

August 14, 2015

Via E-Mail

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**Attention: Bernard Boucher (Montreal)
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Dear Counsel:

**Re: Wabush Mines (CCAA), Québec Court File No. 500-11-048114-157
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining
Company, Managing Agent Arnaud Railway Company and Wabush Lake Railway
Company, Limited Newfoundland Registration Number 021314-000 (the “Salaried
Plan”)
Our File No. 15/1359**

We are the court-appointed Representative Counsel to all non-union employees and retirees of Wabush Mines in its CCAA proceedings. These individuals are also members of the Salaried Plan.

As you are aware, the company reported that as at January 1, 2015, the Salaried Plan is underfunded on a wind up basis by approximately \$18.2 million.

Further, the company has reported that it owes amounts to the Salaried Plan referred to as “Monthly Amortization Payments” in the amount of \$273,218.58 per month, and a “Yearly Catch-Up Amortization Payment” of approximately \$5.5 million (for both the Salaried and Union Plans) which was due for payment in July, 2015.

In the decision of Mr. Justice Hamilton dated June 26, 2015, the court approved the company’s request to not make the Monthly Amortization Payments nor the Yearly Catch-Up Amortization Payment going forward.

Accordingly, the amount of the Monthly Amortization Payments and the proportionate share of the Yearly Catch-Up Amortization Payment attributable to the Salaried Plan are therefore owing to the Salaried Plan and have not been paid by the company.

Statutory deemed trust priorities for members of the Salaried Plan

The Salaried Plan is registered in Newfoundland and thus subject to the Newfoundland *Pension Benefits Act*, 1997, SNL 1996 c.P-4.01 s.1 (“**PBA**”). It is also our understanding that certain members of the Salaried Plan may be subject to federal jurisdiction making the federal *Pension Benefits Standards Act*, 1985 (R.S.C., 1985, c.32 (2nd Supp.)) (“**PBSA**”) also applicable.

Both the PBA and the PBSA contain statutory protections for members of underfunded pension plans.

The PBA states:

Amounts to be held in trust

32. (1) An employer ... shall ensure, with respect to a pension plan, that

...

(b) an amount equal to the aggregate of

(i) the normal actuarial cost, and

(ii) any special payments prescribed by the regulations, that have accrued to date; and

(c) all

...

(ii) other amounts due under the plan from the employer that have not been remitted to the pension fund

are kept separate and apart from the employer's own money, *and shall be considered to hold the amounts referred to in paragraphs (a) to (c) in trust for members, former members, and other persons with an entitlement under the plan.*

(2) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that under subsection (1) is considered to be held in trust shall be considered to be separate from *and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own money or from the assets of the estate.*

(3) *Where a pension plan is terminated in whole or in part, an employer who is required to pay contributions to the pension fund shall hold in trust for the member or former member or other person with an entitlement under the plan an amount of money equal to employer contributions due under the plan to the date of termination.*

(4) *An administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amount required to be held in trust under subsections (1) and (3).* [emphasis added]

The PBSA states:

8. (1) An employer shall ensure, with respect to its pension plan, that the following amounts are kept separate and apart from the employer's own moneys, *and the employer is deemed to hold the amounts referred to in paragraphs (a) to (c) in trust for members of the pension plan, former members, and any other persons entitled to pension benefits under the plan:*

...

(b) an amount equal to the aggregate of the following payments that have accrued to date:

(i) the prescribed payments, and

(ii) the payments that are required to be made under a workout agreement; and

(c) all of the following amounts that have not been remitted to the pension fund:

...

(ii) other amounts due to the pension fund from the employer, including any amounts that are required to be paid under subsection 9.14(2) or 29(6).

...

29(6) *If the whole of a pension plan is terminated, the employer shall, without delay, pay into the pension fund all amounts that would otherwise have been required to be paid to meet the prescribed tests and standards for solvency referred to in subsection 9(1) and, without limiting the generality of the foregoing, the employer shall pay into the pension fund*

(a) *an amount equal to the normal cost* that has accrued to the date of the termination;

(b) *the amounts of any prescribed special payments* that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(c) the amounts of payments that are required to be made under a workout agreement that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(d) all of the following amounts that have not been remitted to the pension fund at the date of the termination:

(i) the amounts deducted by the employer from members' remuneration, and

(ii) *other amounts due to the pension fund from the employer*; [emphasis added]

As the Monthly Amortization Payments and the proportionate share of the Yearly Catch-Up Amortization Payments have not been paid by Wabush, those amounts are now subject to the deemed trust priorities pursuant to both section 32 of the PBA and section 8 of the PBSA in favour of the Salaried Plan members.


Furthermore, in the event the Salaried Plan is wound up, which we expect to be highly likely in the company's current circumstances, the amount the company owes to the Salaried Plan in respect of the wind up liability is also subject to the PBA deemed trust priority in favour of the plan members.

We are writing to confirm that the above-noted priorities will be asserted on behalf of the Salaried Plan members in respect of the amounts owing by the company to the Salaried Plan and are to be paid from the company's assets ahead of the claims of other creditors (after payment of the court-ordered CCAA charges). As a trust claim, the amounts owing to the Salaried Plan that are subject to the PBA and PBSA deemed trusts have priority over any secured claim that may be claimed by another creditor. Please bear that in mind should any bidder in the current sales process applicable to Wabush seek to assert a "credit bid" predicated on its assertion that it is a first priority secured creditor of Wabush.

Should you have any questions with respect to the above, please do not hesitate to contact the undersigned. Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay

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cc. Nigel Meakin, Steven Bissell, *FTI Consulting* (Monitor)
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