

**IN THE MATTER OF AN ARBITRATION UNDER  
CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT  
AND THE UNCITRAL RULES OF 1976**

**BETWEEN:**

**WILLIAM RALPH CLAYTON, WILLIAM RICHARD CLAYTON, DOUGLAS  
CLAYTON, DANIEL CLAYTON AND BILCON OF DELAWARE, INC.**

Claimants/Investors

**AND:**

**GOVERNMENT OF CANADA**

Respondent

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**WITNESS STATEMENT OF**

**JOE FORESTIERI**

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December 13, 2016

1. I am the Chief Financial Officer of the Clayton Group of Companies (the “Clayton Group”), a position I have held since 2003.
2. As Chief Financial Officer, I am responsible for supervising the financial affairs of the Clayton Group, including financial statements, and tax returns. I also provide advice and guidance regarding joint ventures, debt financing and refinancing, audits, the purchase and sale of companies, real estate investments, trust and estate planning, tax planning and succession planning.
3. I have over 35 years’ experience in the accounting profession. After earning my Bachelor of Science in Accounting in 1978, I worked as the Accounting Supervisor for Panasonic from 1980-1985, and then as the Accounting Manager and Controller for Matrix Instruments from 1985-1988. From 1989-1994, I was the Controller for a leading distributor of vitamins and supplements, where I oversaw the growth in annual sales from [REDACTED] to over [REDACTED]. All of these positions involved financial analysis and the preparation of financial statements.
4. In 1994, I was engaged to be the Controller of the Clayton Group. My responsibilities as Controller included the preparation of consolidated financial statements and supervision of the accounting department. I was the Controller until 2003, when I was appointed Chief Financial Officer.
5. In 2013, I was a finalist for the NJBIZ CFO of the Year Award, in the category of “Private Company with revenues over \$50MM”.
6. When I joined the Clayton Group in 1994, annual sales were approximately [REDACTED]. In 2015, with almost 600 employees, annual sales were just under [REDACTED].
7. A copy of my resume is attached as Appendix A.

### **The Clayton Group**

8. The Clayton Group consists of [REDACTED] presently owned, operated and controlled by [REDACTED]. The main business operations of the Clayton Group are centered in the aggregate industry. For many years, the Clayton Group has been the largest ready-mix concrete supplier in New Jersey, with eleven concrete ready-mix plants, located from Jersey City, in the North, to Atlantic City in the South, and a fleet of over 200 ready-mix concrete trucks.
9. The Clayton Group also supplies high quality sand, gravel and specialty products throughout the tri-state area of New York, New Jersey and Pennsylvania, with three fine aggregate quarries strategically located in central New Jersey. It also owns nine masonry stores, selling a variety of concrete block masonry units.
10. Through its acquisition of an interest in the Riverdale Quarry in 1996, the Clayton Group extended its business in fine aggregates to include coarse aggregates. The Quarry, 15 miles from the New York State border, produced approximately [REDACTED] tons of stone annually, with approximately 20% of its production sold to the [REDACTED] market.
11. The Clayton Group has a decades-long history of strong financial performance through many business cycles, including the 2008 financial crisis and the severe economic contraction which followed.
12. A summary of the financial performance of the Clayton Group for the years 2001-2015 is attached.<sup>1</sup>

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<sup>1</sup> Clayton Companies Financial Information (**Forestieri Exhibit 1; Investors' Schedule of Documents, Tab C1048**), Clayton Companies Audited Consolidated Financial Statements (*Investors' Schedule of Documents, Tab C1049*).

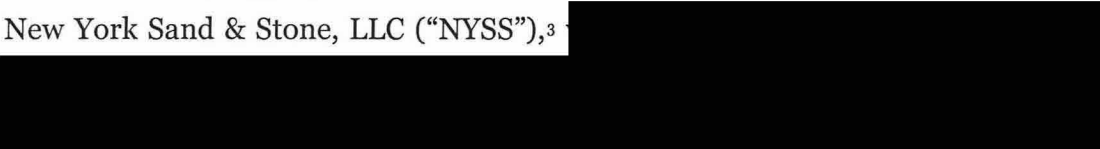
13.



**Amboy Aggregates and New York Sand & Stone**

14. In January, 1989, Ralph Clayton & Sons Materials, LP, a member of the Clayton Group, entered into a joint venture agreement with Great Lakes Dredge and Dock Company to form Amboy Aggregates.<sup>2</sup> A principal business of Amboy Aggregates was dredging sand from the bottom of the Ambrose Channel entrance to the New York City harbor, and supplying sand products to the northern New Jersey and New York City markets.

15. In 1998, Amboy Aggregates and New York Sand, LLC (“New York Sand”) created New York Sand & Stone, LLC (“NYSS”),<sup>3</sup>



16.



17.



18. A summary of the financial performance of Amboy Aggregates for the years 2001-2014 is attached.<sup>4</sup>

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<sup>2</sup> Amboy Aggregates Joint Venture Agreement (*Investors’ Schedule of Documents, Tab C1050*).

<sup>3</sup> Operating Agreement of New York Sand & Stone, LLC (*Investors’ Schedule of Documents, Tab C1015*).

<sup>4</sup> Amboy Aggregates Financial Information (**Forestieri Exhibit 2**; *Investors’ Schedule of Documents, Tab C1051*), Amboy Aggregates Financial Statements (*Investors’ Schedule of Documents, Tab C1052*).

19. A summary of the financial performance of NYSS for the years 2001-2013 and for the partial year January 1, 2014 to July 31, 2014 is attached.<sup>5</sup>

20. Amboy Aggregates required an aggregate product, known as grit, to mix with the sand it dredged from the Ambrose Channel entrance to the New York City harbor.

[REDACTED]

21.

[REDACTED]

[REDACTED]

22.

[REDACTED]

[REDACTED]

23.

[REDACTED]

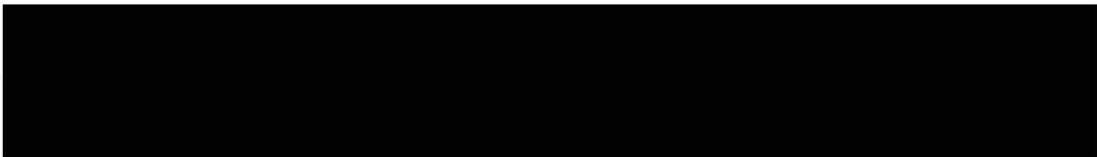
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<sup>5</sup> New York Sand & Stone Financial Information (**Forestieri Exhibit 3; Investors' Schedule of Documents, Tab C1053**), New York Sand & Stone Financial Statements (**Investors' Schedule of Documents, Tab C1018**); New York Sand & Stone July 2014 Financials (**Investors' Schedule of Documents, Tab C1054**).

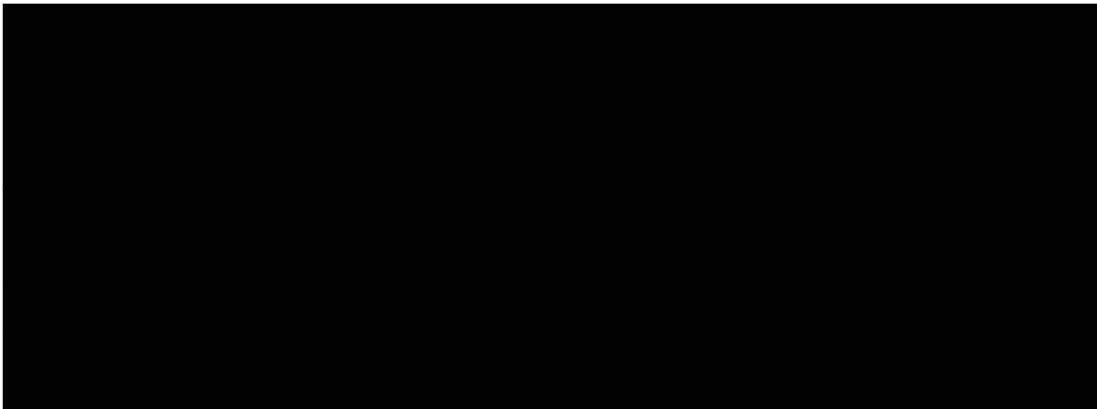
24.



25.



26.



**Tax Treatment**

27. The corporate entity created for the operation of the Whites Point Quarry was Bilcon of Nova Scotia. From 2002 to 2007, the Investors invested in Bilcon of Nova Scotia for the purpose of establishing and operating the Whites Point Quarry through Bilcon of Delaware.

28.



Bilcon of Delaware is the sole shareholder of Bilcon of Nova Scotia. The Investors, William Clayton, Douglas Clayton and Daniel Clayton (the “shareholders/investors”), are the sole shareholders of Bilcon of Delaware and have been throughout.

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<sup>6</sup> Bilcon of Delaware 2002 Tax Return (*Investors’ Schedule of Documents, Tab C1055*).

29. An S corporation generally is not itself subject to US Federal income tax, and is not subject to individual State income tax in New Jersey. Rather, its income is included on the US and New Jersey individual income tax returns of its shareholders. [REDACTED]

[REDACTED]

[REDACTED]

Dated: December 13, 2016

  
\_\_\_\_\_  
Joe Forestieri



**Appendix A**  
**Resume**  
**Joseph Forestieri**

**EXPERIENCE:**Ralph Clayton and Sons and Affiliates, Lakewood, New Jersey

2003 thru  
current

**CHIEF FINANCIAL OFFICER**

Responsible for overseeing all financial activities for this recognized leader and manufacturer of concrete, masonry products and aggregates. I am involved in all business decisions within the organization, and play a key role assisting the family to diversify its holdings. I am responsible for managing all of the books and records of [REDACTED] constantly providing substantial suggestions, advice and feedback as it relates to a plethora of business transactions. Some of these matters include trust and estate planning, tax planning, succession planning, managing joint ventures, debt refinancing, audits, purchase and sale of companies and real estate investments.

1994 – 2003

**CONTROLLER**

Responsibilities included the preparation of the consolidated financial statements, and the review of account analysis. Implemented Epicor, a new accounting software program, created standard chart of accounts across all entities, and created many standard reports assisting management in making key business decisions. Duties also included the supervision of the Accounting department, inclusive of A/R, A/P, General Accounting, Payroll, Inventory, and Credit.

1989 - 1994

L & S Research Corp. d.b.a. Cybergenics, Lakewood, New Jersey**CONTROLLER**

Managed all financial matters for this leading distributor of vitamins, supplements, and weight loss programs from its early stages, [REDACTED] in annual sales, through its growth phase, to more than [REDACTED] annually. Responsibilities included preparation of financial statements, budgets, cash management, evaluating operations, sales and purchasing.



1985 - 1988      Matrix Instruments, Inc. Division of Agfa Corporation, Orangeburg, New York

**ACCOUNTING MANAGER/CONTROLLER**

Responsible for the preparation of consolidated financial statements and analysis for this 100 million dollar multi-national medical equipment manufacturer. Supervised staff of ten. Organized and handled annual audits with Coopers and Lybrand. Assisted with preparation of SEC reports.

1980 - 1985      Panasonic Company, Division of Matsushita Electric Corp of America, Secaucus, New Jersey

**ACCOUNTING SUPERVISOR**

Supervised the daily activities of the general accounting and inventory accounting departments. Supervised the preparation of financial statements and analysis. Assumed heavy financial budgetary involvement. Insured the accuracy and timeliness of financial statements. Prepared product profit and loss statements. Trained and appraised staff.

**EDUCATION:**

1974 - 1978      Farleigh Dickinson University, Teaneck, New Jersey  
**BACHELOR OF SCIENCE, ACCOUNTING**  
**Degree:** May 1978

# EXHIBIT 1

## WITNESS STATEMENT OF JOE FORESTIERI

### Clayton Companies Financial Information

Year	Net Sales	Cost of Sales	Gross Profit	Income from Operations	Net Income
2001					
2002					
2003					
2004					
2005					
2006					
2007					
2008					
2009					
2010					
2011					
2012					
2013					
2014					
2015					

# EXHIBIT 2

## WITNESS STATEMENT OF JOE FORESTIERI

### Amboy Aggregates Financial Information

Year	Net Sales	Cost of Sales	Income [REDACTED] from Operations	Net Income [REDACTED]
2001	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2002	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2003	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2004	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2005	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2006	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2007	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2008	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2009	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2010	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2011	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2012	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

# EXHIBIT 3

## WITNESS STATEMENT OF JOE FORESTIERI

**New York Sand & Stone Financial Information**

<b>Year</b>	<b>Net Sales</b>	<b>Cost of Sales</b>	<b>Income [REDACTED] from Operations</b>	<b>Net Income</b>
2001	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2002	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2003	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2004	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2005	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2006	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2007	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2008	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2009	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2010	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2011	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2012	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Jan. 1, 2014 to July 31, 2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]