

**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 THE ENERGY & MINERALS GROUP LP  
(Motion Returnable June 10, 2026)**

June 9, 2026

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## Overview

1. EMG, the *de facto* majority shareholder and a creditor of the Applicants, makes two primary submissions on this motion. EMG's submissions relate to the DIP financing process undertaken by the Applicants and the Monitor, and specifically to the way DIP financing will be dealt with during the "Bridge Period" from June 10 until the determination of the DIP approval motion returnable June 30, 2026.

2. **First**, EMG wishes to ensure the Applicants and the Monitor will continue to seek a the best terms possible for long-term DIP financing during the Bridge Period. In their materials, the Applicants state that approval of a financing agreement with Export Development Canada during the Bridge Period will not "entrench" EDC over other potential DIP lenders and that nothing prevents the EDC DIP facility from "being replaced by another facility" following the Bridge Period.<sup>1</sup> To give life and accuracy to those assurances to the Court and the parties, it is imperative that the Monitor, which led the DIP negotiations on behalf of the Applicants, be directed to fully and fairly engage and negotiate with parties, including IRH Global Trading Ltd., making a proposal during the Bridge Period that is or may be more favourable than EDC's.

3. EMG is particularly concerned that the Monitor may consider itself "bound" by a provision in the DIP Facility Loan Agreement between the Applicants and EDC that restricts the Applicants from soliciting or accepting alternative financing proposals during the Bridge Period. If that is the case and the Monitor refuses to discuss or negotiate alternative DIP facilities with other lenders, the Applicants would be at risk of significant prejudice. Moreover, this would

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<sup>1</sup> Affidavit of Celeste van Tonder, sworn June 7, 2026 at para 15. Responding Motion Record of the Applicants at Tab 1, p 4.

make a fallacy of the Applicants' representation to this Court that EDC is not "entrenched" and can be "replaced by another facility".

4. **Second**, EMG is of the strong view that a transaction to recapitalize and/or restructure the Applicants' business can occur before and independently of a Court-supervised SISP, and that this approach would yield the best results for all stakeholders. A SISP will prevent a transaction through which the Applicants can sustainably carry on business and will add a huge amount of costs in the form of professional and other fees. For that reason, EMG submits that the Applicants should not be required to commence a SISP within 60 days of the approval of the Second Amended and Restated Initial Order (as set out in the EDC DIP Loan Agreement). EMG also intends to oppose any motion for the approval of a SISP order until the Applicants have been given the opportunity to achieve a restructuring or recapitalization independently.

### **EMG and the Applicants**

5. The Energy & Minerals Group LP, along with EMG Fund IV Management, LP and EMG Fund V Management, LP, act as registered investment advisors on behalf of certain funds and co-investment vehicles for which they are designated as manager. These entities are collectively referred to here as "EMG".

6. EMG has invested over \$1.5 billion (USD) in the Applicants and owns, directly or indirectly, 74.8% of the Applicants' equity.<sup>2</sup> In addition to equity funding, EMG has provided an additional \$275 million (USD) to assist the Applicants in exchange for royalty agreements

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<sup>2</sup> Affidavit of Celeste van Tonder, sworn May 14, 2026 at para 17. Application Record at Tab 2, p 28.

registered on title to the Applicants' mining rights. One of the EMG funds has also invested \$3.9 million in the Applicants' unsecured notes, due in 2029.

7. No other party has contributed anywhere near what EMG has to the development and operation of the Mary River Mine. EMG has an overriding financial interest in the conduct of this proceeding, the terms of the Applicants' DIP financing, and the nature of any steps taken to restructure their business or capital structure.

### **The DIP Solicitation Process**

#### *Expedited Process Led to Inadequate Opportunity to Negotiate DIP Terms*

8. The process undertaken by the Applicants to solicit DIP financing is set out in the Second Report of the Monitor. The Monitor sought proposals for DIP financing for a minimum of \$300 million (USD) on May 15, 2026. It received three proposals on May 25, from EDC; a group of noteholders in the Applicants (known as the "**Ad Hoc Group**"); and IRH. The bidders submitted their final offers on May 30, the Applicants signed the DIP financing agreement with EDC on June 3, and they sought approval of the agreement from this Court on June 5.

9. As is clear from the dates set out above, the solicitation, negotiation and approval process for the DIP financing was completed on an exceedingly tight timeline given the size and complexity of the agreement. As explained by the CFO of the Applicants, Celeste van Tondern, on cross-examination, the compressed timing of the process was driven by the Applicants' desire to present an executed DIP agreement to this Court for approval at a June 5 hearing. Ms. van Tondern noted that the "urgency of funds" was an important consideration in the process, and the May 30<sup>th</sup> date for final offers was "unfortunately" the date the Applicants had to meet to "get us

into court” on June 5, although this requirement imposed a “hectic” timeline on the DIP solicitation process.<sup>3</sup>

10. According to both the Monitor and the CFO, of the three DIP proposals, the one put forth by IRH had the best financial terms for the Applicants (i.e., the lowest interest rate and other costs). The Monitor nevertheless rejected IRH’s proposal because of concerns about “certainty of funding” resulting from IRH’s refusal to deposit the total amount of the DIP loan into a Canadian bank account. While the three proponents were provided with an opportunity to put in a final and best offer, there is no evidence that the Applicants or the Monitor ever sought to work with IRH to attempt to resolve this issue.<sup>4</sup>

11. The Monitor’s rejection of IRH’s proposal left only those of EDC and the Ad Hoc Group outstanding. As explained in the Applicants’ evidence and the Monitor’s Second Report (which EMG agrees with), the EDC proposal is preferable to that of the Ad Hoc Group. The Monitor recommended, and the Applicants’ Operating Committee agreed to, acceptance of the EDC proposal.<sup>5</sup>

*EDC Agreement Should Not Prevent Attempts to Negotiate Better DIP Terms*

12. The Applicants signed the EDC DIP loan agreement on June 3, 2026. The loan agreement contains a provision stating that “during the Bridge Period no alternative proposals for interim financing will be solicited or accepted by the Borrowers”.<sup>6</sup> This term is concerning in light of the

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<sup>3</sup> Transcript of the Cross-Examination of Celeste van Tondern, held June 8, 2026, at qq 189, 193, pp 62, 65.

<sup>4</sup> Second Report of the Monitor, dated June 4, 2026 at para 48, p 19. Van Tondern Transcript at qq 201, 208-210 pp 67-68, 70.

<sup>5</sup> Affidavit of Celeste van Tonder, sworn June 3, 2026 at para 69. Motion Record of the Applicants at Tab 2, p 30.

<sup>6</sup> DIP Facility Loan Agreement, dated June 3, 2026 at s 8. Motion Record of the Applicants at Tab 2H, p 147.

Applicants' evidence about the status of the EDC facility and their planned activities during the Bridge Period.

13. For example, as Ms. van Tonder stated in her June 7 affidavit:

Contrary to the suggestion of the Objecting Bidder in the cross motion, approval of the full DIP Facility does not entrench EDC or confer upon it any advantage over other parties. ... Nothing prevents the DIP Facility from being replaced by another facility if the Objecting Bidder is ultimately successful.<sup>7</sup>

14. Similarly, Ms. van Tonder agreed on cross-examination that it would be “useful” to have more time to attempt to resolve the outstanding issue with the IRH proposal, that the Applicants’ overarching goal is to “get the best DIP for the company during [the Bridge] period”, and that, in order to do so, the “Monitor and the company will be able to negotiate with other potential DIP Lenders [in addition to EDC]” during that period.<sup>8</sup>

15. Ms. van Tonder also agreed that, during the Bridge Period, “EDC doesn’t get an advantage over other parties” in negotiations regarding which party will provide DIP financing in the longer term, and that “if a potential lender comes back with a proposal that [is] better than EDC and the objecting bidder in every way ... the company should be able to discuss that and negotiate with that offeror” in that period.<sup>9</sup>

16. This evidence makes clear that the Applicants do not believe there are, or should be, any impediments to replacing the EDC DIP facility with a more favourable financing arrangement (if

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<sup>7</sup> Affidavit of Celeste van Tonder, sworn June 7, 2026 at para 15. Responding Motion Record of the Applicants at Tab 1, p 4.

<sup>8</sup> Transcript of the Cross-Examination of Celeste van Tonder, held June 8, 2026, at qq 213, 221, 223-224, pp 71-75.

<sup>9</sup> Transcript of the Cross-Examination of Celeste van Tonder, held June 8, 2026, at qq 218-219, 231, pp 73, 76.

possible) during the Bridge Period and that, to ensure the best financing arrangement is selected, EDC is not intended to have any advantage as a result of being selected to provide interim DIP financing during the Bridge Period.

17. To ensure that the Applicants have a real opportunity to obtain the best possible DIP financing arrangement during the Bridge Period, it must be clear that the Applicants and the Monitor are authorized to engage with lenders whose terms may be superior to those of EDC, including IRH (which has already made a proposal with better financial terms), or any other potential lender. EMG is concerned that the Monitor does not share this view, based on the language of the Second Report, which states that no alternative proposals for interim financing can be solicited or accepted by the Borrowers during the Bridge Period.<sup>10</sup>

18. On the morning of June 9, EMG asked the Monitor to confirm in writing whether it believes there are any obstacles to it considering other financing proposals on behalf of the Applicants; the Monitor has not yet responded.<sup>11</sup> The Monitor's confirmation of this point is particularly critical given the evidence of Ms. van Tonder that the Monitor and its counsel were "running" the discussions with lenders and that the Applicants' management was not directly involved in the negotiations.<sup>12</sup>

19. In light of the above, EMG asks the Court to direct the Applicants and the Monitor to engage with IRH to discuss and negotiate to determine whether the IRH proposal can be

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<sup>10</sup> Second Report of the Monitor, dated June 4, 2026 at para 55(a), p 22.

<sup>11</sup> See letter from M. Gottlieb to M. Wasserman, dated June 9, 2026, attached as **Appendix "A"**.

<sup>12</sup> Transcript of the Cross-Examination of Celeste van Tondern, held June 8, 2026, at qq 225-230, pp 75-76.

amended to a form acceptable to the Applicants and the Monitor, and that they also be directed to consider any reasonable proposals from other potential DIP funders during the Bridge Period.

**The SISP**

20. There is no pending motion to approve a SISP at this time. That said, the DIP proposals of both EDC and Ad Hoc Group require a SISP to be commenced in relatively short order—within two to three months from the Court’s decision on this motion.

21. It is EMG’s respectful position that a SISP should not be commenced until the Applicants have been given a reasonable opportunity to come to an agreement with their key stakeholders in order to develop a restructuring and/or recapitalization plan that will be in the best interest of all their stakeholders. EMG believes this can be accomplished in relatively short order and that the delay and expense of a SISP process will not be necessary.

22. EMG therefore opposes the conditions in the EDC DIP agreement and the Ad Hoc Group’s DIP proposal which would require a SISP to be undertaken within a specific time period following the making of the SARIO. In addition, the timeline for an SISP should not begin to run until after the determination of the DIP approval motion. EMG also reserves all of its rights to oppose the motion for a SISP order if and when the Applicants seek such an order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 9<sup>th</sup> day of June, 2026.



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Matthew P. Gottlieb / Philip Underwood

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## **Appendix "A"**

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The logo for Lax O'Sullivan Lisus Gottlieb is a dark blue square with the firm's name in white, stacked vertically: "Lax", "O'Sullivan", "Lisus", and "Gottlieb".

Lax  
O'Sullivan  
Lisus  
Gottlieb

June 9, 2026

**BY EMAIL**

Marc Wasserman/Michael De Lellis  
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Suite 6200, 100 King St W  
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Dear Counsel:

**CCAA Application of Baffinland Iron Mines Corporation et al. (the “Applicants”)**

We write to you to request a response from your client, FTI Consulting Canada Inc., in its Capacity as Monitor (the “**Monitor**”), to questions arising from the Monitor’s Second Report to the Court, dated June 4, 2026.

During her cross-examination on June 8, 2026, Celeste van Tonder, the Chief Financial Officer of the Applicants, advised that the Monitor is responsible for the conduct of negotiations between the Applicants and prospective debtor-in-possession financing (“**DIP**”) lenders. Further to Ms. van Tonder’s examination and the Second Report, we require further information.

Please provide answers from the Monitor to each of the following questions:

1. What role did the Monitor play in the negotiations of the DIP proposals prior to the EDC DIP proposal being accepted?
2. Ms. Van Tonder’s testimony is that the Monitor ran the negotiations and the Applicants were not involved in that negotiation. Please confirm.
3. What does the Monitor consider its duty to be with respect to (i) addressing and/or (ii) seeking, a potential new or updated DIP financing proposal during the period from June 10 through June 30 (the “**Bridge Period**”)?
4. Does the Monitor consider there to be any restrictions on its ability to:
  - a. solicit;
  - b. enter into discussions regarding; or

c. recommend approval by the Court;

of any additional or revised proposal to provide DIP financing to the Applicants during the Bridge Period?

5. If the answer to 4 above is yes, specifically and in detail, what are the restrictions and what is the source of such restrictions?
6. Specifically, will the Monitor engage in discussions with a party if, during the Bridge Period, that party proposes to offer DIP financing to the Applicants for the CCAA proceeding?
7. Specifically, if IRH, or any other party, approaches the Monitor to discuss offering DIP financing to the Applicants for the CCAA proceeding, will the Monitor engage with that party to discuss and then negotiate the potential DIP financing?

Given the upcoming motion scheduled to be heard on June 10, 2026, please provide answers to the above questions by the end of the day today, **June 9**.

If the Monitor is in receipt of questions from other parties, please provide those questions and the answers provided by the Monitor.

Yours truly,



Matthew P. Gottlieb

cc. CCAA Service List

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

Court File No. CL-26-00000219-0000

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF**  
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PROCEEDING COMMENCED AT TORONTO

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**SUBMISSIONS OF THE ENERGY & MINERALS GROUP**  
**(Motion Returnable June 10, 2026)**

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