

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE REGIONAL
SENIOR JUSTICE SHAW

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FRIDAY, THE 8th
DAY OF JANUARY, 2016

BETWEEN:

2403177 ONTARIO INC.

Applicant

– and –

BENDING LAKE IRON GROUP LIMITED

Respondent

ORDER

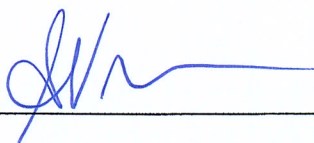
THESE MOTIONS, made by Bending Lake Iron Group Limited (the “**Debtor**”), seeking the relief set out in (a) the Notice of Motion of the Debtor, dated December 16, 2015, attached hereto as Appendix “**A**” and (b) the Notice of Motion of the Debtor dated December 23, 2015, attached hereto as Appendix “**B**”, (together, the “**Debtor’s Motions**”), were heard December 29 and 30, 2015, at 125 Brodie St N, Thunder Bay, Ontario, with judgment having been reserved to this date.

ON READING the Debtor’s Notices of Motion dated December 16, 2015 and December 23, 2015, the Third Report of A. Farber & Partners Inc., in its capacity as court-appointed receiver (the “**Receiver**”), dated November 30, 2015, the Supplemental Report to the Third Report of the Receiver, dated December 21, 2015, the Factum and Book of Authorities of the Receiver, dated December 4, 2015, the Affidavits of Henry Wetelainen, sworn December 9,

2015, and December 16, 2015, the Affidavit of Laura MacRae, sworn December 23, 2015, the Factum and Book of Authorities of the Debtor, dated December 23, 2015, the Factum and Book of Authorities of the Applicant, dated December 23, 2015, and on hearing the submissions of counsel for each of the Receiver, the Applicant, the Debtor, and 1053895 B.C. Ltd., and the supplementary written submissions received from the Receiver, the Debtor and the Applicant, all dated January 6, 2016, no one appearing for any other person on the service list, although properly served as appears from the affidavits of service filed:

1. **THIS COURT ORDERS** that the Debtor's Motions be and are hereby dismissed.
2. **THIS COURT ORDERS AND DECLARES** that Thomas Ungar be and is hereby denied standing to, (a) make submissions before this Court in respect of the motion made by the Receiver, returnable December 29, 2015, and the Debtor's Motions, and (b) file affidavit evidence with this Court after the hearing of such motions.
3. **THIS COURT ORDERS** that the parties shall have thirty days from the date hereof to set a date to speak to the matter of costs, failing which costs shall be deemed to be settled.

ENTRE BOOK
INSUIT _____ REGISTRAR _____
DATE JAN 29 2016
No. 3520 PER LU
No. _____ POUR _____



Appendix “A”

Notice of Motion dated December 16, 2015

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

2403177 ONTARIO INC.

Applicant

and

BENDING LAKE IRON GROUP LIMITED

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. c. 43 AS AMENDED

NOTICE OF MOTION

The Respondent will make a Motion to a Judge on Tuesday, December 29, 2015 at
10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 125
Brodie Street North, Thunder Bay, Ontario, P7C 0A3.

PROPOSED METHOD OF HEARING: The Motion is to be heard;

☒ orally.

THE MOTION IS FOR:

- (a) If necessary, abridging the time for service of this Notice of Motion and the
Motion Record filed in support of this motion and dispensing with further
service thereof;

- (b) An Order of this Honourable Court that the Court not approve the sale agreement and ratify the Receiver's execution of the same at this time until further Order of this Court;
- (c) An Order of this Honourable Court directing that the sale of the "assets only" of Bending Lake Iron Group Limited to Legacy Hill Resources Limited be postponed until further Order of this Court;
- (d) An Order of this Honourable Court that the Receiver be with restrained from dealing further with Legacy Hill Resources Limited regarding the Respondent without further Order of this Honourable Court;
- (e) An Order of this Honourable Court directing that the Respondent corporation be permitted the opportunity to provide information to all of the Shareholders of the Respondent corporation with respect to the proposed transaction between the Receiver and Legacy Hill Resources Limited in a manner to be approved by this Court on no less than seven days Notice by the Respondent to all Parties.
- (f) An Order that the Respondent corporation be entitled to disclose to the BLIG shareholders the value of the LHR offer" to Purchase Assets Only" that is being reviewed by this Honourable Court;

- (g) An Order of this Honourable Court that the Receiver be required to answer the allegations in the Affidavit of Henry Wetelainen by filing with this Court a written report that fairly discloses information regarding the dealings between the Receiver and Legacy Hill Resources.

Disclosure

- (h) An Order that the Receiver disclose to the Respondent corporation the final amount that the Department of Justice Tax Section and the Minister of Finance, Legal Services Branch, have agreed to accept as final payment for the debts of Bending Lake Iron Group Limited;
- (i) An Order of this Honourable Court that the Receiver provide to counsel for the Respondent corporation details and documents that provide the background, any discussions, negotiations or position papers with respect to the special agreement between Legacy Hill Resources Limited and Stuart Livingston by way of;
- (j) The value and nature of the shareholdings that Stuart Livingston will receive from LHR and 1053895 B.C. Ltd. As compensation under the proposed: "Asset Only" purchase by LHR of the Respondent BLIG's assets.
- (k) The value and nature of the Non-Competition Agreement that will be provided to Stewart Livingston by either LHR or 1053895 B. C. Ltd. As compensation to Stewart Livingston pursuant to the proposed "Asset Only" purchase by LHR of the Respondent BLIG's assets

The value and nature of the Consulting Agreement that will be provided to Stewart Livingston by either LHR or 1053895 B. C. Ltd. as compensation to Stewart Livingston pursuant to the proposed "Asset Only" purchase by LHR of the Respondent BLIG's assets;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Striking Out Paragraphs of the Applicant's Motion Record

- (m) An Order that the following paragraphs of the Applicant's Motion Record of November 30, 2015 be struck for failing to disclose supporting documentation, factual underpinnings or information to support the following paragraphs:

Paragraph 11

The basis for striking paragraph 11 is that the Receiver fails to make clear that Legacy Hill Resources Limited was not a perspective purchaser known to the Receiver when Legacy Hill Resources Limited entered into an agreement with BLIG in March of 2015, which included a Non-Disclosure Agreement/Confidentiality Agreement between BLIG and Legacy Hill Resources Limited dated March 12, 2015.

Until September of 2015, Legacy Hill Resources Limited was known to the Receiver to be working in conjunction with BLIG to finance a restructuring of BLIG which would provide refinancing to BLIG and an end to the Receivership of BLIG.

It is incorrect for the Receiver to state that Legacy Hill Resources Limited commenced due diligence in respect of the BLIG opportunity in March of 2015 without also providing this Honourable Court with the information that the due diligence referenced in the paragraph was in fact commenced directly between BLIG and LHR on March 10, 2015, and did not involve the Receiver whatsoever until the Receiver was informed of the relationship between BLIG and LHR by Henry Wetelainen on behalf of BLIG. This is evidenced by the Affidavit of Henry Wetelainen dated December 16, 2015, and the exhibits attached to the said Affidavit.

Paragraph 12

An Order that paragraph 12 of the Receiver's Report of November 30, 2015 is struck. Paragraph 12 fails to make clear to the Court that the due diligence was conducted by Legacy Hill Resources Limited in conjunction with BLIG and included Legacy Hill Resources Limited's review of all confidential information that had been provided to Legacy Hill Resources Limited by BLIG pursuant to the Confidentiality Agreement between LHR and BLIG signed by Legacy Hill Resources Limited's founder on March 12, 2015.

Paragraph 12 fails to disclose to the Court that the consultations that occurred prior to September 30, 2015 with the Receiver also involved BLIG's representatives, in that clearly Legacy Hill Resources Limited was working with BLIG and conducting consultations with the Receiver on that basis. The Receiver clearly knew and ought to disclose to this Honourable Court that the Receiver did not attract Legacy Hill Resources Limited to this project, but rather BLIG did so without any assistance, participation or knowledge of the Receiver whatsoever. And further BLIG and LHR worked together in dealing with the Receiver.

Paragraph 12 should also be struck in that it fails to disclose that on September 30, 2015 the Receiver permitted Legacy Hill Resources Limited to enter into a Letter of Intent with the Receiver that specifically excluded any participation by BLIG and that such information was not conveyed to BLIG and was purposely not disclose to BLIG during the month of October 2015 and November 2015 while BLIG continued to rely upon the agreement with Legacy Hill Resources Limited.

Paragraph 12 also fails to disclose that the Letter of Intent dated September 30, 2015 was not negotiated by the Parties but rather negotiated only between the Receiver and Legacy Hill Resources Limited when in fact the Receiver knew or ought to have known that Legacy Hill Resources Limited had been working directly with BLIG in order to jointly provide a proposal to the Receiver on behalf of BLIG and its shareholder, creditors, stakeholder and affected Aboriginal Communities..

Paragraph 15

Paragraph 15 should be amended to reflect that the Receiver and LHR have agreed to a closing date of January 11, 2016 and that prior to November the 26th no other parties received notice of this transaction.

Paragraph 16

An Order that paragraph 16 be struck in that the SISP expired on March 27, 2015 and the Receiver clearly failed to obtain an extension of the Order of Justice Pierce with respect to the SISP; although, the Order makes clear that such extension must be obtained from this honourable Court:.

4. **THIS COURT ORDERS** that the SISP may be altered or amended by the Receiver in a non-substantive manner to give full or better effect to the process hereby approved, which shall include the Receiver's ability to extend the timelines set forth in the SISP for a period of up to 30 days **(additional time extensions requiring further Order of this Court)**. (emphasis added)

GENERAL



5. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Honourable Court for advice and directions in the discharge of its powers and duties hereunder, including without limitation in connection with any matters relating to the SISP.
6. **THIS COURT ORDERS** that any interested party (including the Receiver) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.¹

Paragraph 16, as in other paragraphs, fails to properly inform the Court that the SISP was terminated pursuant to the Order of the Honourable Justice Pierce dated November 30, 2015 and that the Receiver failed to obtain an extension of the SISP although clearly entitled to do so..

Paragraph 17

An Order that Paragraph 17 be struck on the basis that the Applicant has failed to disclose that the terms of the Purchase of Assets dated November 27, 2015, ensure the continuation of financial benefits to the principle debtor, Stuart Livingston, by way of:

¹ The Order of the Honourable Justice Pierce dated November 27th, 2015

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2. an ongoing consultation agreement with LHR and 1053895 B. C. Ltd and/or
 3. a Non-Competition Agreement with LHR and 1053895 B. C. Ltd.

Paragraph 18

An Order that paragraph 18 be struck in that the Sale Agreement does not in fact improve any prospects for the future development of the mine site. There is no supporting documentation, factual underpinnings or information disclosed by the Receiver to This Honourable Court to support such a bald and unfounded statement. The Affidavits of Henry Wetelainen make very clear that the agreement between Legacy Hill Resources Limited and Bending Lake Iron Group Limited would have resulted in the continued development of the Josephine Cone Mine Project with ongoing Aboriginal Communities involvement.

The “assets only” purchase clearly impacts members of the local communities by depriving them of their right to obtain payment from BLIG with respect to being creditors and impacted Aboriginal communities. As well it will hurt local suppliers who are un-secured Creditors of BLIG. All affected Aboriginal communities will lose the Royalty Rights set out in 2008. All local shareholders will be very negatively impacted by the sale “of Assets” and will lose all value in the shares of BLIG that they and their local Companies hold.

Paragraph 21

An Order that paragraph 21 be struck in that the Receiver fails to adequately explain its failure to previously proceed with Court approval of the second report. This is especially so given that such an action would have provided clarity to the Respondent.

Paragraph 32

An Order that paragraph 32 be struck in that the Receiver fails to disclose to this Honourable Court that LHR signed a Non-Disclosure Agreement/Confidentiality Agreement with BLIG on March 12, 2015, and further that the Receiver was not involved in any manner in first attracting LHR as a potential investor in BLIG. The Receiver also fails to disclose that further due diligence undertaken in March was due diligence specifically with BLIG and such due diligence did not include the Receiver in any manner. In addition, as a result of the provisions of the Confidentiality Agreement (Non-Disclosure) between LHR and BLIG², both Parties without any assistance or knowledge whatsoever of and from the Receiver, participated in a due diligence process throughout the months of March 2015 and early April. It was only when BLIG, on behalf of BLIG and LHR, spoke with the Receiver in April 2015 that the Receiver became involved in the process.

² Confidentiality Agreement (Reciprocal Non-Disclosure) between Bending Lake Iron Group Limited and Legacy Hill Resources Limited signed by both Parties March 12, 2015 which provides amongst others that "AND WHEREAS the Parties are together engaged in discussion regarding a management, technical advisory and financial arrangement to be defied (the Project) during which wither party ("the Discloser") may disclose Confidential Information.....

BLIG had unknowingly been purposely excluded for the discussions that resulted in the execution of a non-binding letter of intent on September 30, 2015, between LHR and the Receiver with BLIG.

Paragraph 33

An Order that Paragraph 33 be amended to make clear that “Legacy Hill’s due diligence activity with BLIG included exclusive preliminary discussions with representatives of BLIG including Mr. Wetelainen”. It is incorrect for the Receiver to suggest to the Court that the due diligence activity involved the Receiver following the PDAC conference in March 2015.

In fact, the Receiver did not become involved until April 2015, after BLIG and LHR agreed to work towards a refinancing of BLIG with the concurrent discontinuation of the Receivership pursuant to the Confidentiality Agreement (Reciprocal Non-Disclosure) signed on March 12, 2015.³.

Paragraph 35

An Order that Paragraph 35 be struck in that the Receiver improperly states that the discussions that he had with Mr. Wetelainen communicated to the Receiver that Mr. Wetelainen had canvassed various parties including other shareholders and he could not raise sufficient funds nor capital to submit a proposal. This is absolutely not correct, accurate or truthful.

³ Confidentiality Agreement (Reciprocal Non-Disclosure) between Bending Lake Iron Group Limited and Legacy Hill Resources Limited signed by both Parties March 12, 2015

As evidenced in the Affidavit of Henry Wetelainen sworn December 16, 2015, Mr. Wetelainen worked tirelessly following his March 3, 2015, meeting with representatives of LHR in order to complete a refinancing of BLIG and the termination of the Receivership Order. As well, Mr. Wetelainen makes clear in his Affidavit that he never considered submitting a proposal that was not submitted on behalf of BLIG in its entirety in order to benefit BLIG, its creditors, shareholders, stakeholders and affected Aboriginal communities and further that Mr. Wetelainen denies having any discussion of this nature with the Receiver.

In addition, Mr. Wetelainen makes clear that he was very much involved in putting forward a proposal on behalf of LHR and BLIG jointly as evidenced by all of the documents disclosed in Mr. Wetelainen's Affidavits.

Paragraph 36

An Order that Paragraph 36 be struck or amended to explain to the Court that Mr. Wetelainen was kept apprised of the Receiver's discussions with LHR during the ongoing LHR due diligence process which involved Mr. Wetelainen and LHR. With respect, the Receiver is required to be entirely clear and accurate with this Court and rather than use general terms such as "as its due diligence progressed" the Receiver is required to properly provide a factual recitation to the Court including dates.

As the Affidavits of Mr. Wetelainen makes clear, at all times Mr. Wetelainen understood that he was included in conversation and in agreement with LHR to participate with LHR in financing of the project and the termination of the Receivership.

The Receiver has a duty and an obligation to this Court to accurately provide the date upon which LHR "subsequently indicated to the Receiver" this information is with respect, required by this Honourable Court in order to properly determine the issues raised.

Paragraph 44

An Order that Paragraph 44 be struck in that there is no factual underpinning provided to this Court regarding LHR and further the Receiver is incorrect in stating:

“ as a result LHR engaged in extensive due diligence over the past six to seven months”

While the due diligence is correct, the Receiver fails to provide full and candid information to the Court that in fact the due diligence was commenced by LHR with BLIG and the Receiver was not involved.

An Order that paragraph 44 through 46 be struck from the Receiver's Report in that there is no supporting documentation, factual underpinnings or information to support these three paragraphs;

An Order striking paragraph 44 h) of the Receiver's Report on the basis that there is no information disclosed to support these allegations. There was no factual underpinning and there is no agreement evidenced to suggest that in any way the future of the mine site will be greatly improved as the result of the sale of the assets only to Legacy Hill Resources Limited;

Paragraph 45

Paragraph 45 should be struck in that it fails to make clear to the Court that LHR participated in confidential discussions with BLIG and received confidential documents from BLIG in regard to the innovative technology and focus on a value added product and starting out as a smaller project was in fact disclosed to LHR in the confidential documents that BLIG provided to LHR pursuant to the Confidentiality Agreement (Non-Disclosure) that LHR entered into with BLIG on March 12, 2015.

Paragraph 46

Paragraph 46 should be struck in that there is no factual information provided to the Court to support this statement. There is no indication in the Agreement of Asset Purchase or in any other documentation filed with this Honourable Court to support such a bald allegation.

Paragraph 49

Paragraph 49 should be struck or amended to properly reflect that:

- a) The SISP was not continued in that the Receiver failed to return to Court and obtain any extensions to the timelines outlined in the Order as required by such Order.⁴. Without the requisite Court Order the Receiver did not have the Authority of the Court to continue the marketing of the Property without further Order of the Court.

Paragraph 49 (a) should be struck in that the Receiver fails to be candid with the Court in that paragraph 49 (a) omits the fact that the Receiver failed to obtain a subsequent Court Order with respect to the extension of the SISP and that such failure was based upon financial considerations. As well, the Receiver fails to report to the Court that the subject Asset Purchase Agreement is with LHR and the fact that BLIG attracted LHR to assist BLIG, and not to deal directly with the Receiver.

- b) The purchase price was arrived at by the Lender following the improper and arbitrary unilateral discussions with LHR when in fact LHR was in a fiduciary relationship with BLIG.

⁴ **THIS COURT ORDERS** that the SISP may be altered or amended by the Receiver in a non-substantive manner to give full or better effect to the process hereby approved, which shall include the Receiver's ability to extend the timelines set forth in the SISP for a period of up to 30 days (additional time extensions requiring further Order of this Court).

c) There is an absolute absence of evidence or disclosed documents to support these assertions. As set out in the Affidavit of Mr. Henry Wetelainen this is simply not correct or accurate. It is as statement included by the Receiver without any supporting information documents or affidavits to assist the Court in determining if in fact such assertions of the Receive are accurate. The only evidence before the Court makes clear that such is not the case.

The only party who will benefit from the recommended transaction will be the secured creditor. The unsecured creditors will lose all. The shareholders will lose all. The stakeholders will lose all.

Paragraph 51

An Order that Paragraph 51 be struck in that the transaction clearly does not present the best option for the Debtor's stakeholders in that the secured debtors through Mr. Livingston will continue to receive accruing benefit by way of:

- 1) [REDACTED]
- 2) The one secured creditor, Stuart Livingston, will receive an ongoing consultation agreement with LHR and 1053895 B.C. Ltd.
- 3) And/or a Non-Competition Agreement with LHR and 1053895 B.C. Ltd. property.

All other creditors, shareholders, stakeholders and affected Aboriginal communities will lose all.

The Receiver has a fiduciary duty to speak on behalf of all stakeholders in the Respondent corporation and clearly as a result of the secret conversations and discussions and meetings and negotiations with LHR alone, in violation of the Receiver's obligation to BLIG and all stakeholders, the only stakeholder that will receive any benefit from this transaction will be Stuart Livingston and James McLean through 2403177 Ontario Inc. as well as personally as set out above.

Miscellaneous and Administrative

The request by the Receiver to assign the debtor into bankruptcy is premature given the nature of the relationship between LHR and BLIG, which is for the benefit of BLIG and its creditors, shareholders, stakeholders and affected Aboriginal communities.

Disclosure

- n) An Order disclosing a copy of the "recap of the call and current status" as set out in the Invoice for Professional Services Rendered by A. Faber & Partners for the period of March 01, 2015 to March 31, 2015.
- o) An Order disclosing a copy of the "recap of the call and current status" dated April 30, 2015 as set out in the Invoice for Professional Services Rendered by A. Faber & Partners for the period of April 01, 2015 to June 30, 2015.
- p) An Order for a copy of the draft Third Court Report as referenced in the May 01, 2015 and May 06, 2015 entries in the Invoice for Professional Services Rendered by A. Faber & Partners for the period of April 01, 2015 to June 30, 2015.

q) An Order that the Receiver provide the Respondent corporation with a copy of the Report provided by Legacy Hill Resources Limited following the visit to Thunder Bay and the Josephine Cone Mine on June 02 , 2015 and docketed by A. Farber & Partners Inc. on June 10, 2015.

r) An Order that pursuant to the Order of Honourable Madam Justice Pierce of Thursday, the 27th day of November 2014, the Receiver be required to comply with paragraphs 4, 5 and 6 of such order;

Process to inform the creditors, shareholders, stakeholders and affected Aboriginal communities with respect to the opportunity to participate in the funding of the amount set out in the Asset Purchase Agreement of November 27th within a defined period of time.

s) An Order that the Receiver provide to the Respondent disclosure of the documents that are referenced by the Receiver in paragraph 36 of the Third Report to the Court of A. Farber & Partners et al., dated November 30, 2015⁵ that deal with the suggestion that:

“LHR subsequently indicated to the Receiver that it would not be involving Mr. Wetelainen in the process going forward and it would not be seeking to offer Mr. Wetelainen a consultancy role or any other position with the purchaser upon the closing of the transaction”.

⁵ Motion Record of the Applicant, Third Report to the Court of A. Farber & Partners et al., November 30, 2015, Tab 2, para. 36

t) An Order that the Receiver disclose an unredacted copy of paragraph 50 of the Third Report to the Court of A. Farber & Partners et al., of November 30, 2015⁶.

u) Notification to the shareholders, and the provision of a shareholder information circular to all existing Shareholders of the Respondent Corporation and the calling of a shareholders meeting as agreed between the parties or as approved by this Honourable Court;

v) An Order that the information contained in the Circular with respect to the meeting of the shareholders meeting for the approval of the same be:

That the shareholders be notified that a requirement of *****INTENTIONALLY LEFT BLANK***** is required in order to satisfy the principle debtor with respect to the loan outstanding to 2403177 Ontario Inc.

w) The opportunity for shareholders to invest in preferred shares that will have preference over all regularly issued shares shall be provided to all 160+ shareholders on a pro-rata basis based upon shareholdings

x) That a period of 45 days be provided for the receipt of requests for special shares

⁶ Motion Record of the Applicant, Third Report to the Court of A. Farber & Partners et al., November 30, 2015, Tab 2, para. 50

y) That following the 45 day period the requests for special shares shall be disclosed to the Receiver and Receiver's counsel and the major secured lenders

z) That the money received from shareholders intending to purchase special shares in Bending Lake Iron Group Limited be held in escrow by a separate Thunder Bay law firm to be agreed upon by the Receiver and BLIG and to be distributed directly to the major creditors as represented by 2403177 Ontario Inc. pursuant to further Order of this Honourable Court.

aa) That in the event that creditors of Bending Lake Iron Group Limited, stakeholders and Aboriginal communities desire to invest in the special shares to be utilized to retire the debt to 2403177 Ontario Inc. they be permitted to tender their interest in the same but that such investment would not be accepted until such time as the shareholders have completed their response to the sale of the special shares;

bb) That the secured creditors represented by 2403177 Ontario Inc., who are in fact shareholders of approximately 1,000,000 shares in Bending Lake Iron Group Limited be permitted to participate in this process in kind, if necessary

cc) An Order that the Respondent re-attend before this Honourable Court following the expiration of the solicitation and to provide this Honourable Court with a report outlining the compliance with the process, or in the alternative;

- i) a process to inform the creditors, shareholders, stakeholders and affected Aboriginal communities arrived at in consultation between the Receiver and BLIG's representatives and approved by this Honourable Court within 60 days from the date of this Order.,
- ii) An Order that the legal representative of Bending Lake Iron Group Limited and the representative of the Receiver and 2403177 Ontario Inc. be provided with ongoing information with respect to the sale solicitation process.
- iii) That counsel for the Respondent be required to provide this Honourable Court either on consent of the Receiver or by way of Motion within 45 days how the Respondent's counsel will be seeking their legal fees that will be required to compensate Receiver's counsel to complete such a transaction.
- iv) In the alternative a process as determined by the Court to best provide for a process that best protects the interests of all Parties including its creditors, shareholders, stakeholders and affected Aboriginal communities.
- j) Such further and other Relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

- a. The proposed purchaser, Legacy Hill Resources Limited, is bound by a Non-Disclosure Agreement/Confidentiality Agreement signed by Legacy Hill Resource Limited's founder on March 12, 2015 as well as the fiduciary duties that flow from the creation of the business relationship between Legacy Hill Resources Limited and Bending Lake Iron Group Limited that commenced no later than March 3, 2015, but were discussed confidentially on March 3, 2015 and subsequently;
- b. On March 10, 2015, Legacy Hill Resources Limited confirmed to Bending Lake Iron Group Limited in writing that LHR would participate with BLIG in assisting refinancing the company and obtaining a termination of the Receiver's Order;
- c. It is clear that given the nature of the relationship between Bending Lake Iron Group Limited and Legacy Hill Resources Limited as well as the exchange of confidential information that was disclosed by Bending Lake Iron Group Limited specifically to Legacy Hill Resources Limited pursuant to a Non-Disclosure Agreement/Confidentiality Agreement dated March 12, 2015, that a fiduciary relationship and duty exists between Legacy Hill Resources Limited and Bending Lake Iron Group Limited.

- d. The Non-Disclosure Agreement/Confidentiality Agreement, signed by Legacy Hill Resources Limited reveals that a Fiduciary Relationship between Bending Lake Iron Group Limited and LHR is in existence with respect to any attempts to acquire lands, property or assets of BLIG by Legacy Hill Resources Limited or any affiliated company from the Receiver to the detriment of BLIG;
- e. Legacy Hill Resources Limited has not acted fairly, properly or in good faith with respect to reaching the agreement with the Receiver. This is set out in the Affidavit of Henry Wetelainen and the documentary evidence; and the Respondent seeks Equitable Relief from this Honourable Court with respect to the attempts of LHR to obtain these assets from the Receiver.
- f. The Receiver knew or ought to have known that Bending Lake Iron Group Limited had entered into a business relationship with Legacy Hill Resources Limited that preceded any involvement of the Receiver and that as a result there existed a fiduciary relationship between Legacy Hill Resources Limited and Bending Lake Iron Group Limited.

- g. The Receiver knew or ought to have known that as a result of the due diligence completed on behalf of Legacy Hill Resources Limited in reviewing all of the confidential material for Legacy Hill Resources Limited provided by Bending Lake Iron Group Limited that there existed a fiduciary relationship between Legacy Hill Resources Limited and Bending Lake Iron Group Limited.
- h. The Receiver knew as a result of secret discussions that he conducted with the major lender and representatives of Legacy Hill Resources Limited in September of 2015 in Toronto, ON that representatives of Bending Lake Iron Group Limited were purposely excluded from such discussions and that such actions by LHR were improper and did not reflect good faith processes by both LHR and the Receiver.

Equitable Relief:

- i. The Respondents relies upon the requirement for full and fair disclosure by the Receiver and LHR with respect to the transaction that is being proposed.
- j. In Order for LHR through the Receiver to seek the equitable relief of this Court that would form part of the vesting Order, LHR must come to this Court with clean hands.

- k. Clearly, the Affidavit evidence, as well the attached exhibits make clear that LHR has not acted in good faith with BLIG. It also appears that LHR has not acted in good faith with the Receiver.
- l. The Receiver was obligated pursuant to failing to renew the SISP, and also as a result of documents and emails forwarded to representatives of BLIG to act in good faith with respect to the transaction that BLIG introduced to the Receiver in April of 2015. The Receiver must be fair, open and have acted in good faith. Accordingly, neither LHR or the Receiver are entitled to equitable relief given the failure to act in good faith either intentional or otherwise..

SISP

- m. The Receiver knew or ought to have known at all times following March 27th, 2015 that the Receiver had failed to return to the Court to extend the SISP and in doing so had failed to provide notice to representatives of the Respondent corporation that they were commencing confidential discussions with any other parties. The Receiver conducted discussions with LHR without the authority of this Honourable Court and outside of the jurisdiction and latitude granted in the Order of Madame Justice Pierce and in doing so prejudiced all other parties including its creditors, shareholders, stakeholders and affected Aboriginal communities.

- n. As a result of the Receiver failing to return to this Honourable Court for the requisite Order although fully entitled to do so the Respondent was entitled to believe that there was no longer any authority for the Receiver to sell the Assets of the Corporation. Such failure to return to this Honourable Court deprived the Respondent and their counsel of notice regarding the Receivers intentions and actions.

The Order of the Honourable Madam Justice Pierce dated November 27, 2014

- o. The Order of Madam Justice Pierce dated Thursday, November 27, 2014, and in particular paragraphs 4, 5 and 6;
- p. Bending Lake Iron Group Limited has carried out an extensive exploration and development program with respect to the Josephine Cone Mine Project and other ancillary developments and disclosed this confidential information in confidence to Legacy Hill Resources Limited;
- q. Representatives from Legacy Hill Resources Limited, including Mr. Rajan, the Managing Director and Founder of Legacy Hill Resources Limited as well as Andrew Malim, Executive Director – Project Development and Finance, met with representatives of Bending Lake Iron Group Limited on March 3, 2015, in Toronto for the purpose of discussing the finances of the Josephine Cone Mine Project;

- r. The founder of Legacy Hill Resources Limited and Executive Director – Project Development and Finance, Mr. Malim, were advised by Mr. Wetelainen on March 3, 2015, that Bending Lake Iron Group Limited was presently in Receivership;
- s. At that time, it may have been appropriate for the representatives of Legacy Hill Resources Limited to cease discussions with Mr. Wetelainen and to deal directly with the Receiver directly ⁷ this is especially so given that the Receiver had published information on its website at that time. The information was available; however, both these individuals made a conscious decision on behalf of Legacy Hill Resources Limited as evidenced in the Affidavit of Mr. Wetelainen and the included Exhibits to extend an offer to Bending Lake Iron Group Limited and deal with Bending Lake Iron Group Limited rather than to approach the Receiver;
- t. The representatives of Legacy Hill Resources Limited did not take any steps to approach the Receiver and instead completed a Non-Disclosure Agreement/Confidentiality Agreement between Legacy Hill Resources Limited and Bending Lake Iron Group Limited. This step was not subject to the approval of the Receiver in that the Receiver clearly knew that Mr. Wetelainen was working incredibly diligently to promote a restructuring and refinancing of Bending Lake Iron Group Limited with the subsequent termination of the Receivership;

⁷ This is not to suggest that this is so but only utilized as an example to bring into sharp relief that they did not do so.

- u. As a result of the documents provided by Legacy Hill Resources Limited as well as the Non-Disclosure Agreement/Confidentiality Agreement signed between Legacy Hill Resources Limited and Bending Lake Iron Group Limited, without involvement of the Receiver, Legacy Hill Resources Limited was permitted access to confidential information that was the property of Bending Lake Iron Group Limited as well as shareholders, Mr. Wetelainen, Ms. MacKay and Mr. Mackie. Legacy Hill Resources Limited had the opportunity to read the test results and confidential geological findings and also the geological theory of the site and the importance of the Josephine Cone Mine location as well as the other results as outlined in the Affidavit of Henry Wetelainen
- v. In the first correspondence provided to Mr. Wetelainen by a representative of LHR Mr. Malim of Legacy Hill Resources Limited clearly turned his mind to the issue of confidentiality. In fact, two Confidentiality Agreements exist – One that was provided by Legacy Hill Resources Limited as a suggested document that reflects what LHR understood and the document that was signed by both parties on March 12, 2015;
- w. Following the signing of the Non-Disclosure Agreement/Confidentiality Agreement by Legacy Hill Resources Limited the representatives of Bending Lake Iron Group Limited instructed all parties, being Henry Wetelainen, Dawn MacKay and Jay Mackie to gather information on the Josephine Cone Mine Project.

- x. At no time did Legacy Hill Resources Limited inform Bending Lake Iron Group Limited or any of its representatives that at any time in the future there was an intention of improperly and in breach of their Fiduciary duty appropriating the assets of Bending Lake Iron Group Limited for the sole benefit of Legacy Hill Resources Limited. The actions of signing the Asset Sale Agreement on November the 27th, 2015 were in direct violation of the fiduciary duty that Legacy Hill Resources Limited owed to Bending Lake Iron Group Limited that arose as a result of the Non-Disclosure Agreement/Confidentiality Agreement and the provision of volumes of extensive confidential information to Legacy Hill Resources Limited by Bending Lake Iron Group Limited;
- y. It is not necessary for the creation of a fiduciary duty between two parties that there be a contract included; however, the Non-Disclosure Agreement/Confidentiality Agreement is clearly a contract and both of the parties - LHR and BLIG - are clearly bound by the terms of the contract including all notice provisions;

- z. In addition, it is alleged that Legacy Hill Resources Limited is liable as a result of the breach of confidence with respect to the information contained in the disclosure by Bending Lake Iron Group Limited subsequent to the Non-Disclosure Agreement/Confidentiality Agreement. LHR clearly utilized the confidential information to in a manner that was extremely damaging and harmful to Bending Lake Iron Group Limited. LHR has attempted to deprive Bending Lake Iron Group Limited, its shareholders, stakeholders, creditors and Aboriginal communities in the affected area of all the assets of BLIG;
- aa. Legacy Hill Resources Limited violated their fiduciary duty to BLIG its shareholders, stakeholders, creditors and Aboriginal communities in the affected area by surreptitiously, and by deceiving or with the unwitting assistance of the Receiver, attempting to appropriate all of the property of Bending Lake Iron Group Limited to the detriment of Bending Lake Iron Group Limited, its shareholders, stakeholders, creditors and Aboriginal communities in the affected area;
- bb. As a result of the fiduciary duty, in the event that the Court permits the proposed sale to be completed on January 11, 2016, it is submitted that Legacy Hill Resources Limited will only hold the assets in a constructive trust for the entire of benefit of Bending Lake Iron Group Limited; and
- cc. Rule 1.04(1), 1.04(1) (1.1), 2.01 (1), 2.03 and 3.02 (1) of the Ontario *Rules of Civil Procedure*;

dd. Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3 as amended;

ee. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c. 43 as amended;

ff. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion: (List the affidavits or other documentary evidence to be relied on)

- a. The Affidavit of Henry Wetelainen sworn December 16, 2015;
- b. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 16, 2015

O'NEILL DELORENZI MENDES

Barristers & Solicitors
116 Spring Street
Sault Ste. Marie ON P6A 3A1

Robert MacRae (329661)

rmacrae@saultlawyers.com

Tel: (705) 949-6901

Fax: (705) 949-0618

Lawyers for the Respondent

Appendix “**B**”

Notice of Motion dated December 23, 2015

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

2403177 ONTARIO INC.

Applicant

and

BENDING LAKE IRON GROUP LIMITED

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. c. 43 AS AMENDED

NOTICE OF MOTION

The Respondent will make a Motion to a Judge on Tuesday, December 29, 2015 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 125 Brodie Street North, Thunder Bay, Ontario, P7C 0A3.

PROPOSED METHOD OF HEARING: The Motion is to be heard:

☒ orally.

THE MOTION IS FOR:

- (a) An Order that the Receiver, through its counsel, at the hearing of the within Motion be required to advise the Court of the status of Legacy Hill Resources Limited's due diligence process. This is so given that the Offer of Purchase is entirely conditional upon Legacy Hill Resources Limited completing its due diligence process by December 29, 2015. The close of business for Legacy Hill Resources Limited in England is 5 hours ahead of Canada.

- (b) An Order striking paragraphs 24, 33, 35, 36, 37, 41, 43, 47, 48 and 50 from the Supplemental Report to the Third Report to the Court of A. Farber & Partners Inc. dated December 21, 2015;
- (c) An Order amending paragraphs 28, 30, 31, 32, 38, 40, 44 and 52 from the Supplemental Report to the Third Report to the Court of A. Farber & Partners Inc. dated December 21, 2015; and
- (d) Such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Paragraph 24 should be struck in that it is complete heresay and entirely self-serving. The evidence of Mr. Wetelainen in the Affidavits dated December 9, 2015, and December 17, 2015, provide sufficient evidence to discount this letter as completely self-serving and of no evidentiary value at the hearing of the motion on December 29, 2015.
- (b) Paragraph 28 should be amended to reflect that the Receiver was not able to connect with Legacy Hill Resources Ltd. until such time as the SISP had expired and the Receiver had failed to seek an extension. This information is set out in the Affidavits of Henry Wetelainen.
- (c) Paragraph 30 should be amended to correct the Report in that the Non-Disclosure Agreement/Confidentiality Agreement dated March 12, 2015, between Legacy Hill Resources Ltd. and Bending Lake Iron Group Limited was not at the behest of Mr. Wetelainen. Legacy Hill Resources Ltd.,

in seeking and entering into discussions with Bending Lake Iron Group Limited, proffered a Non-Disclosure Agreement/Confidentiality Agreement and forwarded a copy of the same to Bending Lake Iron Group Limited.

- (d) Paragraph 31 and 32 should be amended to reflect the reality that in fact Bending Lake Iron Group Limited cooperated completely with the Receiver and provided all requested information. Mr. Wetelainen offered additional information to the Receiver with respect to the ongoing development of Bending Lake Iron Group Limited; however, Mr. Livingston dismissed this information as foolish.
- (e) Paragraph 33 should be struck in that there is no evidence before the Court that Mr. Wetelainen and Bending Lake Iron Group Limited undertook a parallel sales process. The evidence is clear that Mr. Wetelainen worked with Legacy Hill Resources Ltd. in order to respond to the Receivership and jointly go forward in working with the Receiver towards the ultimate goal of removing Bending Lake Iron Group Limited from Receivership. Mr. Wetelainen never participated in an attempt to purchase or sell Bending Lake Iron Group Limited to any other party. On the contrary, Mr. Wetelainen always worked for the interests of Bending Lake Iron Group Limited and its creditors and shareholders.

- (f) Paragraph 35, 36, 37 should be struck in that the Receiver fails to provide any evidence whatsoever of the Receiver's effort in this regard. Mr. Wetelainen's evidence makes very clear that all information that was requested by the Receiver of Bending Lake Iron Group Limited was provided. The Receiver provides no evidence to support the allegations that Bending Lake Iron Group Limited failed in any way to comply with the Order.
- (g) Paragraph 38 should be amended to remove the wording

"is in direct violation of paragraph 3(g) of the Receivership
Order"

The Receiver, in filing a Report with the Court, is required to be factual and not to enter into legal argument. There is no proceeding, by way of Statement Claim, Notice of Motion or other, initiated by the Receiver seeking a finding of this Honourable Court that there has been a violation of the Receivership Order. It is respectfully submitted that the Receiver is not entitled to make any argument regarding a violation of the Receivership Order in that a request for such relief is not before this Court.

- (h) Paragraph 40 should be amended to remove the second sentence regarding the "secret efforts". The evidence of Mr. Wetelainen makes very clear that all efforts of Mr. Wetelainen were driven towards a refinancing of Bending Lake Iron Group Limited, with a restructuring of Bending Lake Iron Group Limited, and the saving of the company on behalf of the creditors, shareholders, stakeholders and affected Aboriginal communities. There is

not any evidence before the Court or in the Reports of the Receiver that Mr. Wetelainen was conducting his own sale process in that clearly Mr. Wetelainen only worked towards a restructuring of BLIG and the subsequent termination of the Receivership.

- (i) Paragraph 41 should be struck in its entirety as it is entirely self serving, hearsay and obviously sent for the purpose of inclusion in a Report in a manner that is not in keeping with the Receiver's responsibility to all parties.
- (j) Paragraph 43 should be struck in that it is argument with respect to the status of Bending Lake Iron Group Limited. As well, it fails to recognize that Mr. Wetelainen was clearly not involved in a sale process with Legacy Hill Resources Ltd., but rather involved in a process to secure new financing, or otherwise restructure the Debtor with the assistance of Legacy Hill Resources Ltd.. The evidence with respect to this is clear in the Affidavits of Mr. Wetelainen.
- (k) Paragraph 44 should be amended to properly report to this Honourable Court the actual amount of monies that were advanced by the Applicant company. The number of \$3.5 million is not accurate. The Receiver is obligated to provide accurate information to this Court.

- (l) Paragraph 47 should be struck in that the Receiver fails, once again, in this Report to provide the Court with a full appreciation and description of the benefit that Mr. Livingston and others will be receiving in the event the Court permits an “assets only” purchase of Bending Lake Iron Group Limited's assets.
- (m) Paragraph 48 should be struck in that Bending Lake Iron Group Limited is not attempting to submit a competing offer. At all times, Bending Lake Iron Group Limited understood that it would be part of the process of providing a joint offer with Legacy Hill Resources Ltd, to the Receiver and was doing so for the benefit of all creditors, shareholders and stakeholders.
- (n) Paragraph 50 should be struck in that it fails to provide any factual underpinning or documentation to support such a bald allegation. On the contrary, LHR is a company that had been incorporated for less than 12 months prior to the company entering into a Non-Disclosure Agreement/Confidentiality Agreement on March 12, 2015.
- (o) Paragraph 52 should be amended to reflect the fact that the proceeds of the process as suggested by the Respondent will provide benefits to all creditors and stakeholders. As well, the Receiver has once again failed to disclose all of the benefit that Mr. Livingston will be receiving as a result of this process.

- (p) A review of the dockets of A. Farber & Partners Inc. and Dentons makes clear that due diligence with respect to Legacy Hill Resources Ltd. was not completed by the Receiver or the Receiver's counsel. Accordingly, it is inappropriate for the Court to be requested to accept that Legacy Hill Resources Ltd. is a party to this process with "clean hands".
- (q) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The Affidavits of Henry Wetelainen sworn December 9, 2015 and December 17, 2015;
- (b) The Motion Record of the Applicant dated November 30, 2015;
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 23, 2015

O'NEILL DELORENZI MENDES

Barristers & Solicitors
116 Spring Street
Sault Ste. Marie ON P6A 3A1

Robert MacRae (329661)

rmacrae@saultlawyers.com

Tel: (705) 949-6901

Fax: (705) 949-0618

Lawyers for the Respondent

2403177 ONTARIO INC.
Applicant

-and-

BENDING LAKE IRON GROUP LIMITED
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at THUNDER BAY

ORDER

DENTONS CANADA LLP

77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1
Fax: 416-863-4592

Kenneth Kraft (LSUC No. 31919P)

Tel: 416-863-4374
Email: kenneth.kraft@dentons.com

John Salmas (LSUC No. 42336B)

Tel: 416-863-4737
Email: john.salmas@dentons.com

Sara-Ann Van Allen (LSUC No. 56016C)

Tel: 416-863-4402
Email: sara.vanallen@dentons.com

Lawyers for A. Farber & Partners Inc.