

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
LABRADOR IRON MINES HOLDINGS LIMITED, LABRADOR IRON MINES LIMITED
and SCHEFFERVILLE MINES INC. (the "Applicants")

**APPLICATION UNDER THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**FACTUM OF
THE APPLICANTS, LABRADOR IRON MINES LIMITED, LABRADOR IRON MINES
HOLDINGS LIMITED and SCHEFFERVILLE MINES INC.**

April 1, 2015

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Monitor

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF LABRADOR IRON MINES LIMITED**

**FACTUM OF THE APPLICANTS, LABRADOR IRON MINES LIMITED,
LABRADOR IRON MINES HOLDINGS LIMITED and SCHEFFERVILLE MINES INC.**

PART I. OVERVIEW

1. Labrador Iron Mines Holdings Limited ("LIMH"), Labrador Iron Mines Limited ("LIM") and Schefferville Mines Inc. ("SMI", and together with LIMH and LIM, the "Applicants") are applying for an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").
2. On this application, the Applicants seek an order:
 - (a) abridging and validating the time for service of the Notice of Application and the Application Record, and dispensing with further service thereof;
 - (b) declaring that the Applicants are companies to which the CCAA applies;
 - (c) appointing Duff & Phelps Canada Restructuring Inc. ("**Duff & Phelps**") as Monitor of the Applicants;

- (d) staying all proceedings and remedies taken or that might be taken against or in respect of the Applicants or any of their property, except as otherwise set forth in the Initial Order;
 - (e) authorizing the Applicants to carry on business in a manner consistent with the preservation of their property and to make certain payments in connection with their business and the proceedings; and
 - (f) creating the Administration Charge, Directors' Charge and Intercompany Charge.
3. If the relief sought is granted, the Applicants intend to use the stay period to:
- (a) consult with their creditors and stakeholders with a view to securing agreement to a restructuring plan which would compromise creditor claims and restructure the Applicants key operating contracts;
 - (b) pursue negotiations for the monetization of certain of the Applicants' non-core assets;
 - (c) continue discussions with LIM's major outside creditors, RBRG Trading (UK) Limited ("**RBRG**" and formerly RBR Metalloyd Limited) and Grey Rock Services Inc. ("**Grey Rock**") with a view to concluding an agreement to compromise their claims;
 - (d) continue discussions with Gerald Metals SA ("**Gerald**"), an affiliate of RBRG with a view to concluding a support agreement and a potential

mine development financing with such parties generally as contemplated in a non-binding memorandum of understanding, dated November 4, 2014; and,

- (e) identify opportunities and pursue interim debtor-in-possession financing (“**DIP Financing**”) on a basis to be determined to cover the costs of the Applicants’ care and maintenance operations during these proceedings should it appear that the Applicants do not have sufficient liquidity or resources to fund these costs and these CCAA proceedings.

4. The Applicants are mindful of the interests of their key stakeholders, including not only their lenders but employees, suppliers, customers, and aboriginal partners, as well as the important role that LIM plays in the economic fabric of Labrador. This application seeks to provide the Applicants with the time and opportunity to restructure their operations and obligations under the protection of court-supervised proceedings for the benefit of all of these stakeholders.

PART II. FACTS

5. LIM's Chief Executive Officer and director, John Kearney, swore an affidavit on March 31, 2015 (the "Kearney Affidavit") in support of this Application. The Kearney Affidavit sets out the facts concerning LIM's financial condition and this application for relief. Capitalized terms not otherwise defined in this factum have the same meanings as in the Kearney Affidavit.

A. Corporate Structure¹

6. LIMH is incorporated in the Province of Ontario pursuant to articles of incorporation dated May 17, 2007 under the *Business Corporations Act* (Ontario), R.S.O. 1990 c.B.16 (the “**OBCA**”).²

7. LIM is constituted under the laws of the Province of Ontario pursuant to articles of amalgamation dated November 30, 2007 under the OBCA. LIM was formed by LIMH to be the operating company in respect of iron ore properties located within the Province of Newfoundland and Labrador and previously held or controlled by LIMH.³

8. SMI is incorporated under the laws of Canada pursuant to articles of incorporation dated May 17, 2007 under the *Canada Business Corporations Act*, R.S.C. 1985 c.C.44 (the “**CBCA**”). SMI was formed by LIMH to be the operating company in respect of iron ore properties located within the Province of Québec and previously held or controlled by LIMH.⁴

9. The Applicants' registered and executive offices are located at 220 Bay Street, Suite 700, Toronto, Ontario M5J 2W4.⁵

10. LIMH is a publicly held company whose share capital consists of an unlimited number of common shares without par value of which 126,323,123 common shares are issued and outstanding. In addition, 13,800,000 warrants and 1,030,000 options to

¹ See organization chart showing the corporate relationships among the Applicants and other wholly owned subsidiaries of LIMH at Kearney Affidavit, Exhibit “A”, Application Record, Tab 2A.

² Kearney Affidavit at para 10, Application Record, Tab 2.

³ Kearney Affidavit at para 11, Application Record, Tab 2.

⁴ Kearney Affidavit at para 12, Application Record, Tab 2.

⁵ Kearney Affidavit at para 15, Application Record, Tab 2.

purchase totals of 13,800,000 and 1,030,000 additional common shares, respectively, are issued and outstanding.⁶

11. The directors of LIMH are Matthew Coon Come, Eric Cunningham, Gerald Gauthier, D. William Hooley, Danesh Varma and John Kearney.⁷

12. Kearney is also a director of LIM and SMI, as are Rodney A. Cooper and Richard R.J. Pinkerton.⁸

13. The executive officers of each of the Applicants are:

- (a) John F. Kearney, Chairman and Chief Executive Officer;
- (b) Rodney A. Cooper, President and Chief Operating Officer;
- (c) Richard R.J. Pinkerton, Chief Financial Officer; and
- (d) Neil J.F. Steenberg, Secretary.⁹

14. The Applicants currently have 15 full time employees and independent contractors, including 8 at the Applicants' corporate offices and 7 at other locations. At the peak of its mining operations in August 2013 the Applicants had 250 employees and independent contractors, including 75 aboriginal people from local communities, employed at its mine and exploration sites, offices and other locations.¹⁰

⁶ Kearney Affidavit at para 16, Application Record, Tab 2.

⁷ Kearney Affidavit at para 20, Application Record, Tab 2.

⁸ Kearney Affidavit at para 21, Application Record, Tab 2.

⁹ Kearney Affidavit at para 22, Application Record, Tab 2.

¹⁰ Kearney Affidavit at para 23, Application Record, Tab 2.

B. The Applicants' Business

15. The Applicants' operations are carried out in the central part of the Labrador Trough iron ore region (the "**Schefferville Projects**").¹¹

16. The Applicants' Schefferville Projects are centered in the Menihek area in the Province of Newfoundland and Labrador around the town of Schefferville, Québec. Schefferville is a community of less than 1,000 people, the majority of whom are Innu of the Matimekush Lac John First Nation. There are no roads connecting Schefferville to southern Labrador or to Québec. The Schefferville Projects are connected by a direct railway to the Port of Sept-Îles on the Atlantic Ocean.¹²

17. The Applicants' mine has operated seasonally from approximately the beginning of April to the end of November in 2011, 2012 and 2013. The mine operations have been shut down each winter from approximately the beginning of December to the end of March.

18. The Applicants' operations have been funded largely by LIMH which raised capital through public share offerings in December, 2007, March, 2010, April, 2011, March, 2012, November, 2012, and February, 2013.¹³

19. Through these public offerings, LIMH raised total gross proceeds (before underwriting commissions and offering expenses) of \$342,620,728. To date, a total of

¹¹ Kearney Affidavit at para 24, Application Record, Tab 2.

¹² Kearney Affidavit at para 26, Application Record, Tab 2.

¹³ Kearney Affidavit at para 30, Application Record, Tab 2.

approximately \$270 million has been loaned by LIMH to LIM on an unsecured basis making LIMH LIM's largest creditor (unsecured).¹⁴

20. As described in further detail in the Kearney Affidavit, with the exception of limited security interests granted over certain iron ore stockpiles of the Applicants, over the Applicants' fleet of rail cars and in respect of certain capital leases, all of the Applicants' obligations are unsecured.¹⁵

C. Commodity Price Declines and Operations Difficulties

21. During 2012, there was a major, precipitous decline in world iron ore prices in the middle of the Applicants' April to November seasonal operations. In particular, the price dropped from US\$147.65/ tonne in April 2012 to US\$86.70/tonne in September 2012.¹⁶

22. This price decline reduced the Applicants' cash flow significantly and required the Applicants to severely curtail operations in 2012. The Applicants experienced operating losses in 2012 of approximately \$58.0 million.¹⁷

23. In 2013, the Applicants required additional working capital financing to fund the resumption of their mining operations. To address this need, in May 2013, LIM entered into a financing agreement (the "**RBRG Financing Agreement**") with RBRG Trading (UK) Limited ("**RBRG**" and formerly RBR Metalloyd Limited).¹⁸

24. Under the terms of the RBRG Financing Agreement, RBRG advanced a pre-payment of US\$35 million to LIM. The pre-payment was intended to be repaid through

¹⁴ Kearney Affidavit at para 31, Application Record, Tab 2.

¹⁵ Kearney Affidavit at para 32, Application Record, Tab 2.

¹⁶ Kearney Affidavit at para 85, Application Record, Tab 2.

¹⁷ Kearney Affidavit at para 86, Application Record, Tab 2.

¹⁸ Kearney Affidavit at para 87, Application Record, Tab 2.

the proceeds of the Applicants' committed sales of 3.5 million tonnes of iron ore shipments between August 2013 and December 2014. In consideration for the pre-payment, RBRG received a security interest over certain iron ore stockpiles owned by LIM and by SMI. Both LIMH and SMI have guaranteed LIM's obligations under the RBRG Financing Agreement.¹⁹

25. In May 2013, LIM entered into a two-year iron ore sales agreement with the Iron Ore Company of Canada ("IOC") for the 2013 and 2014 operating seasons (the "**IOC Sales Agreement**"). At the same time, IOC entered into a sales agreement with RBRG.²⁰

26. Pursuant to the IOC Sales Agreement and prior to suspending operations, the Applicants sold all of their iron ore to IOC who, in turn, re-sold it to RBRG.²¹

27. During 2013 operations, as mining went deeper in the James open pit, both the grade and the consistency of the ore began to fall. Among other things:

- (a) the silica content of the shipments was generally higher than the 4.5% threshold; and
- (b) the iron content of some of the shipments was lower than standard benchmark levels (typically 62% Fe).²²

28. This reduction in grade and consistency created difficulties in plant throughput and product quality and resulted in discounts being applied to the price of the

¹⁹ Kearney Affidavit at para 88, Application Record, Tab 2.

²⁰ Kearney Affidavit at para 89, Application Record, Tab 2.

²¹ Kearney Affidavit at para 90, Application Record, Tab 2.

²² Kearney Affidavit at para 91, Application Record, Tab 2.

Applicants' iron ore products, which negatively impacted revenues. As a result, even though iron ore prices held up in the US \$130 to \$140/tonne range during 2013, the Applicants were unable to generate positive cash flow during the 2013 operating season and experienced operating losses of approximately \$91.2 million for the 2013 year.²³

29. In 2014, the iron ore price declined nearly 50% to approximately US \$66.00/tonne by late December, 2014. The iron ore price has continued at the US\$60.00 to US\$65.00 range during the 2015 year to date. By the end of March, 2015 the price was approximately US\$52.00/tonne.²⁴

30. The presently depressed price of iron ore, operational problems in 2012 and 2013, together with significant capital investment for plant upgrades and expansion at Silver Yards, have put considerable strain on the Applicants' cash resources.²⁵

31. The iron ore mining industry within the Labrador Trough area of western Labrador and eastern Quebec, including the Applicants' Schefferville Projects, is a major contributor to the economy of communities in the area. In addition to the suspension of the Applicants' operations in the Schefferville area, depressed iron ore prices and high operating and transportation costs have led to the closure of the larger Wabush mine and the Bloom Lake mine, both of which are located near Labrador City and owned by Cliffs Natural Resources of the United States, with the loss of up to 900 full time jobs. On January 27th, 2015 Cliffs Natural Resources announced that its

²³ Kearney Affidavit at para 92, Application Record, Tab 2.

²⁴ Kearney Affidavit at para 93, Application Record, Tab 2.

²⁵ Kearney Affidavit at para 94, Application Record, Tab 2.

Canadian operating subsidiaries had applied for and obtained an order under the CCAA for protection from their creditors.²⁶

D. Community Relations and First Nations Agreements

32. The properties comprising the Schefferville Projects are located in an area over which different First Nations assert claims for traditional aboriginal rights. These include claims by the Innu of Matimekush- Lac John (Schefferville), the Innu of Uashat Mak Mani-Utenam (Sept-Îles), the Naskapi Nation of Kawawachikamach (near Schefferville) and the Innu Nation of Labrador.²⁷

33. The Applicants have entered into Impact Benefit Agreements (“IBAs”) with the Innu Nation of Labrador (July, 2008), the Naskapi Nation of Kawawachikamach (September, 2010), the Innu of Matimekush-Lac John (Schefferville) (June, 2011), and the Innu Takuaitkan Uashat Mak Mani-Utenam (Sept-Îles) (February, 2012) with respect to the development and operation of the Schefferville Projects.²⁸

34. The Applicants have also entered into an Economic Partnership Agreement (December, 2012) with the NunatuKavut Community Council, representing the Southern Inuit of Labrador.²⁹

35. Under the IBAs and the Economic Partnership Agreement, the Applicants provide these aboriginal groups with a financial participation in the Schefferville Projects based, in part, on iron ore production.³⁰ The Applicants further agreed to take certain

²⁶ Kearney Affidavit at para 96, Application Record, Tab 2.

²⁷ Kearney Affidavit at para 97, Application Record, Tab 2.

²⁸ Kearney Affidavit at para 98, Application Record, Tab 2.

²⁹ Kearney Affidavit at para 99, Application Record, Tab 2.

³⁰ Kearney Affidavit at paras 100-01, Application Record, Tab 2.

social and environmental protection measures to mitigate the impact of the Schefferville Projects.³¹

36. The Applicants have also agreed to use their efforts to provide employment and training opportunities for members of these communities and business opportunities for aboriginal-owned and operated businesses.³²

37. The Applicants, both on their own and through their contractors, have provided employment for up to 250 people when in full operating mode, including approximately 75 members of these aboriginal communities. In addition, several of the Applicants' operating contracts are with businesses which are owned or partially owned by community members, including the TSH Agreement, mining contract, camp lease and catering, assay analysis and trucking.³³

38. Through the IBAs and Economic Partnership Agreement, the First Nations groups have consented to the Applicants' projects and have agreed to provide the Applicants continuing and unobstructed access to, and equitable enjoyment of, the iron ore projects and its properties.³⁴

39. Overall, the Applicants believe that their operations have, and can continue to have, a significant positive economic and social impact on the towns of Schefferville, Québec; Kawawachikamach, Québec; Sept-Îles, Québec; and Goose Bay, Labrador and the surrounding communities, with some positive impact on the towns of Labrador City and Wabush, Labrador. The Applicants operate the only significant business in the

³¹ Kearney Affidavit at para 101, Application Record, Tab 2.

³² Kearney Affidavit at para 100, Application Record, Tab 2.

³³ Kearney Affidavit at para 102, Application Record, Tab 2.

³⁴ Kearney Affidavit at para 103, Application Record, Tab 2.

Schefferville area and are also meaningful contributors to the economy of Newfoundland and Labrador, particularly Labrador.³⁵

E. Current Financial Position

40. The Applicants' financial position and the results of their operations are consolidated in LIMH's financial statements which are publicly disclosed in accordance with applicable securities laws.³⁶

41. After recognition of non-cash impairment charges totalling \$198,168,728 in the period ending December 31, 2014, the Applicants had current and non-current assets of \$3,479,483 and \$12,390,450, respectively, and current and non-current liabilities of \$65,728,733 and \$3,826,211, respectively.³⁷

42. Presently, as a result of the sale of their joint venture interest relating to its Howse Project, the Applicants have an unrestricted, consolidated cash balance of \$5.5 million. The Applicants' banking arrangements together with those of the Applicants' other affiliated companies are operated on a centralized offset banking basis such that all but \$1,000 of the available cash balances of each of LIM and SMI are transferred to and held in an operating account in the name of LIMH. Intercompany obligations arising as a result of this system are tracked and recorded in the non-consolidated financial records of each of the Applicants. It is intended that these banking arrangements will continue. Current operations of the Applicants have been funded by advances from

³⁵ Kearney Affidavit at para 104, Application Record, Tab 2.

³⁶ Kearney Affidavit at para 105, Application Record, Tab 2. A copy of LIMH's audited consolidated financial statements for the financial year ended March 31, 2014 and its unaudited consolidated financial statements for the nine months ended December 31, 2014 are marked as Exhibit "D" to the Kearney affidavit, Application Record, Tab 2D

³⁷ Kearney Affidavit at para 106, Application Record, Tab 2.

LIMH which are recorded as intercompany obligations. Intercompany advances by LIMH to LIM and SMI are currently approximately \$270.2 million and \$21.3 million, respectively.³⁸

43. In addition to the intercompany debt owing to LIMH, the Applicants' most significant creditors are currently:

- (a) RBRG (deferred revenue) (approximately US\$20.6 million); and
- (b) Grey Rock and its affiliates (accounts payable) (approximately \$15.6 million).

The majority of amounts due to creditors have been outstanding since the end of the Applicants' operating season in 2013. The creditors have largely been supportive of the Applicants' efforts to restructure their affairs and have, to date, not sought to enforce payment or other remedies.³⁹

44. The amounts owed to these, and all other creditors, are unsecured except that (i) RBRG holds a security interest in certain iron ore stockpiles owned by the Applicants; (ii) the Port Authority holds a security interest in the Applicants' fleet of rail cars; and (iii) LIM's mine camp and certain office equipment are subject to capital leases.⁴⁰

45. In light of the current prevailing iron ore price, the Applicants' ability to operate on a cash-flow positive basis is conditional on the restructuring of its mining, rail and port

³⁸ Kearney Affidavit at para 51-53, 107, Application Record, Tab 2.

³⁹ Kearney Affidavit at para 108, Application Record, Tab 2.

⁴⁰ Kearney Affidavit at para 109, Application Record, Tab 2. Marked as Exhibit "E" to this affidavit are copies of search results for personal property registrations in the provinces of Ontario, Québec and Newfoundland & Labrador against the Applicants as of March 9, 2015, Application Record, Tab 2E.

contracts and other operating costs. In 2013, the Applicants generated negative gross margin of \$49,188,203, with rail and port costs accounting for more than 50% of the unit cost of the Applicants' production. The Applicants did not resume mining operations in 2014 due in part to these costs, particularly in the context of deteriorating iron ore market conditions. In the absence of a meaningful restructuring of these costs, the Applicants will not be able to resume mining operations in 2015 or in the foreseeable future.⁴¹

46. In addition, the Applicants must restructure their current accounts payable to a manageable level and obtain financing to fund the capital expenditures and working capital needed to resume mining operations.⁴²

F. Current Operating Plan

47. The Applicants have developed an operating plan (the "**Operating Plan**") which addresses both its operating plans for the next mining season (the "**Current Mining Plan**") and longer-term plans. The Operating Plan is based upon balancing product quality and quantity and minimizing operating costs.⁴³

48. At this time, the Applicants do not have the necessary financial resources to recommence mining operations in 2015. The Applicants will not be able to implement the Operating Plan unless they can secure additional financing for capital costs and working capital, and reduce their mining, rail and port infrastructure and other operating costs. If

⁴¹ Kearney Affidavit at para 110, Application Record, Tab 2.

⁴² Kearney Affidavit at para 111, Application Record, Tab 2.

⁴³ Kearney Affidavit at para 112, Application Record, Tab 2.

additional financing cannot be secured on a timely basis, the Applicants will have to defer re-commencement of their mining operations.⁴⁴

49. The Applicants require restructuring of their current accounts payable and new investment or financing facilities to provide necessary working capital to ensure operations can effectively continue and to enable the development of the Houston project in accordance with the current operating plan.⁴⁵

50. Future operating plans involve the relocation of the dry crushing and screening plant from Silver Yards to Houston and the construction of a new railway siding near the Houston mine thereby reducing the ore haulage requirements and related operating costs.⁴⁶

G. Restructuring Efforts To Date

51. Over the past 18 months, the Applicants (working with Canaccord Genuity Corp. (“**Canaccord**”), an independent Canadian investment bank, and, more recently, in consultation with Duff & Phelps, have made significant efforts to identify and negotiate additional financing for capital costs and working capital.⁴⁷

52. Over the same period, the Applicants have met regularly with RBRG to keep it apprised of developments and explore possible new financing arrangements. Through these efforts and after extensive negotiations over several months, the Applicants entered into a non-binding memorandum of understanding (“**MOU**”) with RBRG and its related company, Gerald Metals SA (“**Gerald**”), dated November 4, 2014 which

⁴⁴ Kearney Affidavit at para 113, Application Record, Tab 2.

⁴⁵ Kearney Affidavit at para 116, Application Record, Tab 2.

⁴⁶ Kearney Affidavit at para 117, Application Record, Tab 2.

⁴⁷ Kearney Affidavit at para 118, Application Record, Tab 2.

contemplated RBRG's agreement to support the Applicants' proposed restructuring and to compromise the debts owed to it on terms to be set out in a support agreement among the Applicants, Gerald and RBRG and the provision by Gerald of interim financing and a mine development credit facility upon implementation of a restructuring. As of the date hereof, these support and financing agreements have not been concluded.⁴⁸

53. The Applicants have also been negotiating with their suppliers and service providers since the end of its 2013 operating season in an effort to restructure their operating costs. To date, these efforts have only been partially successful.⁴⁹

54. These CCAA proceedings are necessary to permit the Applicants an opportunity to secure financing and complete negotiations with their suppliers and service providers to restructure the Applicants' accounts payable, as well as to permit the Applicants a further opportunity to canvas the market for potential sources of financing or other means of effecting a restructuring of their business and operations.⁵⁰

1. *The Search for Capital Investment*

55. The Applicants have pursued a lengthy and extensive process over the past 12 months in attempts to secure new sources of capital investment (the "**Investment Solicitation Process**") including as follows:

- (a) Canaccord has led all of LIMH's equity financings since its initial public offering in 2007. Using a confidential information memorandum ("**CIM**"),

⁴⁸ Kearney Affidavit at para 119, Application Record, Tab 2.

⁴⁹ Kearney Affidavit at para 120, Application Record, Tab 2.

⁵⁰ Kearney Affidavit at para 121, Application Record, Tab 2.

prepared in conjunction with the Applicants' management, Canaccord approached and provided a CIM to a number of sources of potential capital after they executed confidentiality/non-disclosure agreements ("**NDAs**") and followed up the resulting detailed inquiries;

- (b) In 2014, the Applicants had extensive discussions with, and provided detailed operational and corporate information to, a major Chinese international mining and metals trading firm which also entered into an NDA;
- (c) During 2014, the Applicants provided detailed operational and corporate information to, and had discussions with, a major Europe-based international commodities trading and logistics firm, which also entered into an NDA;
- (d) During 2014, the Applicants had discussions with and provided detailed operational and corporate information to other developing iron ore producers in the Labrador Trough region and elsewhere under the provisions of NDAs;
- (e) The Applicants have provided CIMs to a leading international accounting firm for the purpose of engaging with its Sovereign Wealth Fund contacts in the Middle East;
- (f) The Applicants have provided CIMs to several Toronto-based well respected mine finance executives; and

(g) The Applicants pursued extensive discussions with RBRG and Gerald.⁵¹

56. To date, the extensive Investment Solicitation Process has not resulted in any expressions of interest other than the transaction described in the MOU executed by RBRG and Gerald on December 1, 2014 which has not culminated in any definitive documentation. The Applicants intend to continue their efforts to arrange financing and/or to realize on certain of their assets.⁵²

2. *Negotiations with Suppliers and Services Providers*

57. The Applicants have had ongoing discussions with Grey Rock. These discussions have resulted in a broad based understanding for a new unit cost rate structure for future mining operations.⁵³

58. The Applicants have also met on numerous occasions with the railway and port service providers to negotiate reductions in the unit tariffs charged and relief from the 'take or pay' obligations in the Rail Contracts. While these discussions have been constructive, the Applicants have not, to date, been able to conclude revised agreements for adequate revisions to the applicable rail and port costs.⁵⁴

59. Negotiations with the key stakeholders described above must be successfully concluded to permit implementation of the Applicants' Operating Plan.⁵⁵

⁵¹ Kearney Affidavit at para 122, Application Record, Tab 2.

⁵² Kearney Affidavit at para 123, Application Record, Tab 2.

⁵³ Kearney Affidavit at para 124, Application Record, Tab 2.

⁵⁴ Kearney Affidavit at para 125, Application Record, Tab 2.

⁵⁵ Kearney Affidavit at para 126, Application Record, Tab 2.

PART III. ISSUES

60. The key issues on this Application are as follows:

- (a) Does this Court have jurisdiction to grant the CCAA relief requested?

Yes, the Applicants are debtor companies to which the CCAA applies. The Applicants are insolvent and the statutory requirements of the CCAA have been met;

- (b) Should a Stay of Proceedings be granted as requested?

Yes, this is an appropriate case in which to grant a stay of proceedings in respect of the Applicants and their property;

- (c) Should the Monitor be approved as requested?

Yes, the appointment of Duff & Phelps as Monitor under the CCAA (the "Monitor") is appropriate and should be approved; and

- (d) Should the requested charges be granted?

Yes, this Court has the jurisdiction to grant an Administration Charge, Directors' Charge and Intercompany Charge (each as defined below) with the priority requested, and this is an appropriate case in which to do so.

PART IV. LAW

A. JURISDICTION

1. The Applicants are Debtor Companies to which the CCAA Applies

61. The CCAA applies to a "debtor company" with total claims against it of more than \$5 million.⁵⁶ The Applicants are "debtor companies" entitled to relief under the CCAA.

⁵⁶ *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, s. 3(1) ["CCAA"].

(a) The Applicants are “Companies”

62. The CCAA defines "company" as follows:

"company" means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, railway or telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies.

63. The Applicants meet this definition, as follows:

- (i) LIMH is a holding company incorporated in the Province of Ontario pursuant to articles of incorporation dated May 17, 2007 under the Business Corporations Act (Ontario), R.S.O. 1990 c.B.16 (the “OBCA”);
- (ii) LIM is an company constituted under the laws of the Province of Ontario pursuant to the articles of amalgamation dated November 30, 2007 under the OBCA; and
- (iii) SMI is a company incorporated under the laws of Canada pursuant to articles of incorporation dated May 17, 2007 under the Canada Business Corporations Act (Ontario), R.S.C. 1985 c.C.44 (the “CBCA”).

(b) The Applicants are insolvent

64. "Insolvent" is not expressly defined in the CCAA. However, for the purposes of the CCAA, a debtor is insolvent if it meets the definition of an "insolvent person" in section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA") or if it is "insolvent" as described in *Stelco Inc., Re*.

65. In that case, Justice Farley found that "insolvency" includes a corporation "reasonably expected to run out of liquidity within [a] reasonable proximity of time as compared with the time reasonably required to implement a restructuring."⁵⁷

66. Section 2 of the BIA defines an "insolvent person" as a person who, among other things, is "insolvent" under one of the following tests:

- (i) is for any reason unable to meet his obligations as they generally become due,
- (ii) has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (iii) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.⁵⁸

67. These tests for insolvency are disjunctive. A company satisfying any one of these tests is considered insolvent for the purposes of the CCAA.⁵⁹

⁵⁷ *First Leaside Wealth Management Inc., Re*, 2012 ONSC 1299 at para 24, Book of Authorities of the Applicant ("Applicants' BOA") [*First Leaside*], Tab 1; *Re Stelco Inc.*, 2004 CarswellOnt 1211 (SCJ), leave to appeal refused (2004), 48 CBR (4th) 299 (ONCA), leave to appeal refused 2005 CarswellOnt 5200 (SCC) at para 26 [*Re Stelco*], BOA, Tab 2; followed in *Priszm Income Fund (Re)*, [2011] OJ No 1491 (SCJ) at para 21 [*Priszm*], Applicants' BOA, Tab 3; followed in *Canwest Global Communications Corp. (Re)*, [2009] OJ No 4286 (SCJ) at para 25 [*Canwest*], Applicants' BOA, Tab 4.

⁵⁸ BIA, s 2(1) [emphasis added].

⁵⁹ *Re Stelco*, *supra* note 18 at para 28, BOA, Tab 2.

68. The Applicants are insolvent because their consolidated current liabilities exceed their consolidated current assets by approximately \$62.2 million, and, but for the commencement of these proceedings, they are unable to meet their obligations as they become due.

2. Claims Total More than \$5 million and other Technical Requirements Met

69. As described above, as of December 31, 2014, the Applicants have liabilities in excess of \$5 million dollars.

70. In addition, the Applicants have met the other threshold requirements required by section 10 of the CCAA.⁶⁰ Further, since the head office and chief place of business of the Applicants is located in Toronto, Ontario, this Court has jurisdiction to hear this application pursuant to section 9(1) of the CCAA.⁶¹

B. A STAY OF PROCEEDINGS IS APPROPRIATE

71. Given the Applicants' current financial condition, CCAA proceedings at this time are in the best interests of the Applicants and their stakeholders and are both appropriate and necessary.

72. Pursuant to section 11.02 of the CCAA, the Court may make an order staying proceedings, restraining further proceedings, or prohibiting the commencement of

⁶⁰ Section 10 (2) of the CCAA provides that an initial application must be accompanied by

(a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company — see the Monitor's Pre-Filing Report;

(b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement - — see the Monitor's Pre-Filing Report; and copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement — see Exhibit "L" to the Kearney Affidavit, Application Record, Tab 2L.

⁶¹ Kearney Affidavit at para 4, Application Record, Tab 2.

proceedings, "on any terms that it may impose" and "effective for the period that the court considers necessary" provided the stay period is no longer than 30 days.⁶² The Applicants seek a stay of proceedings in this case for an initial period of 30 days.

73. In exercising the discretionary authority to grant a stay pursuant to the CCAA, the discretionary authority must be informed by the purpose behind the CCAA, which should be construed broadly.⁶³

74. The CCAA's broader remedial purpose is to allow a debtor the opportunity to emerge from financial difficulties short of bankruptcy, foreclosure or the seizure of assets through receivership proceedings with a view to allowing the business to continue and to maximize returns to creditors, shareholders and other stakeholders and to preserve employment and economic activity.⁶⁴ The CCAA is intended to be flexible and its effectiveness in achieving its objectives is dependent upon a broad and flexible exercise of jurisdiction to facilitate a restructuring and to continue the debtor as a going concern in the interim.⁶⁵

75. The Applicants believe that the continuation of mining operations will be of significant benefit not only to their existing suppliers and service providers, but also to the Schefferville area generally and to local businesses and residents including First Nations peoples. Indeed, as noted above, the Applicants' contributions to community

⁶² CCAA, s. 11.02.

⁶³ *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (Ont SCJ) at para 34 [“**Nortel**”], Applicants' BOA, Tab 6; *Lehndorff General Partners Ltd. (Re)* (1993), 17 CBR (3rd) 24 (Ont Gen Div [Comm List] at para 10 [“**Lehndorff**”], Applicants' BOA, Tab 7.

⁶⁴ *Timminco Limited (Re)*, 2012 ONSC 506 at paras 49-50 [“**Timminco**”], Applicants' BOA, Tab 8, citing in part the Ontario Court of Appeal in *Stelco Inc. (Re)* (2005), 75 OR (3d) 5 (CA) at para 36, Applicants' BOA, Tab 9; *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 15, Applicants' BOA, Tab 10.

⁶⁵ *Citibank Canada v. Chase Manhattan Bank of Canada* (1991), 5 CBR (3rd) 165 (Ont Gen Div), Applicants' BOA, Tab 11; *Nortel*, *supra* note 46 at para 47, Applicants' BOA, Tab 6.

and cultural activities in the region and the aboriginal communities' equitable financial participation in the Applicants' revenues are a positive economic benefit to the region.

76. Accordingly, the stay of proceedings requested is appropriate in the circumstances and consistent with the purpose of the CCAA.

C. APPOINTMENT OF MONITOR

77. Pursuant to section 11.7 of the CCAA, the Court is required to appoint a person to monitor the business and financial affairs of a debtor company at the same time that an initial CCAA order is made.⁶⁶

78. Section 11.7 requires that the monitor be a trustee, within the meaning of subsection 2(1) of the BIA and there are certain restrictions on who may be monitor, set out in subsection 11.7(2). In this case, the proposed Monitor, Duff & Phelps., is a trustee within the meaning of subsection 2(1) of the BIA and not subject to any restrictions on who may be a monitor pursuant to section 11.7(2) of the CCAA. It has also consented to its appointment as Monitor.⁶⁷

D. CHARGES

79. The Applicants are seeking approval of three charges: an Administration Charge, a Directors' Charge, and an Intercompany Charge. (collectively, the "Charges").

80. This Court has the jurisdiction to grant the requested charges. The Applicants are not requesting that the Charges rank in priority to any encumbrances in favour of

⁶⁶ CCAA, s 11.7.

⁶⁷ Kearney Affidavit at para 131, Application, Tab 2.

persons who are not served with notice of this application. The proposed charges would only take priority over the interests of secured creditors upon said creditors receiving notice of these proceedings, and having had an opportunity to respond.⁶⁸

1. Indemnity and Directors' Charge

81. The proposed Initial Order contemplates the indemnification of directors and officers (and deemed and *de facto* directors and officers) of the Applicants (defined, collectively, in the proposed Initial Order as the "**Directors**"), the creation of a Directors' Charge in relation thereto, and a related stay of proceedings of claims against Directors.⁶⁹

82. Section 11.03 of the CCAA provides that an order made under section 11.02 of the CCAA may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company.⁷⁰ Paragraph 20 of the Initial Order makes clear that the requested stay of proceedings against such persons is only with respect to claims that relate directly to the Applicants.

83. Section 11.51 of the CCAA provides statutory authority to grant a directors' and officers' charge on a super-priority basis. In this case, it is appropriate to extend coverage to the Directors as defined in the Initial Order and it is submitted that it is

⁶⁸ Initial Order at para 35, Application Record, Tab 3.

⁶⁹ Initial Order at paras 23-26, Application Record, Tab 3.

⁷⁰ CCAA, s 11.03(1)

necessary and appropriate to make the requested charge in the circumstances of this case for the following reasons.

84. First, LIM has obtained directors' and officers' insurance coverage ("**D&O Insurance**"), but there may be significant limitations to coverage that may leave directors and officers exposed to personal liability. The proposed Directors' Charge is to protect Directors against exposure beyond that which is covered by insurance.

85. Second, It is important to have the Directors' Charge to keep the Directors in place during the restructuring and to protect them against liabilities that they could incur during the restructuring that are ultimately found to not be covered by the D&O Insurance.

86. Accordingly, the Applicants request that this Court exercise its discretion to approve the Directors' Charge proposed in the Initial Order, to rank second in priority after the Administration Charge, in the maximum amount of \$300,000. It is respectfully submitted that this amount is appropriate to protect the Directors from possible exposure and that the Directors' Charge is appropriate to avoid destabilization that would result without the experienced Directors during the restructuring proceeding.⁷¹

2. Administration Charge

87. The Applicants are requesting an Administration Charge to provide security for the fees and disbursements of the Monitor, counsel to the Monitor, and the Applicants' counsel, through a charge over all present and after-acquired assets of the Applicants.

⁷¹ Kearney Affidavit at para 136, Application Record, Tab 2.

88. The Administration Charge includes a charge not to exceed an aggregate of \$500,000 as security for the fees and disbursements of those entitled to the benefit of the Administration Charge, and would have a first priority over all other charges.⁷²

89. The Court is empowered by section 11.52 of the CCAA to grant an administration charge, which section is permissive and does not specify any particular criteria.

90. In *Re Canwest Publishing*, Pepall J. provided a non-exhaustive list of factors to be considered in approving an administration charge, including:

- (a) the size and complexity of the businesses being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the Monitor.⁷³

91. The amount of the proposed Administration Charge is commensurate with the complexity of the Applicants' business and the tasks required to effect a successful restructuring.

92. The proposed Monitor has concluded that the quantum of the proposed charge is reasonable. Accordingly, it is respectfully submitted that the Administration Charge be granted in the amount and priority requested.

⁷² Kearney Affidavit at para 134, Application Record, Tab 2.

⁷³ *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 at para 54, Applicants' BOA, Tab 14.

Intercompany Charge

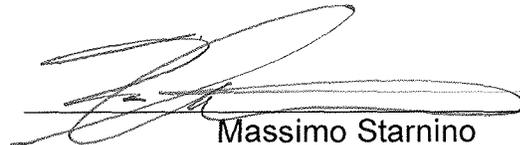
93. In order to ensure that creditors of the individual Applicants are not prejudiced by these proceedings, the Applicants are also asking that an Intercompany Charge be imposed to secure amounts that may be advanced by one Applicant to another in the ordinary course of operations.

94. The court's authority to grant the Intercompany Charge can be found, inter alia, in s. 11.2 of the CCAA, with the factors to be considered in sub-section 11.2(4). In the particular circumstances of this case, the Intercompany Charge is justified by the fact that the business and affairs will be amply managed during these proceedings, and the Intercompany Charge is not intended to prioritize or secure the interests of a particular stakeholder or creditor, but rather, to the contrary, to avoid prejudice to distinct interests in closely related companies which necessarily require each others' support in the ordinary course of business if this restructuring is to be successful.⁷⁴

PART V. RELIEF SOUGHT

95. The Applicants request that this Court grant relief by making an order substantially in the form of the initial Order included in the Application record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1st day of April, 2015


Massimo Starnino

⁷⁴ CCAA s. 11.2; *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 at para 41-46, Applicants' BOA, Tab 14.

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SCHEDULE "A"
LIST OF AUTHORITIES

Jurisprudence

1. *First Leaside Wealth Management Inc., Re*, 2012 ONSC 1299
2. *Re Stelco Inc.*, 2004 CarswellOnt 1211 (SCJ)
3. *Priszm Income Fund (Re)*, [2011] OJ No 1491 (SCJ)
4. *Canwest Global Communications Corp. (Re)*, [2009] OJ No 4286 (SCJ)
5. *633746 Ontario Inc. (Trustee of) v Salvati*, [1990] OJ No 995
6. *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (Ont SCJ)
7. *Lehndorff General Partners Ltd. (Re)* (1993), 17 CBR (P) 24 (Ont Gen Div [Comm List])
8. *Timminco Limited (Re)*, 2012 ONSC 506
9. *Stelco Inc. (Re)* (2005), 75 OR (3d) 5 (CA)
10. *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60
11. *Citibank Canada v Chase Manhattan Bank of Canada* (1991), 5 CBR (3d) 165 (Ont Gen Div)
12. *Re General Publishing Co.*, 2003 CarswellOnt 275 (SCJ)
13. *Re Jetsgo Corp.*, 2005 CarswellQue 2700 (SC)
14. *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222

SCHEDULE "B"

Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36

2. (1) In this Act

...

"company" means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, railway or telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies;

...

3. (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

...

Form of applications

10. (1) Applications under this Act shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.

Documents that must accompany initial application

(2) An initial application must be accompanied by

(a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;

(b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and

(c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

...

General power of court

11. Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

...

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

...

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

...

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.

...

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the Bankruptcy and Insolvency Act.

Restrictions on who may be monitor

- (2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company
- (a) if the trustee is or, at any time during the two preceding years, was
 - (i) a director, an officer or an employee of the company,
 - (ii) related to the company or to any director or officer of the company, or
 - (iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or
 - (b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the Civil Code of Quebec that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Court may replace monitor

(3) On application by a creditor of the company, the court may, if it considers it appropriate in the circumstances, replace the monitor by appointing another trustee, within the meaning of subsection 2(1) of the Bankruptcy and Insolvency Act, to monitor the business and financial affairs of the company.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3

2. In this Act,

...

“insolvent person” means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

Court File No.

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 LABRADOR IRON MINES HOLDINGS LIMITED, LABRADOR IRON MINES LIMITED and SCHEFFERVILLE MINES INC.

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

PROCEEDING COMMENCED AT
TORONTO

**FACTUM OF
THE APPLICANTS, LABRADOR IRON MINES LIMITED,
LABRADOR IRON MINES HOLDINGS LIMITED and
SCHEFFERVILLE MINES INC.**

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