] The principal asset of Crystallex is its arbitration claim of US\$3.4 billion against Venezuela. In addition, Crystallex has mining equipment with a book value of approximately \$10.1 million and cash of approximately \$2 million.

[13] Crystallex asserts that the insolvency in which it finds itself is not attributable to poor business judgment by Crystallex but to the illegal conduct of the Venezuelan government in refusing to let Crystallex develop Las Cristina, even though Crystallex had the undisputed contractual right to do so.

### **Arbitration proceedings**

[14] On February 16, 2011 Crystallex filed a Request for Arbitration with the International Centre for the Settlement of Investment Disputes (“ICSID”) against Venezuela pursuant to a Bilateral Investment Treaty between Canada and Venezuela. ICSID is a mechanism through which private investors can seek legal redress against a foreign government for conduct that might be otherwise immune from suit. In the arbitration, Crystallex seeks compensation of \$3.4 billion plus interest as full compensation for the loss of its investment.

[15] The Arbitration Tribunal held its first procedural meeting on December 1, 2011 in Washington, DC. At that hearing, the Tribunal established Washington, DC as the seat of the arbitration proceeding, and established a timetable for the arbitration. Pursuant to the timetable, Crystallex delivered its written case on February 10, 2012. Crystallex’s written case comprises fourteen volumes of detailed witness statements, expert’s reports, exhibits, law and argument. Its memorial summarizing the evidence, law and argument extends to 226 pages. Venezuela is required to respond to Crystallex’s case by August 31, 2012. The hearing of the arbitration is scheduled for two weeks beginning on November 11, 2013.

[16] The valuation evidence Crystallex submitted with its ICSID case claims damages of \$3.4 billion plus interest. While the result of the arbitration is unknown, if it is successful, and the award is collected, there will be far more available than necessary to pay the outstanding debts of Crystallex. It is also clear that any meaningful recovery for the creditors and possibly shareholders will require some success in the arbitration, either by a collectible award or a settlement.

### **DIP financing selection process**

[17] In accordance with paragraph 12 of the Initial Order, Crystallex, with the assistance of its counsel and its financial advisor, commenced a process to seek DIP financing of \$35 million with a term of December 13, 2014.

[18] With the approval of the Monitor, Crystallex hired a financial advisor, Skatoff & Company, LLC based in New York City. Mr. Skatoff is an independent financial advisory firm focused on debt advisory services, financial restructuring advisory services, financing advisory services and M&A services.

[19] Crystallex, in consultation with Mr. Skatoff and on its recommendation, prepared a set of bid procedures to govern the solicitation of bids to provide DIP financing to Crystallex. The bid procedures were approved by the Monitor. The bid procedures are referred to in some detail in my endorsement of January 25, 2012. They included a provision whereby the DIP lender could obtain a “back-end entitlement” of up to 49% of the arbitration proceeds.

[20] The bid procedures provided that Crystallex would only consider bids from qualified bidders. A qualified bidder was one who, among other things, complied with certain participation requirements including the submission of a participation package.

[21] As a result of the DIP financing auction, a small number of qualified bidders ultimately submitted proposals for the DIP financing. Among the bidders were the three hedge funds that hold approximately 77% of Crystallex’s senior unsecured notes.

[22] Ultimately Mr. Skatoff recommended, and the board of Crystallex agreed, to accept the terms of the Tenor DIP financing now before the court for approval.

**Proposed Tenor DIP financing**

[23] The Tenor DIP facility contains the following material financial terms:

- (a) Tenor will advance \$36 million to Crystallex due and payable on December 31, 2016. This period for the loan is based on Crystallex’s arbitration counsel’s

assessment of the likely timing of a decision from the arbitral tribunal and collection of the award.

- (b) The advances will be in four tranches, being \$9 million upon execution of the loan documentation and approval of the facility by court order in Ontario, the second being \$12 million upon any appeal of the Ontario court order approving the facility being dismissed and upon a U.S court order approving the facility, the third being \$10 million when Crystallex has less than \$2.5 million in cash and the fourth being \$5 million when Crystallex again has less than \$2.5 million in cash.
- (c) The loans are to be used to (i) repay an interim bridge loan of \$3.25 million advanced by Tenor with court approval of January 20, 2012 and payable on April 16, 2012, (ii) fees and expenses in connection with the facility, (iii) general corporate expenses of Crystallex including expenses of the restructuring proceedings and of the arbitration in accordance with cash flow statements and budgets of Crystallex approved by Tenor from time to time.
- (d) Crystallex will pay Tenor a \$1 million commitment fee.
- (e) \$35 million of the loan amount will bear PIK interest (payment in kind, meaning it is capitalized and payable only upon maturity of the loan or upon receipt of the proceeds of the arbitration) at the rate of 10% per annum compounded semi-annually.
- (f) Tenor will receive additional compensation equal to 35% of the net proceeds of any arbitral award or settlement, conditional upon the second tranche of the loan being advanced. Net proceeds of the award or settlement is defined as the amount remaining after payment of principal and interest on the DIP loan, taxes and proven and allowed unsecured claims against Crystallex, including the noteholders, the latter of which will have a special charge for the unsecured amounts owing. Alternatively, Tenor can convert the right to additional

compensation to 35% of the common shares of Crystallex. This conversion right is apparently driven by tax considerations.

[24] The Tenor DIP facility also provides for the governance of Crystallex to be changed to give Tenor a substantial say in the governance of Crystallex. More particularly:

- (a) Crystallex shall have a reduced five person board of directors, being two current Crystallex directors, two nominees of Tenor and an independent director selected by agreement of Crystallex and Tenor.
- (b) The independent director shall be chair of the board of directors and shall not have a second-casting or tie-breaking vote.
- (c) The independent director shall be appointed a special managing director and shall have all the powers of the board of directors to (i) the conduct of the reorganization proceedings in Canada and in the U.S. and the efforts of Crystallex to reorganize the pre-filing claims of the unsecured creditors, (ii) any matters relating to the rights of Crystallex and Tenor as against the other under the facility, (iii) the administration of the MIP to the extent not otherwise delegated to the bonus pool committee under the MIP, and (iv) to retain any advisor in respect of these matters. The special manager shall first consult with a non-board advisory panel, consisting of the three Crystallex directors who will step down from the board, and consider in good faith their recommendations.
- (d) With respect to matters that may not at law be delegable to the special managing director, he will be required to obtain board approval. If the Tenor nominees use their votes to block that approval, Tenor will forfeit its 35% additional compensation.

[25] The Tenor DIP facility contains proscribed rights of Tenor in the event of default. Tenor may seize and sell assets other than the arbitration proceeding (i.e. any cash and unsold mining

equipment). It may not sell the arbitration claim. If there is a default before any arbitration award, Tenor would have the right to apply to court to have the Monitor or a Canadian receiver and manager appointed to take control of the arbitration proceedings. If such application were not granted, Tenor would be entitled to exercise the rights and remedies of a secured creditor pursuant to an order, the loan documentation or otherwise at law.

### **Proposed Noteholders DIP Loan and Plan**

[26] The noteholders propose a DIP loan of \$10 million with a simple interest rate of 1% repayable on October 15, 2012. This was essentially the same as the interim bridge loan of \$10 million with simple interest of 1% proposed by the noteholders that would have been repaid on April 16, 2012 that was not accepted by Crystallex. It is quite clear that the interest rate is far below market in the circumstances of Crystallex, and it is referred to in the noteholders factum as “exceptionally favourable”.

[27] During the process to find a DIP lender satisfactory to Crystallex and its advisors, the noteholders were asked to increase their proposed loan to \$35 million but they refused. However, in his affidavit Mr. Mattoni on behalf of the noteholders stated that the noteholders would in the future be prepared under certain circumstances, if required by the court, to advance a DIP loan on the same terms as the Tenor DIP facility. He stated that the noteholders would do so in the event that prior to October 1, 2012, the court orders that such long-term financing is appropriate and necessary. The noteholders would reserve their ability as creditors to continue to oppose the need for such a loan and any stay extensions or attempts to secure such long-term financing outside of a plan of compromise. The \$10 million which they provided in interim financing would be repaid from this financing such that the net effect of the financing would be the same as that of the Tenor DIP facility. During argument on this motion, Mr. Swan said that the noteholders were not prepared to agree to such a \$35 million facility at this time but only at some future time as the \$10 million facility they now proposed became due.

[28] The noteholders have also now proposed a restructuring plan, said to be in response to the Tenor DIP and the MIP. This was first proposed by Mr. Mattoni in his affidavit of March 27, 2012 as a proposal of the noteholders. At that time, he did not have any internal authority from

facility for \$10 million being accepted would be very reluctant to go through the process again in the next few months.

[89] This is particularly the case, in my view, when the proposed interest rate by the noteholders is only 1%, clearly below the market rate.<sup>3</sup> The market would see that rate, as would any reasonable observer, as being used for some purpose to further the ends of the noteholders. Hedge funds are not in the business of lending money at less than market rates. The rate no doubt was proposed to assist an argument that the court should accept the noteholders' proposed loan. Why would the noteholders propose that? The answer, I believe, is that it would assist in removing, or seriously eroding, the chance of Crystallex going to the market in time for a new loan by October and thus further make Crystallex beholden to the noteholders in October, as stated by Mr. van't Hof and Mr. Skatoff. I do not view the noteholders proposed loan as being a *bona fide* loan at market rates but rather a loan to gain tactical advantage.

[90] Thus, I do not see the noteholders proposed \$10 million 1% six month facility as maintaining the status quo. I accept the evidence of Mr. Skatoff that it would seriously erode the chances of Crystallex obtaining any third party financing in October.

[91] Had the noteholders been prepared to lend now on the basis of the terms of the Tenor DIP facility, that would have been a preferable outcome, even if it was not made within the terms of the bid process approved by the Monitor, as it would not have involved the insertion of any third party into the process. Unfortunately, it was made clear during argument that the noteholders were not prepared at this time to do so. The uncertainty of a short six month loan when it is clear that financing for a much longer term is required by Crystallex to prosecute the arbitration is something to be avoided.

### **(iii) Position of the Monitor**

[92] I have previously referred to portions of the Monitor's report. The Monitor concludes that on the basis that Crystallex, with assistance of Mr. Skatoff, conducted a canvas of the market and determined that the Tenor Bid was the best available bid generated out of the process to meet its

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<sup>3</sup> The Monitor calculates the savings in interest over the Tenor loan to October 15, 2012 to be approximately \$300,000.

**TAB 7**

Court File No.: CL-26-00000219-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES  
CORPORATION AND 12334992 CANADA INC.**

**Applicants**

**AFFIDAVIT OF CELESTE VAN TONDER  
(sworn June 3, 2026)**

I, CELESTE VAN TONDER, of the City of Oakville, in the Province of Ontario,

**MAKE OATH AND SAY:**

1. I am the Vice President and Chief Financial Officer of Nunavut Iron Ore, Inc., the Chief Financial Officer of 12334992 Canada Inc., and the Chief Financial Officer of Baffinland Iron Mines Corporation ("**BIM Corp**"), which also acts as the general partner of Baffinland Iron Mines LP ("**BIM LP**", and together with the Applicants, the "**Debtors**"). I have held these positions since October 2, 2023. I have also been a director of 12334992 Canada Inc. and BIM Corp since August 29, 2024.

2. I am familiar with the Debtors' day-to-day operations, business and financial affairs, and I have been actively engaged in discussions and negotiations concerning their financial circumstances. As such, I have personal knowledge of the matters described in this Affidavit. Where I have relied on information from other sources, I have stated the source and verily believe such information to be true.

This is Exhibit "H" referred to in the Affidavit of Celeste van Tonder sworn by Celeste van Tonder at the City of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on June 3, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*Sean Monahan*

---

*Commissioner for Taking Affidavits (or as may be)*

**SEAN MONAHAN**

LSO# 87650U

## DIP FACILITY LOAN AGREEMENT

DATED AS OF JUNE 3, 2026

**WHEREAS** Baffinland Iron Mines Corporation and Baffinland Iron Mines LP (collectively, the "**Borrowers**") have requested the DIP Lender (defined below) to provide funding, in connection with the Borrowers' proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") commenced before the Ontario Superior Court of Justice – Commercial List (the "**Court**"), in accordance with the terms and conditions set out herein (the "**CCAA Proceeding**");

**AND WHEREAS** FTI Consulting Canada Inc. has been appointed as monitor of the Borrowers and the Guarantors (in such capacity, the "**Monitor**") pursuant to the Initial Order.

**AND WHEREAS** Export Development Canada ("**EDC**") is party to a Credit Agreement with the Borrowers dated as of October 7, 2022, as amended from time to time, pursuant to which EDC provided a secured credit facility to the Borrowers on the terms set out therein (the "**Pre-Filing Facility**").

**AND WHEREAS** the DIP Lender has agreed to provide the DIP Facility (defined below) in accordance with the terms and conditions set out below.

**NOW THEREFORE**, in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. **Defined Terms:** A capitalized term not defined in the body of this Agreement has the meaning ascribed to it in the Definitions section below.
  
2. **Interpretation:** In this Agreement, words signifying the singular number include the plural and *vice versa*, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".  
  
The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.  
  
References in this Agreement to Sections or Schedules are to be construed as references to a Section or Schedule of or to this Agreement unless the context requires otherwise.
  
3. **Currency:** Unless otherwise stated, all monetary denominations shall be in lawful currency of the United States of America.
  
4. **Borrowers:** Baffinland Iron Mines Corporation ("**BIM Corp**") and Baffinland Iron Mines LP ("**Baffin LP**").
  
5. **Guarantors:** Nunavut Iron Ore, Inc. and 12334992 Canada Inc. (collectively, the "**Guarantors**" and collectively with the Borrowers, the "**Obligors**").

6. **DIP Lender:** His Majesty in Right of Canada, as represented by EDC (the “**DIP Lender**”).
7. **DIP Facility:** A senior secured, super-priority, debtor-in-possession, interim, revolving credit facility (the “**DIP Facility**”) up to a maximum principal amount of US\$400,000,000 in a Finished Product Funding Scenario (as defined below), increased to a maximum of US\$475,000,000 in the event of a Finished Product Non-Funding Scenario (as defined below) (“**Facility Amount**”), subject to the terms and conditions contained herein.
- The Borrowers shall be entitled to prepay amounts under the DIP Facility, without premium or penalty, and re-borrow amounts hereunder, subject to the terms and conditions herein and in all cases in an aggregate principal amount up to the Facility Amount.
8. **DIP Advances:** Advances (each, an “**Advance**”) shall be made in two-week intervals (or as otherwise agreed by the Borrowers and DIP Lender) with the principal amount of the aggregate Advances outstanding being no more than the Facility Amount.
- The DIP Lender shall deposit, into the Borrowers’ Account, each Advance, other than the Initial Advance (defined below) within one (1) Business Day following the date on which the Advance Conditions are satisfied and the Borrowers deliver to the DIP Lender an Advance confirmation certificate in form reasonably satisfactory to the DIP Lender, which shall include a reconciliation to the Approved Cash Flow (an “**Advance Confirmation Certificate**”).
- The Advance Confirmation Certificate shall certify that (i) all representations and warranties of the Obligor contained in this Agreement remain true and correct as of such date in all material respects both before and after giving effect to the use of such proceeds, (ii) no Default or Event of Default then exists and is continuing or would result therefrom; and (iii) the Advance is required for expenditures identified in the Approved Cash Flow (excluding for greater certainty any Excess Exploration and Expansion Expenses) and shall be used solely in accordance with this Agreement.
- Advances under the DIP Facility in the aggregate principal amount of up to US\$110,000,000 (the “**Bridge Advances**”) shall be made available to the Borrowers during the four week period beginning on the date of the Second Amended and Restated Initial Order (the “**Bridge Period**”), subject to satisfaction of the Advance Conditions and delivery of an Advance Confirmation Certificate one (1) Business Day prior to each Advance during such period (other than the first advance under the DIP Facility (the “**Initial Advance**”) which shall be advanced to the Borrower on the date of the Second Amended and Restated Initial Order in accordance with an Advance Confirmation Certificate delivered by the Borrower to the DIP Lender no later than the granting of the Second Amended and Restated Initial Order). Notwithstanding anything else to the contrary herein, fees accruing on or levied in relation to or in respect

**TAB 8**

Court File No.: \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NUNAVUT  
IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION AND 12334992 CANADA  
INC.**

Applicants

**AFFIDAVIT OF CELESTE VAN TONDER  
(Sworn May 14, 2026)**

I, Celeste van Tonder, of the City of Oakville, in the Province of Ontario, **MAKE**

**OATH AND SAY:**

1. I am the Vice President and Chief Financial Officer of Nunavut Iron Ore, Inc. ("**NIO**"), the Chief Financial Officer of 12334992 Canada Inc. ("**123 Canada Inc.**") and the Chief Financial Officer of Baffinland Iron Mines Corporation ("**BIM Corp.**"), which also acts as the general partner of Baffinland Iron Mines LP ("**BIM LP**", and together with the Applicants, the "**Debtors**"). I have held these positions since October 2, 2023. I have also been a director of 123 Canada Inc. and BIM Corp. since August 29, 2024.

2. I am familiar with the Debtors' day-to-day operations, business and financial affairs and I have been actively engaged in discussions and negotiations concerning their financial circumstances. As such, I have personal knowledge of the matters described in this Affidavit. Where I have relied on information from other sources, I have stated the source and verily believe such information to be true.

This is Exhibit "W" referred to in the Affidavit of Celeste van Tonder sworn by Celeste van Tonder at the City of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 14, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*Sean Monahan*

---

*Commissioner for Taking Affidavits (or as may be)*

**SEAN MONAHAN**

LSO# 87650U

## AMENDING AGREEMENT

**THIS AMENDING AGREEMENT** (this “**Agreement**”) is dated as of November 24, 2025 and made amongst:

- (1) **BAFFINLAND IRON MINES CORPORATION**, a corporation organized under the laws of the Province of Ontario (the “**Company**”);
- (2) **BAFFINLAND IRON MINES LP**, a limited partnership created under the laws of the Province of Ontario by its general partner Baffinland Iron Mines Corporation (together with the Company, the “**Borrowers**” and each, a “**Borrower**”); and
- (3) **EXPORT DEVELOPMENT CANADA** (the “**Lender**”).

### RECITALS:

- (A) The Borrowers and the Lender have entered into a credit agreement dated as of October 7, 2022, as amended pursuant to an amendment dated September 27, 2023, as further amended pursuant to an amendment dated March 26, 2024 and as further amended pursuant to an amendment dated May 27, 2025 (as so amended, the “**Credit Agreement**”), pursuant to which the Lender has extended a term credit facility to the Borrowers in an aggregate amount of \$75 million for working capital and general corporate purposes (the “**Loan**”);
- (B) Pursuant to the terms of Fuel Security Agreement, the Borrower has granted to the Lender a security interest over certain fuel purchased by the Company pursuant to the Fuel Supply Agreement in order to secure the Borrowers’ Obligations;
- (C) The Borrowers propose to designate the Loan as an ECA Financing, the Obligations under which are designated to be Pari Passu Payment Lien Obligations, and secured by the Collateral (in addition to the Fuel Collateral);
- (D) The Borrowers and Nunavut Iron propose to grant to the Collateral Agent (on behalf of the Lender) security interests over the assets as described in each Collateral Document, in order to further secure the Borrowers’ Obligations; and
- (E) Pursuant to Section 8.5 of the Credit Agreement, the Lender has agreed to amend the Credit Agreement on the terms and subject to the conditions set forth herein.

**NOW THEREFORE** in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

### 1 Defined Terms

Capitalized terms used in this Agreement and not otherwise defined have the meanings given to them in the Credit Agreement.

### 2 Effective Date

This Agreement shall be and becomes effective on the Fourth Amendment Effective Date (as defined below).

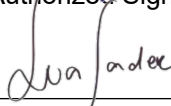
### 3 Amendments to the Credit Agreement

- (a) The Credit Agreement is hereby amended by inserting the double-underlined text (example: double-underlined text) and deleting the stricken text (example: ~~stricken-text~~) set forth on the selected pages of the Credit Agreement attached hereto as Annex A.


**IN WITNESS WHEREOF** the parties hereto have executed and delivered this Agreement as of the date first written above.

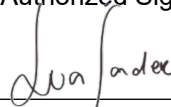
**BAFFINLAND IRON MINES CORPORATION**

By:   
Name: Jowdat Waheed  
Title: Authorized Signing Officer

By:   
Name: Celeste van Tonder  
Title: Chief Financial Officer

**BAFFINLAND IRON MINES LP**, by its general partner, Baffinland Iron Mines Corporation

By:   
Name: Jowdat Waheed  
Title: Authorized Signing Officer

By:   
Name: Celeste van Tonder  
Title: Chief Financial Officer

**EXPORT DEVELOPMENT CANADA**, as Lender

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**IN WITNESS WHEREOF** the parties hereto have executed and delivered this Agreement as of the date first written above.

**BAFFINLAND IRON MINES CORPORATION**

By: \_\_\_\_\_  
Name: Jowdat Waheed  
Title: Authorized Signing Officer

By: \_\_\_\_\_  
Name: Celeste van Tonder  
Title: Chief Financial Officer

**BAFFINLAND IRON MINES LP**, by its general partner, Baffinland Iron Mines Corporation

By: \_\_\_\_\_  
Name: Jowdat Waheed  
Title: Authorized Signing Officer

By: \_\_\_\_\_  
Name: Celeste van Tonder  
Title: Chief Financial Officer

**EXPORT DEVELOPMENT CANADA**, as Lender

By:  \_\_\_\_\_  
Name: James Babbitt  
Title: Principal

By:  \_\_\_\_\_  
Name: Daniel DiFilippo  
Title: Senior Associate

**TAB 9**

Court File No. CL-26-00000219-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION AND  
12334992 CANADA INC.**

**FIRST SECURED LENDERS' TRANSCRIPT BRIEF  
(Returnable June 10, 2026)**

June 9, 2026

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
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Toronto, Canada M5L 1B9

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**Brittney Ketwaroo (LSO #89781K)**  
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Email: bketwaroo@stikeman.com

Counsel for Oaktree Capital  
Management, L.P. and Hartree  
Partners, LP

1 Court File No. CL-26-00000219-0000

2 ONTARIO

3 SUPERIOR COURT OF JUSTICE

4 (COMMERCIAL LIST)

5  
6 B E T W E E N:

7  
8 IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT

9 ACT, R.S.C. 1985, c. C-36, AS AMENDED

10  
11 AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
12 ARRANGEMENT OF NUNAVUT IRON ORE, INC., BAFFINLAND  
13 IRON MINES CORPORATION AND 12334992 CANADA INC.

14 Applicants

15 -----

16 --- This is the Cross-Examination of CELESTE VAN  
17 TONDER, upon her affidavits sworn May 14, 2026,  
18 May 20, 2026, June 3, 2026, and June 7, 2026, taken  
19 by Array Canada, via Array Canada's Virtual Zoom  
20 Platform, on the 8th day of June, 2026.

21 -----

22  
23  
24 REPORTED BY: Judith M. Caputo, RPR, CSR, CRR

1 the Monitor, and presented to the Op Com.

2 36 Q. Okay. So you were not responsible  
3 for providing a recommendation on the DIP facility?

4 A. No.

5 37 Q. But you reviewed the three DIP  
6 proposals submitted?

7 A. I did review, as well as I  
8 reviewed the side-by-side presentation that was  
9 done by the Monitor and Counsel, in the process of  
10 preparing for the Op Com.

11 38 Q. And you'll agree with me that the  
12 DIP facility that has been selected by the Op Com,  
13 and that is being moved to be authorized by the  
14 Debtors, is from the Government of Canada, correct?

15 A. From the Government of Canada  
16 represented by the EDC, correct.

17 39 Q. Okay. But EDC being the  
18 representative, the lender is in fact the  
19 Government of Canada, correct?

20 A. That's correct.

21 MR. RICCI: The documents speaks for  
22 themselves, Mr. Murdoch, in terms of who the lender  
23 is. It's really a legal question. She's given you  
24 her understanding of it.

25 MR. MURDOCH: She's given me an answer.

**TAB 10**

Court File No.: CL-26-00000219-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES  
CORPORATION AND 12334992 CANADA INC.**

**Applicants**

**AFFIDAVIT OF CELESTE VAN TONDER  
(sworn June 3, 2026)**

I, CELESTE VAN TONDER, of the City of Oakville, in the Province of Ontario,

**MAKE OATH AND SAY:**

1. I am the Vice President and Chief Financial Officer of Nunavut Iron Ore, Inc., the Chief Financial Officer of 12334992 Canada Inc., and the Chief Financial Officer of Baffinland Iron Mines Corporation ("**BIM Corp**"), which also acts as the general partner of Baffinland Iron Mines LP ("**BIM LP**", and together with the Applicants, the "**Debtors**"). I have held these positions since October 2, 2023. I have also been a director of 12334992 Canada Inc. and BIM Corp since August 29, 2024.

2. I am familiar with the Debtors' day-to-day operations, business and financial affairs, and I have been actively engaged in discussions and negotiations concerning their financial circumstances. As such, I have personal knowledge of the matters described in this Affidavit. Where I have relied on information from other sources, I have stated the source and verily believe such information to be true.

**(e) Cost of Borrowing**

88. The Debtors assess that the EDC and Oaktree Proposals are competitive from a cost of borrowing standpoint, subject to certain unknown variables such as professional fees. As a result, this was not a determining factor on its own.

**(f) Bridge Facility**

89. As explained above, the EDC Proposal makes available a \$110M bridge facility as part of the DIP loan that is available for four weeks beginning on the date of the Second ARIO. This feature allows for any dispute in respect of the EDC Proposal to be adjudicated before this Court, while at the same time providing the Debtors with the funds they critically need to make sealift expenditures and commitments during the upcoming open-water window. During the four-week bridge period, the Debtors do not have to pay any fees (such as the upfront facility fee or commitment fee) that would normally accrue on the DIP Facility. The EDC Proposal also does not include any exit fees if it is ultimately refinanced by another party.

90. All of the EDC, Oaktree, and IRH Proposals received in the DIP Process made the extension of the bridge facility of \$110 million conditional upon the approval of the full loan facility. As a result, under the DIP Facility, the bridge funding of \$110 million is only guaranteed if the Court approves the full DIP Facility.

91. For all of these and other reasons, the Operating Committee, exercising its business judgment, assessed the EDC Proposal as clearly superior to the alternative proposals received through the Monitor's competitive DIP Process.

**TAB 11**

Court File No.: \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF** the *Companies' Creditors Arrangement Act*, R.S.C. 1985,  
as amended

**AND IN THE MATTER OF** a Plan of Compromise or Arrangement of Nunavut  
Iron Ore, Inc., Baffinland Iron Mines Corporation, and 12334992 Canada Inc.

Applicants

**AFFIDAVIT OF CELESTE VAN TONDER  
(Sworn May 14, 2026)**

I, Celeste van Tonder, of the City of Oakville, in the Province of Ontario, **MAKE**

**OATH AND SAY:**

1. I am the Vice President and Chief Financial Officer of Nunavut Iron Ore, Inc. ("**NIO**"), the Chief Financial Officer of 12334992 Canada Inc. ("**123 Canada Inc.**") and the Chief Financial Officer of Baffinland Iron Mines Corporation ("**BIM Corp.**"), which also acts as the general partner of Baffinland Iron Mines LP ("**BIM LP**", and together with the Applicants, the "**Debtors**"). I have held these positions since October 2, 2023. I have also been a director of 123 Canada Inc. and BIM Corp. since August 29, 2024.

2. I am familiar with the Debtors' day-to-day operations, business and financial affairs and I have been actively engaged in discussions and negotiations concerning their financial circumstances. As such, I have personal knowledge of the matters described in this Affidavit. Where I have relied on information from other sources, I have stated the source and verily believe such information to be true.

	Secured Debt	Total Principal Amount
<i>First</i>	Oaktree and Hartree under the Credit Facility	\$126.5 million
<i>Second (pari passu with the Holders of the Senior Secured Notes due 2026)</i>	EDC	\$75 million
<i>Second (pari passu with EDC)</i>	Holders of Senior Secured Notes due 2026	\$575 million

**(a) 8.75% Senior Secured Notes Due 2026**

92. On June 27, 2018, Baffinland issued \$575 million aggregate principal amount of 8.75% senior secured notes due 2026 (the “**2026 Notes**”). Wilmington Trust, National Association is the trustee and collateral agent. \$25 million in interest on the 2026 Notes is payable on January 15 and July 15 of each year. The 2026 Notes mature July 15, 2026. Attached as **Exhibit “R”** to my Affidavit is the indenture in respect of the 2026 Notes. Pursuant to the Intercreditor Agreement (defined below), the 2026 Notes rank on a *pari passu* basis with the EDC Term Facility (defined below).

93. The 2026 Notes are senior secured obligations of Baffinland and, subject to certain limited exceptions, are secured by a charge over all the assets of Baffinland pursuant to a General Security and Pledge Agreement dated June 27, 2018. In addition, NIO has provided a limited recourse guarantee of Baffinland's obligations under the 2026 Notes, secured by a pledge of its interest in the shares of BIM Corp. and limited partnership units in BIM LP. The security documents provided by Baffinland and NIO in connection with the 2026 Notes are attached as **Exhibit “S”** to my Affidavit.

94. Baffinland is in default under the 2026 Notes as a result of a cross-default that has occurred under the Credit Facility, which is described below.

distribution made in respect of any insolvency or liquidation proceedings. Specifically, it requires that any payment of amounts outstanding under the Credit Facility shall be made prior to the payment of the amounts outstanding under the 2026 Notes and EDC Term Facility, which rank *pari passu*.

**(ii) Letters of Credit**

111. Baffinland has approximately C\$150 million in aggregate obligations outstanding under 19 letters of credit (collectively, the "**Letters of Credit**") issued by three banks: CIBC, Bank of Montreal ("**BMO**") and BNS. The beneficiaries of the Letters of Credit are the Qikiqtani Inuit Association, the Minister of Northern Affairs and Northern Development Canada, and the Department of Fisheries and Oceans. The majority of the Letters of Credit serve as financial assurance required under Baffinland's commercial lease with the Qikiqtani Inuit Association and its water licence, and are intended to fund environmental reclamation costs associated with the rehabilitation of disturbed land in the event that Baffinland abandons the Mine property or the Milne Inlet port.

112. Security for the Letters of Credit is provided as follows:

- (a) One Letter of Credit is currently secured, in part, by a guarantee by Arcelor;
- (b) Approximately C\$75 million of the Letters of Credit are issued by BMO and are secured under the Credit Facility made available by Oaktree and Hartree. If those Letters of Credit are drawn upon, the amounts outstanding under the Credit Facility will increase accordingly;
- (c) Certain of the Letters of Credit are cash-collateralised, in whole or in part, with cash collateral held in Baffinland's accounts at BNS and CIBC; and

- (d) Certain Letters of Credit are secured by a surety bond from Liberty Mutual – although Liberty Mutual has only bonded 70% of the amounts owing because 30% are cash collateralized with the cash held in the CIBC bank accounts.

**(iii) Other Secured Obligations**

113. The PPSA Search Summaries show that in addition to the secured parties identified above, the following parties have security registrations against the Debtors::

Party	Details
Caterpillar Financial Services Limited and Caterpillar Financial Services Leasing ULC	Registrations made in connection with a master lease between Baffinland and Caterpillar dated September 13, 2019, pursuant to which Baffinland leases mining equipment from time to time.  These equipment leases were paid off in April 2026.
Macquarie Equipment Finance Ltd	Registrations made in connection with a master lease between Baffinland and Macquarie dated September 5, 2024, pursuant to which Baffinland leases mining equipment from time to time.
IRH Global Trading Ltd.	Registrations made in connection with the offtake agreement between Baffinland and IRH dated January 30, 2025.
Glencore AG	Registration made in connection with the Purchase and Sale Agreement between Glencore and Baffinland dated June 5, 2020 (described below) regarding “unscreened lump” being mined and sold to Glencore, but left in the possession of Baffinland.
Wajax Limited	Registrations made in connection with certain motor vehicles collateral located in Ontario.
Bank of Nova Scotia; Canadian Imperial Bank of Commerce	Registrations made in connection with cash collateral held in accounts at these institutions.
De Lage Landen Financial Services Canada Inc.	Registration made in connection with certain office equipment for Oakville office.
AMMC Baffinland Holdco Inc.	This is a legacy registration. There are no debts outstanding to this party.

**TAB 12**

Court File No. CL-26-00000219-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NUNAVUT IRON ORE, INC., BAFFINLAND  
IRON MINES CORPORATION, AND 12334992 CANADA INC.

APPLICANTS

**WRITTEN SUBMISSIONS OF EXPORT DEVELOPMENT CANADA**

**(Motion Returnable June 10, 2026)**

June 8, 2026

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Lawyers for Export Development Canada

TO: **THE SERVICE LIST**

of such a facility by the AHC or any other lender does not engage this section. In addition, the provision does not apply to any interim financing facility in excess of \$40 million. Any interim financing facility in this case, even for the first four weeks, will exceed \$40 million.

10 Pursuant to the Intercreditor Agreement, the obligations under the pre-filing loan made by EDC in the amount of US\$75 million are “Pari Passu Obligations”, having the same second-ranking priority and the same security as the 8.750% senior secured notes.<sup>6</sup> EDC’s US\$75 million secured loan is a market, long-term, and very material economic interest in this case.

#### Amount of EDC DIP Loan

11 The EDC DIP Loan is in a principal amount of US\$400 million (increasing to US\$475 million in certain circumstances to fund non-forecasted shortfalls that could arise if funding from the company’s current off-take counterparty falls away). The primary reason for the deviation in the EDC DIP Facility from the US\$300 million in the company’s own form of DIP Facility Loan Agreement is timing.<sup>7</sup> EDC’s review of the company’s cash flow forecast information suggests interim funding requirements approach US\$400 million in the fourth quarter of 2027. This is relevant because the EDC DIP Loan provides for a 12-month term (to June 2027) with a 6-month potential extension period (to December 2027). The principal amount of the EDC DIP Loan is intended to account for this extension period based on EDC’s and its advisors’ own review of the company’s cash flow forecast.<sup>8</sup> There were no ‘backroom’ DIP negotiations, as suggested by the AHC.

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<sup>6</sup> Affidavit of Celeste van Tonder sworn May 14, 2026 at Exhibit “Y”.

<sup>7</sup> Affidavit of Celeste van Tonder sworn May 14, 2026 at Exhibit “E”.

<sup>8</sup> Affidavit of Celeste van Tonder sworn June 3, 2026 at Exhibit “H”.

**TAB 13**

Court File No. CL-00000219-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION AND  
12334992 CANADA INC.**

---

**BOOK OF AUTHORITIES OF  
OAKTREE CAPITAL MANAGEMENT, L.P AND HARTREE PARTNERS, LP**

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June 9, 2026

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Counsel for Oaktree Capital  
Management, L.P. and Hartree  
Partners, LP

**TO: SERVICE LIST**

**CITATION:** 1843208 Ontario Inc. v. Baffinland Iron Mines Corporation, 2023 ONSC 4906  
**COURT FILE NO.:** CV-11-00009222-00CL  
**DATE:** 20230829

**ONTARIO - SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

**IN THE MATTER OF AN APPLICATION BY 1843208 ONTARIO INC. TO  
DETERMINE THE FAIR VALUE FOR THE SHARES OF BAFFINLAND IRON MINES  
CORPORATION AS AT MARCH 21, 2011**

**APPLICATION UNDER THE BUSINESS CORPORATIONS ACT, R.S.O. 1990, C. 8.16,  
S. 185, AS AMENDED, AND RULES 14.05(2) AND 14.05(3) OF THE RULES OF CIVIL  
PROCEDURE**

**RE:** 1843208 Ontario Inc., Applicant

**AND:**

Baffinland Iron Mines Corporation, Respondent

**BEFORE:** Peter J. Osborne J.

**COUNSEL:** *Steve Tenai, Miranda Spence and Adam West*, for the Applicant

*Dimitri Lascaris and Ashley Seely*, for the Respondent, Dissenting Shareholders  
of Baffinland Iron Mines Corporation

**HEARD:** June 9, 2023

**ENDORSEMENT**

[1] This is an Application to fix the fair value of the shares held by shareholders who dissented from a plan of arrangement.

[2] The Applicant, 1843208 Ontario Inc. (“208” or the “Applicant”), seeks an order fixing the fair value for the common shares of any dissenting shareholder of Baffinland Iron Mines Corporation (“Baffinland”) as at March 21, 2011 at \$1.50 per share.

[3] The Dissent Group, on the other hand, submits that this court should fix the fair value at \$8.91 per share.

**Background and Context**

[4] 208 acquired control of Baffinland in 2011 following a contested takeover bid. The remaining shares of Baffinland were acquired by 208 pursuant to a plan of arrangement approved by this court on March 25, 2011 (the “Plan of Arrangement” or the “Plan”). The Plan provided, as

place), one would expect a notice to shareholders in the circular cautioning shareholders about the fact that what was before them was a joint bid.

### **Relevant and Corroborative Events Subsequent to the Valuation Date: A Reasonableness Check**

[168] While my determination of fair value is based on the above factors, I draw additional comfort from the actual experience subsequent to the Valuation Date. To be clear, I am not relying on subsequent facts or events in arriving at my determination as set out above, other than for the limited purpose (as discussed below) of addressing the claim of the Dissent Group for interest.

[169] Rather, I am observing that my conclusions as to the reasonableness, or lack thereof, of certain assumptions relied upon by the parties and their respective experts appear to be reasonable with the benefit of hindsight based on subsequent events which I naturally recognize was not available to any party or expert as at the Valuation Date.

[170] Generally, hindsight evidence is not admissible for the purposes of determining the fair value of shares as at the Valuation Date, but that is subject to two exceptions.

[171] First, factual hindsight information may be used to compare actual results achieved after a valuation date as against projected or forecasted results said to have been reasonably foreseeable on the Valuation Date. Second, the reasonableness of assumptions made by the valuers may be challenged: *Ford Motor Co. of Canada v. Ontario (Municipal Employees Retirement Board)* (2000), 48 C.P.C. (4th) 272 (Ont. S.C.) at paras. 5 -6; *Domglas Inc. v. Jarislawsky, Fraser & Co.* (1982), 138 D.L.R. (3d) 521 (Q.C.C.A.) at para. 13; *Nunachiaq Inc. v. Chow* (1993), 8 B.L.R. (2d) 109 (B.C.S.C.) at paras. 19 – 21, quoting with approval from *Cyprus*; and *Hall v. Atto*, [2004] O.T.C. 101 (Ont. S.C.) at para. 23.

[172] This case is somewhat unusual in that there was such a significant period of time between the Valuation Date and the hearing of this Application – 11.5 years. The cause of this delay is, as described below, largely due to the fact that the application was subject to a stay of proceedings pending a determination of a class action arising out of the same takeover transaction.

[173] Since the Valuation Date, the annual production of the Mary River Project has in fact never exceeded 6 MTPA. That is significantly less than the production assumptions of the discounted cash flow analyses of both parties: Supplemental Affidavit of Walter, paras. 229 – 231.

[174] While, naturally, many factors could affect that outcome, the practical reality is that the actual production from the Mary River Project was in fact less than the assumed production on which the position of 208 was based, and very materially less than the assumed production on which the position of the Dissent Group was based.

[175] Again, while I do not rely on actual production results subsequent to the Valuation Date in determining fair value, they do suggest, as contemplated by the exceptions and the caselaw, that my determinations as to the reasonableness of the assumptions made by the valuers and particularly Canessa, are accurate. Simply put, production at the Mary River Project has never been anywhere close to 30 MTPA, nor even 18 MTPA. I put it no higher than that.

**TAB 14**

Court File No. CL-26-00000219-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION AND  
12334992 CANADA INC.**

**FIRST SECURED LENDERS' TRANSCRIPT BRIEF  
(Returnable June 10, 2026)**

June 9, 2026

**STIKEMAN ELLIOTT LLP**  
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Counsel for Oaktree Capital  
Management, L.P. and Hartree  
Partners, LP

# TAB A

8:51



Jowdat

Today 12:44 PM

Here now. Good luck.

Saw EDC submission. They have opened up an avenue re 2027 by saying they are providing \$400M because company will lose more money in 2027. Watch out for cross on this.

HY bondholders are obviously in part confused part panick selling mode. GS is quoting \$65. Basically market saying after EDC's \$400M and Oaktee's \$180M, the secured creditors are only getting \$422 (as against \$650M face). Basically EV of \$1B is what market is assuming.

I hear they are all "shocked" by how much company is bleeding in cash. This partly explains the clamour for CRO.

Ultimately, we need a settlement with Oaktree/HY on this DIP and Approved Cash flows. With everyone fighting it will be hard to even get \$1B EV.



Text Message • RCS



**TAB 15**

Court File No. CL-26-00000219-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION AND  
12334992 CANADA INC.**

**FIRST SECURED LENDERS' TRANSCRIPT BRIEF  
(Returnable June 10, 2026)**

June 9, 2026

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Counsel for Oaktree Capital  
Management, L.P. and Hartree  
Partners, LP

1 Court File No. CL-26-00000219-0000

2 ONTARIO

3 SUPERIOR COURT OF JUSTICE

4 (COMMERCIAL LIST)

5  
6 B E T W E E N:

7  
8 IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT

9 ACT, R.S.C. 1985, c. C-36, AS AMENDED

10  
11 AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
12 ARRANGEMENT OF NUNAVUT IRON ORE, INC., BAFFINLAND  
13 IRON MINES CORPORATION AND 12334992 CANADA INC.

14 Applicants

15 -----

16 --- This is the Cross-Examination of CELESTE VAN  
17 TONDER, upon her affidavits sworn May 14, 2026,  
18 May 20, 2026, June 3, 2026, and June 7, 2026, taken  
19 by Array Canada, via Array Canada's Virtual Zoom  
20 Platform, on the 8th day of June, 2026.

21 -----

22  
23  
24 REPORTED BY: Judith M. Caputo, RPR, CSR, CRR

1 Applicant's First Secured Lenders as of  
2 November 2025, correct?

3 A. That's correct, yes.

4 MR. RICCI: You said "May 14th". I  
5 believe the order is May 15th.

6 MR. MURDOCH: May 15th, apologies. I  
7 was giving you the application date.

8 BY MR. MURDOCH:

9 33 Q. And you were involved in the  
10 decision-making process regarding the selection of  
11 the DIP facility?

12 A. I wasn't involved in the  
13 preparation of the presentation to the Op Com, who  
14 made the ultimate decision of the DIP, the  
15 selection of the DIP.

16 34 Q. But you were involved in that  
17 decision-making process?

18 A. Evaluation process. The decision  
19 was made by the Op Com.

20 35 Q. Yes. And you provided your views  
21 on which DIP was preferable, and you provided  
22 recommendations to the Op Com?

23 A. I did not provide any direct --  
24 what my preference is with regards to the DIP  
25 selection. The analysis was done by counsel and by

1 the Monitor, and presented to the Op Com.

2 36 Q. Okay. So you were not responsible  
3 for providing a recommendation on the DIP facility?

4 A. No.

5 37 Q. But you reviewed the three DIP  
6 proposals submitted?

7 A. I did review, as well as I  
8 reviewed the side-by-side presentation that was  
9 done by the Monitor and Counsel, in the process of  
10 preparing for the Op Com.

11 38 Q. And you'll agree with me that the  
12 DIP facility that has been selected by the Op Com,  
13 and that is being moved to be authorized by the  
14 Debtors, is from the Government of Canada, correct?

15 A. From the Government of Canada  
16 represented by the EDC, correct.

17 39 Q. Okay. But EDC being the  
18 representative, the lender is in fact the  
19 Government of Canada, correct?

20 A. That's correct.

21 MR. RICCI: The documents speaks for  
22 themselves, Mr. Murdoch, in terms of who the lender  
23 is. It's really a legal question. She's given you  
24 her understanding of it.

25 MR. MURDOCH: She's given me an answer.

1 with my counsel during the review and preparation  
2 of this meeting. So I'm aware of the reasons for  
3 the cross-motion as stated in this document.

4 73 Q. Sorry. I just would like to  
5 understand that.

6 So you reviewed the Joint Cross-Motion  
7 record with your counsel in preparation for the  
8 examination today?

9 A. I did review it in summary,  
10 correct.

11 74 Q. In summary, in preparation for  
12 today?

13 A. Yeah.

14 75 Q. And what day was that on?

15 A. Yesterday.

16 76 Q. Yesterday. And was it a review  
17 that you conducted prior to swearing this  
18 affidavit?

19 A. Correct.

20 77 Q. Okay. And when you say you  
21 reviewed it in summary, did you review the Notice  
22 of Motion?

23 MR. RICCI: Just hang on. She just  
24 said she reviewed it with her counsel, so I'm going  
25 to stop it there. I'm worried about getting into

1 issues that are privileged. She gave you her  
2 answer what she reviewed with counsel.

3 MR. MURDOCH: Your position is that her  
4 review of the Joint Cross-Motion is privileged?

5 MR. RICCI: My position is the details  
6 of the meeting between counsel and Ms. van Tonder,  
7 that we now know occurred yesterday, prior to her  
8 swearing the affidavit, is privileged. The  
9 contents of that meeting are privileged, yes.

10 MR. MURDOCH: I don't believe I asked  
11 anything about the contents of the meeting. I  
12 simply asked whether she reviewed the Notice of  
13 Motion.

14 MR. RICCI: I'm not quite sure that's  
15 how you put it at first, but I'm fine with that  
16 narrow question.

17 BY MR. MURDOCH:

18 78 Q. Ms. van Tonder, did you review the  
19 Notice of Motion?

20 A. I did not read the motion word by  
21 word, I was in consultation with counsel to  
22 understand the requirements of the motion.

23 79 Q. Okay. Did you review the  
24 affidavit of Mr. Gordon that was included with the  
25 motion record?

1 A. I don't believe I did.

2 80 Q. Okay. Thank you.

3 And in swearing this affidavit on  
4 June 7th, sort of four days after the third  
5 affidavit that you swore, is it correct to say that  
6 you swore this to address the issues that would be  
7 dealt with at the hearing that's now been  
8 rescheduled for June 10th?

9 A. That is my understanding, correct.

10 81 Q. Okay. And if we go to  
11 paragraph 11 of your fourth affidavit, you say here  
12 that the Joint Cross-Motion is to approve what you  
13 refer to as the "inferior DIP proposal".

14 And so when you say that you are  
15 referring to this "inferior DIP proposal from the  
16 Senior Secured Lenders," I trust you're referring  
17 to the full DIP proposal for \$300 million; is that  
18 correct?

19 A. The DIP proposal would be in  
20 total, which is the 300 million DIP proposal.

21 82 Q. Okay. And then you continue to  
22 say that in the alternative -- or that they're  
23 seeking, "or, in the alternative, a stand-alone  
24 interim bridge DIP."

25 Now, you understand that the Senior

1 the SISP process and, essentially, through to  
2 December of 2027, is what we believed to be  
3 value-destructive. Purely on the facts that the  
4 company has got a great urgency to stabilize the  
5 company, as well as be in the position to unlock  
6 opportunity and wealth for all our stakeholders.

7 An interim DIP, regardless of the  
8 provider, does not provide us with the ability to  
9 stabilize the company post the four weeks, which  
10 could have incremental effects on our business.

11 84 Q. Right. And so what you're  
12 expressing concern about here is the approval of an  
13 interim bridge, without the approval at the same  
14 time on Wednesday of the full DIP; is that right?

15 A. We specifically referred to  
16 paragraph 12?

17 85 Q. Referring to paragraph -- well,  
18 paragraph 12 is where it starts. But we're talking  
19 about this interim bridge.

20 The concerns that you're expressing,  
21 starting here in paragraph 12, are your concerns  
22 with respect to the approval of an interim bridge  
23 without the accompanying approval of the full DIP?

24 A. I agree, yes.

25 86 Q. Thank you. And if we sort of take

**TAB 16**

Court File No.: CL-26-00000219-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES  
CORPORATION AND 12334992 CANADA INC.**

**Applicants**

**AFFIDAVIT OF CELESTE VAN TONDER  
(sworn June 3, 2026)**

I, CELESTE VAN TONDER, of the City of Oakville, in the Province of Ontario,

**MAKE OATH AND SAY:**

1. I am the Vice President and Chief Financial Officer of Nunavut Iron Ore, Inc., the Chief Financial Officer of 12334992 Canada Inc., and the Chief Financial Officer of Baffinland Iron Mines Corporation ("**BIM Corp**"), which also acts as the general partner of Baffinland Iron Mines LP ("**BIM LP**", and together with the Applicants, the "**Debtors**"). I have held these positions since October 2, 2023. I have also been a director of 12334992 Canada Inc. and BIM Corp since August 29, 2024.

2. I am familiar with the Debtors' day-to-day operations, business and financial affairs, and I have been actively engaged in discussions and negotiations concerning their financial circumstances. As such, I have personal knowledge of the matters described in this Affidavit. Where I have relied on information from other sources, I have stated the source and verily believe such information to be true.

**(e) Cost of Borrowing**

88. The Debtors assess that the EDC and Oaktree Proposals are competitive from a cost of borrowing standpoint, subject to certain unknown variables such as professional fees. As a result, this was not a determining factor on its own.

**(f) Bridge Facility**

89. As explained above, the EDC Proposal makes available a \$110M bridge facility as part of the DIP loan that is available for four weeks beginning on the date of the Second ARIO. This feature allows for any dispute in respect of the EDC Proposal to be adjudicated before this Court, while at the same time providing the Debtors with the funds they critically need to make sealift expenditures and commitments during the upcoming open-water window. During the four-week bridge period, the Debtors do not have to pay any fees (such as the upfront facility fee or commitment fee) that would normally accrue on the DIP Facility. The EDC Proposal also does not include any exit fees if it is ultimately refinanced by another party.

90. All of the EDC, Oaktree, and IRH Proposals received in the DIP Process made the extension of the bridge facility of \$110 million conditional upon the approval of the full loan facility. As a result, under the DIP Facility, the bridge funding of \$110 million is only guaranteed if the Court approves the full DIP Facility.

91. For all of these and other reasons, the Operating Committee, exercising its business judgment, assessed the EDC Proposal as clearly superior to the alternative proposals received through the Monitor's competitive DIP Process.

**TAB 17**

**Court File No. CL-26-00000219-0000**

**Nunavut Iron Ore, Inc., Baffinland Iron Mines Corporation  
and 12334992 Canada Inc.**

**SECOND REPORT OF THE MONITOR**

**June 4, 2026**

84. Based on the information available, the Monitor has compared the cost of the DIP Facility to that of other approved interim financings of a similar size. As illustrated in the chart below, the cost of the DIP Facility appears to be within the range of costs, in terms of annualized interest and fees, for interim financings of similar size approved in other CCAA proceedings:

**DIP Facility Summary**

*DIP Financing facilities greater than USD \$35 million*

	<b>DIP Size (\$ USD million)</b>	<b>Interest (%)</b>	<b>Fee(s) as % of DIP Facility</b>
Average	99.3	9.4%	2.3%
Minimum	39.9	4.5%	0.5%
Maximum	445.7	13.0%	5.0%

85. Based on the foregoing, the Monitor is of the view that the terms of the DIP Financing Agreement are within market parameters in respect of interest and fees.

*The Monitor's Recommendation*

86. As noted earlier in this Second Report, three Final DIP Proposals resulted from the DIP Solicitation Process. The proposals received from EDC and the Ad Hoc DIP Group were viable proposals. The proposal received from IRH was not.
87. The Monitor's view is as follows:
- (a) The interest rates and fees contained in the two viable proposals were generally competitive;
  - (b) The EDC Final DIP Proposal provided additional funding of up to \$75 million in the event of a Finished Product Non-Funding Scenario, providing additional operational certainty for the Debtors;
  - (c) Although both viable proposals contained restrictive covenants, the EDC Final DIP Proposal provided additional flexibility for the Debtors in the operation of their business;

- (d) EDC is an existing secured creditor of the Debtors and is familiar with their business and operations;
  - (e) The Monitor recognizes that the proposed DIP Charge would prime creditors holding a significant amount of the Debtors' secured debt. However, as set out above, the Monitor is of the view that any prejudice is outweighed by the benefits of the DIP Facility;
  - (f) Further, in the near term, any prejudice caused to other secured creditors by being primed by the DIP Facility and DIP Charge is ameliorated by the concept of the Bridge Period and the "without prejudice" nature of any Court approval of the DIP Facility; and
  - (g) The Debtors require the stability provided by the DIP Facility and the ability to draw on the Bridge Advances while litigation is pursued with respect to the DIP Facility.
88. Based on the foregoing, the Monitor respectfully recommends that the Court grant the Debtors' request for approval of the DIP Financing Agreement and the granting of the DIP Charge, recognizing that a process will be put in place to litigate issues relating to the DIP Facility.

#### **PAYMENTS TO CRITICAL SUPPLIERS**

89. In the SARIO, the Applicants are seeking the authority (but not the requirement) to pay certain pre-filing amounts with the consent of the Monitor.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES  
CORPORATION AND 12334992 CANADA INC

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

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