

**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

REPLY WITNESS STATEMENT OF

WILLIAM RICHARD CLAYTON

August 21, 2017

I. INTRODUCTION

1. This statement is supplemental to my Witness Statement dated December 15, 2016 (my “December Witness Statement”) in these proceedings.

II. THE BRATTLE REPORT

2. The Brattle Group report dated June 9, 2017 (the “Brattle report”) asserts that there are four “indications” which provide “some insight into the value of Whites Point”.¹ In fact, none of them provide any indication at all of the long-term value of the Whites Point Quarry to us.

A. *The Nova Stone Relationship*

3. I do not know the basis for [REDACTED] to sell us a portion of its interest in the Whites Point Quarry Project. As a business person, I do know that what ultimately matters is the deal that is reached at the end of the day. After [REDACTED] [REDACTED] made the offer to us, we discussed the project and eventually made an agreement with him.
4. Our partnership with Nova Stone happened in the earliest days of our involvement in the Whites Point Quarry Project. [REDACTED]
[REDACTED]
5. By the 2000s, our family had been working in the aggregates industry for 50 years. We planned the Whites Point Quarry to be an addition to our vertically integrated enterprise, which we had decades of experience operating, and which

¹ Brattle Report, paras. 62, 63.

included by that time importing very significant volumes of aggregate from Canada.

6. The reason for our later buy-out of Nova Stone's interest in the Quarry in 2004 is that [REDACTED] and we wanted to move forward. To the best of my recollection, the negotiation was [REDACTED]

7. We do not take advantage of people. That is not our business philosophy or our business practice. [REDACTED]

8. By the time of our buyout of Nova Stone, we had spent approximately [REDACTED] on the Project. We spent almost [REDACTED] more to take the Project through the environmental assessment. [REDACTED]

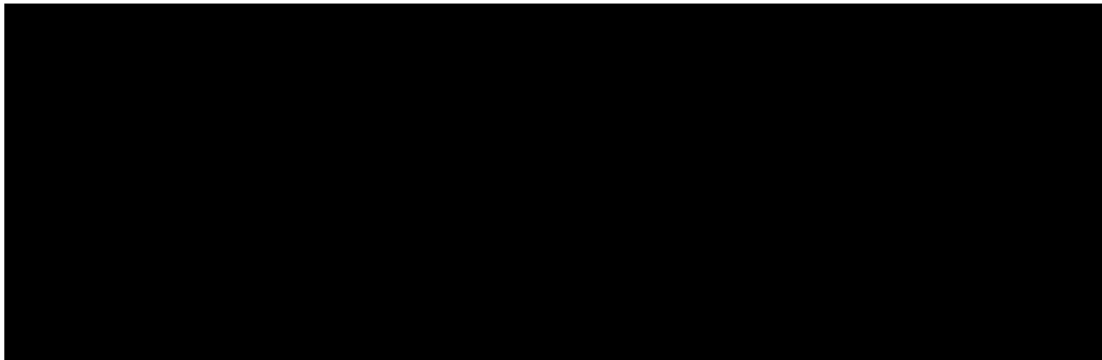
B. The [REDACTED] Relationship

9. I do not know what prompted [REDACTED] to propose [REDACTED] for the Whites Point Quarry [REDACTED] It was an extra add-on to a proposal to [REDACTED] [REDACTED] I do know that the [REDACTED] offer had nothing to do with the actual

value of the Whites Point Quarry to us, based on the profits we expected to realize over the life of the Quarry.

10. One of the reasons for our success over the decades is the value we place on building personal relationships with other people involved in the concrete aggregates business, including our competitors. There are many points of connection between people involved in the coarse aggregate, sand, gravel, cement, concrete and asphalt businesses locally, nationally, and even internationally. We have had mutually beneficial and complementary relationships with many, many people and companies involved in our industry over the decades.

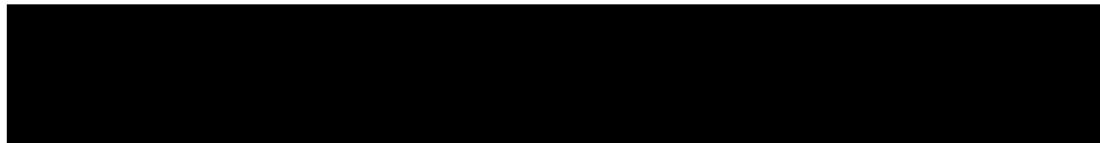
11.



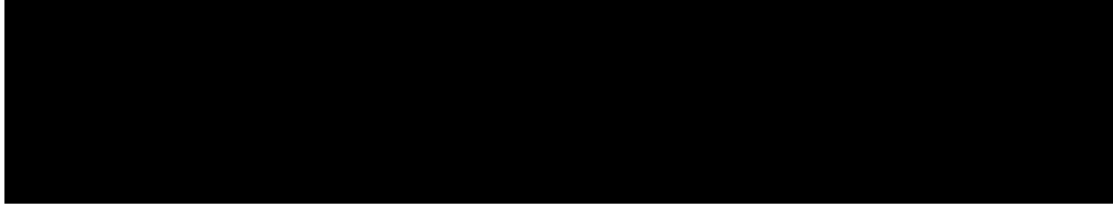
12. We are not flippers.



13.



² Brattle Report, para. 82.



14.



15.



III. FEASIBILITY STUDY

16. As I said in my December Witness Statement, my family makes business decisions with a long-term view based on our deep knowledge and experience in our industry. Our decision-making process and philosophy is very much unlike public companies that rely on consultants' reports to make their decisions and look to quarterly numbers and monthly share prices.³


17. We invest our own money, not just for ourselves, but for the benefit of our family for future generations. We are certainly careful to balance our investments against projected returns. We know exactly where we sell our product, what the profit margin is, and how soon we can pay off any debt.⁴

³ My December Witness Statement, para. 14.

⁴ My December Witness Statement, para. 15.

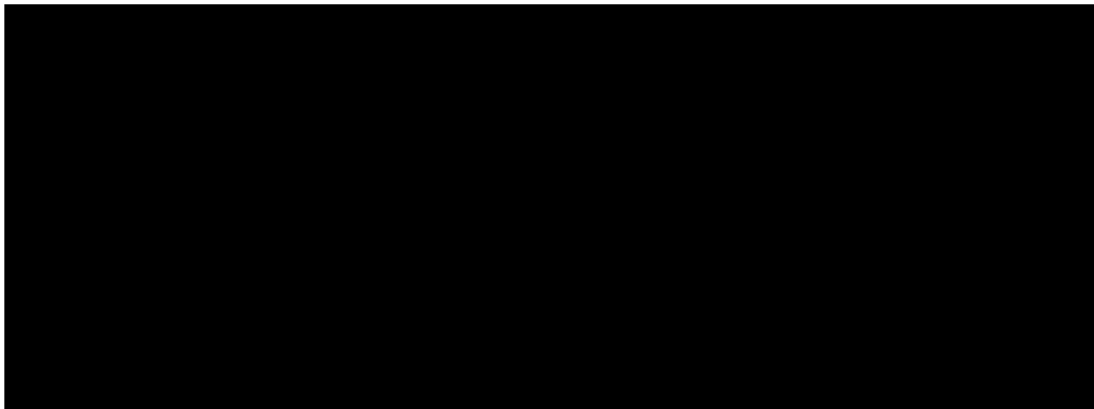
18.



 We had extensive experience in operating aggregate operations. We were already importing stone from Canada for sale in New York City, and for use in our sand dredging operations. We engaged John Lizak, a highly experienced geologist, to assess the quality and quantity of the stone at Whites Point. Mr. Lizak reported to us in 2002 that the Whites Point stone was “ideally suited for quarrying, processing, shipping and construction.”⁵

19. We also engaged John Wall, a veteran quarry manager, and Paul Buxton, a highly competent and skilled local engineer, to develop the costs and operating expenses, and to manage construction and production. Together with our usual calculations of costs and projections with our advisors and in-house accounting staff, we knew the Whites Point Project would be a money maker.⁶

20.



21. As I also said in my December Witness Statement, we invested in the environmental assessment process for the Whites Point Quarry because, while we thought it was needlessly excessive, we never doubted that science, objectivity, and honesty would prevail, and that we would be able to build and operate the

⁵ Witness Statement of John Lizak dated July 8, 2011, Exhibit 1, page 5.

⁶ My December Witness Statement, para. 28.

Whites Point Quarry.⁷ After all of the representations and inducements we had received from the Nova Scotia Government, we fully expected that the Whites Point Quarry Project would be approved. We were shocked when it wasn't.

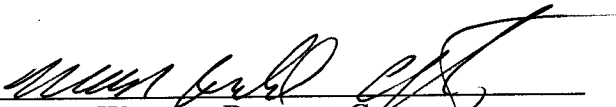
22. From the beginning, we were satisfied that the Whites Point Quarry would have been very profitable and that if we had been treated fairly and honestly by Canada, we and the next generations of our family would have built and operated the Whites Point Quarry profitably for at least 50 years.

IV. TAXATION OF THE WHITES POINT QUARRY PROJECT

23.



Dated: August 21, 2017



WILLIAM RICHARD CLAYTON

⁷ My December Witness Statement, para. 22.