

**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.**

**Factum of Oaktree Capital Management, L.P. and Hartree Partners, LP
(Motion Returnable June 10, 2026)**

June 9, 2026

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TO: SERVICE LIST

PART I - OVERVIEW¹

1. Oaktree Capital Management, L.P. and Hartree Partners, LP (together, the “**First Secured Lenders**”) are the first-ranking secured creditors of Baffinland Iron Mines LP (“**BIM LP**”) and Baffinland Iron Mines Corporation (“**BIM Corp.**” or the “**Company**”, and together with BIM LP, “**BIM**” or the “**Debtors**”). Only six months ago, in November 2025, the First Secured Lenders provided BIM with essential liquidity by purchasing and extending the maturity of \$158 million of the Company’s debt and advancing an additional \$25 million.²

2. The First Secured Lenders have acted in good faith in their dealings with the Debtors by advancing critical liquidity to sustain operations, entering into ancillary service agreements, and twice granting limited waivers when the Company defaulted, all while refraining from exercising their enforcement rights.

3. Together, the First Secured Lenders and the holders of the 8.750% senior secured notes issued by BIM Corp. (the “**Notes**” and the “**Senior Secured Noteholders**”) represent over \$750 million of the Debtors’ secured debt. The First Secured Lenders and the ad hoc committee of Senior Secured Noteholders³ (the “**Ad Hoc Committee**” and together with the First Secured Lenders, the “**Senior Secured Lenders**”) are united in their opposition to the Debtors’ motion seeking authorization to enter into a DIP facility (the “**Proposed Priming DIP**”) that will be entitled to a super-priority charge in the amount of up to \$475 million over the Debtors’ assets.

4. The Debtors attempt to portray the Senior Secured Lenders simply as a “bitter bidder” with no greater entitlement to participation and consideration than any other third party. That is incorrect and disingenuous. The Senior Secured Lenders’ opposition to the Proposed Priming DIP is grounded in their collective holding of over 90% of the Company’s secured debt and the

² All funds in USD.

³ The Ad Hoc Committee represents over 70% of the Senior Secured Noteholders.

resulting risk posed by the proposed charge of \$475 million ranking ahead of their \$750 million in secured debt. Even with an impeccable solicitation process – which this was not, but that is an issue for another day – under established CCAA case law, the Senior Secured Lenders should not be primed when they oppose the priming DIP and are prepared to provide comparable (or in this case better) financing.

5. The Senior Secured Lenders are equally united in their support for a cross-motion seeking an order authorizing the Debtors to enter into a DIP proposal submitted by the Senior Secured Lenders, as amended (the “**Senior Secured DIP**”), that is on better terms than the Proposed Priming DIP and which the Monitor acknowledges is viable (even before the improvement amendments described below). To be clear (as the Debtors have shown and continue to show confusion), the Senior Secured Lenders are not seeking approval of a standalone interim bridge DIP. Instead, as the joint notice of cross-motion sets out in clear terms, they are seeking approval of a full-term DIP facility in the amount of \$300 million with the interim draws limited to \$110 million during the Interim DIP Period, on precisely the same basis as the Proposed Priming DIP.

6. The Senior Secured DIP is the more appropriate facility for the entirety of the Company’s CCAA proceedings. However, that is not the issue to be determined at the hearing on June 10, 2026 (the “**June 10 Hearing**”). There has not been sufficient time to canvass all the evidence necessary for this Court to properly assess the competing DIPs, either of which would represent one of the largest DIP facilities ever authorized by a CCAA court.⁴ The sole issue to be determined at the June 10 Hearing is which DIP facility is least prejudicial and best preserves the *status quo* during the interim 3-4 week period (the “**Interim DIP Period**”) between the June 10 Hearing and a decision following the hearing scheduled for June 30 Hearing (the “**June 30 Hearing**”).

⁴ For that reason, the parties have agreed that the June 30 Hearing will proceed on a *de novo* basis regardless of what facility gets approved at the June 10 Hearing.

7. Both the Senior Secured DIP and the Proposed Priming DIP provide for an initial advance of up to \$110 million during the Interim DIP Period. Both DIP facilities provide for eventual funding well in excess of the 2026 funding needs of the Company. Both DIP facilities will remain available, regardless of which facility this Court selects at the June 10 Hearing, for subsequent approval at the June 30 Hearing. And both DIP facilities can be repaid with no additional fees (only accrued interest) if the other DIP facility is ultimately selected as the successful DIP facility at the June 30 Hearing.

8. The Senior Secured DIP, however, is the appropriate and less prejudicial DIP facility for the Interim DIP Period:

- (a) it contains no exclusivity provision or prohibition on soliciting alternative financing;
- (b) it contains no prohibition on hedging, which will allow the Company to enter into value maximizing and protective hedging contracts;
- (c) the cost of the Senior Secured DIP is slightly lower, including for the period until the June 30 Hearing;⁵
- (d) the Senior Secured Lenders represent 100% of the first secured lenders of the Company and almost 90% of the Company's remaining secured creditors and maintaining their priority in the Company's capital stack best maintains the *status quo*; and
- (e) the Senior Secured Lenders have offered appropriate protections to Export Development Canada ("**EDC**") as the remaining 10% secured lender in the event

⁵ See the DIP Proposal Comparison attached as Exhibit C to the Affidavit of Joshua Gordon dated June 9, 2026 ("**Gordon Affidavit**").

the Senior Secured DIP is approved on June 10.⁶

9. The Senior Secured Lenders respectfully submit that this Court should authorize the Debtors to enter into the Senior Secured DIP.

PART II - FACTS

10. For the purposes of this motion, the First Secured Lenders adopt the facts as set out in paragraphs 7 to 27 of the Factum of the Senior Secured Noteholders.

PART III - LAW & ARGUMENT

A. The Court Should Approve the Senior Secured DIP

i. Existing Secured Creditors Deserve Preference in Providing DIP Funding in CCAA

11. Courts must “scrutinize” any interim financing proposals to ensure that they are “reasonable and appropriate in the circumstances” and that they “do not inappropriately advantage one party over another to the detriment of that party and the stakeholders generally.”⁷

12. In *Temple City*, the Court stated that “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.”⁸

13. Similarly, in *Crystallex*, Justice Newbould confirmed that where the existing lender of a debtor company provides DIP financing on comparable terms, even where that proposal was not made within the precise terms of any bid process approved by a CCAA monitor, the existing

⁶ See the interim DIP financing concessions list included within the Letter from Maria Konyukhova dated June 9, 2026, (the “**June 9 Letter**”) attached as Exhibit D to the Gordon Affidavit.

⁷ *Re Fire & Flower Holdings Corp.*, [2023 ONSC 4048](#) at [para. 40](#), citing *Re Great Basin*; see also *Quest University Canada (Re)*, [2020 BCSC 318](#) at [para. 97](#).

⁸ *Temple City Housing Inc.*, (*Companies’ Creditors Arrangement Act*), [2007 ABQB 786](#) [*Temple City*] at [para. 14](#).

lender should be granted priority to provide such DIP financing:

“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.”⁹ [Emphasis added]

14. To be clear, Justice Newbould was prepared to accept a DIP proposal from the existing creditors of Crystallex even after the conclusion of a robust, multi-week DIP solicitation process conducted by the monitor in that case. Justice Newbould was of the view that the Court had the jurisdiction to accept a late DIP proposal and that the Court should exercise that discretion as long as the late DIP proposal came from the existing creditors and as long as the offer was on comparable terms to the third party’s proposal (both of which are satisfied in this case).

15. The principle underlying both *Temple City* and *Crystallex* is that the party or parties with the most at stake, and whose security is being displaced, deserve preference where they are prepared to fund the CCAA debtor company on similar terms.

16. The Proposed Priming DIP is not provided by an existing member of the Company’s capital structure. The lender under the Proposed Priming DIP is “His Majesty in Right of Canada as represented by EDC”; in other words, the Government of Canada. The Government of Canada is a third-party entity and is certainly not a traditional commercial lender. EDC, which is a commercial lender and secured creditor of the Debtors ranking *pari passu* with the Senior Secured Noteholders, is not the lender under the Proposed Priming DIP but is in fact only agent or representative.¹⁰

17. This Court is, therefore, being asked to allow a third-party entity with substantially different

⁹ *Re Crystallex International Corporation*, 2012 ONSC 2125 at para. 91.

¹⁰ Cross Examination of Celeste van Tonder dated June 8, 2026 (“**van Tonder Cross**”), at pg. 14 lines 38-39.

interests from a traditional commercial lender to leapfrog the existing first-ranking secured creditors — a result that is without precedent and that fundamentally alters the character of the Company's capital structure.

18. That said, even if EDC were acting in its own right as the lender under the Proposed Priming DIP (and it is not), EDC holds a mere \$75 million of the Debtors' secured debt — less than half of the \$183 million held by the First Secured Lenders and only 10% of that held by the Senior Secured Lenders as a whole.

19. EDC also ranks subordinate to the First Secured Lenders. Indeed, this subordinate minority position held by EDC is highlighted in the intercreditor agreement between the parties.¹¹ Pursuant to the intercreditor agreement, EDC agreed that the collateral agent for the First Secured Lenders shall hold the exclusive right to act or refrain from acting with respect to any of the shared collateral and thus EDC has agreed that the First Secured Lenders would make decisions for EDC in matters affecting the shared collateral. EDC has agreed to defer to the First Secured Lenders' judgment in respect of the shared collateral and deference should accordingly be given to the views of the First Secured Lenders on the impact of any Proposed Priming DIP. In addition, although a DIP financing of this magnitude was not foreseen, EDC nevertheless agreed to not raise objections to a smaller DIP financing that, in normal circumstances, would be adequate financing for the Debtors.¹²

20. The Senior Secured Lenders, not a third party such as the Government of Canada, bear the direct economic consequences of any erosion in the Company's value. Each dollar of value lost is a dollar that would otherwise be available to satisfy the secured obligations owed to the

¹¹ See the Intercreditor Agreement dated June 27, 2026, among Wilmington Trust National Association, as collateral Agent under the Indenture and Wilmington Trust, National association as Collateral Agent under the Credit Agreement and each additional Collateral Agent from time to time party thereto attached at Exhibit Y to the Affidavit of Celeste van Tonder dated May 14, 2026, within the Application Record of the Applicants dated May 15, 2026 at Tab 2Y.

¹² *Ibid.*

Senior Secured Lenders — obligations that the Proposed Priming DIP would displace.

21. There has never been a CCAA where existing lenders have been primed by an alternative DIP facility (including one advanced by a junior creditor) in circumstances where the terms of the two competing proposals were comparable. In the exceptional cases where priming has been approved, such as *Tacora Resources Inc.*¹³ and *Crystallex*, the terms of the priming DIP were clearly superior in multiple respects to those offered by the existing secured lenders.¹⁴ Moreover, in both of those cases, the existing lenders refused to match or improve upon their terms so as to render their proposal comparable to the priming DIP proposed by or on behalf of the CCAA debtor. Here, by contrast, the Senior Secured Lenders were not informed that EDC had been selected until after the decision had been made, at which point the Company refused to engage further on the Senior Secured DIP.

ii. Senior Secured DIP is Viable, Comparable to and Less Prejudicial Than the Proposed Priming DIP

22. The Senior Secured Lenders are prepared to and have (as acknowledged by the Debtors and the Monitor) submitted a viable DIP proposal which included interim financing for \$110 million – the same amount as EDC.¹⁵

23. Following submission of their original DIP proposal, the Company provided feedback to the Senior Secured Lenders that certain terms were too onerous and restrictive. Despite several requests, the Senior Secured Lenders were not provided with information regarding what terms of the Senior Secured DIP were concerning to the Company.

24. On May 30, 2026, counsel for the Senior Secured Lenders submitted the Senior Secured

¹⁵ Second Report of FTI Consulting Canada Inc. in its capacity as Monitor dated June 4, 2026 (“**Second Report**”), at para 49.

DIP, accompanied by a letter again expressly indicating their willingness to discuss, clarify, and amend any items that remained of concern to the Debtors. Notwithstanding this, the Senior Secured Lenders were not provided with information regarding what terms of the Senior Secured DIP were concerning to the Company until after the Company selected the Proposed Priming DIP and until after the Company served it materials at 12:12am on June 4, 2026.

25. Instead of engaging with the Senior Secured Lenders (the holders of over 90% of their secured debt) as they had requested, the Debtors selected the Proposed Priming DIP and sought to rely on any ways that the Senior Secured DIP differed from the Proposed Priming DIP as purported deficiencies, including the scope of events of default and permitted variances, funding commitments even though such terms are routine and commercial for DIP loans approved by CCAA courts.

26. As a result of the new information finally provided to the Senior Secured Lenders by way of late served motion materials, the Senior Secured Lenders revised the Senior Secured DIP to address these issues. A revised, binding and actionable commitment was submitted to the Company and the Monitor on June 9 and included, among other things, an immediate initial advance of \$110 million to ensure that there is no risk that the Company will not have sufficient liquidity during the bridge period.¹⁶ A summary of the key terms in the Senior Secured DIP revised by the Senior Secured Lender is attached hereto as **Schedule "B"**.

27. In addition, and to ensure that the Senior Secured DIP is entirely without prejudice to any other pre-filing secured creditors during the interim financing period, the Senior Secured Lenders agreed to provide certain secured creditor protections to EDC should the Senior Secured DIP be

¹⁶ See the revised Senior Secured DIP included within the June 9 Letter, attached as Exhibit D to the Gordon Affidavit. (the "**June 9 Letter**").

approved by the Court at the June 10 Hearing.¹⁷

28. The Senior Secured DIP offers financing on comparable or better terms than the Proposed Priming DIP, particularly for the Interim DIP Period, without intrusive governance rights, last-look provisions, or any terms that would chill the restructuring process. In particular:

- a) the Senior Secured DIP contains no exclusivity provision, meaning the Company remains free to solicit and consider alternative financing proposals during the interim period, whereas the Proposed Priming DIP prohibits the Company from doing so;
- b) the Senior Secured DIP does not prohibit hedging activities, which the Company should be undertaking as soon as possible to protect against commodity price volatility;
- c) the Senior Secured DIP is marginally cheaper from a cost-of-borrowing standpoint;
- d) the Senior Secured DIP is offered by lenders holding over 90% of the Company's secured debt, as compared to EDC which holds only approximately 10%, meaning approval of the Senior Secured DIP causes far less disruption to the existing *status quo* among secured creditors; and
- e) the Senior Secured Lenders are prepared to offer protection to EDC, as the remaining secured lender, under the terms of the Senior Secured DIP.¹⁸

29. The most significant difference between the Senior Secured DIP and the Proposed Priming DIP is the quantum of the full facility beyond the Interim DIP Period – which is not an issue for this motion. The Senior Secured DIP is for \$300 million, the specific amount sought by

¹⁷See the interim DIP financing concessions list included within the June 9 Letter, attached as Exhibit D to the Gordon Affidavit.

¹⁸ *Ibid.*

the Debtors in the DIP solicitation process. The Proposed Priming DIP is for up to \$475 million. At the June 30 Hearing, this Court should apply great scrutiny to any attempt by the Debtors to prime their secured creditors with a massive DIP from a third party when those secured creditors have proposed to make available the financing that the Debtors were projected to require. As stated, however, the assessment of the appropriate quantum of the DIP beyond the Interim DIP Period is reserved for the June 30 Hearing and, in the interim, this Court should follow established and uncontradicted CCAA jurisprudence by approving the Senior Secured DIP to address the Debtors' immediate financing requirements.

iii. The Senior Secured DIP Allows the Company to Operate and Causes the Least Amount of Change to the *Status Quo*

30. In its Second Report, the Monitor stated that the Senior Secured DIP and the Proposed Priming DIP were “both viable proposals for the Debtors.”¹⁹ While the Monitor indicated that the Proposed Priming DIP was “superior on balance,”²⁰ the Monitor did not characterize it as “clearly superior” or suggest that the Senior Secured DIP was deficient in any material respect. Notably, the Monitor’s assessment was made in respect of the DIP facilities as a whole — not with specific reference to the Interim DIP Period now before this Court. It was also made without reference to the various improvement amendments made by the Senior Secured Lenders to their proposal on June 9.

31. The Debtors identified several factors in support of the Proposed Priming DIP. However, when those factors are examined through the lens of the Interim DIP Period, the alleged superiority of the Proposed Priming DIP evaporates. Whether these factors support the superiority of the Proposed Priming DIP over the full term will be addressed at the June 30 Hearing. A

¹⁹ Second Report at paras 9(b), 49 and 86.

²⁰ Second Report at para 49.

summary of these factors as they apply in the Interim DIP Period is below.

- a) **Cost of Borrowing:** The Debtors assert that the two proposals are “competitive from a cost of borrowing standpoint” and that this “was not a determining factor on its own.”²¹ The Monitor also indicated that the “interest rates and fees contained in the two viable proposals were generally competitive.”²² On cross-examination, the Debtors’ CFO, Celeste van Tonder, could not speak to the relative cost of the DIPs over the Interim DIP Period.²³ Analysis from the Senior Noteholders’ financial advisor demonstrates that the cost of the Senior Secured DIP is slightly lower, including for the period until June 30.²⁴
- b) **Facility Size and Financial Flexibility:** The Proposed Priming DIP provides a facility of up to \$475 million, larger than the \$300 million template. Ms. Van Tonder attests that this provides “the greatest flexibility.”²⁵ However, both DIPs are of sufficient size for the Interim DIP Period. No party contends that the Company will draw more than \$110 million during the Interim DIP Period. Both DIP proposals provide \$110 million for the Interim DIP Period and commit sufficient funding to operate through 2026 until the spring of 2027²⁶, signaling stability to the Company’s stakeholders beyond the interim bridge period. The appropriateness of \$300 million and \$475 million as the overall facility limit is irrelevant for the next four weeks and will be an issue for the June 30 Hearing.

²¹ Affidavit of Celeste van Tonder sworn June 3, 2026 (the “**van Tonder Affidavit**”) at para 88, in the Applicants Motion Record dated June 3, 2026 (“**AMR**”), at Tab 2.

²² Second Report at para 87(a).

²³ van Tonder Cross at pg. 36 line 103.

²⁴ See the DIP Proposal Comparison attached as Exhibit C to the Gordon Affidavit.

²⁵ van Tonder Affidavit at para 50(h), AMR at Tab 2.

²⁶ Affidavit of Celeste van Tonder dated June 7, 2026 (the “**Responding van Tonder Affidavit**”) at para 44, in the Responding Motion Record of the Applicants dated June 8, 2026 (“**RMRA**”) at Tab 2.

- c) **Funding Certainty:** Ms. van Tonder comments on the “several (not joint) liability structure and broad syndication rights” of the Senior Secured DIP.²⁷ It is frankly remarkable that the Debtors question the funding certainty of the same secured lenders that have provided them \$750 million without any evidence to support such a risk. Furthermore, the Senior Secured DIP contemplates the appointment of a “fronting lender” to fund through a single channel, on each Advance date (as defined in the Senior Secured DIP), the full amount requested without taking on individual Senior Secured Lender credit risk, replicating the EDC’s single lender structure. On cross-examination, Ms. van Tonder admitted she unfamiliar with the “fronting lender” structure that is common in commercial lending and is, in fact, applicable to the Debtors’ existing Senior Secured Noteholders (despite the fact that the Senior Secured DIP explicitly outlines that concept). Once Ms. van Tonder read the portion of the Senior Secured DIP that dealt with the “fronting lender” in her cross-examination for the first time, she conceded that she was “comfortable” with it.²⁸ Importantly, the Monitor also did not express concerns about funding certainty under the Senior Secured DIP.
- d) **Restrictiveness of Covenants:** Both the Monitor’s Second Report and Ms. van Tonder note that the Senior Secured DIP contains more restrictive covenants, including subjective events of default and limited cure periods.²⁹ However, these covenant differences (which are overstated and consistent with commercial terms) have no practical bearing on the Interim DIP Period. For a four-week bridge period in which the Company’s operations will proceed in accordance with an Approved Cash Flow and draws are limited to \$110 million, the likelihood of triggering any covenant —

²⁷ Van Tonder Affidavit at para 76, AMR at Tab 2.

²⁸ Van Tonder Cross at pg. 39 line 111 – pg. 42 line 123.

²⁹ Van Tonder Affidavit at para 76, AMR at Tab 2. See also the Second Report at para 87(c).

whether under the Senior Secured DIP or the Proposed Priming DIP — is remote. In addition, the Senior Secured Lenders agreed to fund the entire \$110 million as an initial advance eliminating the risks cited by the Debtors. Their revised proposal also modifies some of the covenants that were concerning to the Debtors – and which the Senior Secured Lenders always maintained they were prepared to discuss.³⁰

- e) **Operational Flexibility and Permitted Variances:** Ms. van Tonder notes that the definition of “Permitted Variances” is “markedly more flexible” under the Proposed Priming DIP.³¹ For a four-week period in which spending is constrained to \$110 million in accordance with an Approved Cash Flow, the practical scope for variance is limited. There will be no variance testing during the Interim DIP Period. In addition, the Senior Secured Lenders’ revised proposal modified the provision regarding permitted variance – in a way that provides greater flexibility to the Debtors and in a manner that the Senior Secured Lenders always maintained they were prepared to discuss.
- f) **Stakeholder Alignment and Long-Term Vision:** Ms. van Tonder emphasizes the Government of Canada’s alignment with Inuit communities, regulators, and the Debtors’ “long-term vision for responsible resource development.”³² These are long-term considerations that, while certainly not conceded, have no bearing on the Interim DIP Period. The question of which lender best supports the Company’s long-term restructuring and how that should be considered and assessed in a test for DIP financing is a significant question for the June 30 Hearing.

³⁰ See the revised Senior Secured DIP included within the June 9 Letter, attached as Exhibit D to the Gordon Affidavit. (the “**June 9 Letter**”).

³¹ van Tonder Affidavit at para 84.

³² *Ibid* at para 87.

32. In summary, the picture is clear for the Interim DIP Period: both DIPs provide \$110 million in funding, both are viable, the cost of borrowing under the Senior Secured DIP is marginally lower, it contains no exclusivity provision and does not prohibit hedging. The alleged advantages of the Proposed Priming DIP relate overwhelmingly to matters of facility size, long-term flexibility, and stakeholder signaling — none of which are engaged during a four-week interim period. There is no basis upon which to displace the existing first-ranking secured creditors for this interim period. For the purposes of the Interim DIP Period, the Senior Secured DIP is superior to the Proposed Priming DIP.

33. In circumstances where the Company seeks approval of an unprecedented priming DIP facility of this magnitude — a facility that would displace over \$750 million of existing secured debt held by the Senior Secured Lenders, based on asset valuations that are inconsistent with prior judicial and independent assessments, and in favour of a outside third-party — the appropriate action is for this Court to authorize the Debtors to borrow under the Senior Secured DIP. The Senior Secured DIP provides \$110 million in interim funding on comparable or superior terms, primes no one, and preserves the *status quo* while the parties prepare for a full contested hearing on the merits.

iv. The Proposed Priming DIP Will Cause Material Prejudice to the Senior Secured Lenders Even on an Interim Basis

34. The Proposed Priming DIP contains a no-solicitation provision during the four-week Bridge Period. The term sheet provides that “*the Borrowers hereby confirm that during the Bridge Period no alternative proposals for interim financing will be solicited or accepted by the Borrowers.*”³³ If the full Proposed Priming DIP is approved, the Debtors will be contractually prohibited from considering any alternative financing proposals — including the Senior Secured DIP — during the

³³ See Export Development Canada DIP Facility Loan Agreement dated June 3, 2026, in the van Tonder Affidavit at Exhibit H, AMR at Tab 2H.

very period in which a contested hearing should be occurring. This approach directly contradicts the process contemplated in the endorsement of Justice Steele when she scheduled this hearing.

35. As a result of these terms intended to circumvent the Debtors' ability to procure any alternative financing, approval of the Proposed Priming DIP, even on an interim basis, would result in significant and potentially irreversible prejudice to the First Secured Lenders and other stakeholders.

36. Second, the First Secured Lenders remain concerned about the potential for the estate to be committed to expenditures and contractual obligations and suppliers that, once entered into during the Interim DIP Period without their consent and knowledge, may be difficult to unwind. To the extent the Proposed Priming DIP is approved, these obligations will be entered into without consultation with the First Secured Lenders.

37. Third, under the Proposed Priming DIP, the First Secured Lenders will not receive payment of current interest payments during the pendency of these proceedings. The oversized quantum of the Proposed Priming DIP and the extended DIP solicitation process come, in part, at the expense of the First Secured Lenders' ongoing interest entitlements. These further underscore the prejudice to the First Secured Lenders if the Proposed Priming DIP is approved on an interim basis.

B. The Company's Evidence on Why the Third-Party DIP is Superior is Deficient and Unreliable

38. The Applicants proffered two affidavits of Ms. van Tonder, Vice President and Chief Financial Officer of the Applicants, as the only affidavit evidence in support of their motion to approve the Third Part DIP. The Applicants rely almost exclusively on her affidavits in support of their assertion that the Third-Party DIP is superior to the Senior Secured DIP and their submission

to this Court that there were aspects of the Senior Secured DIP that were concerning to the Company.

39. On cross-examination, which was limited to matters relevant to the June 10 Hearing, it became very apparent that Ms. Van Tonder was not a decision-maker in the DIP selection process, did not make recommendations to the decision makers, did not negotiate with prospective DIP lenders, did not independently review the analysis that she purports to adopt in her affidavits, and did not herself even have a preference among the proposed DIP facilities.³⁴ Oddly, she did not even review the cross-motion record of the Senior Secured Lenders or the supporting affidavit before swearing her June 7 affidavit³⁵.

40. Even more surprising, Ms. Van Tonder demonstrated near complete lack of knowledge about the terms of the Third Party DIP, the Senior Secured DIP or the aspects of the latter that she swore in her affidavit were concerning to the Company, at times appearing to be reading certain sections of the Senior Secured DIP for the first time at the cross-examination.

41. First, the van Tonder Affidavit sworn June 5, 2026, stated that concerns about the “several (not joint) liability structure and broad syndication rights” of the Senior Secured Lenders’ proposal was one reason to prefer the Proposed Priming DIP.³⁶ The Senior Secured Lenders explained on various occasions, including in their term sheet, that the DIP lender under their DIP facility would be a fronting lender, which as is customary now with many DIP financings in CCAA, fronts the loans on behalf of multiple lenders, assumes the credit risk for the full loan and disperses funds to the debtors before collecting any amounts from the lenders. Importantly, the use of a fronting lender does not increase the cost to the debtors and fully addresses any risk that may be perceived relating to the joint and several structure of the Senior Secured DIP. Yet, on cross-

³⁴ van Tonder Cross at pg. 13 line 33 to pg. 14 line 36.

³⁵ *Ibid* at pg. 25 line 72 to line 76.

³⁶ van Tonder Affidavit at para 76, AMR at Tab 2

examination, Ms. van Tonder admitted that she was unfamiliar with the concept of a “fronting lender”. She further admitted that she was not even the source of this concern and testified simply that it was identified by the Monitor and counsel.³⁷

42. Second, Ms. van Tonder could not speak to the comparative cost of the Proposed Priming DIP and the Senior Secured DIP for the Interim DIP Period — a central issue on this motion. She admitted that she did not review the underlying cost calculations prepared by the Monitor; those calculations were only presented to her visually in graph form.³⁸

43. Lastly, Ms. van Tonder stated in her cross-examination that the Company is able to negotiate with the Senior Secured Lenders with respect to their DIP proposal after the June 10 hearing and for the next 21 days.³⁹ That is plainly wrong as the Proposed Priming DIP prohibits any negotiations on terms with any other prospective DIP Lenders. This demonstrates a disturbing lack of familiarity with the competing DIP proposals by the Company’s only witness.

C. Issues Concerning the EDC DIP to be Canvassed at the June 30 Hearing

44. All parties agree that the June 10 hearing is focused solely on which DIP facility should be approved on an interim basis for the Interim DIP Period. However, there remain significant concerns regarding the Proposed Priming DIP that will require full and complete consideration at the June 30 Hearing. These concerns, which are not to be determined at this motion, raise serious questions about the Proposed Priming DIP. While these issues are not appropriate for determination on this expedited motion, they preview the matters that will be canvassed at the June 30 Hearing.

³⁷ van Tonder Cross at pg. 39 line 111; pg 43 line 125-126.

³⁸ *Ibid* at pg. 45 line 131 to 137.

³⁹ *Ibid* at pg. 75 line 225-227

45. First, the Senior Secured Lenders are concerned that the Proposed Priming DIP represents significant overfunding. The Proposed Priming DIP provides a facility of up to \$475 million, substantially larger than the \$300 million facility proposed by the Senior Secured Lenders which, according to the Debtors' own projections, would be sufficient to stabilize operations, fund an orderly SISF, and sustain the Debtors through the coming winter and well into 2027. The Senior Secured Lenders question whether a super-priority DIP charge of \$475 million — approximately \$175 million more than projected requirements — is necessary or appropriate in the circumstances, particularly given the significant subordination of existing secured creditors that such a charge would entail.

46. Second, the Senior Secured Lenders have serious concerns about the DIP solicitation process. The process was initiated post-filing on an unreasonably expedited basis. Ms. van Tonder asserted that the Company commenced a DIP solicitation process with the Monitor as far back as April 2026; however, no details were provided as to what exactly was done as part of this process and, importantly, no explanation was provided for why, if the Company and the Monitor were engaged in a DIP solicitation process for over two months, they chose to put their stakeholders and this Court into a position of having to decide the paramount issue of DIP financing with less than 36 hours' notice.

47. The solicitation process that is detailed in the record was marked by constantly shifting deadlines imposed unilaterally by the Company without notice to or consultation with the Senior Secured Lenders. Despite the Senior Secured Lenders' good-faith engagement and repeatedly expressed willingness to discuss and address any items that remained unclear, the Debtors failed to engage meaningfully with the Senior Secured Lenders. Materials were served with less than 36 hours' notice before the originally scheduled hearing date, and the Senior Secured Lenders were not afforded sufficient time or reliable information to participate meaningfully in the process. The fairness and adequacy of this process will be a live issue at the June 30 Hearing.

48. Third, the Senior Secured Lenders have concerns regarding potential conflicts of interest in the DIP selection process arising from the governance structure of the Debtors. The Senior Secured Lenders have requested that the Debtors and the Monitor to identify all directors, officers, shareholders, and affiliates who have a direct or indirect interest in certain related party arrangements, and disclose what steps were taken to ensure that decision-making in the DIP selection process was free from the influence of such interests — including whether any independent committee of the board was struck, whether interested directors recused themselves from deliberations and voting, and whether independent legal or financial advice was obtained. These questions remain unanswered. The independence and integrity of the DIP selection process will require this Court's scrutiny at the June 30 Hearing.

49. Fourth, the Senior Secured Lenders are concerned that the Debtors' assertion that its assets are sufficient to cover all secured liabilities is based on an inflated valuation that does not withstand scrutiny. The Debtors claims that their total consolidated assets were nearly \$2.7 billion as at December 31, 2025, and that this provides ample coverage for all secured liabilities (thereby, the argument goes, making the Proposed Priming DIP risk free to the Senior Secured Lenders).⁴⁰ No other evidence on value was presented by either the Company or the Monitor.

50. Furthermore, this representation of value is inconsistent with prior judicial and independent third-party assessments of the Debtors' value. In particular, in 2023, this Court was asked to determine the fair value of Baffinland shares in the context of a BCA plan of arrangement. Justice Osborne (as he then was) concluded that the fair value of the shares was \$1.50 per share,

⁴⁰ Affidavit of Celeste van Tonder sworn May 14, 2026, at para 86, found in the Application Record of the Applicants dated May 14, 2026, at Tab 2. See also the Applicants' factum dated June 4, 2026, at paragraph 50 where they argue the following: *The Debtors have total secured debt of approximately \$777 million, owing primarily to: (a) holders of the 2026 Notes; (b) Oaktree and Hartree under a secured credit facility; and (c) EDC under a term loan facility. Against this, the Debtors' total consolidated assets were nearly \$2.7 billion as at December 31, 2025. Even if the entire DIP Facility were fully drawn, the Debtors' assets would remain sufficient to cover all secured liabilities, including amounts outstanding under the DIP Facility.*

implying an enterprise value of approximately \$575 million — a fraction of the \$2.7 billion figure advanced by the Company. While this valuation dated to 2011, there is significant reason to doubt that the enterprise value has risen at all, let alone by 5 times (and Justice Osborne did, in fact, note that the key marker of value, namely the amount of the annual production, did not improve at all since 2011).⁴¹

51. If the Debtors' assets are in fact valued closer to the amount determined by Justice Osborne, then the Senior Secured Lenders' approximately \$750 million in secured claims may not be fully covered — and approval of a \$475 million super-priority DIP charge would materially prejudice the recovery available to the existing secured creditors. Put simply, if the Senior Secured Lenders are right on value, there is material prejudice to their position. Conversely, if the Debtors and the Monitor are confident in a \$2.7 billion valuation, there should be no impediment or objection to the Proposed Priming DIP ranking behind the existing secured creditors. The Senior Secured Lenders do not ask this Court to determine issues of valuation on this motion, but these concerns underscore the need for caution before approving an unprecedented priming charge based on unsubstantiated representations of asset sufficiency.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of June, 2026.

Stikeman Elliott LLP
STIKEMAN ELLIOTT LLP

⁴¹ 1843208 Ontario Inc. v. Baffinland Iron Mines Corporation, [2023 ONSC 4906](#) at [para 192](#).

SCHEDULE "B"
SUMMARY OF MATERIAL DIFFERENCES BETWEEN THE MAY 30, 2026, AND JUNE 9, 2026 VERSIONS OF THE SENIOR SECURED DIP

For ease of reference, the following is a summary of the material differences between the Senior Secured DIP submitted May 30, 2026 (the "**May 30 DIP**") and the revised Senior Secured DIP submitted June 9, 2026 (the "**Revised DIP**").

- **Initial Advance and Bridge Period Structure:** The Revised DIP provides for a single Initial Advance of \$110 million for the entirety of the Bridge Period providing certainty of funding for the entire amount required during the Bridge Period, eliminating any funding risk during the Bridge Period and ensuring the Debtors have immediate access to the full amount of interim liquidity.
- **Reduction in Conditions for Advances:** The Revised DIP removes the requirement that the Borrowers confirm that all Authorizations held as of the Filing Date remain in place, the requirement that the Second Amended and Restated Initial Order not be adversely modified, and lowers the Required DIP Lenders threshold from sole to reasonable discretion relating to amendments to the Second Amended and Restated Initial Order.
- **Royalty Payments** The Revised DIP adds flexibility to the Company to make royalty payments, providing such Royalty Agreement is, among other items, properly registered on title.
- **No Additional Fees:** The Revised DIP confirms that no additional fees will be accrued in the event of any amendment, consent, waiver or accommodation that the DIP Lenders may agree to provide, other than reasonable, documented, out-of-pocket expenses and additional interest and fees that accrue solely from any increase in the Loan Amount.
- **Removal and Amendments to Covenants and Reps & Warranties:** The Revised DIP adds additional materiality thresholds for the benefit of the Borrowers and also imposes acting reasonably thresholds on the DIP Lenders for various provisions and extends certain timing deadlines (e.g. extends deadline to provide business plan and key employee incentive plan). The Revised DIP also removes certain restrictive provisions related to business operations and ensures payments are permitted for essential services.
- **CRO:** The Revised DIP adds a new affirmative covenant requiring the Obligors to retain, within 15 Business Days of the end of the Bridge Period, a chief restructuring officer with customary powers and responsibilities, acceptable to the Required DIP Lenders, and to keep such officer in place at all times thereafter.
- **Permitted Variances:** The Revised DIP provides greater flexibility to address operational risks allowing for the exclusions from the calculation of actual receipts for purposes of measuring variances: (i) unaccounted for fluctuations in the price of iron ore; and (ii) unanticipated timing fluctuations in receipt of funds from any offtake arrangement.
- **Events of Default:** The Revised DIP deletes a number of events of default, provides a broad five (5) day cure period, provides additional flexibility, and increases various thresholds to trigger an event of default for the benefit of the Borrowers .
- **Assignment:** The Revised DIP limits DIP Lenders to only being able to assign to an Eligible Assignee or with the consent of the Borrowers prior to an event of default (both customary and market standard); provided that any such assignment does not release the DIP Lender from its obligations in any event.

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

Court File No. CL-00000219-0000

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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