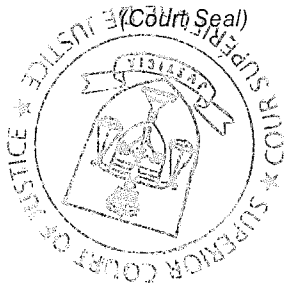


**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE H.A. RADY)

FRIDAY, THE 18th
DAY OF MAY, 2018

BETWEEN:



PETER ROONEY and ARCHIE LEACH

Plaintiffs
(Moving Parties)

and

**ARCELORMITTAL S.A., LAKSHMI N. MITTAL, ADITYA MITTAL,
1843208 ONTARIO INC., PHILIPPUS F. DU TOIT,
NUNAVUT IRON ORE ACQUISITION INC., IRON ORE HOLDINGS, LP,
NGP MIDSTREAM & RESOURCES, L.P., NGP M&R OFFSHORE HOLDINGS,
L.P., JOWDAT WAHEED, BRUCE WALTER, JOHN T. RAYMOND, JOHN
CALVERT, BAFFINLAND IRON MINES CORPORATION, RICHARD D.
McCLOSKEY, JOHN LYDALL and DANIELLA DIMITROV**

Defendants
(Responding Parties)

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiffs, for an Order, *inter alia*, approving the proposed Second Fresh as Amended Statement of Claim, certifying this Action as a class proceeding and appointing the Plaintiffs as representative plaintiffs, and ordering that the Valuation Application (defined herein) and the common issues trial of the within Action be heard together at the same

time or one immediately after the other in the Superior Court of Justice in London, was heard January 22-24, 2018 at the court house, 80 Dundas Street, London, Ontario, N6A 6A3.

ON READING the materials filed by the parties and certain of the Dissenting Shareholders (defined below) and on hearing the submissions of the lawyers for the parties and certain of the Dissenting Shareholders (defined below),

1. **THIS COURT ORDERS** that, except as otherwise stated, this Order incorporates and adopts the definitions set out in the Approved Second Fresh as Amended Statement of Claim (defined below) and the following additional definitions shall apply:

- (a) "Excluded Persons" means (1) the Defendants, and their past and present subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns; (2) any member of the families of the Individual Defendants; (3) the following individuals or entities, each of which directly or indirectly entered into a lock-up agreement pursuant to which BIM Securities were tendered to the Joint Bid: Resource Capital Fund IV L.P.; Resource Capital Fund III L.P.; RCF Management LLC; John Lydall; Walmley Investments Ltd; Gordon Watts; Michael T. Zurowski; Richard Matthews; Richard D. McCloskey; Gregory G. Missal; Ronald S. Simkus; Daniella E. Dimitrov; Grant Edey; Wide Range Mining Projects Pty Ltd, as trustee for the G&K Fietz Family Trust; Gwen M. Gareau; and Russell L Cranswick; and (4) those persons whose BIM Securities were transferred to 1843208 Ontario Inc. pursuant to the Plan of Arrangement completed on March 25, 2011, including (without limitation) the dissenting shareholders ("**Dissenting Shareholders**") identified in Schedule "A" of the Notice of Application filed on May 17, 2011 in the Valuation Application; however, such exclusion taking effect only to the extent of the BIM Securities

transferred by those persons to 1843208 Ontario Inc. pursuant to the Plan of Arrangement; and

- (b) "Valuation Application" means the dissent and appraisal proceeding commenced by 1843208 Ontario Inc. on May 17, 2011 by Notice of Application in Superior Court of Justice, Toronto Region (Commercial List), Court File No. CV-11-9222-00CL.

2. **THIS COURT ORDERS** that the proposed Second Fresh as Amended Statement of Claim attached hereto as Schedule "A" is approved (the "**Approved Second Fresh as Amended Statement of Claim**").

3. **THIS COURT ORDERS** that the action is hereby certified as against the Defendants as a class proceeding pursuant to s. 5 of the *Class Proceedings Act, 1992*.

4. **THIS COURT ORDERS** that the Class or Class Members be defined as:

All persons, other than Excluded Persons, who:

- i. tendered for sale BIM Securities to take-over bids by ArcelorMittal S.A., Nunavut Iron Ore Acquisition Inc., Iron Ore Holdings, L.P., NPG Midstream & Resources, L.P., NPG M&R Offshore Holdings, L.P. and/or 1843208 Ontario Inc. (collectively, the "**Offerors**") and whose BIM Securities were taken up by the Offerors ("**Tendering Shareholders**"); or
- ii. otherwise disposed of BIM Securities on or after January 14, 2011.

5. **THIS COURT ORDERS** that the Plaintiffs be appointed as the representative plaintiffs for the Class.

6. **THIS COURT DECLARES** that the causes of action asserted are as follows:
- (a) as against the Offerors and Lakshmi N. Mittal, Aditya Mittal, Philippus F. du Toit, Jowdat Waheed, Bruce Walter, John T. Raymond and John Calvert, a claim on behalf of the Tendering Shareholders pursuant to s. 131(1) of the Ontario *Securities Act* and analogous provisions of securities legislation of other Canadian provinces and territories;
 - (b) as against the Offerors a claim on behalf of the Tendering Shareholders for unjust enrichment;
 - (c) as against the Offerors a claim on behalf of the Tendering Shareholders pursuant to s. 134 of the Ontario *Securities Act* and analogous provisions of securities legislation of other Canadian provinces and territories;
 - (d) as against Richard D. McCloskey, John Lydall and Daniella Dimitrov, a claim on behalf of the Tendering Shareholders pursuant to s. 131(2) of the Ontario *Securities Act* and analogous provisions of securities legislation of other Canadian provinces and territories;
 - (e) as against Baffinland Iron Mines Corporation, a claim for vicarious liability on behalf of the Tendering Shareholders for the acts and/or omissions of Richard D. McCloskey, John Lydall and Daniella Dimitrov and each of its other officers, directors and employees in connection with the joint bid and acquisition of BIM Securities pursuant thereto; and
 - (f) as against Baffinland, Richard D. McCloskey, John Lydall and Daniella Dimitrov a claim on behalf of the Class pursuant to s. 248 of the Ontario *Business Corporations Act*.

7. **THIS COURT ORDERS** that the relief sought by the Class is set out in subparagraphs 3(b) to (l) of the Approved Second Fresh as Amended Statement of Claim.

8. **THIS COURT DECLARES** that the common issues are those set out in **Schedule "B"** hereto.

9. **THIS COURT APPROVES** the Plaintiffs' Litigation Plan as of October 6, 2017 attached hereto as **Schedule "C"**, with the issue of who should bear the costs of notice of certification to be addressed at some later date and paragraphs 5 and 8 of the Litigation Plan modified to be consistent with paragraphs 1 and 10 of this Order.

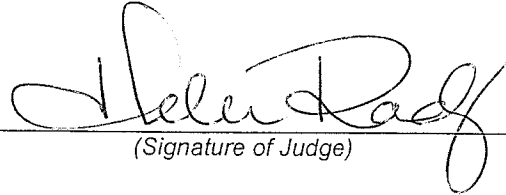
10. **THIS COURT ORDERS** that the Valuation Application is stayed pending future judicial order as to when and how it is to be adjudicated in coordination with this Action, subject to the settlement of this proceeding.

11. **THIS COURT ORDERS** that no other proceeding relating to the subject matter of this Action may be commenced (other than the Valuation Application) without leave of this Court obtained on notice to the parties hereto.

12. **THIS COURT DECLARES** that matters relating to notice of certification of this action as a class proceeding and how Class Members may opt out of this proceeding shall be subject to further order by this Court on motion by the parties.

13. THIS COURT ORDERS that in the event that the parties are unable to agree on costs by July 31, 2018, costs shall be addressed through written submissions to the Court with the Plaintiffs delivering their written submissions by August 15, 2018 and the Defendants delivering their written submissions by August 28, 2018.

ORDER ENTERED
JUL 04 2018
3054


(Signature of Judge)

SCHEDULE "A"

Court File No. 3957-11CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

PETER ROONEY and ARCHIE LEACH

Plaintiffs

- and -

ARCELORMITTAL S.A., LAKSHMI N. MITTAL, ADITYA MITTAL,
1843208 ONTARIO INC., PHILIPPUS F. DU TOIT,
NUNAVUT IRON ORE ACQUISITION INC., IRON ORE HOLDINGS, LP,
NGP MIDSTREAM & RESOURCES, L.P., NGP M&R OFFSHORE HOLDINGS, L.P.,
JOWDAT WAHEED, BRUCE WALTER, JOHN T. RAYMOND, JOHN CALVERT,
BAFFINLAND IRON MINES CORPORATION, RICHARD D. MCCLOSKEY,
JOHN LYDALL and DANIELLA DIMITROV

Defendants

Proceedings under the *Class Proceedings Act, 1992*

SECOND FRESH AS AMENDED STATEMENT OF CLAIM

**(NOTICE OF ACTION ISSUED APRIL 19, 2011; AMENDED APRIL 21, 2011;
FURTHER AMENDED MAY 6, 2011)**

**(STATEMENT OF CLAIM FILED MAY 18, 2011; AMENDED MAY 31, 2013;
FURTHER AMENDED JUNE 4, 2013; FURTHER AMENDED OCTOBER 31, 2013;
FURTHER AMENDED ●, 2018)**

CURRENCY AND DEFINITIONS

1. Unless otherwise indicated, all dollar amounts stated herein are expressed in Canadian currency.
2. The following definitions apply for the purpose of this Statement of Claim:
 - (a) “**Aditya Mittal**” means the defendant Aditya Mittal;
 - (b) “**AMEC**” means AMEC Americas Limited, consulting engineers who completed the **2011 Road Feasibility Study**;
 - (c) “**Amending Notices**” means, collectively, the notice of variation and extension by **ArcelorMittal** and **2263199** dated December 18, 2010, the notice of extension by **ArcelorMittal** and **2263199** dated December 29, 2010, the notice of variation by **ArcelorMittal** and **2263199** dated December 31, 2010, the notice of extension by **ArcelorMittal** and **2263199** dated January 10, 2011, the notice of variation and extension by **ArcelorMittal**, **2263199**, **Nunavut** and **Iron Ore Holdings** dated January 14, 2011, the notice of extension and change by **ArcelorMittal**, **2263199**, **Nunavut** and **Iron Ore Holdings** dated January 25, 2011, and the notice of extension by **ArcelorMittal**, **1843208**, **Nunavut** and **Iron Ore Holdings** dated February 7, 2011;
 - (d) “**ArcelorMittal**” means the defendant ArcelorMittal S.A.;
 - (e) “**ArcelorMittal Directors’ Circular**” means the Directors’ Circular issued by the BIM Board of Directors on November 12, 2010 recommending acceptance of the **Initial ArcelorMittal Offer**;

- (f) “**ArcelorMittal Directors’ Circular Amending Notices**” means the notices of change to the **ArcelorMittal Directors’ Circular** issued by the BIM Board of Directors on December 20, 2010, December 31, 2010, January 3, 2011, and January 17, 2011;
- (g) “**Bid Documents**” means the **Original Circular**, the **Amending Notices**, the **ArcelorMittal Directors’ Circular**, the **ArcelorMittal Directors’ Circular Amending Notices**, the **Nunavut Directors’ Circular** and the **Nunavut Directors’ Circular Amending Notices**;
- (h) “**BIM**” means the defendant Baffinland Iron Mines Corporation;
- (h.1) “**BIM Board**” means the Board of Directors of BIM;
- (i) “**BIM Officers and Directors**” means the defendants **McCloskey, Lydall, and Dimitrov**;
- (j) “**BIM Securities**” means the **Common Shares** and **2007 Warrants** issued by BIM;
- (k) “**Calvert**” means the defendant John Calvert;
- (l) “**CBCA**” means the *Canada Business Corporations Act*, RSC 1985, c C-44, as amended;
- (m) “**CIBC**” means CIBC World Markets Inc.;
- (n) “**CIBC Opinion**” means the written opinion of **CIBC** dated November 5, 2010 attached to the **ArcelorMittal Directors’ Circular**;
- (o) “**CJA**” means the Ontario *Courts of Justice Act*, RSO 1990, c C.43, as amended;

- (p) “**Class**” or “**Class Members**” have the meanings given to such terms in paragraph 3(a) hereto;
- (q) “**Common Shares**” means, at the material time, common shares of BIM;
- (r) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
- (s) “**Defendants**” means, collectively, **ArcelorMittal, Lakshmi Mittal, Aditya Mittal, 1843208, du Toit, Nunavut, Iron Ore Holdings, NGP Midstream, NGP M&R, Waheed, Walter, Raymond, Calvert, BIM, McCloskey, Lydall, and Dimitrov**;
- (t) “**Dimitrov**” means the defendant Daniella Dimitrov;
- (u) “**du Toit**” means the defendant Phillipus F. du Toit;
- (v) “**EMG Funds**” means the defendants **NGP Midstream** and **NGP M&R**, which are funds managed by the **Energy and Minerals Group**;
- (w) “**Energy and Minerals Group**” means the private investment firm of that name, which is based in Texas;
- (x) “**Excluded Persons**” means (1) the **Defendants**, and their past and present subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns; (2) any member of the families of the **Individual Defendants**; (3) the following individuals or entities, each of which directly or indirectly entered into a lock-up agreement pursuant to which **BIM Securities** were tendered to the **Joint Bid**: Resource Capital Fund IV L.P.; Resource Capital Fund III L.P.; RCF Management LLC; John Lydall; Walmley Investments Ltd; Gordon Watts; Michael T. Zurowski;

Richard Matthews; Richard D. McCloskey; Gregory G. Missal; Ronald S. Simkus; Daniella E. Dimitrov; Grant Edey; Wide Range Mining Projects Pty Ltd, as trustee for the G&K Fietz Family Trust; Gwen M. Gareau; and Russell L Cranswick; and (4) those persons whose **BIM Securities** were transferred to **1843208** pursuant to the **Plan of Arrangement** completed on March 25, 2011, including (without limitation) the dissenting shareholders identified in Schedule “A” of the Notice of Application filed on May 17, 2011 in the dissent and appraisal proceeding commenced by **1843208** on May 17, 2011 by Notice of Application in Superior Court of Justice, Toronto Region (Commercial List), Court File No. CV-11-9222-00CL; however, such exclusion taking effect only to the extent of the **BIM Securities** transferred by those persons to **1843208** pursuant to the **Plan of Arrangement**;

- (y) “Fe” is the scientific symbol for iron;
- (z) “**Individual Defendants**” means the defendants **Lakshmi Mittal, Aditya Mittal, du Toit, Waheed, Walter, Raymond, Calvert, McCloskey, Lydall, and Dimitrov**;
- (aa) “**Initial ArcelorMittal Offer**” means the ArcelorMittal offer, dated November 12, 2010, to purchase all of the outstanding Common Shares for \$1.10 per Common Share, and all outstanding 2007 Warrants for \$0.10 per 2007 Warrant;
- (bb) “**Initial Nunavut Offer**” means the Nunavut offer, dated September 22, 2010, offering to purchase all of the outstanding Common Shares for \$0.80 per Common Share;

- (cc) “**Iron Ore Holdings**” means the defendant Iron Ore Holdings, LP;
- (dd) “**January 2011 Draft Environmental Impact Statement**” means the Draft Environmental Impact Statement filed by BIM with the Nunavut Impact Review Board and referred to in a BIM press release dated January 21, 2011;
- (ee) “**January 13, 2011 Press Release**” means the press release issued by BIM on January 13, 2011 purporting to describe the results of the **2011 Road Feasibility Study**;
- (ff) “**January 17, 2011 Notice of Change**” means the notice of change to the **ArcelorMittal Directors’ Circular** issued by the BIM Board on January 17, 2011, recommending acceptance of the **Joint Bid**;
- (gg) “**Joint Bid**” means a take-over-bid for all of the Common Shares and 2007 Warrants of BIM by ArcelorMittal, Nunavut, Iron Ore Holdings and 1843208, pursuant to the **Original Circular** as amended by the **Amending Notices**;
- (hh) “**June 2010 Conceptual Study**” means the *Conceptual Study Report – Road Haulage Early Stage Production, June 2010* prepared by BIM;
- (ii) “**Lydall**” means the defendant John Lydall;
- (jj) “**Lakshmi Mittal**” means the defendant Lakshmi N. Mittal;
- (kk) “**Mary River Project**” means BIM’s wholly-owned Mary River iron ore mining project located on Baffin Island in Nunavut Territory;
- (ll) “**Material Change Report**” means the material change report issued by BIM on January 13, 2011, purporting to report on the results of the 2011 Road Feasibility Study;

- (mm) “**NGP Midstream**” means the defendant NGP Midstream & Resources, L.P.;
- (nn) “**NGP M&R**” means the defendant NGP M&R Offshore Holdings, L.P.;
- (oo) “**Nunavut**” means the defendant Nunavut Iron Ore Acquisition Inc.;
- (pp) “**Nunavut Directors’ Circular**” means the Directors’ Circular issued by the BIM Board of Directors on October 7, 2010;
- (qq) “**Nunavut Directors’ Circular Amending Notices**” means the notices of change to the **Nunavut Directors’ Circular** issued by the BIM Board of Directors on December 20, 2010, December 31, 2010, January 3, 2011 and January 17, 2011;
- (rr) “**McCloskey**” means the defendant Richard D. McCloskey;
- (ss) “**OBCA**” means the Ontario *Business Corporations Act*, RSO 1990, c B.16, as amended;
- (tt) “**Offerors**” means the defendants ArcelorMittal, 1843208, Nunavut, Iron Ore Holdings, NGP Midstream and NGP M&R;
- (uu) “**Original Circular**” means a take-over bid circular of ArcelorMittal dated November 12, 2010;
- (vv) “**OSA**” means the Ontario *Securities Act*, RSO 1990, c S.5, as amended;
- (ww) “**OSC**” means the Ontario Securities Commission;
- (xx) “**Other Canadian Securities Acts**” means the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; *The Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as

amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; *The Securities Act, 1988*, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16;

- (yy) “**Plaintiffs**” means the plaintiffs Peter Rooney and Archie Leach;
- (zz) “**Plan of Arrangement**” means BIM’s Plan of Arrangement dated February 18, 2011 and ultimately approved by BIM’s shareholders on March 22, 2011;
- (zz.1) “**QIA**” means the Qikiqtani Inuit Association;
- (aaa) “**Raymond**” means the defendant John T. Raymond;
- (bbb) “**Rules**” means the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended;
- (ccc) “**SEDAR**” means the System for Electronic Document Analysis and Retrieval used for electronically filing most securities related information with the Canadian Securities Administrators;
- (ddd) “**Support Agreement**” means the Support Agreement between ArcelorMittal and BIM dated November 6, 2010, as amended on December 18, 2010;
- (eee) “**TSX**” means the Toronto Stock Exchange;
- (fff) “**Waheed**” means the defendant Jowdat Waheed;
- (ggg) “**Walter**” means the defendant Bruce Walter;

- (hhh) “**2007 Warrants**” means the warrants issued by BIM pursuant to a warrant indenture dated January 31, 2007 and listed for trading on the TSX under the ticker symbol “BIM.WT”;
- (iii) “**2008 Expansion Study**” means an expanded **2008 Rail Feasibility Study** prepared by Aker Solutions for BIM in June 2008;
- (jjj) “**2008 Rail Feasibility Study**” means the *Technical Report of the Definitive Feasibility Study* prepared by Aker Kvaerner for BIM, and dated February 2008 and filed on SEDAR on March 5, 2008;
- (kkk) “**2011 Road Feasibility Study**” means the *Mary River Iron Ore Trucking NI 43-101 Technical Report* prepared by AMEC for BIM, and dated January 13, 2011;
- (lll) “**1843208**” means the defendant 1843208 Ontario Inc.; and
- (mmm) “**2263199**” means 2263199 Ontario Inc.

RELIEF SOUGHT

3. The Plaintiffs claim:

- a) An order certifying this action as a class proceeding and appointing the Plaintiffs as representative plaintiffs for a class defined as:

All persons, other than Excluded Persons, who:

(i) *tendered for sale BIM Securities to take-over bids by ArcelorMittal, Nunavut, Iron Ore Holdings, NGP Midstream, NGP M&R and/or 1843208 and whose BIM Securities were taken up by the Offerors; or*

(ii) *otherwise disposed of BIM Securities on or after January 14, 2011;*

or such other class definition as may be approved by the Court (the “Class” or “Class Members”);

- b) A declaration that the Original Circular and the Amending Notices contained a misrepresentation;
- c) A declaration that the Nunavut Directors’ Circular and the Nunavut Directors’ Circular Amending Notices contained a misrepresentation;
- d) A declaration that the ArcelorMittal Directors’ Circular and the ArcelorMittal Directors’ Circular Amending Notices contained a misrepresentation;
- e) A declaration that ArcelorMittal, Nunavut, Iron Ore Holdings, 1843208, NGP Midstream and NGP M&R breached section 76 of the *OSA* and the equivalent provisions of the Other Canadian Securities Acts;
- f) A declaration that the acts or omissions of BIM have effected a result, the business or affairs of BIM have been carried on or conducted in a manner, or the powers of the directors of BIM have been exercised in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the Plaintiffs and the Class Members, within the meaning of section 248(2) of the *OBCA*;
- g) A declaration that BIM is vicariously liable for the acts and/or omissions of McCloskey, Lydall, Dimitrov and each of its other officers, directors and employees in connection with the Joint Bid and the acquisition of BIM Securities pursuant thereto;

- h) General and special damages in the sum of \$1,000,000,000 or such other sum as this Court deems appropriate at the trial of the common issues or at a reference or references;
- i) In the alternative to damages, rescission of the transfer of BIM Securities pursuant to the Joint Bid by any individual Class Member who specifically elects such remedy;
- j) An order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- k) Prejudgment and post judgment interest;
- l) Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus, pursuant to section 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and
- m) Such further and other relief as to this Honourable Court may seem just.

THE PARTIES

- 4. The Plaintiff, Peter Rooney is a resident of Uxbridge, Ontario. He tendered 98,000 Common Shares to the Joint Bid and sold at least 2000 more shares in the secondary market after January 14, 2011.
- 5. The Plaintiff, Archie Leach, is a resident of London, Ontario. He sold 3,768,100 Common Shares in the secondary market after January 14, 2011.

6. BIM is an iron mining company incorporated under the *OBCA*. At the material time, BIM was a reporting issuer in all provinces and territories of Canada, and had its head office in Toronto, Ontario. At the material time, BIM's Common Shares were listed for trading on the TSX under the ticker symbol "BIM", and its 2007 Warrants were listed for trading on the TSX under the ticker symbol "BIM.WT". At the material time, BIM's sole business was the development of its wholly-owned Mary River Project located on Baffin Island in Nunavut Territory.
7. ArcelorMittal is a public limited liability company incorporated under the laws of Luxembourg. It is one of the world's largest steel producers. It participated in the Joint Bid as an offeror and acquired BIM Securities, directly or indirectly from Class Members, pursuant thereto.
8. Nunavut is a company incorporated pursuant to the *CBCA*. Nunavut is wholly-owned by Iron Ore Holdings. Nunavut participated in the Joint Bid as an offeror and acquired BIM Securities, directly or indirectly from Class Members, pursuant thereto.
9. Iron Ore Holdings is a limited partnership formed under the laws of Delaware and has as its general partner Iron Ore Holdings GP, LLC. Iron Ore Holdings is the owner of Nunavut. Iron Ore Holdings participated in the Joint Bid as an offeror and acquired BIM Securities, directly or indirectly from Class Members, pursuant thereto.
10. NGP Midstream is a limited partnership having its principal place of business in Irving, Texas. It owns, directly or indirectly, Iron Ore Holdings and Nunavut. NGP Midstream participated in the Joint Bid as an offeror and acquired BIM Securities, directly or indirectly from Class Members, pursuant thereto.

11. NGP M&R is a limited partnership having its principal place of business in Irving, Texas. It owns, directly or indirectly, Iron Ore Holdings and Nunavut. NGP M&R participated in the Joint Bid as an offeror and acquired BIM Securities, directly or indirectly from Class Members, pursuant thereto.
12. 1843208 is a company incorporated pursuant to the laws of Ontario having its head office in Toronto, Ontario. 1843208 was incorporated on January 27, 2011 and on that day amalgamated with 2263199 for the purposes of participating in the take-over of BIM. 1843208 is beneficially owned 70% by ArcelorMittal and 30% by Iron Ore Holdings. 1843208 participated in the Joint Bid as an offeror and acquired BIM Securities, directly or indirectly from Class Members, pursuant thereto.
13. The defendants Lakshmi Mittal and Aditya Mittal were, at the material time, directors and/or officers of ArcelorMittal. They each signed one or more certificates attached to the Original Circular and/or the Amending Notices certifying that the Original Circular and/or the Amending Notices issued up to the relevant time contained no untrue statement of a material fact and did not omit to state a material fact that was required to be stated or that was necessary to make a statement not misleading in light of the circumstances in which it was made.
14. The defendant du Toit was, at the material time, a director of 1843208. He signed a certificate attached to an amending notice certifying that the Original Circular and the Amending Notices issued up to the relevant time contained no untrue statement of a material fact and did not omit to state a material fact that was required to be stated or that was necessary to make a statement not misleading in light of the circumstances in which it was made.

15. The defendant Waheed was, at the material time, the Chief Executive Officer of Nunavut and the Chief Executive Officer of Iron Ore Holdings' general partner, Iron Ore Holdings GP, LLC. He signed certificates attached to certain Amending Notices certifying that the Original Circular and the Amending Notices issued up to the relevant time contained no untrue statement of a material fact and did not omit to state a material fact that was required to be stated or that was necessary to make a statement not misleading in light of the circumstances in which it was made.
16. The defendant Walter was, at the material time, a director of Nunavut and a member of the Board of Managers of Iron Ore Holdings' general partner, Iron Ore Holdings GP, LLC. He signed certificates attached to certain Amending Notices certifying that the Original Circular and the Amending Notices issued up to the relevant time contained no untrue statement of a material fact and did not omit to state a material fact that was required to be stated or that was necessary to make a statement not misleading in light of the circumstances in which it was made.
17. The defendant Raymond was, at the material time, a director of Nunavut and a member of the Board of Managers of Iron Ore Holdings' general partner, Iron Ore Holdings GP, LLC. He signed certificates attached to certain Amending Notices certifying that the Original Circular and the Amending Notices issued up to the relevant time contained no untrue statement of a material fact and did not omit to state a material fact that was required to be stated or that was necessary to make a statement not misleading in light of the circumstances in which it was made.
18. The defendant Calvert was, at the material time, Chief Financial Officer and Managing Partner of NGP MR GP, LLC, as general partner of NGP MR, L.P., as general partner

of NGP Midstream and NGP M&R. He signed certificates attached to certain Amending Notices certifying that the Original Circular and the Amending Notices issued up to the relevant time contained no untrue statement of a material fact and did not omit to state a material fact that was required to be stated or that was necessary to make a statement not misleading in light of the circumstances in which it was made.

19. The defendants McCloskey, Lydall and Dimitrov were, at the material time, directors and/or officers of BIM. They each signed one or more certificates attached to the ArcelorMittal Directors' Circular, the ArcelorMittal Directors' Circular Amending Notices, the Nunavut Directors' Circular and/or the Nunavut Directors' Circular Amending Notices certifying that the ArcelorMittal Directors' Circular, the ArcelorMittal Directors' Circular Amending Notices, the Nunavut Directors' Circular and the Nunavut Directors' Circular Amending Notices issued up to the relevant time contained no untrue statement of a material fact and did not omit to state a material fact that was required to be stated or that was necessary to make a statement not misleading in light of the circumstances in which it was made.

OVERVIEW OF ACTION

20. This action arises out of the 2011 take-over of BIM by the Offerors. The take-over gave the Offerors control of the Mary River Project, one of the world's richest iron ore bodies. The Mary River Project is located on Baffin Island in Nunavut Territory.
21. The Plaintiffs and the Class Members, as holders of BIM Securities, were entitled to full, true and plain disclosure about the business and affairs of BIM in order that they might make informed decisions as to whether to tender their securities to the Joint Bid. They did not get it.

22. Instead, and contrary to their obligations under Canadian securities law, the Defendants provided the Plaintiffs and the Class Members with materially misleading disclosure, replete with misrepresentations about the business and affairs of BIM.
23. The disclosure was not only materially misleading, but the Offerors had knowledge of undisclosed material facts about BIM which they obtained from BIM, thereby creating an unlawful informational imbalance with shareholders who were not BIM insiders. The entire bid process was profoundly tainted, and the completion of the Joint Bid was an unlawful insider trade or series of insider trades contrary to Canadian securities laws.
- 23A. As more fully particularized below, the undisclosed facts about BIM, which were not disclosed in the Bid Documents and were not otherwise generally disclosed, were either material on their own or material in light of the total mix of information available, and in any case were material facts not generally disclosed in the Defendants' possession from the Initial Nunavut Offer and any amendments thereto, through the Initial ArcelorMittal Offer and any amendments thereto, and throughout the Joint Bid.
24. In the result, the Plaintiffs and the Class Members sold their BIM Securities at too low a price, and the Offerors acquired BIM and control of the Mary River Project at a fraction of their true value. The Plaintiffs and the Class Members were damaged by the acts and omissions of the Defendants, as described herein, and the Offerors were unjustly enriched thereby.
25. The claims against the Defendants may be summarized as follows:
 - a) As against the Offerors, jointly and severally, the Plaintiff Peter Rooney and the Class Members who sold their BIM Securities to the Offerors pursuant

- to the Joint Bid, claim damages pursuant to section 134 of the OSA and the equivalent provisions of the Other Canadian Securities Acts;
- b) As against the Offerors, the Plaintiff Peter Rooney and the Class Members who sold their BIM Securities to the Offerors pursuant to the Joint Bid, claim damages for unjust enrichment;
 - c) As against the Offerors, jointly and severally, the Plaintiff Peter Rooney and all Class Members, except those who sold BIM Securities in the secondary market on or after January 14, 2011 (but only to the extent of such sales), claim damages pursuant to section 131(1) of the *OSA* and the equivalent provisions of the Other Canadian Securities Acts for misrepresentations in the Original Circular and the Amending Notices, or in the alternative to damages, rescission of the transfer of BIM Securities pursuant to the Joint Bid by any individual Class Member who specifically elects such remedy;
 - d) As against Lakshmi Mittal, Aditya Mittal, du Toit, Waheed, Walter, Raymond, and Calvert, jointly and severally, the Plaintiff Peter Rooney and all Class Members, except those who sold BIM Securities in the secondary market on or after January 14, 2011 (but only to the extent of such sales), claim damages pursuant to section 131(1) of the *OSA* and the equivalent provisions of the Other Canadian Securities Acts for misrepresentations in the Original Circular and the Amending Notices;
 - e) As against the BIM Officers and Directors, jointly and severally, the Plaintiff Peter Rooney and all Class Members, except those who sold BIM Securities in the secondary market on or after January 14, 2011 (but only to the extent

of such sales), claim damages pursuant to section 131(2) of the *OSA* and the equivalent provisions of the Other Canadian Securities Acts for the misrepresentations in the Nunavut Directors' Circular, the Nunavut Directors' Circular Amending Notices, the ArcelorMittal Directors' Circular and the ArcelorMittal Directors' Circular Amending Notices;

- f) As against BIM and the BIM Officers and Directors, jointly and severally, the Plaintiffs and all Class Members claim relief from oppression pursuant to section 248 of the *OBCA*, including compensation pursuant to section 248(3)(j) of the *OBCA*; and

For greater clarity, where Class Members sold BIM Securities in the secondary market on or after January 14, 2011, and:

- a) also tendered BIM Securities for sale to take-over bids by any of the Offerors and/or 2263199 between September 22, 2010 and February 17, 2011, and the Class Member's tendered BIM Securities were taken up by the any of the Offerors; or
- b) otherwise disposed of BIM Securities on or after January 14, 2011,

such Class Members claim the relief set out in subparagraphs (a) to (f), to the extent applicable to them.

EVENTS LEADING TO THE TAKE-OVER OF BAFFINLAND

The 2008 Rail Feasibility Study and the 2008 Expansion Study

26. The Mary River Project, located on northern Baffin Island in Nunavut Territory, is among the largest and most significant undeveloped iron ore deposits in the world. It is a world class mining asset, and it is wholly owned by BIM.
27. On March 5, 2008, BIM filed on SEDAR the 2008 Rail Feasibility Study for the Mary River Project in which iron ore reserve/resource estimates for the project were stated to be: proven and probable reserves of 365 million tonnes grading 64.66% Fe; measured resources of 0.4 million tonnes grading 65.39% Fe; indicated resources of 52 million tonnes grading 64.6% Fe; and inferred resources of 448 million tonnes grading 65.48% Fe. The analysis of the project economics was based on transporting the iron ore from the project site by a proposed 143 kilometre railway to a port on Steensby Inlet for shipping to market, and production of 18 million tonnes of iron ore annually. Capital costs were estimated at approximately \$4 billion. The net present value of the project (at a discount rate of 7%) was said to be approximately \$5 billion pre-tax and around \$2.7 billion after-tax based on average sales prices of US\$67 per tonne for lump iron ore and US\$55 per tonne for fines.
28. The 2008 Rail Feasibility Study was the definitive study for the Mary River Project and, as such, it was the key document that disclosed BIM's strategic business plan to the investing public.
29. When the 2008 Rail Feasibility Study was made public on March 5, 2008, BIM's Common Shares were trading on the TSX at approximately \$3.79 per Common Share.

30. In or about June 2008, BIM received from independent consultants Aker Solutions, the 2008 Expansion Study, which was an expanded 2008 Rail Feasibility Study. In the 2008 Expansion Study, Aker Solutions considered the potential expansion of the Mary River Project to a production rate of 30 million tonnes per annum, an increase of approximately 67% from the production rate stated in the 2008 Rail Feasibility Study. The 2008 Expansion Study assumed the additional production, beyond the 18 million tonnes per annum planned in the 2008 Rail Feasibility Study, would come on-line in the fourth year of production.
31. BIM publicly reported the existence of the 2008 Expansion Study, the fact that results from the study were “consistent with management’s expectations”, and that the study would contribute to strategic planning for the Mary River Project. However, the 2008 Expansion Study itself was not disclosed to the investing public.

Jowdat Waheed is Retained by BIM, Then Launches Take-Over Bid

32. On February 18, 2010, the defendant Waheed, former President and Chief Executive Officer of Canadian mining company Sherritt International Corporation, entered into a consulting agreement with BIM whereby he provided strategic advice to the BIM Board and the BIM Chief Executive Officer in respect of strategic planning and the development of the Mary River Project.
- 32A. In the course of his consultancy to BIM, Waheed was provided with virtually unlimited access to strategic, financial and operational information concerning BIM’s business and affairs. As particularized more fully elsewhere herein, BIM and certain of its officers and directors provided Waheed with access to the following confidential documents and information regarding BIM, which contained material facts about BIM

that were not disclosed in the Bid Documents and were not otherwise generally disclosed:

- a) its budgets and financial forecasts;
- b) its exploration plans;
- c) details about BIM's negotiations with the Nunavut Impact Review Board relating to required permits for the development of the Mary River Project as referred to in BIM's January 21, 2011 Press Release which negotiations had been ongoing for nearly five years up to the making of the Initial Offer;
- d) materials of the BIM Board;
- e) the 2008 Expansion Study;
- f) the June 2010 Conceptual Study;
- g) a financial model developed by BIM to assess the viability of a road haulage option as an alternative to the larger scale rail haulage option for the transport of iron ore from the Mary River site to port;
- h) details about BIM's search for a strategic partner;
- i) details about BIM's negotiations with ArcelorMittal; and
- j) details about BIM's negotiations with the QIA regarding royalties that BIM would have to pay in respect of the Mary River Project.

Particulars of such material facts are set out in Schedule "B" hereto or elsewhere herein.

32B. Waheed attended weekly management meetings at BIM and meetings of the strategic committee of the BIM Board which consisted of four BIM Board members whose mandate it was to negotiate the terms of a joint venture with ArcelorMittal.

- 32C. Throughout March and April 2010, Waheed was kept fully apprised of the status of negotiations between BIM and ArcelorMittal and he was actively involved in advising the BIM Board and the Strategic Committee of the BIM Board regarding these negotiations.
- 32D. Waheed attended a critical BIM Board Meeting on or about March 23, 2010 wherein the BIM Board agreed to execute an exclusivity and confidentiality agreement with ArcelorMittal in furtherance of BIM's negotiations of a joint venture with ArcelorMittal.
- 32E. As a result of BIM entering the confidentiality and exclusivity agreement with ArcelorMittal, ArcelorMittal provided BIM with a term sheet regarding a proposed joint venture. Waheed was given a copy of this term sheet and subsequent versions of the term sheet following March 23, 2010, and Waheed provided his comments to BIM in respect of same.
- 32F. In addition, while he was a consultant to BIM, Waheed and senior BIM management employees developed a comprehensive financial model for the purposes of assessing the financial feasibility of the Mary River Project.
- 32G. The financial model enabled an analysis of the value of the project while varying key data inputs. While he was a consultant at BIM, Waheed used the financial model to assess the economic feasibility of the road haulage option. This comprehensive financial model considered various factors, which were BIM's confidential information, including the grade and type of ore to be extracted at Mary River, processing and transportation costs, capital costs including the cost of building such things as port facilities, the costs of exploration in the project area, and BIM's operating costs. The

model considered BIM's revenues, its tax reserves, anticipated iron ore prices and currency exchange rates and the various royalties the company would have to pay, including the anticipated royalty to be negotiated with the QIA. The model considered anticipated rates of taxation to three levels of government. The many inputs were broken down on a quarterly basis from 2010 to 2029. All of this was used by Waheed and BIM in aid of an assessment of the economic feasibility of the road haulage option. This was all highly confidential and material information about BIM and not generally disclosed.

32H. The product of this comprehensive financial model was the June 2010 Conceptual Study. Mr. Waheed and senior BIM Management started work on this document during March 2010 and it was completed in June 2010, after Mr. Waheed had left BIM as a consultant. The June 2010 Conceptual Study is a comprehensive strategic review of the road haulage option. It was a highly confidential internal BIM document and contained material facts about BIM that were not generally disclosed. As is described more fully below, after he left BIM as a consultant in April 2010, Waheed was given copy of the June 2010 Conceptual Study.

32I. An important piece of information that went into the assessment of the economic feasibility of the Mary River Project was the royalty that would have to be paid to government by BIM. The royalties were the subject of confidential negotiations between BIM and the QIA in 2010. The QIA's positions regarding royalties (that is, what they were prepared to accept) was made known to Waheed as at April 12, 2010 or later. This information was highly confidential to BIM, and a material fact about BIM not generally disclosed.

- 32J. Waheed's role as a consultant for BIM ended in April of 2010. However, he remained contractually bound to keep in confidence the confidential information he received about BIM's business and affairs throughout the period relevant to this lawsuit and to not use such confidential information for his own personal benefit.
- 32K. Waheed kept a copy of the comprehensive financial model on his home computer when he left BIM as a consultant.
- 32L. Waheed was an insider of BIM. He had access to BIM's confidential information, and as detailed more particularly herein, he learned material facts about BIM that were not generally disclosed.
33. On June 10, 2010, while Waheed remained in contact with the BIM Board and the BIM Chief Executive Officer on strategic planning, BIM issued a press release announcing that it was examining a road haulage early stage production option. The road haulage option referred to the transport of iron ore to port *via* trucks, rather than the proposed railway discussed in the 2008 Rail Feasibility Study. In fact, in June 2010, BIM had in hand an extensive internal feasibility study, the June 2010 Conceptual Study, which discussed in great detail the economics of the road haulage option. In a financial summary appearing at page 62 of the June 2010 Conceptual Study, investment returns were set out including an expected return on equity during the 16 year life of the project as follows:

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
(8%)	(7%)	(2%)	3%	28%	29%	22%	18%	13%	10%	10%	9%	9%	9%	9%	9%

34. In the course of his work with BIM's Chief Executive Officer and Board, Waheed received and reviewed various confidential reports and information about the Mary River Project, and in particular, the 2008 Expansion Study and the June 2010 Conceptual Study. In addition, he engaged in communications with the BIM Board and the BIM Chief Executive Officer about BIM's strategic planning and the development of the Mary River Project. In so doing, Waheed gained knowledge of BIM's sensitive and highly confidential information, and in particular, information disclosed during BIM's ongoing discussions with ArcelorMittal, information relating to BIM's internal estimates of the resources potential at the Mary River Project and all of the information of BIM's Strategic Committee relating to the proposed BIM / ArcelorMittal joint venture and discussions with other third parties, all as described in the letter of BIM's counsel, Stikeman Elliott LLP, to the OSC dated October 8, 2010. The information learned by Waheed constituted undisclosed material facts about BIM and the Mary River Project. Particulars of the communications and the undisclosed material facts learned through the communications are known to the Defendants.
35. The June 2010 Conceptual Study was not disclosed to holders of BIM Securities, including the Class Members.
36. In the period of time following the expiry of his consulting agreement with BIM on June 15, 2010, until the end of July 2010, Waheed also met with representatives of BIM to discuss a possible proposal by Waheed for the acquisition and/or financing of the Mary River Project. Waheed was advised by representatives of BIM that, while it would evaluate any such proposal, it was pursuing other options, including some with strategic partners, and BIM might become subject to exclusivity provisions which would

preclude it from responding to anything other than an offer made to BIM or its shareholders. Particulars of the forgoing are set out in the following paragraphs.

- 36A. Following the conclusion of Waheed's formal relationship with BIM as a consultant on April 30, 2010, Waheed retained in his possession confidential information belonging to BIM. In particular, he kept a copy of a financial model which, while he was a consultant, he developed along with BIM senior management. Waheed also kept copies of BIM PowerPoint presentations which he had prepared and used while a BIM consultant.
- 36B. On or about April 30, 2010, Waheed started having discussions with Barclays about becoming a member of Barclay's senior management team in Canada. At the suggestion of Waheed, these discussions included doing a possible transaction involving BIM.
- 36C. In June and July 2010, Waheed actively sought information about BIM from its senior management. He approached BIM management on a number of occasions to request updates in respect of the company, including the status and details of its negotiations with ArcelorMittal. Waheed advised McCloskey and Dimitrov that he had spent some time in New York with a private equity fund, and that he was working on putting a proposal together for the Mary River Project.
- 36D. On or about June 9, 2010, Waheed met with Dimitrov. At this meeting, Dimitrov provided Waheed with up-to-date information about: the joint venture negotiations between ArcelorMittal and BIM; and the June 2010 Conceptual Study which BIM was still working on. He also conveyed to her his intention to trade in BIM securities.

36E. On or about July 12, 2010, Waheed e-mailed McCloskey to request a meeting to discuss the June 2010 Conceptual Study. Waheed wrote:

“The last time we met, you were expecting the final numbers on the trucking option to come out soon. I would love to talk to someone about them and update my sense of capital and operating parameters (I continue to be covered by the confidentiality agreement).”

36F. On or about July 13, 2010, Waheed met with Dimitrov and advised her of his intention to trade in BIM Securities. She then provided him material information about BIM that was not generally disclosed. She provided Waheed with one or more of the:

- a) copy of the June 2010 Conceptual Study;
- b) a BIM capital cost summary schedule;
- c) a BIM operating cost summary schedule;
- d) BIM’s internal rates of return for the Mary River Project.

36G. At this meeting, Waheed learned from Dimitrov that:

- a) BIM had terminated its exclusivity agreement with ArcelorMittal;
- b) There was a “higher offer on the table” to BIM from ArcelorMittal as compared to the last offer from ArcelorMittal which he had seen earlier;
- c) BIM was an advanced stage of negotiations with ArcelorMittal;
- d) A new exclusivity agreement would soon be in place with ArcelorMittal and if Waheed was going to make a firm proposal, he should do so quickly before BIM entered a further exclusivity agreement with ArcelorMittal.

36H. Waheed subsequently learned that BIM executed a second exclusivity agreement with ArcelorMittal on or about August 10, 2010 which was to run until October 15, 2010.

- 36I. The documents and information provided to Waheed as detailed in paragraphs 36A through 36H herein as to the status and details of the negotiations between BIM and ArcelorMittal about a potential joint venture, contained or were themselves material facts that were not generally disclosed. The fact that ArcelorMittal was in advanced negotiations with Baffinland, as evidenced by the revised and improved term sheet and the parties executing a second exclusivity agreement, would reasonably be expected to have a significant effect on the market price or value of BIM's securities. Waheed's receipt of all of this information was subject to his obligation to maintain the confidentiality of this information and not to use it for his personal benefit.
37. On July 12, 2010, BIM publicly disclosed that it had retained the engineering consultants AMEC to complete a definitive feasibility study for a road haulage option for the Mary River Project. The press release stated that the study was expected to be completed before the end of 2010.
38. In fact, and as described below, AMEC's 2011 Road Feasibility Study was completed as of January 13, 2011, but not released to the public by BIM until February 28, 2011, 11 days after the Joint Bid expired.
39. During July 2010, Waheed and the defendant Walter agreed to work together with respect to a possible transaction involving BIM and, in furtherance of this, during July and August 2010, they approached and met with various potential sources of funding for their proposed transaction including Barclays Natural Resources Investment Fund and the Energy and Minerals Group. The EMG Funds would provide financing for the Nunavut take-over bid for BIM.

- 39A. Sometime between approximately July 13, 2010 and July 19, 2010 Waheed took the updated data from the June 2010 Conceptual Study and other information provided to him on or about July 13, 2010 by Dimitrov, and entered it into the comprehensive financial model which he took from BIM and kept on his home computer, in order to generate a fresh feasibility analysis of the Mary River Project.
- 39B. Waheed conveyed to Walter and EMG Funds this confidential information and analyses relating to BIM and the Mary River Project. Waheed, Walter and EMG Funds knew that this was material information about BIM that had not been generally disclosed, and it was based on this information that EMG Funds agreed to provide funding for a transaction involving BIM.
40. On August 27, 2010, Nunavut was incorporated by Waheed and others for the purposes of launching a take-over of BIM. Iron Ore Holdings was also formed at or about the same time for the purposes of holding Nunavut as it undertook a take-over bid for BIM. Iron Ore Holdings was owned by Waheed, Walter and the EMG Funds. At the material time, Waheed was the President and Chief Executive Officer of Nunavut and the Chief Executive Officer of Iron Ore Holdings' general partner, Iron Ore Holdings GP, LLC.
41. Given his new position with Nunavut and Iron Ore Holdings, the undisclosed material facts about BIM and the Mary River Project which were imparted to Waheed by BIM only a few weeks earlier became undisclosed material facts about BIM and the Mary River Project within the knowledge of Nunavut and Iron Ore Holdings.

ArcelorMittal Negotiates Potential Joint Venture with BIM, Then Launches Take-Over Bid

42. In late 2009, ArcelorMittal and BIM engaged in negotiations in respect of a potential transaction involving BIM securities and the Mary River Project which negotiations continued into 2010. A confidentiality agreement was entered on March 23, 2010 which granted ArcelorMittal a period of exclusivity and limited BIM's ability to pursue alternative transactions, and permitted the parties to conduct due diligence and to negotiate definitive transaction documents.
- 42A. Shortly after joining BIM as a consultant on February 18, 2010, Waheed met and spoke extensively with Dimitrov about BIM's negotiations with ArcelorMittal regarding a potential joint venture. Dimitrov provided Waheed with one or more of the following:
- a) a detailed chronology of the negotiations between the parties;
 - b) presentations made to the Baffinland Board by CIBC World Markets Inc. ("CIBC"), Baffinland's financial advisor in the negotiations;
 - c) Baffinland's presentations to ArcelorMittal; and
 - d) proposals and term sheets exchanged between the parties.

All of this was confidential, material information about BIM that was not generally disclosed.

- 42B. As the negotiations between BIM and ArcelorMittal progressed in March and April 2010, Waheed was kept fully apprised of the status of the negotiations and was actively involved in discussing and providing input on BIM's strategy in the negotiations. He also assisted senior management in preparing a presentation to ArcelorMittal.

- 42C. In mid-March 2010, Waheed learned that ArcelorMittal was very serious about moving ahead with a transaction with BIM as it had hired financial advisors and legal counsel for the transaction.
- 42D. As pleaded above, Waheed was present at the March 23, 2010 BIM Board meeting during which it was agreed that BIM would enter into an exclusivity agreement with ArcelorMittal until August 12, 2010.
- 42E. Waheed was also aware of ArcelorMittal's proposed terms. On April 4, 2010, ArcelorMittal provided BIM with a new term sheet for the potential joint venture. This term sheet formed the basis for ongoing negotiations between the parties and ArcelorMittal conducting its due diligence in the summer of 2010. Waheed reviewed this term sheet and provided advice to BIM on the proposal.
43. Discussions regarding a potential joint venture between ArcelorMittal and BIM regarding the Mary River Project continued through July and August 2010 and the confidentiality agreement of March 23, 2010 was amended so that ArcelorMittal might engage in a comprehensive due diligence review of the Mary River Project. As particularized above, Waheed was made aware by Dimitrov and others of developments in the BIM negotiations with ArcelorMittal.
44. During 2009 and 2010 when it undertook its comprehensive due diligence of BIM as it considered a joint venture agreement about the Mary River Project, ArcelorMittal also gained knowledge of undisclosed material facts about BIM. ArcelorMittal gained knowledge of undisclosed material facts contained in the 2008 Expansion Study and the June 2010 Conceptual Study.

- 44A. In fact, by mid-September of 2010, ArcelorMittal and BIM had reached an agreement in principle for a joint venture to develop the Mary River Project. That agreement provided for ArcelorMittal to make a substantial investment in the development of the Mary River Project and for BIM to remain a public company and owner of a substantial stake in the Mary River Project. Waheed was aware of this proposed arrangement prior to the delivery of the Nunavut bid on September 22, 2010.
- 44B. The facts relating to ArcelorMittal's negotiations with BIM and the proposed joint venture agreement were material facts about BIM that were not generally disclosed.

THE TAKE-OVER OF BAFFINLAND

45. On or about September 22, 2010, approximately four months after Waheed purportedly finished his work advising the BIM Board and Chief Executive Officer on financial and strategic planning and the development of the Mary River Project, Waheed's new companies, Nunavut and Iron Ore Holdings, made a take-over bid for all of the outstanding BIM Common Shares for \$0.80 per Common Share.
- 45A. The Nunavut bid was intended to, and did, pre-empt the completion and announcement of the joint venture transaction between BIM and ArcelorMittal, which was scheduled to be announced on September 30, 2010. That agreement would have been substantially more advantageous to Class Members than the Joint Bid ultimately consummated.
46. On or about November 12, 2010, ArcelorMittal, by way of the Original Circular, made a competing take-over bid for all outstanding BIM Common Shares and 2007 Warrants for \$1.10 per Common Share and \$0.10 per 2007 Warrant.

47. On or about January 14, 2011, ArcelorMittal, Nunavut and Iron Ore Holdings joined forces and made the Joint Bid, offering to purchase all of the outstanding BIM Common Shares and 2007 Warrants for \$1.50 per Common Share and \$0.10 per 2007 Warrant.
48. On February 17, 2011, the Joint Bid expired with BIM securityholders tendering 325,192,869 Common Shares and 4,530,824 2007 Warrants, representing 93% of outstanding Common Shares and 76% of outstanding 2007 Warrants.
49. On March 25, 2011, pursuant to the Plan of Arrangement, all of the BIM Securities which were not tendered pursuant to the Joint Bid were acquired by 1843208, which, at the time of the Joint Bid, was owned 70% by ArcelorMittal and 30% by Iron Ore Holdings.
50. As a result of the successful Joint Bid, and subsequent Plan of Arrangement whereby the Offerors acquired, directly or indirectly, all of the outstanding BIM Securities, the Offerors acquired the exclusive right to exploit the significant resources of the Mary River Project.
51. On March 31, 2011, BIM was de-listed by the TSX.
52. The defendants McCloskey, Lydall and Dimitrov, being the three BIM officers and directors who signed the ArcelorMittal Directors' Circular and the ArcelorMittal Directors' Circular Amending Notices recommending acceptance of the Joint Bid, earned the following on the completion of the Joint Bid:

Name	Position	Number of Common Shares	Common Share Value at \$1.50	Number of Options Held	Option Value at \$1.50 Less Reported Exercise Price	Financial Benefit from Joint Bid
Daniella E. Dimitrov	Director and Vice-Chair	Nil	Nil	775,000	\$748,500	\$748,500
John Lydall	Director	2,111,484	\$3,167,226	328,000	\$366,790	\$3,534,016
Richard D. McCloskey	Director, Chairman, Acting President and CEO	8,347,066	\$12,520,599	456,000	\$512,140	\$13,032,739

53. The particulars of the options held by Dimitrov, Lydall and McCloskey referred to in the chart above are as follows:

Name	Number of Options	Exercise Price	Date Granted	Expiry Date
Daniella E. Dimitrov	400,000	\$0.58	April 30, 2010	April 30, 2015
	175,000	\$0.56	February 23, 2010	February 23, 2015
	200,000	\$0.42	June 9, 2009	June 9, 2014
John Lydall	91,000	\$0.56	February 23, 2010	February 23, 2015
	150,000	\$0.35	March 24, 2009	March 24, 2014
	87,000	\$0.25	January 6, 2009	January 6, 2014
Richard D. McCloskey	106,000	\$0.56	February 23, 2010	February 23, 2015
	250,000	\$0.35	March 24, 2009	March 24, 2014
	100,000	\$0.25	January 6, 2009	January 6, 2014

54. As pleaded elsewhere, in late 2009, ArcelorMittal and BIM engaged in negotiations in respect of a potential transaction involving BIM securities and the Mary River Project which negotiations continued into 2010. As set out in the table immediately above, many of the options granted to Dimitrov (575,000), Lydall (91,000) and McCloskey (106,000) were granted at prices of \$0.56 and \$0.58 per Common Share, at a time when BIM was negotiating a joint venture development of the Mary River Project with ArcelorMittal.

55. BIM disclosed in its management information circular dated May 6, 2010 that all options granted under its option plan become unconditionally exercisable as to one quarter immediately on the date of the grant of such options, an additional one quarter six months after the date of grant, an additional one quarter twelve months after the date of grant and the remaining one quarter eighteen months after the date of grant.
56. Pursuant to the Support Agreement between ArcelorMittal and BIM dated November 8, 2010, all stock options issued pursuant to BIM's stock option plan would vest no later than the take-up date of the ArcelorMittal offer. This accelerated vesting of BIM options issued under the stock option plan applied to many of the options held by Dimitrov, Lydall and McCloskey as described above. As a result of the accelerated vesting and the Joint Bid, these three directors received substantial cash payments for their options earlier than would otherwise have been the case had BIM not been taken over by the Offerors.

MISREPRESENTATIONS IN THE BID DOCUMENTS

57. The Bid Documents, which included the Original Circular (as amended by the Amending Notices issued by the Offerors), the Nunavut Directors' Circular, the Nunavut Directors' Circular Amending Notices, the ArcelorMittal Directors' Circular and the ArcelorMittal Directors' Circular Amending Notices, all as issued by the BIM Board, were the fundamental disclosure documents whereby holders of BIM Securities, including the Plaintiffs and the Class Members, were to have received material information about BIM in order that they might make an informed decision as to whether to tender their shares pursuant to the Joint Bid or otherwise dispose of their BIM Securities.

58. Pursuant to the *OSA* and the Other Canadian Securities Acts, and the regulations thereunder, the Defendants were required to ensure that the Bid Documents were free of any misrepresentation, as that term is used in the *OSA* and the Other Canadian Securities Acts.

59. “Misrepresentation” is defined by section 1(1) of the *OSA* as:

- (i) an untrue statement of material fact; or
- (ii) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

60. “Material Fact” is defined by section 1(1) of the *OSA* as:

... a fact that would reasonably be expected to have a significant effect on the market price or value of the securities.

61. Each of the Bid Documents contained a certificate, signed by officers and directors of the company or board on whose behalf the circular or notice was issued, to the following effect:

The forgoing contains no untrue statement of material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

A particularized list of the Bid Documents, identifying the Individual Defendants who signed the certificates, is attached as Schedule “A” hereto.

62. The Bid Documents contained misrepresentations in that they did not state material facts that were required to be stated or that were necessary to make statements not misleading in light of the circumstances in which they were made, as described in paragraphs 63 to 73 hereof.

63. The Bid Documents failed to disclose the contents of the 2008 Expansion Study and the fact that the Offerors had knowledge of the contents of the 2008 Expansion Study.
64. The Bid Documents failed to disclose the contents of the June 2010 Conceptual Study and the fact that the Offerors had knowledge of the contents of the June 2010 Conceptual Study.
65. The Bid Documents failed to disclose the contents of the 2011 Road Feasibility Study and the fact that the Offerors had knowledge of the contents of the 2011 Road Feasibility Study.
66. On November 12, 2010, the BIM Board stated in the ArcelorMittal Directors' Circular that the BIM Board unanimously recommended to BIM securityholders (including the Plaintiffs and the Class Members) that they accept the Initial ArcelorMittal Offer to purchase all BIM Common Shares for \$1.10 per Common Share and all BIM 2007 Warrants for \$0.10 per 2007 Warrant. In so doing the following representations were made:

“Following the announcement of the Nunavut Offer on September 22, 2010, the Board formed a Special Committee of independent directors comprised of John Lydall (Chair), Grant Edney and Ronald S. Simkus to review the Unsolicited Offer and make recommendations to your Board regarding the Unsolicited Offer and other alternatives available to the Company. At this meeting, your Board also resolved to amend and extend CIBC's existing engagement to include providing advice to your Board and the Special Committee in connection with the Unsolicited Offer, including soliciting alternatives thereto, and if requested, preparing and delivering its opinion as to the adequacy or fairness of the Unsolicited Offer.

...

[S]ince the announcement of the Nunavut Offer, the Special Committee, together with its financial advisor CIBC World Markets Inc., and its legal advisor Stikeman Elliott LLP, spent a

considerable amount of time and effort exploring and discussing alternative value enhancing transactions that would be in the best interests of Baffinland and its Shareholders. CIBC World Markets Inc. contacted forty-five potential buyers or joint venture partners, ten of whom entered into a confidentiality and standstill agreement to facilitate the exchange of information and/or engaged in an active dialogue with CIBC World Markets inc. and Baffinland.

...

In making its recommendation, the Board received the unanimous recommendation of the Special Committee consulted with its legal and financial advisors, and carefully reviewed, considered and deliberated all aspects of the ArcelorMittal Offer. The Board of Directors identified a number of factors set out below as being the principal reasons for the **UNANIMOUS** recommendation of the Board that Shareholders and 2007 Warrantholders **ACCEPT** the ArcelorMittal Offer and **TENDER** their Common Shares and 2007 Warrants to the ArcelorMittal Offer.”

[Emphasis in original]

These statements were materially misleading in that the BIM Officers and Directors failed to disclose in the ArcelorMittal Directors’ Circular material facts that were necessary to be stated to make the ArcelorMittal Directors’ Circular not misleading. In particular:

- (a) While it may have been technically correct that the BIM Board unanimously recommended acceptance of the Initial ArcelorMittal Offer on November 12, 2010, former BIM Chief Executive Officer and former BIM Board member, Gordon McCreary, resigned from the BIM Board on November 5, 2010 because he would not recommend to holders of BIM Securities acceptance of the Initial ArcelorMittal Offer which he believed to be far too low. Mr. McCreary believed that a much better offer could be achieved from Chinese or other interests with whom he had been dealing. These material facts should have been disclosed in the ArcelorMittal Directors’ Circular for the benefit of holders of BIM

Securities, including the Plaintiffs and the Class Members, as they assessed the offer.

(a.1) The representation in the ArcelorMittal Directors' Circular that the Special Committee was comprised of independent directors was intended to convey and in fact did convey that the BIM Board was basing its recommendation to accept the ArcelorMittal Offer on, among other things, the independent advice of the independent Special Committee, when in fact the Special Committee was not independent because defendant Dimitrov, who was not an independent director, was a regular and active participant in the meetings and deliberations of the Special Committee and in fact advised and influenced the Special Committee throughout the bid process on, among other things, whether to accept the ArcelorMittal Offer, and whether to enter the Support Agreement with ArcelorMittal which she herself negotiated. Contrary to the representations of the Board, the Special Committee was robbed of its independence by the involvement of Dimitrov. That the Special Committee was not independent and the reasons therefore should have been disclosed in the ArcelorMittal Directors' Circular for the benefit of holders of BIM Securities, including the Plaintiffs and the Class Members, as they assessed the offer.

(a.2) The representation in the ArcelorMittal Directors' Circular that "[S]ince the announcement of the Nunavut Offer... CIBC World Markets Inc. contacted forty-five potential buyers or joint venture partners, ten of whom entered into a confidentiality and standstill agreement to facilitate the exchange of information and/or engaged in an active dialogue with CIBC World Markets Inc. and

Baffinland”, in the context within which it was made, was intended to convey and in fact did convey the described level of activity occurred during the period of time between September 22, 2010 (the announcement of the Nunavut Offer) and November 12, 2010 (the date of the ArcelorMittal Directors’ Circular) when in fact the level of activity described took place during the almost three year period of time beginning in early 2008 when BIM first retained CIBC World Markets Inc. to assist them in securing a joint venture partner. That the Special Committee and its financial advisor CIBC World Markets Inc. were not nearly as active in soliciting other interest in BIM following the Nunavut Offer, and instead the BIM Board, the Special Committee and CIBC World Markets Inc. concentrated almost exclusively on the competing bid of ArcelorMittal should have been disclosed in the ArcelorMittal Directors’ Circular for the benefit of holders of BIM Securities, including the Plaintiffs and the Class Members, as they assessed the offer.

- (b) When the BIM Board recommended acceptance of the Initial ArcelorMittal Offer, they did so principally on the basis that it represented a premium on the recent trading price of BIM Securities and that the BIM Board received an opinion from CIBC that the offer was “fair, from a financial point of view”. The ArcelorMittal Directors’ Circular failed to disclose why the BIM Board’s assessment of the Initial ArcelorMittal Offer was based on different criteria from its assessment of the Initial Nunavut Offer five weeks earlier on October 7, 2010. In particular, the BIM Board recommended rejection of the Initial Nunavut Offer because, among other things, the Initial Nunavut Offer: “significantly

undervalues Baffinland and its Mary River Property”, including on the basis that a conservative estimate by equity research analysts of BIM’s net asset value (“NAV”) was \$3.34 per Common Share; was “at a significant discount to precedent transaction multiples”; was “inadequate, from a financial point of view”, according to an opinion received from CIBC; and was “highly opportunistic”. The BIM Board reached those conclusions, at least in part, in reliance on a detailed value analysis prepared by CIBC for the BIM Board. Had the same criteria been applied to the Initial ArcelorMittal Offer, the BIM Board should have come to the same conclusion as they did with the Initial Nunavut Offer, and that is it should have been rejected. An explanation as to why the BIM Board changed its assessment criteria, and what its recommendation would have been had it used the same assessment criteria as it did with the Initial Nunavut Offer, was necessary in order to make the ArcelorMittal Directors’ Circular not misleading.

- (c) As was the case for the Nunavut Directors’ Circular, an opinion was solicited by the BIM Board from CIBC about the Initial ArcelorMittal Offer. However, instead of asking CIBC to assess the Initial ArcelorMittal Offer on the same terms as they assessed the Initial Nunavut Offer – namely, whether the offer was “adequate” – CIBC was instead asked to assess whether the Initial ArcelorMittal Offer was “fair”. Whereas CIBC opined that the Initial Nunavut Offer was “inadequate”, they opined that the Initial ArcelorMittal Offer was “fair, from a financial point of view.” An explanation as to why the BIM Board asked CIBC to change its assessment criteria, and what CIBC’s opinion would have been had

they used the same assessment criteria on the Initial ArcelorMittal Offer as they did on the Initial Nunavut Offer, was necessary in order to make the ArcelorMittal Directors' Circular not misleading.

- (d) The BIM Board, and in particular the BIM Officers and Directors, intentionally favoured the Initial ArcelorMittal Offer from the outset, and recommended acceptance of it to BIM securityholders, when they knew it was wholly inadequate, just as they recommended acceptance of the Joint Bid when they knew it to be wholly inadequate. As was the case with the Initial Nunavut Offer, the Joint Bid “significantly undervalues Baffinland and its Mary River Property”; was “at a significant discount to precedent transaction multiples”; and was “highly opportunistic”. The ArcelorMittal Directors' Circular and the ArcelorMittal Directors' Circular Amending Notices should have included these honest and objective assessments from the BIM Board in order to make these circulars not misleading.

67. On January 13, 2011, BIM issued the January 13, 2011 Press Release and followed up by filing the Material Change Report of that same date, both purporting to report on the results of the 2011 Road Feasibility Study. The January 13, 2011 Press Release and the Material Change Report stated that the 2011 Road Feasibility Study was based on a production level of 3 million tonnes annually with a mine life of 20 years. It went on to say that, on an owner-operated basis, the net present value of the project was approximately \$1.4 billion pre-tax and approximately \$1 billion after-tax based on average sales prices of US\$120 per tonne for lump iron ore and US\$94 per tonne for

finer. It also stated that the proven and probable mineral reserves for the 2011 Road Feasibility Study were 60.7 million tonnes.

68. This is to be contrasted with the 2008 Rail Feasibility Study, the only other definitive study made available to shareholders, which stated that the Mary River Project had proven and probable reserves of 365 million tonnes and a net present value of the project of approximately \$5 billion pre-tax and around \$2.7 billion after-tax based on average sales prices of US\$67 per tonne for lump iron ore and US\$55 per tonne for fines.
69. The January 13, 2011 Press Release and the Material Change Report which followed also included the following statement:

The reserves for the RHFS [the 2011 Road Feasibility Study] reflect a very limited conversion of in-pit measured and indicated resources to reserves; less than what was contemplated and generated in 2008 for the Rail Definitive Feasibility Study, which contemplates transporting the iron ore south by rail to the proposed Steensby port site (“Rail Study”). **The 2008 mineral reserves of 365 million tonnes grading 64.7% iron; as defined by the “*Technical Report of the Definitive Feasibility Study, Aker Kvaerner, February 2008*” [the 2008 Rail Feasibility Study] have been superseded by the RHFS and the new economic and technical data have rendered the 2008 reserves as no longer valid.** As the Company updated current technical and economic criteria for the RHFS, the result is a single mineral reserve at Deposit No. 1 based upon these criteria. The RHFS reserves are part of the former larger reserve that was defined as part of the Rail Study and are not accretive.

[Emphasis added.]

70. In the January 17, 2011 Notice of Change recommending acceptance of the Joint Bid, the BIM Directors incorporated the January 13, 2011 Press Release by reference into the document. The January 17, 2011 Notice of Change stated, in part:

Recent Developments Concerning Baffinland’s Mary River Project

On January 13, 2011, Baffinland issued a press release (the “RHFS Press Release”) announcing the results of the feasibility study on the Road

Haulage Project Option (the “RHFS”) [the 2011 Road Feasibility Study] relating to its 100%-owned Mary River Project. The RHFS contemplates trucking iron ore northwest along the existing 100 kilometre Milne Inlet tote road 300-days per year and shipping iron ore using market vessel ships during an approximate 90-day open water season in Milne Inlet. Mining and shipping targets 3 million tonnes of lump and fine iron ore production per annum and production is expected to be 75% high quality lump iron ore and 25% premium quality fine iron ore (sinter feed). Baffinland’s lump and fine iron ores are expected to grade greater than 66% iron over the twenty-year life of production. As noted in the RHFS Press Release, *Baffinland expects that production would start in 2013 with approximately 1 million tonnes of iron ore being shipped*. This is the earliest date that production could be achieved assuming that the environmental assessment process is complete and permits are received by the second half of 2012. *Full production of 3 million tonnes per annum is expected to commence in 2014 over an anticipated mine life of 20 years*.

As stated in the RHFS Press Release, the reserves set forth in the RHFS reflect a very limited conversion of in-pit measured and indicated resources to reserves; less than what was contemplated and generated in 2008 for the Rail Definitive Feasibility Study [the 2008 Rail Feasibility Study], which contemplates transporting the iron ore south to the proposed Steensby port site. *The 2008 mineral reserves, as defined by the “Technical Report of the Definitive Feasibility Study, Aker Kvaerner, February 2008”, have been superseded by the RHFS and the new economic and technical data have rendered the 2008 reserves as no longer valid*. Baffinland security-holders should read the RHFS Press Release in its entirety for further information concerning the results of the RHFS. This description of the RHFS Press Release (including the results of the RHFS set out herein) is intended to be a summary only and is qualified in its entirety by the full text of the RHFS Press Release (including the assumptions, qualifications and limitations described therein), a copy of which has been filed on SEDAR.

[Emphasis added.]

71. The foregoing statements regarding BIM’s expectations regarding anticipated production pursuant to the 2011 Road Feasibility Study, the fact that the 2008 Rail Feasibility Study was superseded by the 2011 Road Feasibility Study, and the fact that reserve data from the 2008 Rail Feasibility Study were no longer valid, were untrue and materially misleading statements in that:

- a) at the time the statements were made on January 13 and January 17, 2011, it was not BIM's expectation that production pursuant to the 2011 Road Feasibility Study would start in 2013 with approximately 1 million tonnes of iron ore being shipped or that production of 3 million tonnes per annum was expected to commence in 2014 over an anticipated mine life of 20 years. Rather, it was and remains BIM's expectation and intention that the 2008 Rail Feasibility Study, or some iteration of same, like the 2008 Expansion Study, involving a rail haul option and production in excess of 20 million tonnes per year actually defined BIM's intended operations and expected production from the Mary River Project; and
- b) the 2011 Road Feasibility Study, when it was released on February 28, 2011, 11 days after the Joint Bid expired, did not say that 2008 reserve data was no longer valid, rather it spoke of a significant upside to the Mary River Project by integrating the very substantial 2008 reserves into the road option study.

- 72. The true state of BIM's business and the potential of the Mary River Project was known by BIM and made known by BIM to the Offerors, but not disclosed by the Defendants to the Plaintiffs and the Class Members as required by law.
- 73. During the Class Period, it was the intention of BIM and the Offerors to fully develop the Mary River Project in a manner consistent with the 2008 Rail Feasibility Study and/or the 2008 Expansion Study, and not limit the development of the Mary River Project to the much smaller road haul option, contrary to the representations made to the Plaintiffs and the Class Members in the Bid Documents.

UNDISCLOSED MATERIAL FACTS WITHIN THE OFFERORS' KNOWLEDGE

74. The undisclosed material facts about BIM that were within the knowledge of the Offerors were material facts contained in or concerning the following:
- (a) the 2008 Expansion Study;
 - (b) the June 2010 Conceptual Study;
 - (c) the January 2011 Draft Environmental Impact Statement;
 - (d) the 2011 Road Feasibility Study;
 - (e) BIM's budgets and financial forecasts;
 - (f) BIM's exploration plans;
 - (g) details about BIM's negotiations with the Nunavut Impact Review Board relating to required permits for the development of the Mary River Project as referred to in BIM's January 21, 2011 Press Release which negotiations had been ongoing for nearly five years up to the making of the Initial Offer;
 - (h) materials of the BIM Board;
 - (i) details about BIM's search for a strategic partner;
 - (j) details about BIM's negotiations with ArcelorMittal;
 - (k) details about BIM's negotiations with the QIA regarding royalties that BIM would have to pay in respect of the Mary River Project;

- (l) a financial model developed by BIM to assess the economic viability of a road haulage option as an alternative to the larger scale rail haulage option for the transport of iron ore from the Mary River site to port;
 - (m) BIM's capital cost summary schedule;
 - (n) BIM's operating cost summary schedule; and
 - (o) BIM's internal rates of return for the Mary River Project.
- 74A. Particulars of material facts, which were not disclosed in the Bid Documents and were not otherwise generally disclosed, contained in certain of the above documents or concerning certain of the above matters are set out in Schedule "B" hereto or elsewhere herein.
75. This information and documentation included critical technical and/or financial feasibility studies about the Mary River Project and were among a great volume of undisclosed material information about BIM that was made available to the Offerors, but not the Plaintiffs or the Class Members, by BIM.
76. As described above, the 2008 Expansion Study and the June 2010 Conceptual Study were made available to Nunavut and ArcelorMittal prior to their original offers of September 22, 2010 and November 12, 2010, respectively. They have never been publicly disclosed.
77. The 2011 Road Feasibility Study was made available to the Offerors before the expiry of the Joint Bid. It was only disclosed to the public after the expiry of the Joint Bid.

78. On January 21, 2011, BIM issued a press release announcing submission of a Draft Environmental Impact Statement for the Mary River Project. In the press release the following is stated:

The DEIS [the January 2011 Draft Environmental Impact Statement] considers a cumulative 21 million tonne per annum iron ore mine located at Mary River on North Baffin Island, consisting of a preferred 18 million tonne per annum railway and a year-round port alternative that would entail shipping iron ore from the proposed Steensby Inlet Port, south of the Mary River Property, and a road haulage option alternative of 3 million tonnes per annum that entails shipping in the open water season from port facilities at Milne Inlet, northwest of the Mary River Property.

79. The January 2011 Draft Environmental Impact Statement actually filed by BIM with the Nunavut Impact Review Board stated the following:

Shipping 12 months of the year is the only commercially viable alternative. As a result, the Steensby Port option is the only economically viable alternative for a production rate of 18 to 21 Mt/a. The Milne port option offers only a 3 to 4 month shipping season without ice breaking increasing the ocean freight cost significantly for 18 to 21 Mt/a of ore production. The Project would not be commercially competitive with iron ore suppliers in Brazil with only an open water shipping season.

[...]

The feasibility of shipping about 3 Mt/a from Milne Inlet is currently under study. It could potentially supplement year round shipping and would offer an opportunity to produce revenues about two years sooner than shipping from Steensby Inlet.

80. The January 2011 Draft Environmental Impact Statement formed no part of the disclosure provided to the Plaintiffs or Class Members during the bid period, or at all, and contradicts the Bid Documents which, as is explained in paragraphs 88, 88A, 88B, and 88C, below, adopted BIM's public disclosure advising the Plaintiffs and Class Members that the reserve data from the 2008 Rail Feasibility Study was no longer valid, and that the 2008 Rail Feasibility Study was superseded by the 2011 Road Feasibility Study.

81. On February 8, 2011, an ArcelorMittal officer at the 2010 ArcelorMittal fourth quarter earnings conference call told analysts that the BIM project was virtually guaranteed to make a profit:

The iron ore price that would justify the acquisition of Baffinland is I believe at price that we will likely never see. The operating costs at Baffinland are potentially so low, once the project is built, that this project can produce a profit through any cycle. But certainly at long term prices in the order of \$50 to \$60, this project makes a lot of money.

82. The 2011 Road Feasibility Study projected an average long term price forecast for Mary River iron ore of US\$120 per tonne. What the ArcelorMittal officer was saying on the February 8, 2011 fourth quarter earnings conference call was that the Mary River Project was virtually guaranteed to make a lot of money with ore prices at \$50 to \$60 a tonne. Because the long range price of iron ore was projected to be \$120 per tonne, this project would make a substantial profit through any business cycle. This statement formed no part of the disclosure provided to the Plaintiffs or the Class Members during the bid period, or at all.
- 82A. The fact of ongoing negotiations between ArcelorMittal and BIM of a joint venture agreement for the development of the Mary River Project was also an undisclosed material fact in the possession of the Defendants which was not disclosed at the time of the Nunavut takeover bid on September 22, 2010 or thereafter as it ought to have been.

THE TRUTH IS REVEALED AFTER THE JOINT BID CLOSED

83. On February 28, 2011, BIM finally released the 2011 Road Feasibility Study, 46 days after the January 13, 2011 Press Release which purported to summarize it, and 11 days after the expiry of the Joint Bid. Rather than stating that the earlier reserve data was no

longer valid, and that the rail option was no longer being pursued, the 2011 Road Feasibility Study stated:

AMEC notes that the 2008 feasibility study, which was based on an assumption of using rail transport, evaluated a larger area of mineralization than the current study. *There remains significant upside Project potential in Deposit No. 1 if this mineralization can be integrated into the current study.*

[...]

This AMEC Trucking FS only considers upgrading a limited and initial 60Mt from these mineral resources into reserves as directed by BIM. The current assumption by BIM as the basis for this Study is that after the initial 60MT have been mined, *the balance of mineral resources will then be removed by rail transport to the coast as per the Aker FS (2008). The pit shells used to report Mineral Resources in this report are based on rail costs associated with the 18Mtpa throughput rate defined in the Aker FS (2008).*

[...]

There is some additional upside *if the rail scenario considered in the superseded 2008 feasibility study can be integrated into this trucking option feasibility study.*

[Emphasis added.]

84. The 2011 Road Feasibility Study has an effective date of January 13, 2011, and was purportedly signed on February 15, 2011, yet BIM chose not to release it until February 28, 2011, 11 days after the expiry of the Joint Bid.
85. On April 15, 2011 BIM wrote to the Nunavut Impact Review Board and advised that:

Taking into consideration the Feasibility Study released in January 2011, and the likelihood that the pre-conference hearings currently scheduled for July will likely be delayed if the Company sought incorporating the road haulage alternative into the existing Mary River environmental assessment process, Baffinland has decided not to seek a modification of the Project as part of the NIRB process. As such Baffinland will proceed with a project in line with the originally presented development proposal (sent to NIRB on March 14, 2008).

86. The feasibility study referred to by BIM in its April 15, 2011 letter to the Nunavut Impact Review Board, and which formed the basis of BIM's decision to purportedly abandon the road haul option and revert to the rail option, was not made available to the Plaintiffs or the Class Members in January 2011. Rather, and as stated above, the 2011 Road Feasibility Study was not publicly disclosed until February 28, 2011, 11 days after the Joint Bid expired.
87. On April 19, 2011, BIM stated that it was not pursuing the road option, at all; and that the rail option was the only choice for the development of the Mary River Project. This statement was made by BIM's Senior Vice President, Corporate Affairs Greg Missal in discussions with reporters following an information session at Iqaluit's Parish Hall in Iqaluit, Nunavut Territory when he said:

[T]he company now plans to ship exclusively via a railway connecting the mine with a port at Steensby Inlet.

[R]esults from an internal feasibility study on the road option weren't promising, and the project would have required changes to Baffinland's application to the Nunavut Impact Review Board, a process that's now half done.

[R]ail is the most efficient way to move the 21 million tonnes of iron ore BIM expects to ship out of Mary River every year.

Transportation of iron ore comes down to movement of volume, which is why rail is there.

In order for Mary River to operate efficiently we need to move a high volume of material efficiently, and that's how we are going to do it.

88. The original Take-Over Bid Circulars issued by the each of the Offerors stated that:

The Offeror has no knowledge of any material fact concerning the securities of Baffinland that has not been generally disclosed by Baffinland, or any other matter that is not disclosed in the Circular and that has not previously been generally disclosed, and that would reasonably be

expected to affect the decision of the shareholders to accept or reject the Offer

88A In doing so, the Offerors represented that that unless they specified otherwise, the contents of BIM's public disclosures was correct and that they had nothing to add to them.

88B A Notice of Variation and Extension announcing the Joint Bid issued by the Offerors on January 14, 2011 contained certifications that:

The foregoing, together with the Original Offer and Circular and the Prior Notices, contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it is made.

88C The January 14, 2011 Notice of Variation and Extension adopted and brought up to date the Offerors' earlier adoption of BIM's public disclosures.

88D Contrary to what the Plaintiffs and the Class Members were told by BIM, and certified as correct by all of the Defendants pursuant to the Offerors' adoption of BIM's public disclosure that prior to the Joint Bid closing, that the 2008 Rail Feasibility Study was superseded by the 2011 Road Feasibility Study, and that the 2008 reserve data were no longer valid, in fact:

- a) BIM and the Offerors, during the material period of time, always intended to develop the rail option for the purposes of exploiting the full reserve potential of the Mary River Project, and not the road option;
- b) the reserves for the project were at least 365 million tonnes of iron ore, not the 60.7 million tonnes of iron ore referred to in January 13, 2011 Press Release and the Material Change Report;

- c) BIM and the Offerors were not planning on a production rate of 3 million tonnes of ore annually; rather, they were planning on a production rate of at least 21 million tonnes of ore annually;
- d) the net present value of the Mary River Project was not approximately \$1.4 billion pre-tax and approximately \$1.0 billion after tax (which values were based on average sales prices of US\$120 per tonne for lump iron ore and US\$94 per tonne for fines); rather, it was greatly in excess of \$5 billion pre-tax and \$2.7 billion after-tax (which values were based on average sales prices of US\$67 per tonne for lump iron ore and US\$55 per tonne for fines estimated in 2008); and
- e) the Offerors believed that, given that the Mary River Project was the largest lump ore deposit in Canada and possibly in the world, the share value of BIM could be in excess of \$10.

BIM and the BIM Officers and Directors Breached the OSA

89. The January 13, 2011 Press Release and the Material Change Report contained misleading or untrue statements, as particularized herein, and the issuance of such statements by BIM was in violation of section 126.2 of the *OSA* in that BIM knew or reasonably ought to have known that the statements, taken together or individually, in a material respect and at the time they were made and in light of the circumstances under which they were made were misleading or untrue and BIM did not state a fact that was required to be stated or that was necessary to make the statement or statements not misleading and such statement or statements were reasonably expected to have a significant effect on the market price or value of BIM Securities.

90. The Nunavut Directors' Circular, the Nunavut Directors' Circular Amending Notices, the ArcelorMittal Directors' Circular and the ArcelorMittal Directors' Circular Amending Notices, contained misleading or untrue statements, as particularized herein, and the issuance of such statements by the BIM Officers and Directors was in violation of section 126.2 of the *OSA* in that the BIM Officers and Directors knew or reasonably ought to have known that the statements, taken together or individually, in a material respect and at the time they were made and in light of the circumstances under which they were made were misleading or untrue and the BIM Officers and Directors did not state a fact that was required to be stated or that was necessary to make the statement or statements not misleading and such statement or statements were reasonably expected to have a significant effect on the market price or value of BIM Securities.

BIM Vice-Chair Daniella Dimitrov breached the *OSA*

90A. Dimitrov's communications with Waheed as described in paragraphs 36C, 36D, 36E, 36F, 36G and 36H herein were contrary to the reasonable expectations of the Plaintiffs and Class Members in that they constitute a breach of the anti-tipping provisions of section 76(2) of the *OSA* which states:

"Tipping

(2) No reporting issuer and no person or company in a special relationship with a reporting issuer shall inform, other than in the necessary course of business, another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed."

90B. Particulars of Dimitrov's breach of section 76(2) of the *OSA* are:

- (a) Dimitrov was an officer and director of BIM and therefore was in a special relationship with BIM.
- (b) On or about June 9, 2010, Waheed met with Dimitrov. At this meeting, Dimitrov provided information to Waheed about the status of BIM's potential joint venture transaction with ArcelorMittal.
- (b) On or about July 13, 2010, Waheed met with Dimitrov who informed him that BIM had terminated its exclusivity agreement with ArcelorMittal which resulted in ArcelorMittal providing an enhanced offer to BIM as compared to the last offer he had seen while a consultant at BIM; and BIM was at an advanced stage of negotiations with ArcelorMittal. In addition Dimitrov provided Waheed with the 2010 Conceptual Study, a BIM capital summary schedule, a BIM operating costs summary schedule, and BIM's internal rates of return for the Mary River Project.
- (c) Subsequent to August 12, 2010, Dimitrov informed Waheed that BIM executed a second exclusivity agreement with ArcelorMittal on August 12, 2010 which was to run until October 15, 2010.
- (d) The status and details of the negotiations between BIM and ArcelorMittal about the joint venture, and the other data and information provided by Dimitrov to Waheed and described above were material facts about BIM that were not generally disclosed. The fact that ArcelorMittal was in advanced negotiations with BIM, as evidenced by the revised and improved term sheet and the parties

executing a second exclusivity agreement was a material fact about BIM that was not generally disclosed.

(e) These communications by Dimitrov to Waheed were not in the necessary course of business because:

(i) Waheed was no longer working for BIM as a consultant or otherwise;

(ii) BIM was in the advanced stages of negotiating a joint venture with ArcelorMittal, and was subject to exclusivity and confidentiality obligations to ArcelorMittal which Dimitrov breached as an officer and director of BIM.

90C. These unlawful communications by Dimitrov to Waheed contributed directly to the Nunavut Bid and scuttled the ArcelorMittal / BIM joint venture, damaging the Plaintiffs and the Class Members.

90D. The facts set out in paragraphs 90A, 90B and 90C were first discoverable during the hearing in 2013 of the OSC proceedings against Waheed and Walter for insider trading and tipping relating to BIM.

RIGHTS OF ACTION

Circular Misrepresentation

91. The Original Circular, the Amending Notices, the Nunavut Directors' Circular, the Nunavut Directors' Circular Amending Notices, the ArcelorMittal Directors' Circular and the ArcelorMittal Directors' Circular Amending Notices each contained misrepresentations in that the documents contained untrue statements of material fact,

or failed to disclose material facts that were required to be stated or that were necessary to make statements in the offering documents not misleading in light of the circumstances in which they were made, and in particular the undisclosed material facts described herein.

92. As a result of the misrepresentations contained in the Original Circular, the Amending Notices, the Nunavut Directors' Circular, the Nunavut Directors' Circular Amending Notices, the ArcelorMittal Directors' Circular and the ArcelorMittal Directors' Circular Amending Notices, the Plaintiffs and the Class Members suffered damage.

93. The Original Circular provided that:

The Offer and all contracts resulting from acceptance thereof shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each party to any agreement resulting from the acceptance of the Offer unconditionally and irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

94. The Plaintiffs plead and rely on section 131 of the *OSA*. In the alternative, the Plaintiffs plead and rely on the equivalent provisions of the Other Canadian Securities Acts.

Insider Trading

95. At the material time, each of the Offerors was in a special relationship with BIM.

96. In breach of section 76 of the *OSA* and the equivalent provisions of the Other Canadian Securities Acts, the Offerors, with knowledge of material facts that had not been generally disclosed, and in particular the material facts referred to in paragraphs 32A, 74 and 74A hereof, either purchased securities of BIM pursuant to the Joint Bid or informed one or more of the others of the undisclosed material facts and recommended,

encouraged and/or enabled one or more of the others to purchase BIM Securities pursuant to the Joint Bid.

97. As a result of the conduct of the Offerors in breach of section 76 of the *OSA*, and the equivalent provisions of the Other Canadian Securities Acts, the Plaintiff Peter Rooney and the Class Members who sold their BIM Securities pursuant to the Joint Bid have suffered damage.
98. The Plaintiffs plead and rely on section 134 of the *OSA*. In the alternative, the Plaintiffs plead and rely on the equivalent provisions of the Other Canadian Securities Acts.

Relief from Oppression

- 98A. As against BIM and the BIM Officers and Directors, the Plaintiffs and Class Members seek relief from their oppressive conduct pursuant to section 248 of the *CBCA*.
99. The Plaintiffs and the Class Members had reasonable expectations about the manner in which the business and affairs of BIM would be conducted.
100. The reasonable and legitimate expectations of the Plaintiffs and the Class Members were that:
- a) the business and affairs of BIM would be conducted in accordance with the law and, in particular, in accordance with the disclosure requirements and insider trading prohibitions of Canadian securities laws;
 - b) the directors and management would take all reasonable steps available to them to protect their interests as shareholders in the context of their endeavours to maximize shareholder value; and

- c) the directors and officers of BIM would not put their own interests ahead of the interests of BIM, the Plaintiffs and the Class Members, as shareholders of BIM.

101. As particularized herein, BIM and the BIM Officers and Directors breached Canadian securities laws by issuing the January 13, 2011 Press Release, the Material Change Report, the Nunavut Directors' Circular, the Nunavut Directors' Circular Amending Notices, the ArcelorMittal Directors' Circular and the ArcelorMittal Directors' Circular Amending Notices, all of which contained misleading or untrue statements.

101A. BIM and the BIM Officers and Directors further disregarded the reasonable expectations of the Plaintiffs and Class Members by:

- a) failing to ensure that the terms of BIM's exclusivity agreements with ArcelorMittal contained terms which prevented it from joining forces with a hostile takeover bidder, which it ultimately did, when such terms were in common use in circumstances similar to these;
- b) failing to take appropriate or any action to prevent Waheed from violating the terms of his confidentiality agreement with BIM when such actions would or could have either
 - (i) put a stop to the Nunavut bid, and thus preserved the more valuable joint venture agreement with ArcelorMittal; or
 - (ii) provided time for competitive bidders to consider and commence bids for BIM's shares.

101B. Dimitrov, as an officer and director of BIM, further disregarded the reasonable expectations of the Plaintiffs and the Class Members by engaging in unlawful tipping as described in paragraphs 90A, 90B and 90C herein.

- 101C. The BIM Officers and Directors further disregarded the reasonable expectations of the Plaintiffs and the Class Members by putting their own interests ahead of the interests of BIM, the Plaintiffs and the Class Members, by approving and supporting the Joint Bid which resulted in the accelerated vesting of the stock options of the BIM Officers and Directors to their personal benefit, as particularized herein.
102. The conduct of BIM and the BIM Officers and Directors was oppressive and unfairly prejudicial to the Plaintiffs and the other Class Members, and unfairly disregarded their interests, and as a result, the Plaintiffs and the Class Members seek relief pursuant to section 248 of the *OBCA* for, *inter alia*, compensation for the damage they have suffered.

Unjust Enrichment

103. As a result of the Defendants' breaches of Canadian securities laws as set out above, the Plaintiff Peter Rooney and the Class Members who sold their BIM Securities to the Offerors pursuant to the Joint Bid, did so at too low a price.
104. Accordingly, the Offerors were directly or indirectly enriched by their breaches of Canadian securities laws and the Plaintiff Peter Rooney and the Class Members who sold their BIM Securities to the Offerors pursuant to the Joint Bid suffered a corresponding deprivation.
105. There was no valid juristic reason for the resulting enrichment of the Offerors.
106. Accordingly, the Plaintiff Peter Rooney and Class Members who sold their BIM Securities to the Offerors pursuant to the Joint Bid are entitled to the difference between

the price they were paid for their BIM Securities by the Offerors, and the true value of the BIM Securities as at the date they were acquired by the Offerors.

107. The acts and omissions of Aditya Mittal and Lakshmi Mittal particularized and alleged herein were also done for their own benefit, and they remain personally liable to the Plaintiff Peter Rooney and the Class Members, for the acts and omissions, except to those Class Members who sold BIM Securities in the Secondary Market on or after January 14, 2011 (but only to the extent of such sales).
108. The acts and omissions of du Toit particularized and alleged herein were also done for his own benefit, and he remains personally liable to the Plaintiff Peter Rooney and the Class Members, except those Class Members who sold BIM Securities in the Secondary Market on or after January 14, 2011 (but only to the extent of such sales).
109. The acts and omissions of Waheed, Walter, Calvert and Raymond particularized and alleged herein were also done for their own benefit, and they remain personally liable, for the acts and omissions, to the Plaintiff Peter Rooney and the Class Members, except those Class Members who sold BIM Securities in the Secondary Market on or after January 14, 2011 (but only to the extent of such sales).

Vicarious Liability of BIM

110. BIM is vicariously liable for the acts and omissions of McCloskey, Lydall and Dimitrov. The acts or omissions particularized and alleged herein to have been done by BIM were authorized, ordered and done by McCloskey, Lydall, Dimitrov and BIM's other agents, employees and representatives while engaged in the management, direction, control and

transaction of its business and affairs and are, therefore, acts and omissions for which BIM is vicariously liable.

111. The acts and omissions of McCloskey, Lydall and Dimitrov particularized and alleged herein were also done for their own benefit, and they remain personally liable to the Plaintiffs and the Class Members for the acts and omissions.

SERVICE OUTSIDE ONTARIO

112. The Plaintiffs may serve the Notice of Action and Statement of Claim outside of Ontario without leave in accordance with rule 17.02 of the *Rules*, because it is:

- a) A claim in respect of personal property in Ontario (para 17.02(a));
- b) A claim in respect of damage sustained in Ontario (para 17.02(h));
- c) A claim authorized by statute to be made against a person outside of Ontario by a proceeding in Ontario (para 17.02(n)); and
- d) A claim against a person outside of Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario (para 17.02(o)).

RELEVANT LEGISLATION

113. The Plaintiffs plead and rely on:
- a) the *CJA*;
 - b) the *CPA*;
 - c) the *OBCA*; and
 - d) the *OSA* and the Other Canadian Securities Acts.

PLACE OF TRIAL

114. The Plaintiffs propose that this action be tried in the City of London in the Province of Ontario.

May 18, 2011
amended as of May 31, 2013
further amended as of June 4, 2013
further amended as of October 31, 2013,
further amended as of ●, 2018

Siskinds LLP
Barristers & Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Michael G. Robb (LSUC#: 45787G)
Tel: (519) 660.7872
Fax: (519) 660.7873

Douglas Worndl (LSUC#: 30170P)
Tel: (416) 594-4379
Fax: (416) 594-4380

Nicholas Baker (LSUC#: 59642T)
Tel: (519) 660-7868
Fax: (519) 660-7869

Lawyers for the Plaintiffs

SCHEDULE "A"
BID DOCUMENTS

Original Circular and Amending Notices

Document	Date	Individual Defendants as Signatories
Original Circular	November 12, 2010	Lakshmi N. Mittal and Aditya Mittal
Notice of Variation and Extension	December 18, 2010	Lakshmi N. Mittal and Aditya Mittal
Notice of Extension	December 29, 2010	Lakshmi N. Mittal and Aditya Mittal
Notice of Variation	December 31, 2010	Lakshmi N. Mittal and Aditya Mittal
Notice of Extension	January 10, 2011	Lakshmi N. Mittal and Aditya Mittal
Notice of Variation and Extension	January 14, 2011	Lakshmi N. Mittal, Aditya Mittal, Jowdat Waheed, Bruce Walter, John T. Raymond and John Calvert
Notice of Extension and Change	January 25, 2011	Lakshmi N. Mittal, Aditya Mittal, Jowdat Waheed, Bruce Walter, John T. Raymond and John Calvert
Notice of Extension	February 7, 2011	Lakshmi N. Mittal, Aditya Mittal, Phillipus F. du Toit, Jowdat Waheed, Bruce Walter, John T. Raymond and John Calvert

ArcelorMittal Directors' Circular, ArcelorMittal Directors' Circular Amending Notices, Nunavut Directors' Circular and Nunavut Directors' Circular Amending Notices

Document	Date	Individual Defendants as Signatories
Nunavut Directors' Circular	October 7, 2010	Richard McCloskey, John Lydall and Daniella Dimitrov
ArcelorMittal Directors' Circular	November 12, 2010	Richard McCloskey, John Lydall and Daniella Dimitrov
Notice of Change	December 20, 2010	John Lydall and Daniella Dimitrov
Notice of Change	December 31, 2010	John Lydall and Daniella Dimitrov
Notice of Change	January 3, 2011	John Lydall and Daniella Dimitrov
Notice of Change	January 17, 2011	Richard McCloskey and Daniella Dimitrov

SCHEDULE "B"
UNDISCLOSED MATERIAL FACTS

1. Particulars of material facts, which were not disclosed in the Bid Documents and were not otherwise generally disclosed, contained in the 2008 Expansion Study as referred to in paragraphs 30, 31, 32A, 34, 44, 63, 71, 73, 74, 76 and 96 of the Second Fresh as Amended Statement of Claim are:
 - (a) the Mary River Project could be feasibly expanded to a production rate of 30 million tonnes per annum ("MTA") from the 18 MTA as set out in the publicly-disclosed 2008 Rail Feasibility Study;
 - (b) to achieve this increase in production would require:
 - (i) an increase in direct and indirect capital costs of \$802 million from \$4.075 billion to \$4.877 billion; and
 - (ii) an increase in operating costs of \$0.81 per tonne from \$14.62 per tonne to \$15.43 per tonne;
 - (c) this increase in production would result in:
 - (i) an increase in pre-tax internal rate of return of 3% from 21% to 24%;
 - (ii) an increase in the pre-tax payback of 0.2 years from 3.7 years to 3.9 years;
 - (iii) an increase in after-tax internal rate of return of 4% from 16% to 20%;
and
 - (iv) a decrease in the after-tax payback of 0.3 years from 4.3 years to 4.0 years.

2. Particulars of material facts, which were not disclosed in the Bid Documents and were not otherwise generally disclosed, contained in the June 2010 Conceptual Study as referred to in paragraphs 32A, 32H, 33, 34, 35, 36D, 36E, 36F, 39A, 44, 64, 74, 76, 90B and 96 of the Second Fresh as Amended Statement of Claim are:
 - (a) as of June 2010, BIM completed the conceptual study for a production scenario which was materially different from that which was set out in the publicly-disclosed 2008 Rail Feasibility Study;
 - (b) the Mary River Project could be feasibly developed with a production rate of 3 MTA reduced from the 18 MTA as set out in the publicly-disclosed 2008 Rail Feasibility Study;
 - (c) this reduced production would be achieved by:
 - (i) reducing the initial size and complexity of the project;
 - (ii) commencing production as quickly as possible;
 - (iii) maximizing the opportunity provided by iron ore prices that were expected to remain high in the near term;
 - (iv) reducing risk;
 - (d) the June 2010 Conceptual Study scenario provided for a modest mining, crushing and screening operation at Deposit No. 1 to produce lump and fine ore products that would be trucked to stockpiles at Milne Inlet for shipping to customers at a rate of 3 MTA during the open water shipping season;

- (e) the 3 MTA production rate under this new plan provided for an internal rate of return of 42% on an unlevered basis and a net present value of the project at 8% of \$741 million;
- (f) shipping could begin as early as the 2013 open water shipping season with full production achieved the following year;
- (g) total capital costs for the new 3 MTA plan were \$537 million while operating costs were \$32.50 per tonne, compared to capital costs of \$4.506 billion and operating costs of \$14.60 per tonne for the 18 MTA option (as set out in the publicly-disclosed 2008 Rail Feasibility Study); and
- (h) the expected return on equity for the new plan during the 16 year life of the project was as follows:

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
(8%)	(7%)	(2%)	3%	28%	29%	22%	18%	13%	10%	10%	9%	9%	9%	9%	9%

3. Particulars of material facts, which were not disclosed in the Bid Documents and were not otherwise generally disclosed, contained in the January 2011 Draft Environmental Impact Statement referred to in paragraph 74 of the Second Fresh as Amended Statement of Claim are:

- (a) that BIM proposed to operate the Mary River Project at a production rate of 21 MTA and that approval of the project was being sought on that basis; and
- (b) the Mary River Project could be feasibly expanded to a production rate of 30 MTA.

4. Particulars of material facts, which were not disclosed in the Bid Documents and were not otherwise generally disclosed, contained in materials of the BIM Board referred to in paragraphs 32A and 74 of the Second Fresh as Amended Statement of Claim are:
 - (a) material facts contained in BIM's 2010 Company Strategy and Consolidated Budget (January 12, 2010), and in particular:
 - (i) BIM's budget for 2010, including funding sources and budgeted expenditures;
 - (ii) the exploration activities to be undertaken at the Mary River Project during 2010 and the budget for that exploration program; and
 - (iii) the activities to be undertaken during 2010 to advance the Environmental Impact Statement for the Mary River Project and the budget for those activities;
 - (b) material facts contained in BIM's Conceptual Base Exploration Plan 2010-2011-2012 (September 9, 2009), and in particular:
 - (i) BIM's plans for the exploration and development of the Mary River Project between 2010 and 2016;
 - (ii) BIM's budgeted expenditures for 2010 to 2012.
5. Particulars of material facts, which were not disclosed in the Bid Documents and were not otherwise generally disclosed, concerning details about BIM's negotiations with ArcelorMittal as referred to in paragraphs 32A to 32E, 36G to 36I, 42A to 42E, 74, 82A and 90B of the Second Fresh as Amended Statement of Claim are:

- (a) the content of numerous agreements and term sheets negotiated between BIM and ArcelorMittal, up to and including the final term sheet dated August 10, 2010 entitled “Exclusivity Reinstatement and Amendment Agreement” to which was attached a “Summary of Terms” (the “Final Term Sheet”) which represented the agreed commercial terms of the joint venture between ArcelorMittal and BIM which were to be incorporated into “Definitive Agreements” as defined in the Final Term Sheet;
 - (b) the fact that, as at August 10, 2010, the final commercial terms of the joint venture between ArcelorMittal and BIM, as reflected in the Final Term Sheet, were agreed; and
 - (c) the fact that, as at September 22, 2010, the joint venture between ArcelorMittal and BIM was scheduled to be formally entered on September 30, 2010.
6. Particulars of material facts, which were not disclosed in the Bid Documents and were not otherwise generally disclosed, concerning details about BIM’s negotiations with the QIA regarding royalties that BIM would have to pay in respect of the Mary River Project as referred to in paragraphs 32A, 32I and 74 of the Second Fresh as Amended Statement of Claim are:
- (a) the structure of the royalty sought by the QIA, namely that the QIA sought an up-front fixed payment as well as ongoing payments based on a percentage of BIM’s income; and

- (b) the quantum of the royalty payments sought by the QIA, namely that the QIA sought an up-front fixed payment of approximately \$30 million and ongoing payments of approximately 4.5% of BIM's income.
- 7. Particulars of confidential BIM information contained in BIM PowerPoint presentations which Waheed prepared while a BIM consultant which he took with him after he left BIM, as referred to in paragraph 36A of the Second Fresh as Amended Statement of Claim are:
 - (a) data which BIM believed to be true as at April 2010 regarding reserves and resources at the Mary River Project, BIM's internal rates of return ("IRR"), the net asset value of BIM on a per share basis, anticipated earnings for BIM from 2013 through 2015 based upon various IRR and ore prices per tonne, and other financial analytical data used in and derived from BIM's confidential financial models;
 - (b) stated reserves of the Mary River Project of 375 million tonnes of +65% Fe and potential resources of 460 to 1,250 million tonnes of +65% Fe; and
 - (c) a believed BIM net asset value of \$3.25 per share as at April 11, 2010.
- 8. The above facts about BIM, which were not disclosed in the Bid Documents and were not otherwise generally disclosed, were either material on their own or material in light of the total mix of information available, and in any case were material facts not generally disclosed in the Defendants' possession from the Initial Nunavut Offer and any amendments thereto, through the Initial ArcelorMittal Offer and any amendments thereto, and throughout the Joint Bid.

9. The foregoing particulars of material facts are in addition to other particulars pleaded in this Second Fresh As Amended Statement of Claim.

PETER ROONEY and ARCHIE LEACH
Plaintiffs

and
ARCELORMITTAL S.A. *et al.*
Defendants

Court File No: 3957-11CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

**SECOND FRESH AS AMENDED
STATEMENT OF CLAIM**

Siskinds LLP
Barristers & Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Michael G. Robb (LSUC#: 45787G)
Tel: 519.660.7872
Fax: 519.660.7873

Douglas Wormdl (LSUC#: 30170P)
Tel: (416) 594-4379
Fax: (416) 594-4380

Nicholas Baker (LSUC#: 59642T)
Tel: (519) 660-7868
Fax: (519) 660-7869

Lawyers for the Plaintiffs

SCHEDULE "B"
COMMON ISSUES

Circular Misrepresentation Claim

1. Did the Original Circular and the Amending Notices, or any of them, contain a misrepresentation within the meaning of the OSA (and, as applicable, the Other Canadian Securities Acts)?
2. If the answer to (1) is yes, are the Offerors, Lakshmi Mittal, Aditya Mittal, du Toit, Waheed, Walter, Raymond and Calvert, or any of them, liable to Class Members (other than those Class Members who disposed of their BIM Securities on the secondary market) pursuant to section 131(1) of the OSA (and, as applicable, the equivalent provisions of the Other Canadian Securities Acts) having regard to defences under section 131(7) of the OSA (and, as applicable, the equivalent provisions of the Other Canadian Securities Acts)?
3. If the answer to (2) is yes, are Class Members (other than those Class Members who disposed of their BIM Securities on the secondary market) entitled to rescission or damages against the Offerors, and/or damages against any or all of Lakshmi Mittal, Aditya Mittal, du Toit, Waheed, Walter, Raymond and Calvert? If rescission is available, what conditions, if any, must be satisfied by a Class Member who elects rescission?
4. If the answer to (3) is yes with respect to damages, what is the quantum of damages payable calculated on a per BIM Security basis?
5. Did the ArcelorMittal Directors' Circular, the ArcelorMittal Directors' Circular Amending Notices, the Nunavut Directors' Circular and the Nunavut Directors' Circular Amending Notices, or any of them, contain a misrepresentation within the meaning of the OSA (and, as applicable, the Other Canadian Securities Acts)?
6. If the answer to (5) is yes, are the BIM Officers and Directors, or any of them, liable to Class Members (other than those Class Members who disposed of their BIM Securities on the secondary market) pursuant to section 131(2) of the OSA (and, as applicable, the equivalent provisions of the Other Canadian Securities Acts) having regard to defences under section 131(7) of the OSA (and, as applicable, the equivalent provisions of the Other Canadian Securities Acts)?
7. If the answer to (6) is yes, are Class Members (other than those Class Members who disposed of their BIM Securities on the secondary market) entitled to damages against the BIM Officers and Directors or any one of them?
8. If the answer to (7) is yes, what quantum of damages calculated on a per BIM Security basis is payable in respect of that liability?

Insider Trading and/or Tipping Claim

9. Were the Offerors, or any of them, in a "special relationship" with BIM within the meaning of the OSA (and, as applicable, the equivalent provisions of the Other Canadian Securities Acts)?

10. Did the Offerors, or any of them, propose to make a take-over bid for the securities of BIM or become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with BIM?
11. Did the Offerors, or any of them, purchase securities of BIM with knowledge of a material fact with respect to BIM that had not been generally disclosed within the meaning of section 134 of the OSA (and, as applicable, the equivalent provisions of the Other Canadian Securities Acts)?
12. If the answer to (11) is yes, what quantum of damages calculated on a per BIM Security basis is payable by the Offerors or any of them?
13. Did the Offerors, or any of them, inform any other of the Offerors of a material fact with respect to BIM that had not been generally disclosed, as the terms "material fact" and "generally disclosed" are meant in the OSA (and, as applicable, the Other Canadian Securities Acts)?
14. If the answer to (13) is yes, what quantum of damages calculated on a per BIM Security basis is payable by any of the Offerors in respect of liability pursuant to section 134 of the OSA (and, as applicable, the equivalent provisions of the Other Canadian Securities Acts)?

Unjust Enrichment Claim

15. Were the Offerors, or any of them, unjustly enriched in connection with their acquisition of BIM Securities?
16. If the answer to (15) is yes, what quantum of damages or restitution calculated on a per BIM Security basis is payable by the Offerors or any of them?

Statutory Oppression Claim

17. Did any act or omission of BIM effect a result, or were the business or affairs of BIM carried on or conducted in a manner, or were the powers of the directors of BIM exercised in a manner, that was oppressive or unfairly prejudicial to or that unfairly disregarded the interests of the Class Members, within the meaning of section 248 of the OBCA?
18. If the answer to (17) is yes, should the Court make an order that BIM and the BIM Officers and Directors, or any one of them, compensate the Class Members pursuant to section 248(3) of the OBCA?
19. If the answer to (18) is yes, on what basis should the amount of compensation payable to the Class Members be determined?
20. If the answer to (17) is yes, are there other remedies that should be ordered by the Court pursuant to section 248 of the OBCA to rectify the harm caused by BIM and the BIM Officers and Directors, or any of them, to the Class Members as a result of the conduct of those Defendants, or any of them, which was oppressive or unfairly prejudicial to or that unfairly disregarded the interests of the Class Members?

Joint and Several Liability

21. Are the Defendants jointly and severally liable to pay for any or all of the damages or costs payable to the Class?

Vicarious Liability

22. Is BIM vicariously liable or otherwise responsible for the acts and or omissions of any or all of the BIM Officers and Directors, as pleaded in the Statement of Claim?

SCHEDULE "C"
LITIGATION PLAN

Court File No. 3957-11CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

PETER ROONEY and ARCHIE LEACH

Plaintiffs

- and -

ARCELORMITTAL S.A., LAKSHMI N. MITTAL, ADITYA MITTAL,
1843208 ONTARIO INC., PHILIPPUS F. DU TOIT,
NUNAVUT IRON ORE ACQUISITION INC., IRON ORE HOLDINGS, LP,
NGP MIDSTREAM & RESOURCES, L.P., NGP M&R OFFSHORE HOLDINGS, L.P.,
JOWDAT WAHEED, BRUCE WALTER, JOHN T. RAYMOND, JOHN CALVERT,
BAFFINLAND IRON MINES CORPORATION, RICHARD D. MCCLOSKEY,
JOHN LYDALL and DANIELLA DIMITROV

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**PLAINTIFFS' LITIGATION PLAN
AS OF OCTOBER 6, 2017**

DEFINED TERMS

1. Capitalized terms that are not defined in this litigation plan (the "**Plan**") have the meanings set out in the Plaintiffs' Fresh as Amended Statement of Claim dated October 31, 2013 (the "**Claim**").

CLASS COUNSEL

2. The Plaintiffs have retained Siskinds LLP ("**Class Counsel**") to prosecute this class action. Class Counsel has the requisite knowledge, skill, experience and resources to prosecute the action to resolution.

PLAINTIFFS' EXPERTS

3. Class Counsel has the expertise and experience to identify and retain appropriate experts, as may be needed.

COMPOSITION OF THE CLASS

4. The Plaintiffs seek to represent a "Class" defined as:

All persons, other than Excluded Persons, who:

- (i) tendered for sale BIM Securities to take-over bids by ArcelorMittal, Nunavut, Iron Ore Holdings, NGP Midstream, NGP M&R and/or 1843208 (collectively, the "**Offerors**") and whose BIM Securities were taken up by the Offerors; or
- (ii) otherwise disposed of BIM Securities on or after January 14, 2011.

5. "Excluded Persons" means:

Excluded Persons means (1) the Defendants, and their past and present subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns; (2) any member of the families of the Individual Defendants; (3) the following individuals or entities, each of which directly or indirectly entered into a lock-up agreement pursuant to which BIM Securities were tendered to the Joint Bid: Resource Capital Fund IV L.P.; Resource Capital Fund III L.P.; RCF Management LLC; John Lydall; Walmley Investments Ltd; Gordon Watts; Michael T. Zurowski; Richard Matthews; Richard D. McCloskey; Gregory G. Missal; Ronald S. Simkus; Daniella E. Dimitrov; Grant Edey; Wide Range Mining Projects Pty Ltd, as trustee for the G&K Fietz Family Trust; Gwen M. Gareau; and Russell L Cranswick; and (4) the dissenting shareholders ("**Dissenting Shareholders**") identified in Schedule "A" of the Notice of Application filed by 1843208 Ontario Inc. on May 17, 2011 in the dissent and appraisal proceeding, Superior Court of Justice, Toronto Region (Commercial List), Court File No. CV-11-9222-00CL ("**Valuation Application**"), however, such exclusion taking effect only to the extent of the Dissenting Shareholders' BIM Securities in respect of which dissent rights were exercised.

6. There are approximately 58 former holders of Common Shares of BIM who exercised their rights to dissent pursuant to section 185 of the *Business Corporations Act* (Ontario) (the "**Dissenting Shareholders**"). 1843208 has commenced an application (the

“Valuation Application”), to which the Dissenting Shareholders are respondents, seeking a determination of the fair value of their Common Shares.

7. By order of the Court dated March 6, 2013, affirmed by the Divisional Court in its order dated July 8, 2013, the Valuation Application was stayed until the motion for certification in this action is finally determined.
8. The Plaintiffs are seeking an order on the certification motion that the Valuation Application and the common issues trial of the within action be heard at the same time or, alternatively, one immediately after the other, in the Superior Court of Justice in London.

REPORTING AND COMMUNICATION

9. Class Counsel has posted information about the nature and status of this action on their website at www.siskinds.com/baffinland-iron-mines-corporation (the “Website”).
10. The information on the Website will be updated regularly. Copies of important, publicly available court documents, court decisions, notices, documentation and other information relating to the action are or will be accessible on the Website.
11. The Website also:
 - (a) contains an “Ask a question” feature that permits putative Class Members to submit inquiries to Class Counsel, which are sent directly to a designated member of the Class Counsel team, who will promptly respond; and
 - (b) allows putative Class Members to complete an online information form with their contact and transaction details so that they can be notified by Class Counsel of developments in the class action.

NOTICE OF CERTIFICATION AND OPT-OUT PROCEDURE

12. If the action is certified as a class proceeding, the Plaintiffs propose that a notice be circulated to advise Class Members, among other things, that:
- (a) the Court certified the action as a class proceeding;
 - (b) a person may only opt out of the class proceeding by sending a written election to opt out to the recipient designated by the Court before a date fixed by the Court;
 - (c) a person may not opt out of the class proceeding after the date fixed by the Court; and
 - (d) if the common issues are resolved in favour of the Class Members, claimants may be required to register, file a claim and submit documentation to a designated person in order to be entitled to any compensation.
13. The notice advising of certification, in a form approved by the Court, will be distributed and published in the following manner:
- (a) posted by Class Counsel on the Website;
 - (b) sent directly by Class Counsel to any person who requests it;
 - (c) sent directly by Class Counsel to any person who has contacted Class Counsel about this class action via the Website;
 - (d) disseminated as a press release;
 - (e) printed once in the national edition of *The Globe and Mail*, Report on Business section;
 - (f) sent to brokers in Canada asking them to send the notice by regular or electronic mail to the attention of their clients who, to their knowledge, are Class Members,

or alternatively requesting that they provide contact information for those persons they believe to be Class Members; and

(g) placed online on such websites as are proposed by Class Counsel and approved by the Court.

14. Publication of the notice of certification may be contracted to a service provider with expertise in the delivery of notice to shareholders.
15. The Plaintiffs may ask the Court to order that the Defendants pay the costs of disseminating the notice. Alternatively, the Plaintiffs will pay the costs in the first instance, reserving their right to seek recovery of these costs from the Defendants by order of the judge presiding at the trial of the common issues.

LITIGATION SCHEDULE

16. After disposition of the certification motion, absent agreement among counsel, the Plaintiffs will ask the Court to set a litigation schedule for the remaining steps in the action, including the delivery of statements of defence by the Defendants.
17. The Plaintiffs may ask from time to time that the litigation schedule be amended.

DISCOVERY

18. Following the close of pleadings, the Plaintiffs will seek to reach agreement with the Defendants with respect to a discovery plan meeting the requirements of Rule 29.1.03 of the *Rules*. As discovery proceeds, the plan may be updated from time to time in accordance with Rule 29.1.04.

DOCUMENT MANAGEMENT

19. Class Counsel will use data management systems to organize, code and manage the documents produced by the Defendants and all relevant documents in the Plaintiffs' possession. The agreement of Defendants' counsel will be sought to facilitate electronic exchange of documents. Once the volume of documents to be produced in the action is ascertained, Class Counsel may retain the services of a third party document management firm to assist.

REFINEMENT OF COMMON ISSUES

20. Following the filing of statements of defence and the completion of discovery, the parties may seek an amendment of the order certifying this proceeding to deal with any necessary refinement to the common issues arising from those processes.

TRIAL OF THE COMMON ISSUES

21. The Plaintiffs will ask the Court to hold the trial of the common issues with 12 months after the completion of examinations for discovery and the production of the information required by the undertakings and any motions and appeals therefrom.
22. To the extent possible, the Plaintiffs will ask the trial judge to apply sections 23 and 24 of the *CPA* to the assessment of damages. The Plaintiffs will also seek an order under section 26 of the *CPA* that the Defendants pay into court, or some other appropriate depository, the total amount of the Defendants' liability to the Class.

NOTICE OF THE RESOLUTION OF THE COMMON ISSUES

23. Following the trial of the common issues, the Court will be asked to:
- (a) settle the form and content of the notice of resolution of the common issues;

- (b) order that the notice of the resolution of the common issues be distributed to those Class Members who did not validly opt out;
 - (c) assuming that the Plaintiffs have been successful on some or all of the common issues, prescribe the information required from Class Members in order to make a claim under the *OSA* (and the equivalent provisions of the Other Canadian Securities Acts), the *OBCA* and at common law; and
 - (d) set a date by which each Class Member will be required to file a claim.
24. If the common issues, or some of them, are resolved in favour of the Plaintiffs, the Plaintiffs will propose that the notice of resolution of the common issues advise Class Members, among other things:
- (a) that the Plaintiffs were successful on the common issues, or some of them, and describe the causes of action to which those common issues relate;
 - (b) that no Class Member will be entitled to any remedy or compensation unless a claim is filed in a prescribed manner by a fixed date;
 - (c) of the nature of the claims that Class Members may assert and the relief that may be available, including, if applicable, the right to elect rescission;
 - (d) of the procedure to file a claim and how to obtain assistance in doing so;
 - (e) that damages for each Class Member will be calculated based, at least in part, on their trading particulars, including in particular the number of shares disposed of after January 14, 2011;

- (f) that each Class Member will have the opportunity to review and, if necessary, provide information to correct the calculation of their damages by accessing personal transaction particulars through the secure portion of the Website;
- (g) that each Class Member will have the opportunity to come forward and establish their damages by proving any facts, other than their trading particulars, as may be prescribed by the Court; and
- (h) that their rights against the Defendants in relation to the matters set out in the Claim will be deemed to have been finally adjudicated whether they submit a claim or not.

25. The Plaintiffs will ask the Court to order that the notice of resolution of the common issues be distributed substantially in accordance with the procedure set out in paragraph 13 above.

CLAIMS PROCESS

26. The Plaintiffs believe that following the determination of the common issues, the only issues to be determined will be non-contentious matters of the available remedies and, in respect of entitlements to monetary relief, the quantum of individual entitlement, which can be determined based on Class Members' trading records.

27. Each Class Member may be entitled to:

- (a) rescission; or
- (b) damages or restitution pursuant to the various causes of action asserted in the claim; plus
- (c) prejudgment interest; plus

- (d) postjudgment interest.
28. The Plaintiffs will ask the Court to appoint an administrator (the “**Administrator**”), with such rights, powers and duties as the Court directs, to receive and evaluate claims in accordance with the protocols approved by the Court pursuant to section 25 of the *CPA* (or, if applicable, section 24 of the *CPA*).
 29. The Plaintiffs will request an order that the Administrator’s costs be paid by the Defendants.
 30. In order to simplify the claims process, the Administrator will, wherever practical, utilize:
 - (a) a paperless, electronic state-of-the-art web-based technology system which will include a secure database that is incorporated into the Website (“**Database**”);
 - (b) standardized claims forms and filing procedures; and
 - (c) summary methods of introducing documentary evidence.
 31. The Court will be asked to set a deadline (the “**Claims Deadline**”) by which Class Members must file their claims with the Administrator.
 32. Any person who does not file a claim with the Administrator before the Claims Deadline will not be eligible to participate in the damages assessment procedure and will not be entitled to recover any damages without leave of the Court.
 33. In order to file a claim, a person must, on or before the Claims Deadline:
 - (a) register on the Database, or by mail or by fax, with the Administrator; and
 - (b) submit such documentation to the Administrator as required by the Court in support of the claim.

34. The types of records which shall constitute sufficient proof of a claim shall be specified in a protocol to be approved by the Court and may include trading account statements, trade confirmation slips or other evidence confirming the sale or disposition of BIM Securities.
35. The name, address and amount claimed by each person who files a claim with the Administrator before the Claims Deadline shall be added to the Database and provided with a user name and a password by the Administrator to permit the person access to their claims information in the Database.
36. If any claimant disagrees with the Administrator's decision relating to eligibility or calculation of damages, they may elect to have the Administrator reconsider its decision within a time period fixed by the Court.
37. Following this type of reconsideration, the Administrator's decisions will be final. There shall be no right of appeal from the Administrator's decisions.

DETERMINATION OF CONTENTIOUS INDIVIDUAL ISSUES

38. If the Court determines that there are contentious individual issues which must be addressed in order to finally resolve the claims of Class Members, then the Class Members will be provided with the opportunity to come forward to prove any such individual issues and their damages.
39. Class Members will be required to give notice of their intention to proceed with a claim by providing a statement of the facts (limited to those facts relating solely to the individual issues) on which they rely, by a time fixed by the Court.

40. The Plaintiffs will ask the Court to appoint one or more referees (the “**Referees**”), with such rights, powers and duties as the Court directs, to conduct references in accordance with protocols approved by the Court.
41. In order to simplify these determinations, the Referee will, wherever practical, utilize:
 - (a) a paperless, electronic state-of-the-art web-based technology system which will include a secure database that is incorporated into the Website;
 - (b) standardized forms and filing procedures for evidence and submissions; and
 - (c) summary methods of introducing documentary evidence.
42. The types of evidence required for such determinations shall be specified in a protocol to be approved by the Court and depend on the individual issues requiring determination.
43. The Court will be asked to set a deadline by which Class Members must file their submissions and evidence with the Referee.
44. Any person who does not file a claim with the Referee before the deadline will not be entitled to recover any damages without leave of the Court.
45. If any claimant disagrees with the Referee’s decision relating to the determination of issues of liability and the claim is for an amount exceeding \$100,000, they may appeal to the Ontario Superior Court of Justice in respect of such liability issues only within a time period fixed by the Court.
46. Except as provided in paragraph 45, the Referee’s decisions will be final and there shall be no right of appeal from the Referee’s decisions.
47. The Plaintiffs will request an order that the Referee’s costs be paid by the Defendants.

Small Claims (Under \$25,000)

48. Class Members with claims of less than \$25,000 wishing to proceed with such claims will be required to file affidavit evidence setting out their evidence with respect to the individual issues remaining to be proven. Any Defendant may cross-examine an affiant on their affidavit by written interrogatories (in accordance with Rule 35 of the *Rules*) should they wish to challenge the evidence. The Referee will then make a decision with respect to the Class Member's claim on the basis of the affidavit and the answers to the written interrogatories.

Simplified Procedure Claims (\$25,000-\$100,000)

49. Class Members with claims worth between \$25,000 and \$100,000 wishing to proceed with such claims shall proceed by analogy with the simplified procedure set out in Rule 76 of the *Rules* and will be required to file:
- (a) an affidavit of documents prepared in accordance with Rule 76.03; and
 - (b) affidavit evidence relating to the individual issues remaining to be proven.
50. Each party will be permitted to engage in up to two hours of oral examination for discovery.
51. The Referee may make decisions on the claims of the Class Member on the basis of the record, or may, in her or his discretion, conduct a summary trial of such claims in accordance with Rule 76.12 of the *Rules*.

Full Claims (Over \$100,000)

52. Class Members with claims in excess of \$100,000 wishing to proceed with such claims will be required to:

- (a) serve on the Defendants an affidavit of documents prepared in accordance with Rule 30.03 of the *Rules*; and
- (b) attend for an oral examination for discovery (in accordance with Rule 34 of the *Rules*), or provide answers to written interrogatories (in accordance with Rule 35 of the *Rules*), as any Defendant wishing to examine them may elect.

53. The Referee may, in its discretion, make a decision on the individual issues based on the documentary and discovery evidence, or conduct a trial of such claims.

Procedure Relating to Defences

54. If the Defendants seek to assert affirmative defences against certain Class Members that require a determination of individual issues, such issues shall be determined by a procedure analogous to the procedure set out in paragraphs 38 to 53 above, with such modifications as directed by the Court.

THE ADMINISTRATOR'S REPORT TO COURT

55. Once the Referee(s) has conducted all of the proceedings described above, the Administrator will present the findings to the Court in the Administrator's Report to the Court.

56. The Court will be asked:

- (a) to review the Administrator's Report to the Court and enter judgment in accordance with it; and
- (b) discharge the Referee(s) from his or her mandate.

57. If the Administrator is holding funds for distribution to Class Members which are not fully disbursed to the Class Members within a period of time fixed by the Court, the

unpaid amount may be distributed by the Administrator to designated recipients *cy prè*s in such manner and on such terms as the Court may direct.

CLASS COUNSEL'S FEES AND THE COSTS OF ADMINISTRATION

58. After the trial of the common issues, the Plaintiffs will ask the Court to approve an agreement respecting fees and disbursements with Class Counsel. To the extent that the approved Class Counsel's fees, disbursements and applicable taxes are not completely paid by the costs recovered from the Defendants, the unpaid balance shall be a first charge on the total recovery and paid before any distribution to the Class Members.
59. The Plaintiffs will ask the Court to order that the Defendants pay all administration costs, including the costs of all notices associated with the process and the fees and disbursements of the Administrator and Referee as these costs are incurred. Absent that court order, the Plaintiffs will seek an order that these costs be paid out of the total recovery after payment of Class Counsel's fees and disbursements but before any distribution to the Class Members.

FURTHER ORDERS CONCERNING THIS PLAN

60. This Plan may be amended from time to time by directions given at case conferences or by further order of the Court.

EFFECT OF THIS PLAN

61. This Plan shall be binding on all Class Members who do not opt out in accordance with the procedure directed by the Court whether or not they make a claim under the Plan.

PETER ROONEY et al.
Plaintiffs

and
ARCELORMITTAL S.A. et al.
Defendants

Court File No. 3957-11CP

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
LONDON

CERTIFICATION ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

Steve J. Tenai – LSUC No. 33726R
Tel: 416-865-4620
Fax: 416-863-1515
Email: STenai@airdberlis.com

Lawyers for the Defendants,
ArcelorMittal S.A., Lakshmi N. Mittal, Aditya Mittal, 1843208
Ontario Inc., Philippus F. du Toit and Baffinland Iron Mines
Corporation

Fax number and Email for parties served:
Michael G. Robb / 519-660-7873 /
michael.robb@siskinds.com
Kent Thomson / 416-863-0871 / kentthomson@dwpv.com
Alan D'Silva / 416-947-0866 / adsilva@stilkeman.com