

**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  
WILLIAM RICHARD CLAYTON**

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December 15, 2016

1. In 2002, my father, Bill Clayton Sr., and I were invited by Minister Gordon Balser of the Nova Scotia Government to meet with him in Digby, Nova Scotia, about the Whites Point Quarry. Minister Balser had encouraged us to develop the Quarry and assured us of his full support. After meeting with Minister Balser, Bill Sr. sent him a note<sup>1</sup>:

7-5-02

Dear Mr. Minister;

I wanted to thank you for meeting with us last week and giving us your insights. John Wall told me today that you were good enough to show him around this week as well. We appreciate your assistance and look forward to working with you to create a win-win project for the town and its people.

2. By the summer of 2003, Government officials responsible for the development of quarries had shown our geologist, John Lizak, the Whites Point Quarry site, and many other quarry sites available for development in Nova Scotia, and had given great assistance to Mr. Lizak in his investigation of Whites Point and other possible quarry locations. On August 1, 2003, Mr. Lizak wrote to the Director of the Nova Scotia Department of Natural Resources to thank him for the outstanding professional assistance of the Nova Scotia officials:<sup>2</sup>

I've been working on several industrial mineral ventures located in Nova Scotia for the last two years. During this period, the staff of the Minerals and Energy Branch has been an invaluable business resource.

My clients, our Canadian partners, and I are indebted for the ongoing assistance provided by Messrs. Finck, Prime, and Kontack. Phil Finck's tireless enthusiasm for the project, his timely technical and economic advice, and his personal assistance have been

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<sup>1</sup> Letter dated July 5, 2002 from Bill Clayton to Minister Gordon Balser (**Clayton Exhibit 1**).

<sup>2</sup> Letter dated August 1, 2003 from John Lizak to Dr. Mike Cherry, Director, Nova Scotia Department of Natural Resources (**Clayton Exhibit 2**).

particularly exemplary. Phil's involvement has truly provided the opportunity for success in the venture. I want to thank you and your staff for your constant adherence to the highest professional, technical, and ethical standards and your commitment to Nova Scotia.

3. We had engaged Mr. Lizak in 2002 to go to Nova Scotia to locate for us a large aggregate deposit [REDACTED]

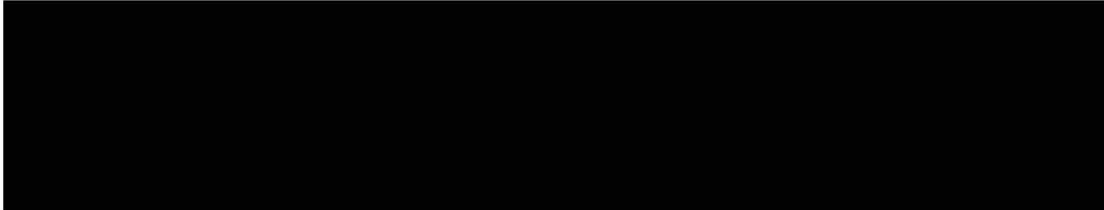
4. We had been importing coarse aggregates from the Bayside Quarry in New Brunswick for mixing with our fine aggregates at our facility in Amboy, New Jersey, and for sale through our New York Sand & Stone facilities into the New York City market.

5. We had received advice from Tom Dooley, who we had engaged as the Sales and Marketing Manager for New York Sand & Stone, that the [REDACTED]

[REDACTED] At the same time, the [REDACTED] [REDACTED] so we were looking to secure our own long term supply of high quality stone.

6. In his Report to us, Mr. Lizak ranked the various quarry sites he had been shown by Nova Scotia Government officials. [REDACTED]

[REDACTED]



7. Shortly after we met with Minister Balsler, he sent Bill Sr. a letter about the Whites Point Quarry development:<sup>3</sup>

House of Assembly Nova Scotia

Dear Mr. Clayton:

I would like to take this opportunity to thank you for meeting with me in Digby. As you are well aware, this development has been an interesting challenge. Mr. Wall is doing a good job of representing your interests.

The next step will require presenting the business plan to the community. I hope that you and your company will continue to move the project forward as I feel it has the potential to benefit both you and our area.

Please do not hesitate to contact me in the future if I can be of any assistance.

Hon. Gordon Balsler, MLA

8. We were not surprised by the Nova Scotia Government's support of our coming to Nova Scotia, since it had a long history, through publications, trade missions, and conferences, of promoting the development of Nova Scotia quarries, and inviting investors to develop quarries in Nova Scotia for the export of aggregate to the Unites States.
9. In October, 2003, Bill Sr. sent a letter to Minister Morash of the Nova Scotia Government, thanking him for meeting with Paul Buxton, our Project Manager

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<sup>3</sup> Letter from Hon. Gordon Balsler, MLA (Clayton Exhibit 3).

for the Whites Point Quarry, and John Wall, who we had engaged to be the Quarry Manager.<sup>4</sup>

Dear Minister Morash:

I would like to take this opportunity to thank you for the time and consideration you extended to our representatives when you met with them regarding the White's Point Cove Quarry Project. We have been very distressed by the negative publicity. It is indeed unfortunate that our quarry permit application has become such a political football.



We fully intend to obtain our workforce from the local area. Further, wherever possible, all purchases of services, and equipment will be made in Nova Scotia. We have already demonstrated this by our initial investment in this development.

We look forward to working with you on our quarry permit application. We would also like to assure you that we fully intend to comply with your regulations, your process, and your laws. Our only expectation is that we will receive fair and equal consideration in return.

We would welcome an opportunity to meet with you in person, and I would like to renew the invitation that was extended to you on our behalf by John Wall. It is our belief that first hand observation of our operation and consultation with our employees would provide you with a positive perspective of our operation and our organization.

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<sup>4</sup> Letter dated October 24, 2003 from William Clayton to Minister Morash (Clayton Exhibit 4).



10. As my Dad said in his letter to Minister Morash, our business vision for the Whites Point Quarry was simple and clear. Our family had been in the aggregate business for over 60 years, and we saw the Whites Point Quarry as a central part of our long term business plan. Our business is multi-generational, and our outlook is always for the next 60 years.
11. Our business philosophy has never changed from the entrepreneurial instinct Dad started it with. He took thoughtful risks, put every dollar back into the business and, by sticking with it, he always found a way to make it work.
12. Before the Great Recession, we had many very good years, and were generating large annual profits, but my Dad still drove a Chevy, and still focused on growing the business.
13. My Dad always took the long view. If it will eventually make money, stick with it. If it's able to meet its debt obligation, even if you're not making money for the first five or seven years, still stick with it. This was his attitude.
14. As a family business, we make decisions quickly, and we move quickly, unlike public companies which must look to quarterly numbers and monthly share price.
15. Of course, there's always a point at which the numbers don't make sense, and we're careful to balance our investments against estimated returns. We look at where we sell the rock, what the profit margin is, and how soon can we pay off any debt.
16. That's how we look at opportunities. How much will it cost to purchase the property. How much we will be able to sell the product for, and for how many years.

17. Our approach is much more intuitive than the way the big public companies go about it and, at the end of the day, for us it is really that simple. That is the attitude that took us to Whites Point.

18. [REDACTED]  
[REDACTED] We saw it is an opportunity to do for the next generation of our family what my Dad had done for us, [REDACTED]  
[REDACTED]

19. [REDACTED]

20. [REDACTED]

21. As I said in my note to Minister Balsler, we also saw the Whites Point Quarry as a “win-win”, not just for us, but “for the town and its people”. Before committing to the Whites Point Quarry, my Dad and I went to Digby Neck to meet with the people who lived there. We liked the people. People have always been at the heart of how we built our business, and how we operate our business. Our business is family centered, and that includes our employees and their families, who work with us every day in a common enterprise. We saw the Whites Point Quarry as providing local citizens with good jobs, and we saw ourselves as responsible corporate citizens of the local community, just as we have been widely honoured for being in our New Jersey community.


22. Throughout the 4 1/2 years of the environmental review process, we never doubted that science and honesty would eventually prevail. That is why, even though the process was much more excessive than anything usual, we told Paul Buxton to do whatever was needed, to spend whatever was needed, and to engage the best experts from wherever they may be, to ensure there could be no possible concern about the environmental efficacy of the Quarry. We believed in the Quarry because we focus on the long-term. So we said "We're going to get through this. And we're going to have a 60 year Quarry. It will still be operating when our grandkids are running the business."
23. Our family business has been successful for over 60 years, and we know what we're doing in our industry. We were certain about the earning potential of the Whites Point property, and we were determined to satisfy whatever was asked of us, and to meet every requirement, no matter how high the bar was raised along the way. That's why we stuck with the environmental assessment process and spent millions of dollars to prove that the Quarry was environmentally safe.
24. Our commitment to the Whites Point Quarry was unwavering from the outset. In addition to all the work being done by Paul Buxton, John Wall travelled to the Quarry on a bi-weekly basis from 2002 to 2006. We knew John Wall from our ownership interest in the Riverdale Quarry, where Tom Dooley was the Sales Manager and John was the Vice President. In our view, they are both the best and most experienced at what they do in the aggregate industry, which is why we engaged John to run the Quarry and Tom to run New York Sand & Stone.
25. In 2006, John Wall moved permanently to Digby. By the fall of 2007, he and LB&W Engineering had designed every detail of the plant. We had approved the design, and the plant was ready for immediate construction. [REDACTED]
- [REDACTED]






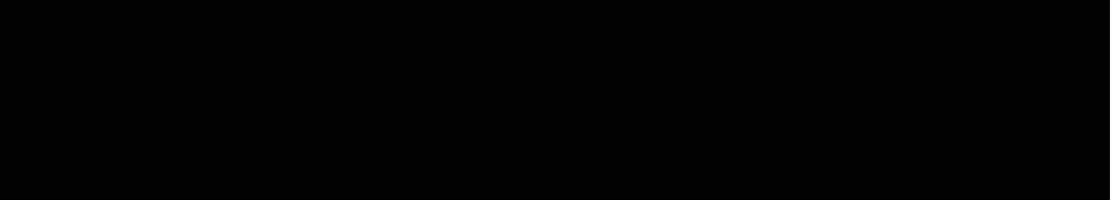
26. All of this was just a reflection of how we run our family business, and why we believe our business has been so successful.


27. When my Dad and I went to Whites Point, we walked the whole property and surrounding area. The site was already there, and we could immediately see its potential and how it could be developed further.

28. We had experience with other quarries, so we knew what we were getting into. We had asked John Wall and Paul Buxton to put together a list of likely operating expenses, and the equipment that would be needed. 




 We could afford it, and we were convinced that it was a profitable opportunity.

29. 

30. We were very confident of the market demand for rock from Whites Point. 



 There were also other major markets available to us down the entire East Coast of the United States, from New York to Florida.

31.

[REDACTED]

[REDACTED] The Whites Point  
rock is of very good quality, [REDACTED]

[REDACTED] and the site offered great longevity. We liked  
the property, and we wanted to develop it.

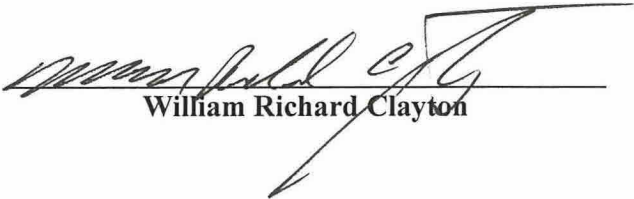
32.

[REDACTED]

[REDACTED] The  
attached Pro Forma<sup>5</sup> sets out the operating costs we would have incurred, and the  
revenue we would have earned from the sale of aggregate in our first five years of  
operating the Quarry. [REDACTED]

[REDACTED]

Dated: December 15, 2016

  
William Richard Clayton

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<sup>5</sup> Whites Point Quarry Pro Forma Statement of Operations (Clayton Exhibit 5; *Investors' Schedule of Documents, Tab C1046*).

# EXHIBIT 1

WITNESS STATEMENT  
OF  
WILLIAM RICHARD  
CLAYTON



Ralph Clayton & Sons

Clayton Block Co., Inc.

Clayton Sand Co.

515 Route 528  
Post Office Box 3015  
Lakewood, NJ 08701

Lakewood 732-363-1995  
FAX 732-367-9473

*Lordon Balser, MHA*  
FAX 902-245-1946

7-5-02

Dear Mr. Minister;

I wanted to thank you for meeting with us last week and giving us your insights. John Wall told me today that you were good enough to show him around this week as well. We appreciate your assistance and look forward to working with you to create a win-win project for the town and its people.

Hope all is well. Please call with any thoughts or questions you may have.

Sincerely

*Bill Clayton*

732 905 3106  
732 370 0643 Home



# EXHIBIT 2

## WITNESS STATEMENT OF WILLIAM RICHARD CLAYTON



**MINERAL  
VALUATION &  
CAPITAL, INC.**

*Northeast Office:*

1805 Evans Street  
Northampton, PA 18067  
Telephone: 610-262-9120  
Facsimile: 610-262-4212

**Industrial Minerals & Construction Materials Group**

August 1, 2003

Dr. Mike Cherry, Director  
Nova Scotia Department of Natural Resources  
P.O. Box 698  
Halifax, Nova Scotia B3J 2T9

Dear Dr. Cherry:

I've been working on several industrial mineral ventures located in Nova Scotia for the last two years. During this period, the staff of the Minerals and Energy Branch has been an invaluable business resource.

My clients, our Canadian partners, and I are indebted for the ongoing assistance provided by Messrs. Finck, Prime, and Kontack. Phil Finck's tireless enthusiasm for the project, his timely technical and economic advice, and his personal assistance have been particularly exemplary. Phil's involvement has truly provided the opportunity for success in the venture.

I want to thank you and your staff for your constant adherence to the highest professional, technical, and ethical standards and your commitment to Nova Scotia.

Sincerely,

John Lizak  
Principal

# EXHIBIT 3

## WITNESS STATEMENT OF WILLIAM RICHARD CLAYTON



House of Assembly  
*Nova Scotia*

**Mr. Douglas Clayton Sr.**  
**Clayton Block Company**  
**515 Route # 528**  
**Lakewood**  
**New Jersey, USA**  
**087018115**

**Dear Mr. Clayton:**

**I would like to take this opportunity to thank you for meeting with me in Digby. As you are well aware, this development has been an interesting challenge. Mr. Wall is doing a good job of representing your interests.**

**The next step will require presenting the business plan to the community. I hope that you and your company will continue to move the project forward as I feel it has the potential to benefit both you and our area.**

**Please do not hesitate to contact me in the future if I can be of any assistance.**

**Yours truly,**

A handwritten signature in cursive script that reads "Gordon Balser".

**Hon. Gordon Balser, MLA**  
**Digby/Annapolis**

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**HON. GORDON BALSER-MLA**

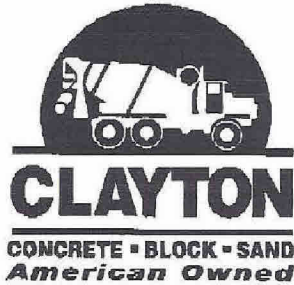
*P. O. Box 1827 ♦ Digby, NS ♦ B0V 1A0*  
*902-245-2220 ♦ Fax: 902-245-1946*

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# EXHIBIT 4

## WITNESS STATEMENT OF WILLIAM RICHARD CLAYTON



RALPH CLAYTON & SONS  
CLAYTON BLOCK CO., INC.  
CLAYTON SAND CO.

POST OFFICE BOX 3015  
LAKEWOOD, NJ 08701  
  
LAKEWOOD 732-363-1995  
FAX 732-367-9473  
TOLL FREE 800-662-3044  
  
WWW.CLAYTONCO.COM

October 24, 2003

Dear Minister Morash:

*I would like to take this opportunity to thank you for the time and consideration you extended to our representatives when you met with them regarding the White's Cove Quarry Project. We have been very distressed by the negative publicity. It is indeed unfortunate that our quarry permit application has become such a political football.*



*We fully intend to obtain our workforce from the local area. Further, wherever possible, all purchases of services, and equipment will be made in Nova Scotia. We have already demonstrated this by our initial investment in this development.*

*We look forward to working with you on our quarry permit application. We would also like to assure you that we fully intend to comply with your regulations, your process, and your laws. Our only expectation is that we will receive fair and equal consideration in return.*

*We would welcome an opportunity to meet with you in person, and I would like to renew the invitation that was extended to you on our behalf by John Wall. It is our belief that first hand observation of our operation and consultation with our employees would provide you with a positive perspective of our operation and our organization.*

Sincerely,

# EXHIBIT 5

## WITNESS STATEMENT OF WILLIAM RICHARD CLAYTON

**Pro Forma Statement of Operations**  
**Five Years ending December 31, 2015**  
**(Financed Through Equity Investment)**

**December 7, 2016**



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**Pro Forma Statement of Operations  
Five Years ending December 31, 2015**

	Annual Volumes				
	2011	2012	2013	2014	2015
Production (tons)					
Shipments (tons)					
Inventory change (tons)			-	-	-

	Metrics Per Ton				
	2011	2012	2013	2014	2015
Freight adjusted revenue (Page 8)					
Plant operating costs					
Personnel (Note 2)					
Energy (Note 3)					
Supplies and raw materials (Note 4)					
Repairs and maintenance (Note 5)					
Contract services (Note 6)					
Other expenses (Note 7)					
Depreciation (Note 8)					
Production cost per ton					
FIFO adjustment per ton sold					
Cost of sales					
Gross profit					

	Pro Forma Statement of Operations				
	2011	2012	2013	2014	2015
Freight adjusted revenue					
Plant operating costs					
Personnel					
Energy					
Supplies and raw materials					
Repairs and maintenance					
Contract services					
Other expenses					
Depreciation					
Inventory change (Note 9)					
Cost of sales					
Gross profit					
Selling, general & admin					
Pre-tax earnings					
Income taxes (Page 7)					
Net income					

## Notes to Pro Forma Statement of Operations Five Years ending December 31, 2015

### 1) Major assumptions and conditions

#### Nature of operations

The owner/operator of Whites Point Quarry is Bilcon of Nova Scotia Corporation (“Bilcon Nova Scotia”), incorporated under the Nova Scotia Companies Act on April 24, 2002. The principal activity of Bilcon Nova Scotia is the production and shipment of crushed aggregate to markets in the Northeastern United States.

#### Scope of operations

Bilcon Nova Scotia planned to construct and operate a basalt quarry, processing facility and marine terminal located on Digby Neck in Digby County, NS, which is conceptually described in the Environmental Impact Statement submitted to the Canadian Environmental Assessment Agency.

#### First five years of operations

The primary focus of this financial pro-forma is the first five years of operations which for the purpose of this report is assumed to coincide with the 2011 through 2015 calendar years. It is intended that the first five years will serve as a baseline for developing financial projections covering the economic life of the project.

#### Significant accounting policies

- a. Inventories are carried at the lower of cost or market.
- b. Properties, plant and equipment are carried at cost less accumulated depreciation. Depreciation and amortization are computed over estimated service lives by the straight line method.
- c. Monetary assets and liabilities denominated in foreign currencies are converted to Canadian dollars at rates of exchange prevailing at the balance sheet date. Revenue and expenses are converted at the rates in effect at the date of the transaction.
- d. Investment tax credits are recorded as a reduction in income tax expense using the flow through method.

#### Selling, general and administrative expense

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

	2011	2012	2013	2014	2015
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

**Operating costs**

The costs for personnel, energy, supplies, repairs, contract services and other expenses are as assumed in Notes 2 through 7.

**Income tax**

The Canada Revenue Agency effective corporate tax rates and regulations for companies engaged in manufacturing and processing activities were used to determine the tax consequences set out on Page 7.

2) Personnel

	2011	2012	2013	2014	2015
Production employees					
Maintenance employees					
Production hours per year					
Maintenance hours per year					
Production overtime hours					
Paid hours					
Tons per paid man hour					
Production ave hourly wage					
Maintenance ave hourly wage					
Payroll Straight time					
Payroll - Overtime					
Total payroll					
Benefits - [REDACTED]					
Management					
Personnel cost					
Personnel cost per ton					

3) Energy

	Per Ton				
	2011	2012	2013	2014	2015
Diesel					
Electricity					
Gasoline/acetylene/propane					
Total					

4) Supplies and raw materials

	Per Ton				
	2011	2012	2013	2014	2015
Explosives					
Drill steel					
Tires and tubes					
Welding and cutting					
Oils and lubricants					
Manganese					
Conveyor belts					
Screen cloth					
Total					

## 5) Repairs and maintenance

	Per Ton				
	2011	2012	2013	2014	2015
Production equipment					
Mobile equipment					
Conveyor and shiploader					
Total					

## 6) Contract services

	Per Ton				
	2011	2012	2013	2014	2015
Waste removal					
Other					
Total					

## 7) Other expenses

	Per Ton				
	2011	2012	2013	2014	2015
Property related					
Professional services					
Demurrage					
Environmental					
Insurance					
Taxes and licences					
Equipment rental					
Incoming freight					
Royalties					
Reclamation					
Miscellaneous					
Total					

8) Depreciation and Amortization

Description	Estimated Cost	Depreciation	Annual Charge to Operations

9) Inventory change (first in, first out)

	2011	2012	2013	2014	2015
Opening Inventory					
Cost per ton					
Inventory value					
Closing inventory					
Cost per ton					
Inventory value					
Inventory change					



**Income tax and Capital Cost Allowance Schedule**

	2011	2012	2013	2014	2015

Capital Cost Allowance	2011	2012	2013	2014	2015
Land Improvements					
Class 17 - 8%					
Plant and Infrastructure					
Class 29 - 30%					
Mobile Equipment					
Class 29 - 30%					
Marine Load Out					
Class 3 - 5%					
Project Development					
Eligible Capital Expenditure					
7% x 75%					
<b>Total</b>					

**Revenue Matrix Summary**

