

**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 October 9, 2026)**

September 29, 2026

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A. Overview of EMG’s Submissions in Support of the Applicants’ Motion

1. EMG, the *de facto* majority shareholder and creditor of the Applicants, supports the Applicants’ motion for approval of a SISP run by the Chief Restructuring Officer, but with ultimate decision-making authority remaining with the Debtors *via* the Operating Committee.¹
2. EDC’s counter-proposal—that *all* SISP decisions be made by the CRO in place of the Operating Committee—is unreasonable and inconsistent with this debtor-led CCAA proceeding. EDC has no right to require a corporate governance change of the Applicants regarding the SISP or at all. The Court-approved DIP Facility preserves the Operating Committee’s governance rights, and the CRO’s mandate was deliberately limited to providing advice on and assisting the Operating Committee with implementing the SISP. EDC now proposes a SISP that would override the Debtors’ governance rights and strip the Operating Committee of decision-making powers over matters fundamental to the corporation’s existence. This cannot be allowed.
3. There is no basis for EDC’s alleged “unresolvable conflicts” and “process concerns”. The Operating Committee’s composition, *i.e.*, appointees from EMG and ArcelorMittal, was known to EDC and the secured lenders for years. The Senior Secured Lenders first raised concerns about potential conflicts during the DIP Facility motion in June 2026, but these concerns were not an impediment to EDC providing DIP financing. EDC and the Senior Secured Lenders also had the opportunity to deal with any perceived Operating Committee conflicts as part of the CRO Mandate but did not do so.
4. Nor can EDC point to a single instance where the Operating Committee acted contrary to the best interests of the Debtors or their stakeholders. The Operating Committee has consistently

¹ Capitalized terms are as defined in the affidavit of Jowdat Waheed, sworn Sept. 17, 2026 (the “Waheed Affidavit”).

supported the Debtors' efforts to restructure towards an outcome that maximizes value for all parties, including by supporting the DIP Settlement, the CRO's mandate, and the SISP. There is no real evidence that the members of the Committee will not properly do their jobs.

5. Finally, any issue of conflict is fully addressed by the Operating Committee's Independence Mandate, which states that all committee members must act in the Debtors' best interest, and requires *independent members to deliberate and vote in place of any conflicted members*. Each independent member is eminently qualified, and none have any interest in the SISP's outcome. They are just as "outcome agnostic" as the CRO and the Monitor.

6. EDC now takes issue with independent committee members being paid by their nominating shareholders, suggesting that it calls their independence into question. But EDC refused to let the company pay those fees, leaving EMG and the other shareholders no choice but to fund the Independence Mandate themselves. EDC cannot engineer this perceived lack of independence and then cite it as a basis for opposing the SISP. The fact that independents are paid by those appointing them does not make them not independent. The Independence Mandate makes that clear.

B. Corporate Relationship between EMG, the Applicants, and the Operating Committee

7. The Energy & Minerals Group LP, along with EMG Fund IV Management, LP and EMG Fund V Management, LP (collectively, "EMG") are registered investment advisors acting on behalf of certain funds and co-investment vehicles for which they serve as manager.²

² Affidavit of John Calvert, sworn Sept. 23, 2026 (the "Calvert Affidavit"), [para. 1](#).

8. EMG has invested over US\$1.6 billion in the Applicants and owns, directly or indirectly, 74.8% of their equity. EMG has also provided US\$275 million to assist the Applicants in exchange for certain royalties registered on title to the Applicants' mining rights. One EMG fund invested an additional US\$3.9 million in the Applicants' unsecured notes, due in 2029, along with two affiliates that invested over US\$38 million in such notes.³

9. EMG is a shareholder of Nunavut Iron Ore, Inc. ("NIO"), which is the parent company of the other Debtors: Baffinland Iron Ore, Inc., Baffinland Iron Mines Corporation, Baffinland Iron Mines LP, and 12334992 Canada Inc. The other NIO shareholder is ArcelorMittal Canada Inc.⁴

10. NIO is subject to a unanimous shareholders' agreement (the "USA") establishing an Operating Committee vested with all decision-making authority over NIO and each of its subsidiaries. The Operating Committee's members are appointed by NIO's shareholders: EMG appoints five members, and ArcelorMittal appoints two.⁵

11. EDC has had a copy of NIO's USA since 2020. It and other lenders have long known about the Operating Committee's composition and how its members are appointed. At no point prior to this motion did EDC raise concerns about conflicts arising from provisions of the USA.⁶

12. The Applicants applied for a debtor-led restructuring under the CCAA on May 14, 2026. EDC and the Senior Secured Creditors participated extensively in this proceeding. They have

³ Calvert Affidavit, [para. 2](#).

⁴ Calvert Affidavit, [para. 3](#).

⁵ Calvert Affidavit, [para. 4](#).

⁶ Calvert Affidavit, [para. 12](#).

had every opportunity to address perceived conflicts with the Operating Committee's role in the SISP process, including at motions for the approval of DIP Financing and the CRO's Mandate.

C. Neither DIP Facility Nor CRO Mandate Supplant Operating Committee's Authority

13. On June 30, 2026, this Court approved the DIP Facility, being a \$400 million revolving credit facility from EDC.⁷ The terms of the DIP Facility allow the Debtors to continue operating in the ordinary course. Neither it nor the related DIP Settlement Agreement change the Debtors' management structure or the Operating Committee's decision-making authority.⁸ EDC did not ask the Court to limit the Operating Committee's powers, whether for conflicts or otherwise.

14. The Applicants' SISP is consistent with the Operating Committee's continued management powers. Nothing in the DIP Facility or any other Court-approved agreement or Order ousted the Operating Committee's authority to make critical decisions about the company's future, including those arising in the SISP. They do not vest these decisions in the CRO or the Monitor.

15. EDC's opposition to the Debtors' SISP rests on its approval rights in section 27 of the DIP Facility, which requires that any SISP terms be acceptable to EDC "in its *reasonable* discretion":

...All terms of the SISP, including all Milestones, must be acceptable to the DIP Lender **in its reasonable discretion**. Forthwith after the date hereof, the Borrowers shall work with the Monitor to commence the process of identifying a financial advisor appropriately experienced and qualified to conduct the SISP. The financial advisor, its scope of services and compensation must be acceptable to the DIP Lender in its reasonable discretion.⁹

⁷ Waheed Affidavit, [para. 17](#); the US\$400M credit facility may be upsized to \$US475M in certain circumstances.

⁸ Waheed Affidavit, [para. 18](#).

⁹ [Ex. C](#) to the Waheed Affidavit (DIP Facility Loan Agreement, dated June 3, 2026) (emphasis added).

16. Like any contractual discretion, EDC's rights under section 27 must be exercised reasonably, in good faith, and for the purpose for which it was granted. EDC cannot reject the Debtors' SISP terms arbitrarily, and it must demonstrate legitimate grounds for taking away the Operating Committee's decision-making powers.¹⁰ As set out below, EDC's sole basis for opposing the Debtors' SISP—perceived conflicts—falls well short of the reasonableness requirement in section 27 of the DIP Facility. Moreover, the discretion regarding the SISP was not granted so as to give EDC the ability to change the Applicants' corporate governance.

17. The law is clear that EDC cannot use the CCAA process to interfere with the Debtors' corporate governance rights. In *Re Stelco*, the Ontario Court of Appeal held that a CCAA court lacks jurisdiction to remove directors for perceived conflicts of interest. Justice Blair explained that the court “is not entitled to usurp the role of the directors and management in conducting what are in substance the company's restructuring efforts”. That is because “the corporate activities that take place in the course of the workout [of a plan or compromise] are governed by the legislation and legal principles that normally apply to such activities”.¹¹

18. The same reasoning applies here. The Operating Committee's powers to oversee the Debtors' restructuring are authorized by the *Ontario Business Corporations Act* and consistent with common law principles of corporate governance. If EDC is unhappy or dissatisfied with the outcome of the SISP, as determined by the Operating Committee, it can bring a motion

¹⁰ See *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7, [paras. 4, 62-63, 88 & 91](#); see also *Yukon (Government of) v. Yukon Zinc Corporation*, 2020 YKSC 16, [para. 73](#).

¹¹ *Re Stelco Inc. (Bankruptcy)* (2005), 75 O.R. (3d) 5, [para 44](#); [2005 CanLII 8671](#) (C.A.).

challenging that outcome before this Court. But it cannot use the CRO—a court-appointed officer—to usurp the Operating Committee’s power to make that decision in the first place.

19. EDC’s position is also untethered from the CRO’s mandate, which was extensively negotiated and approved by EDC and the Senior Secured Lenders. At no time did EDC have the Applicants agree that the CRO would assume decision-making authority over the SISP, whether for supposed conflicts or otherwise. Nor did the Senior Secured Lenders, despite having raised conflict concerns during the DIP Facility motion in June 2026.¹² To the contrary, the CRO Mandate acknowledges the Operating Committee’s decision-making authority over the SISP and limits the CRO’s role to advising on and assisting with its implementation:

The CRO’s duties shall be as follows:

... b) **advising and providing recommendations to the Operating Committee** and attending meetings of the Operating Committee in respect of the Debtors’ restructuring activities and CCAA Proceeding, including in respect of the items listed below:

...

c. **the development of a sale and investment solicitation process** in respect of the Debtors and its business and assets (a “SISP”);

d. **updates regarding material developments in the SISP;**

...

e) **assisting with the negotiation of, and executing, NDAs** in preparation for or **in connection with any SISP;**

f) assisting with the negotiation of, and executing, the **engagement letter for the financial advisor responsible for conducting the SISP;**¹³

20. EDC cannot now re-trade on Court-ordered arrangements in an attempt to wrest control of the SISP from the Operating Committee.

¹² Waheed Affidavit, [paras. 63-66](#).

¹³ [Ex. H](#) to the Waheed Affidavit (Schedule A (“Mandate”) to the CRO Appointment Order, dated July 29, 2026).

D. Operating Committee Acts in the Debtors' Best Interests

21. At paragraph 38 of her affidavit, EDC's Director of Structured & Project Finance, Ashley Glen, asserts "significant concerns that a SISP in which the Operating Committee composed of shareholder representatives retains decision making authority invites unresolvable conflicts and process concerns".¹⁴ There is no evidence to support this alleged concern.

22. EDC's concerns about conflicts of interest are based almost entirely on the fact that Operating Committee members are appointed by NIO's equity holders.¹⁵ This is true of virtually all corporate boards. EDC does not—and cannot—point to a single instance where the Operating Committee acted contrary to the Debtors' interests. To the contrary, the Operating Committee has consistently acted in the best interest of the Debtors and their stakeholders throughout this proceeding, including by:

- (a) allowing the Debtors to pursue a value-maximizing SISP process;
- (b) supporting the DIP Settlement, which ended value-destructive litigation and established a framework for cooperation with the secured creditors;
- (c) approving the appointment of the CRO and the terms of the CRO mandate;
- (d) approving the engagement of the Transaction Advisor to advance the SISP; and
- (e) developing and seeking Court approval of the SISP that the Applicants put forward.¹⁶

¹⁴ Affidavit of Ashley Glen, sworn Sept. 21, 2026 ("Glen Affidavit"), [para. 38](#).

¹⁵ Glen Affidavit, [para. 39](#).

¹⁶ Calvert Affidavit, [paras. 15-16](#).

23. Ms. Glen also points to section 3.1(c) of the USA, which allows each shareholder to “act in its own best interest and approve or disapprove any matter, or authorize its nominees to do so, in its sole discretion”. This reflects a pre-CCAA allocation of contractual rights among shareholders of a private company and does not purport to override any obligations arising in the context of a court-supervised restructuring. As set out above, the Operating Committee has fully complied with these obligations.¹⁷

24. EDC did not just learn about the USA during this proceeding. It has had a copy of the USA since September 2020, and has been fully aware of the governance structure it establishes. At no point prior to this motion did it raise concerns about s. 3.1(c) creating a conflict of interest.¹⁸

25. In any event, as discussed below, the Independence Mandate approved by the Operating Committee makes clear that section 3.1(c) does not apply during the pendency of the CCAA proceedings.¹⁹ The Independence Mandate confirms that all Operating Committee members remain duty-bound to act in the Debtors’ best interests.

E. EMG is Fully Supportive of the Applicants’ Proposed SISP

26. At paragraph 42 of her affidavit, Ms. Glen states that “[m]embers of the Operating Committee are not agnostic as to what outcome of a SISP they would prefer” because EMG had previously indicated a desire to pursue recapitalization before engaging in a sale process. She suggests this preference for a recapitalization reflects bias on the SISP’s outcome.

¹⁷ Calvert Affidavit, [paras. 15-16](#).

¹⁸ Calvert Affidavit, [para. 12](#).

¹⁹ Calvert Affidavit, [para. 17](#); [Ex. K](#) to the Waheed Affidavit (Independence Mandate dated September 16, 2026).

27. In submissions delivered three months ago, EMG advocated for pursuing a negotiated recapitalization or restructuring transaction in advance of and independently of a formal SISP. These submissions were made at a time the Court was considering the appropriate debtor-in-possession facility and the proper sequencing of restructuring alternatives. EMG favoured recapitalization or restructuring because it would yield the best outcome for all stakeholders. If such a transaction were successful, it would have saved the significant cost and time of the SISP process. EMG never expressed blanket opposition to a SISP under any circumstances.²⁰

28. A recapitalization transaction did not occur, and EMG fully supports the Applicants' SISP—which expressly contemplates recapitalization as a permitted transaction. EMG's earlier preference for sequenced recapitalization/restructuring and sale processes, now overtaken by the SISP, does not reflect any bias or call the Operating Committee's duties into question.²¹

29. Also, EMG confirmed it will not participate in the SISP. There is no basis for any suggestion that EMG supports the SISP in order to control the process to its own advantage.²²

F. Any Perceived Conflicts are Fully Addressed by the Independence Mandate

30. While EMG disagrees that the Operating Committee is acting on the basis of any alleged conflicts, any such concerns are fully addressed by the Operating Committee's unanimous adoption of the Independence Mandate. It provides, among other things, for independent committee members to deliberate and vote in place of any conflicted member.²³

²⁰ Calvert Affidavit, [para. 8](#).

²¹ Calvert Affidavit, [para. 9](#).

²² Calvert Affidavit, [para. 10](#).

²³ Waheed Affidavit, [paras. 12, 69-71](#), and [Ex. K](#) (Independence Mandate dated September 16, 2026).

31. On behalf of EDC, Ms. Glen says the Independence Mandate is “unacceptable” and insists that all SISP decision-making authority be “vested in the CRO” rather than the Operating Committee.²⁴ Its position must be rejected.

32. At paragraph 49(d) of her affidavit, Ms. Glen states that “EDC is concerned about any perception of the absence of independence among the proposed Independent Members” because they are “selected and funded individually by each Nominating Shareholder”. However:

- (a) The fact that EMG selected its proposed independent member—Jay Goffman—does not call his independence into question. Mr. Goffman has no relationship with EMG and has attested to his “independence” within the meaning of section 1.4 of National Instrument 52-110. His fees are fixed and not conditional on the SISP outcome or any other decisions he makes as an independent member. There is no success fee;²⁵
- (b) Mr. Goffman’s fees are fair and reflect the calibre of his over forty years of experience in complex restructuring. He is a retired partner and former Global Head of Restructuring at Skadden Arps, and previously served as Vice President of Global Advisory (North America) for Rothschild & Co and the Client Chairman at Teneo;²⁶
- (c) Mr. Goffman’s fees are also commensurate with the scope, complexity, and demands of the role he is being asked to perform. The Operating Committee oversees a major

²⁴ Glen Affidavit, [para. 49](#).

²⁵ Waheed Affidavit, [paras. 74, 76](#) & [Ex. N](#) (EMG Engagement Letter dated September 17, 2026); Calvert Affidavit, [para. 19](#).

²⁶ Waheed Affidavit, [para. 74\(a\)](#) & [Ex. M](#) (Curriculum Vitae for Independent Members); Calvert Affidavit, [para. 20](#).

mining operation with secured debt obligations exceeding US\$1.2 billion, a multi-phase SISP, and a broad range of stakeholders with competing interests;²⁷

- (d) The fact that each Nominating Shareholder is responsible for the compensation of its own Independent Member does not compromise the independence of those individuals. EMG has agreed to pay Mr. Goffman's fees only because EDC refused to include those fees in the Debtors' cash flow forecasts. For this reason, the Operating Committee members decided that having the shareholders fund the Independence Mandate directly was the most prudent course, avoiding delay and addressing potential conflict-of-interest concerns.²⁸ EDC cannot have it both ways—refusing to fund the Independence Mandate while complaining that EMG and the other shareholders are funding it; and
- (e) EMG confirms that it will not terminate Mr. Goffman's appointment as independent member during the course of the CCAA proceeding. If for any reason a replacement must be appointed, EMG will seek court approval or Monitor consent.²⁹

33. Paragraph 49(e) of Ms. Glen's affidavit also raises concerns that independent committee members "do not add value" and create "additional layers of decision-making" that will "be inefficient, time consuming, and result in significant delay".

34. This is wrong. The independent committee members serve a specific and discrete function: Exercising decision-making powers at the Operating Committee level in place of any conflicted

²⁷ Calvert Affidavit, [para. 20](#).

²⁸ Calvert Affidavit, [paras. 22-23](#).

²⁹ Calvert Affidavit, [para. 24](#).

members. *When a conflict arises*, the only change is the identity of the members who deliberate and vote. Otherwise, the Operating Committee operates under the same procedures as if no conflict existed. The independent members add no delay or complexity to the SISP.³⁰

35. Nor can the Monitor or the CRO fulfil the role of independent committee members. The Monitor's role is to supervise the CCAA proceedings and report to the Court. The CRO's mandate is to advise and provide recommendations to the Operating Committee on the Debtors' restructuring activities and the CCAA proceedings. They are not empowered to assume decision-making authority of conflicted Operating Committee members.³¹ Neither of them has expressed any concerns with the Independence Mandate before this Court.

G. Order Requested

36. For all of the foregoing reasons, EMG asks the Court to grant the Applicants' motion for a SISP as set out at Tab 3 of their Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of September, 2026.



Matthew P. Gottlieb / John Carlo Mastrangelo
Lawyers for The Energy & Minerals Group LP

³⁰ Calvert Affidavit, [para. 26](#).

³¹ Calvert Affidavit, [paras. 26](#) & [28](#).

SCHEDULE “A” - LIST OF AUTHORITIES

1. *Re Stelco Inc. (Bankruptcy)* (2005), 75 O.R. (3d) 5, [2005 CanLII 8671](#) (C.A.)
2. *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, [2021 SCC 7](#)
3. *Yukon (Government of) v. Yukon Zinc Corporation*, [2020 YKSC 16](#)

I certify that I am satisfied as to the authenticity of every authority, and I am satisfied that every quotation from an authority that appears in the factum accurately reproduces the text of the authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date September 29, 2026



Signature

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PROCEEDING COMMENCED AT TORONTO

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