

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ESSAR STEEL MINNESOTA LLC and
ESML HOLDINGS INC.,¹

Debtors.

Chapter 11

Case No. 16-11626 (BLS)

(Jointly Administered)

Hearing Date: Sept. 20, 2016 at 11:30 AM EST
Objections Due: August 30, 2016 at 4:00 PM EST

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER DIRECTING
DISCOVERY FROM CLIFFS NATURAL RESOURCES INC. PURSUANT
TO RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY
PROCEDURE**

TO THE HONORABLE BRENDAN L. SHANNON.
UNITED STATES BANKRUPTCY JUDGE:

Essar Steel Minnesota LLC (“**ESML**”) and ESML Holdings Inc. (“**Holdings**,” together with ESML, the “**Debtors**”) file this motion (the “**Motion**”) pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order, substantially in the form attached as Exhibit A, authorizing and compelling discovery (the “**Requested Discovery**”) from Cliffs Natural Resources Inc. in the form of production by it of documents responsive to the requests set forth in the attached **Schedule A** within 15 days after the Court enters an order granting the Motion, and authorization to conduct a deposition on the topics set forth in the attached **Schedule B** within 30 days after Cliffs Natural Resources Inc. produces to

¹ The last four digits of Essar Steel Minnesota LLC’s federal taxpayer identification number are 8770. The last four digits of ESML Holdings Inc.’s federal taxpayer identification number are 8071.

the Debtors all responsive documents, without the need for further relief from this Court. In support of the Motion, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. ESML owns a partially completed iron ore pellet manufacturing plant located in northern Minnesota, which, upon completion, would make ESML the first new entrant into the North American iron ore pellet manufacturing market in years. It has landed in chapter 11 the victim of unanticipated construction delays and cost over-runs. The ripples created in the pond from these circumstances have, over time, become waves, resulting in severe strains, and in some cases, ruptures, in key business relationships of the Debtor--with respect to the construction of the plant; with respect to the company's right to mine the iron ore needed for its manufacturing activities, and; with respect to commitments to purchase product once operations begin.

2. ESML is not the first, and certainly won't be the last, business to find itself in chapter 11 facing the challenges raised by the forgoing circumstances.

3. What may be unique here though is the possibility that at least some of ESML's woes arise from, or have been worsened by, the knowing activities of Cliffs Natural Resources Inc. ("**Cliffs**"), the largest producer of iron ore pellets in the North American market (with the appurtenant market power), to prevent ESML from completing its plant and becoming a competitor. Only a couple of days after ESML's largest off-take purchaser, ArcelorMittal USA LLC ("**ArcelorMittal**"), sent notice purporting to terminate its agreement with ESML in May, ArcelorMittal announced that it had entered into a new off-take agreement with Cliffs. Since then, ESML has learned that at least since 2015 Cliffs has been engaged in discussions with certain of ESML's most important business partners. In at least one instance, these discussions resulted in a secret agreement giving Cliffs the exclusive opportunity to takeover certain of

ESML's critical assets. In another instance, at the same time that ESML was seeking forbearance from its lenders, Cliffs was offering to purchase their collateral should the lenders become entitled to own it.

4. Whether or not Cliffs' conduct results in the estate having claims against Cliffs is unclear at this time. What is clear is that ESML, its stakeholders and ultimately the Court, are entitled to know the salient facts so that informed decisions regarding the path forward can be made.

5. This 2004 Motion is filed in furtherance of that objective.

JURISDICTION AND VENUE

6. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested in this Motion are section 105 of title 11 of the Bankruptcy Code, Bankruptcy Rules 2004, 9014 and 9016, and Local Rule 2004-1.

BACKGROUND

A. General Background

7. On July 8, 2016 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"), thereby commencing the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. The Court has entered an order for the joint administration of the Chapter 11 Cases [Docket No. 32].

9. No trustee or examiner has been appointed in the Chapter 11 Cases. On July 19, 2016, an official committee of unsecured creditors (the “**Committee**”) was appointed in the Chapter 11 Cases.

10. Information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the commencement of the Chapter 11 Cases is set forth in the *Declaration of Sanjay Bhartia in Support of First Day Motions and Applications* (the “**First Day Declaration**”) [Docket No. 14].

B. Background Specific to the Motion²

1. The State Mineral Leases

11. ESML was formed to develop and operate a fully-integrated, seven (7) million tons per annum (mtpa) capacity pellet production facility, *i.e.*, the Project, in the western Mesabi Range in northern Minnesota. First Day Decl., ¶ 6. The Project will consist of an open-pit iron ore mine, crushing, concentrating and pelletizing facilities, and a rail line and train-loading system. *Id.* Among the Project’s potential core competitive strengths is its ability to supply multiple types of pellets on a competitive basis to both national blast furnace and electric furnace steel manufacturers due to lower costs and higher overall pellet quality. *Id.*

12. The land that ESML expects to utilize for the Project consists of, among other things, 6,154 acres for mining iron ore. First Day Decl., ¶ 10. ESML mainly leases the mineral rights to that land, and the largest percentage of those mineral rights is leased from the State of Minnesota’s Department of Natural Resources (“**DNR**”). *Id.*, ¶¶ 12-13. Specifically, ESML’s leases for mineral rights entered into with the DNR (the “**State Mineral Leases**”) comprise more than 40% of ESML’s total mineral rights. *Id.*, ¶ 13. Almost the entire balance of ESML’s

² Unless otherwise noted, all factual assertions provided herein are made upon information and belief.

mineral rights is leased from Great Northern Iron Ore Properties (“**GNIOP**”) (33.4%), Superior Mineral Resources, LLC (“**SMR**”) (17.2%), and the Langdon-Warren group (4.4%). *Id.* ESML has paid approximately \$13 million in royalties to these entities under the mineral leases.

13. The Debtors began working on the Project in 2008. Due to certain financial difficulties not at-issue in this Motion, however, the Debtors were unable to complete construction of the Project, and initiated these Chapter 11 Cases. The State Mineral Leases remain property of the estates.

2. Cliffs’ Interference with the State Mineral Leases

14. Cliffs is a direct competitor of ESML. Cliffs operates iron ore and pellet production facilities in northern Minnesota, including NorthShore Mining, United Taconite Mining, and Hibbing Taconite. Cliffs accounts for approximately 49% of the total blast furnace pellet production in the United States. In addition, because a significant number of blast furnace pellets are produced and consumed by steel manufacturers, Cliffs controls virtually all of the open market for blast furnace pellets in North America.

15. Cliffs has sought to derail the Debtors’ entry into the northern Minnesota iron ore mining and production market since 2014. For example, beginning in 2014 and continuing through the first half of 2015, Cliffs flew aircraft over the Debtors’ property to obtain aerial photographs of the progress of construction and apparently used the photos to paint a misleading picture of the progress. Furthermore, in January 2015, Lourenco Goncalves, Cliffs’ CEO, met with legislators from northern Minnesota and criticized the State of Minnesota’s decision to work with ESML towards extending ESML’s date to repay a State monetary grant to build infrastructure for the Project. (Ex. B) According to a legislator who attended the meeting, Mr. Goncalves “was passionate about protecting their [Cliffs’] interests in the domestic U.S. taconite

and steel markets.” *Id.* During the meeting, Mr. Goncalves also told the legislators that “Essar’s entry into the U.S. taconite iron ore market may upset what has been a well-balanced supply-and-demand chain.” (Ex. C). Just months later, on July 29, 2015, Mr. Goncalves gave a telephone interview to the Mesabi Daily News after touring the Project, telling the news outlet ESML would “need a miracle” to complete the Project and start producing iron ore pellets. (Ex. D). Mr. Goncalves added that ESML’s construction efforts “are only smoke and mirrors.” *Id.*

16. Just a few months later, in October 2015, Mr. Goncalves told the Mesabi Daily News that the Project, once complete, would directly compete with Cliffs, and that “[i]f they [the Project] go online, I will shut down a plant up there the same day.” (Ex. E).

17. There are also indications of a concerted effort by Cliffs to improperly influence the State of Minnesota, dating back to 2015, to acquire the Debtors’ mineral rights and the Project. Cliffs met with the State of Minnesota on August 4, 2015 to discuss Cliffs’ “interest in state taconite leases with the State of Minnesota,” in particular those “state taconite leases currently held by Essar Steel Minnesota, LLC.” (Ex. F (emphasis added)). At this time, the Debtors had hundreds of workers at the Project site every day, working to complete the Project, and ESML was working diligently with the State of Minnesota to ensure that the Project was built for the Debtors’ and the State’s benefit. The State of Minnesota apparently ultimately caved to Cliffs’ improper pressure and entered into an exclusivity agreement with Cliffs, documented in a letter from the State of Minnesota to Cliffs on October 15, 2015, whereby the State of Minnesota would offer the State Mineral Leases to Cliffs “in the event that the lands become available.” *Id.*

18. Tellingly, the State of Minnesota conditioned Cliffs’ ability to obtain the State Mineral Leases on Cliffs first “securing ownership or leaseholds to ore adjacent to the state ore.”

Id. In other words, Cliffs would have to first obtain the mineral rights that ESML holds pursuant to leases with GNIOP, SMR, and the Langdon-Warren group, and could then seek to obtain the mineral rights subject to the State Mineral Leases. The Debtors were unaware of this secret agreement until August 16, 2016, when it obtained the agreement from the State.

19. It appears that as a result of Cliffs' lobbying efforts and communications with State officials against the ESML project, the State of Minnesota determined it would not continue to work with the Debtors to allow them the time necessary complete the Project. For example, before the Debtors filed these Chapter 11 Cases, they had been negotiating with the State of Minnesota to obtain an extension of time in which to repay certain grant funds used to build infrastructure for the Project. While ESML did make some progress with the State in negotiating terms of a possible grant repayment agreement to repay the grant over a number of years, the State, again in part due to ongoing pressuring and interference by Cliffs, eventually took the position that the repayment deadline would not be extended.

20. In October 2015, Cliffs sent a proposed term sheet to the Debtors' secured lenders, via the agent, offering a "Proposed Right to Match Agreement." In the term sheet, Cliffs proposed to enter into an agreement with the Debtors' lenders for the sale of the leasehold interests to Cliffs by the secured lenders if they should come into ownership of the property by foreclosure in the future. The terms included a proposed agreement on a floor price that Cliffs would pay for the interest, an opportunity for the lenders to shop the assets to third parties and the right of Cliffs to match a deal at a higher price should the secured lenders enter into an agreement with an alternative purchaser. Cliffs even offered to pay a breakup fee to the

alternative purchaser if Cliffs agreed to match the price. The Debtors' secured lenders had not, and have not, foreclosed on any of the Debtors' property, including the leasehold interests.³

21. Mr. Goncalves has recently ramped up his rhetoric. When Cliffs announced in May 2016 that it finalized a new 10-year agreement to supply steelmaker ArcelorMittal with taconite pellets, Mr. Goncalves openly ridiculed ESML regarding what Mr. Goncalves described as ESML's attempt to eat into Cliffs' business. Mr. Goncalves boasted "[t]hey [Essar] were messing with the wrong guy." (Ex. G).

22. Since the Debtors filed these Chapter 11 Cases, Mr. Goncalves has openly encouraged the State of Minnesota to terminate the leases with ESML and transfer those same leases to Cliffs as part of Cliffs' efforts to acquire the Debtors' assets despite the ongoing reorganization process. On the Petition Date, for example, Mr. Goncalves issued a statement, noting that Cliffs viewed the Project "as part of our [Cliffs'] future growth plans toward the production of value-added iron products in Minnesota," and praised the State of Minnesota for attempting (albeit unsuccessfully) to terminate the State Mineral Leases. (Ex. H (emphasis added)).

23. Just four days after the Petition Date, on July 12, 2016, Mr. Goncalves attended a public meeting at the Cloverdale Township Hall (located just a couple of miles north of the ESML project site) with over 100 people in attendance including legislators from northern Minnesota. The stated purpose and agenda for this meeting was to talk about Cliffs' "future development of the former Butler Taconite site" [*i.e.*, the ESML site f/k/a Butler Taconite]. (Ex. I). At the meeting, Mr. Goncalves explained in no uncertain terms that Cliffs plans to acquire the

³ Indeed, by reaching out almost a year ago to seek to lock up the opportunity to buy the assets in foreclosure, Cliffs appears to be attempting a purchase that would avoid the Hart-Scott-Rodino Notice that would be required if it sought to purchase the Project once operational.

Debtors' assets, complete construction of the Project, and use the Project to produce DRI pellets for Cliffs' benefit irrespective of any efforts by the Debtors to restructure their debt and continue with the Project themselves. Specifically, Mr. Goncalves explained:

- DRI pellets will be the future of Minnesota's taconite iron ore industry;
- the Debtors' Project has several strategic advantages with respect to producing DRI pellets over Cliffs' current assets, as explained above (*see* ¶ 4, *supra*);
- Cliffs does not want to develop its current assets to produce DRI pellets because it will be more cost effective and timely to acquire the Debtors' mineral leases and the Project;
- Cliffs intends to start acquiring the Debtors' assets associated with the Project by obtaining the State Mineral Leases; and
- once Cliffs acquires the State Mineral Leases, it will leverage those to acquire the GNIOP, SMR, and Langdon-Warren group mineral leases held by ESML.

24. During Cliffs' Quarterly Conference Call on July 28, 2016, Mr. Goncalves continued his harsh rhetoric against ESML stating that "Essar Minnesota is also known as Neverland. Never finished, never producing pellets, never paying anyone" and asserting that "We have a signed commitment with Governor Dayton that we have – we are – as soon as Essar vacates the site, the lease are ours. So that was 41.6% of the land that's currently occupied by Essar. So it's a matter of time. It's not a matter of if; it's a matter of when. They are in breach of everything."

3. Cliffs' Interference with ESML's Offtake Agreement

25. There are also indications that Cliffs has similarly pursued and interfered with certain of the Debtors' other vital business relationships since before the Petition Date.

26. On December 17, 2012, ESML entered into an offtake agreement with ArcelorMittal (the “**ArcelorMittal Offtake Agreement**”).⁴ Under the agreement, as amended, ESML agreed to produce, and ArcelorMittal agreed to purchase a minimum quantity of iron ore pellets through 2027. First Day Decl., ¶ 25.

27. Under the terms of the ArcelorMittal Offtake Agreement, as amended, ESML was to start producing by July 1, 2016, iron ore pellets in a quantity to meet ArcelorMittal’s needs under its offtake agreement. An extension of the July 1, 2016 deadline for ESML to perform was being actively negotiated. Yet ArcelorMittal terminated its offtake agreement with ESML suddenly on Friday, May 27, 2016, when ArcelorMittal had a meeting scheduled with ESML to discuss an agreement in the works to extend the deadline until 2017 and well in advance of ESML’s deadline to perform. *Id.* Just four days later, after the holiday weekend, on Tuesday, May 31, 2016, Cliffs and ArcelorMittal announced that they had entered into a very lucrative, long-term offtake agreement through 2026. (Ex. J). Cliffs’ previous offtake agreements with ArcelorMittal were scheduled to expire in December 2016 and January 2017. In aggregate, this suggests that Cliffs was in contact with ArcelorMittal, encouraged ArcelorMittal to terminate its agreement and not negotiate a new agreement even as ESML was seeking contractual modifications and extensions. There is a reasonable basis to investigate Cliffs’ activities undertaken to prevent a new competitor from entering the market, as it controls approximately 49% of the total blast furnace pellet production in the United States, and virtually all of the open market for blast furnace pellets in North America.

⁴ ESML also entered into a separate offtake agreement with Essar Steel Algoma on January 28, 2014. That agreement is still in full force and effect, however, the Debtors would not be surprised to discover in the course of this investigation that Cliffs has been in contact with Essar Steel Algoma and sought to interfere with this contract as well.

RELIEF REQUESTED

28. By this Motion, the Debtors respectfully request entry of an order authorizing the Debtors to examine Cliffs, pursuant to Rule 2004, including that Cliffs be required to produce, not later than 15 days after the Court enters an order granting the Motion, all documents requested in the attached **Schedule A**, and that the Debtors be authorized to conduct a deposition on the topics set forth in the attached **Schedule B** not later than 30 days after Cliffs produces to the Debtors all relevant documents, without the need for further relief from this Court.

29. No previous motion for the relief sought herein has been made to this or any other court.

BASIS FOR RELIEF

30. Rule 2004(a) provides that “on motion of any party in interest, the court may order the examination of any entity.” Rule 2004(b) provides, in turn, that an examination under Rule 2004 may relate to:

the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate, or the debtor’s right to a discharge. . . . and any other matter relevant to the case or to the formulation of a plan.

31. A Rule 2004 inquiry is “unfettered and broad.” Collier on Bankruptcy ¶ 2004.02[1] (16th ed. Revised 2007) (internal quotations and citations omitted). As one court explained it:

[t]he understanding generally acceptable today is that the scope of a Rule 2004 examination is very broad. Rule 2004 discovery is broader than discovery under the Federal Rules of Civil Procedure, and has fewer procedural safeguards.

In re Drexel Burnham Lambert Group, Inc., 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991)

(citations omitted); *accord In re Larkham*, 24 B.R. 70, 71-72 (Bankr. D. Vt. 1982) (“[t]he scope

of examination is extremely broad and . . . it is in the nature of an inquisition and consequently the field of inquiry is wide”). Rule 2004 permits a party to undertake a broad inquiry “in the nature of a fishing expedition,” *In re Valley Forge Plaza Assoc.*, 109 B.R. 669, 674 (Bankr. E.D. Pa. 1990) (collecting citations), and courts have allowed examination of any third party who can be shown to have had dealings with the debtor. *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) (citing *Air Line Pilots Assoc., Int’l v. Am. Nat’l Bank & Trust Co. of Chi. (In re Ionosphere Clubs, Inc.)*, 156 B.R. 414, 432 (S.D.N.Y. 1993)).

32. A debtor may use “Rule 2004 to determine the nature and extent of a bankruptcy case and to ascertain whether wrongdoing has occurred.” *In re Hilsen*, 2008 WL 2945996, at *4 (Bankr. S.D.N.Y. 2008); *In re Recoton Corp.*, 307 B.R. at 755 (“[t]he purpose of a Rule 2004 examination is to assist a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, examining transactions and assessing whether wrongdoing has occurred”); *In re Washington Mut., Inc.*, 408 B.R. 45, 50 (Bankr. D. Del. 2009) (in granting debtors’ Rule 2004 motion for documents and a deposition to investigate potential business tort claims, noting the “[l]egitimate goals of Rule 2004 examinations include ‘discovering assets, examining transactions, and determining whether wrongdoing has occurred’”) (citations omitted)).

33. In deciding whether to permit Rule 2004 discovery, courts “balance the competing interests of the parties, weighing the relevance of and necessity of the information sought by examination.” *Drexel Burnham Lambert Group*, 123 B.R. at 712. The purpose of the request and its degree of intrusiveness are relevant to this determination. *See id.* at 711-12; *In re Hawley Coal Mining Corp.*, 47 B.R. 392, 394 (S.D. W. Va. 1984).

34. It is typical for a debtor to investigate the conduct of third parties that may have acted in a manner that harmed the debtor for their own interests, as well as to seek discovery related to potential causes of actions against such parties. As set forth below, the Debtors need information concerning Cliffs' actions to properly assess potential claims against Cliffs, including without limitation, tortious interference with the Debtors' contractual arrangements with third parties and violation of antitrust laws.

35. The claims potentially implicated by Cliffs' public statements and conduct are more than sufficient to merit further investigation by the Debtors.

A. The Debtors Require Information Regarding Potential Claims For Tortious Interference with Contract

36. The first critical area of inquiry is whether Cliffs tortiously interfered with ESML's State Mineral Leases, its relationships with its secured lenders, and with the ArcelorMittal Offtake Agreement.

37. To establish a claim for tortious interference with contract in Minnesota, ESML would need to show, (1) the existence of a contractual relationship, (2) the alleged wrongdoer's knowledge of the contract, (3) intentional procurement of its breach, (4) without justification, and (5) damages. *Kallok v. Medtronic, Inc.*, 573 N.W.2d 356, 362 (Minn. 1998). Interference with a contract is not justified when "it is done for the indirect purpose of injuring the plaintiff or benefitting the defendant." *Andersen v. Andersen*, 376 N.W.2d 711, 715-16 (Minn. Ct. App. 1985). The defendant has the burden of proving sufficient justification. *Id.*

38. Here, Cliffs' efforts since at least mid-2015 to secure for itself ESML's mineral rights raise serious questions as to whether Cliffs has tortiously interfered with, at the very least, the State Mineral Leases. A letter from the State of Minnesota, dated October 15, 2016, acknowledges Cliffs' efforts to secure for itself the State Mineral Leases. It acknowledges that,

in order to secure the State Mineral Leases, Cliffs would have to first secure ESML's mineral rights held pursuant to leases with GNIOP, SMR, and the Langdon-Warren group. There can be no doubt that Cliffs knew then and knows now that those mineral rights are crucial to the Debtors' business operations, and that those mineral rights are for iron ore that is of superior quality to iron ore accessible to Cliffs. Worse yet, when Cliffs explained its "proposal" to the State for the State Mineral Leases, Cliffs knew the Debtors had hundreds of workers at the Project site working to get the Project completed and operational. That did not stop Cliffs from making a play to keep ESML out of the market and to secure ESML's vital mineral rights. Accordingly further investigation into the issues discussed above as well as all of Cliffs' conduct relating to the Debtors' mineral rights and leases is warranted.

39. Mr. Goncalves' public statements merit further investigation into the foregoing theory. Mr. Goncalves has admitted in public statements that he knew about the State Mineral Leases. He also has admitted that he endeavored to encourage the State of Minnesota to terminate them as part of Cliffs' larger plan to secure its competitive advantage in the northern Minnesota iron ore industry, particularly with respect to producing DRI pellets, by acquiring the Debtors' very valuable and strategically well-positioned Project and mineral rights. Indeed, Mr. Goncalves' statements make clear that Cliffs intends to derail the Debtors' effort to reorganize and complete the (potentially very lucrative) Project for the benefit of their estates.

40. Cliffs' contact with the Debtors' secured lenders and attempt to secure a right to purchase assets upon which the secured lenders had not foreclosed also merits further investigation. Not only is this an important factor in what the Debtors' believe will turn out to be a broad scheme of interference, but seeking to induce a secured lender to foreclose or otherwise interfering with the Debtors' relationship with its secured lenders could give rise to other claims.

41. Similarly, the timing of ArcelorMittal's termination of its offtake agreement with ESML, and announcement of a replacement offtake agreement with Cliffs smacks of the same type of interference. It appears that, while Cliffs was lobbying the State of Minnesota to terminate the State Mineral Leases, it may have been lobbying ArcelorMittal to terminate its offtake agreement with ESML, thereby attempting to deprive the Debtors of both a substantial portion of their mineral rights and a vital source of revenue for the Project once it becomes operational. It is highly unlikely that ArcelorMittal would have terminated its offtake agreement with ESML, and, in the span of 4 days, negotiated from scratch an entirely new agreement with Cliffs in time to announce the agreement on May 31, 2016. In all likelihood, ArcelorMittal and Cliffs were in discussions well in advance of ArcelorMittal's termination of its offtake agreement with ESML.

42. Cliffs' public actions strongly indicate that Cliffs tortiously interfered with the Debtors' important contract rights, and the Debtors should be permitted to investigate those possible claims and to protect their assets during these Chapter 11 Cases. *See In re Washington Mut., Inc.*, 442 B.R. 314, 323 (Bankr. D. Del. 2011) (noting the court previously granted a motion for a Rule 2004 examination to enable the debtors to investigate a "tortious interference" claim, among others); *see also In re Countrywide Home Loans, Inc.*, 384 B.R. 373, 387 (Bankr. W.D. Pa. 2008) (in upholding UST's right to conduct a 2004 exam, rejecting Countrywide's argument that "allowing any party in interest (in this case the UST) to exam[ine] a third party to the extent requested in this case opens the floodgates for potential abuse of the Rule 2004 exam process;" "[t]he Court always remains available to rein in or restrict any attempt to abuse the process").

B. The Debtors Require Information Regarding A Potential Claim For Anti-Competitive Behavior

43. A second critical area of inquiry is whether Cliffs' conduct constitutes anti-competitive behavior in violation of the Sherman Act, 15 U.S.C. § 2 and the Minnesota Antitrust Law.

44. To show a violation of section 2 of the Sherman Act for having a monopoly, a plaintiff must show, (1) the defendant possesses a monopoly of power over the relevant market, and (2) the defendant willfully acquired or maintained that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident. *Queen City Pizza, Inc. v. Domino's Pizza, Inc.*, 124 F.3d 430, 437 (3d Cir. 1997) (citing *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 596 n. 19 (1985)). Similarly, to show a claim for attempted monopolization under section 2 of the Sherman Act, a plaintiff must show, (1) the defendant engaged in predatory or anticompetitive conduct, (2) with a specific intent to monopolize, and with (3) a dangerous probability of achieving monopoly power. *Id.* at 442.

45. As to Minnesota antitrust law, it is "generally interpreted consistently with federal antitrust law." *Lorix v. Crompton Corp.*, 736 N.W.2d 629, 626 (Minn. 2007). Courts analyzing claims under Minnesota's antitrust law treat them as analogous to federal claims, including under Section 2 of the Sherman Act, and generally analyze them together. *See, e.g., Minnesota Made Hockey v. Minnesota Hockey, Inc.*, 789 F. Supp. 2d 1133, 1141 n.2 (D. Minn. 2011).

46. Here, there are indications that Cliffs enjoys a strong, if not dominant, position in the U.S. iron ore pellet market. Cliffs accounts for approximately 49% of the total blast furnace pellet production in the United States. In addition, because a significant number of blast furnace pellets are produced and consumed by steel manufacturers, Cliffs controls virtually all of the open market for blast furnace pellets in North America. That market share, combined with

Cliffs' public statements regarding its efforts to acquire ESML's mineral leases and the Project, and the suspicious timing of its entry into an offtake agreement with ArcelorMittal, suggest Cliffs was engaged in anticompetitive behavior in order to protect its market share at the expense of the Debtors and their estates. The Debtors should be able to investigate, among other things, the market relevant to Cliffs' iron ore pellet producing activities, Cliffs' intent with respect to how it would acquire the Debtors' assets, and Cliffs' market share. Investigation into these areas, and other matters relevant to claims for anti-competitive behavior, may show that Cliffs used its market position in efforts to keep the Debtors from competing with Cliffs.

RESERVATION OF RIGHTS

47. The Debtors reserve all rights to request, pursuant to Rule 2004 or otherwise, additional documents or examination of parties upon review of the documents produced in connection with this Motion.

NOTICE

48. Notice of this Motion has been given to counsel for Cliffs, the United States Trustee, and those parties that have filed requests for notices in this case pursuant to Bankruptcy Rule 2002.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached as Exhibit A hereto, granting the Motion and such other and further relief as this Court deems just and proper.

Dated: August 23, 2016

Respectfully submitted,

/s/ L. John Bird

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SCHEDULE A

DEFINITIONS

The terms and instructions below apply to the following Document Requests:

1. Capitalized terms used but not defined herein have the meaning ascribed to them in the Motion.
2. Each reference to a corporation, partnership, joint venture, unincorporated association, government agency or other fictitious person shall be deemed to include each and all of its subsidiaries, affiliates, predecessors and successors, and with respect to each of such entities, its officers, directors, shareholders, employees, partners, limited partners, representatives, agents, accountants, attorneys and any other person who acted on its behalf.
3. Each reference to a natural person shall be deemed to include that person's agents, attorneys and any other person who acted on that person's behalf.
4. References to the singular shall include the plural and references to the plural shall include the singular; the conjunctive shall include the disjunctive and the disjunctive shall include the conjunctive.
5. "Affiliate" of any specified Person means any other Person that directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified.
6. "Algoma" means Essar Steel Algoma Inc. and any of its respective current or former affiliates, subsidiaries, parent corporation, predecessors, or successor entities; and all of its respective current or former directors, offices, employees, agents, attorneys, advisors, and representatives.

7. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

8. “Any,” “all” and “each” shall be construed broadly, and shall mean each, any and all as necessary to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

9. “ArcelorMittal” means ArcelorMittal USA LLC and any of its respective current or former affiliates, subsidiaries, parent corporation, predecessors, or successor entities; and all of its respective current or former directors, offices, employees, agents, attorneys, advisors, and representatives.

10. “Asset” means movable, immovable or real property of any kind.

11. “Bankruptcy Case” means the jointly administered chapter 11 cases, commenced by the Debtors in the Bankruptcy Court.

12. “Bankruptcy Code” means title 11 of the United States Code, as amended.

13. “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware or such other court as is presiding over the Bankruptcy Case.

14. “Communication” means the transmittal of information of any kind, in any form and by any means. All such communications in writing shall include, without limitation, printed, typed, handwritten or other readable Documents, correspondence, memos, reports, contracts, both initial and subsequent, diaries, logbooks, minutes, notes, studies, surveys and forecasts.

15. “Concerning” means comprising, consisting of, referring to, reflecting, regarding, supporting, evidencing, relating to, prepared in connection with, used in preparation for, or being

in any way legally, logically or factually concerned with the matter or Document described, referred to or discussed.

16. “Debtors” means, collectively, Essar Steel Minnesota LLC (“**ESML**”) and ESML Holdings Inc. (“**Holdings**”), which filed voluntary chapter 11 petitions under the Bankruptcy Code commencing the Bankruptcy Case, and any of their respective current or former affiliates, subsidiaries, parent corporation, predecessors, or successors entities; and all of their respective current or former directors, offices, employees, agents, attorneys, advisors, and representatives.

17. “Describe” means:

- a. When used in reference to an individual person shall mean to state his or her full name, present home address, or last home address if present home address is unknown, his or her business affiliation and business address and phone number; and
- b. When used in reference to a document shall mean to state the type of document, date, author, or addressee, title, its present location, the name and address of its custodian, and the substance of its contents. In lieu of the foregoing, a copy of the document may be attached in reference as an exhibit to your answer.

18. “Document” is used in its broadest sense and means any printed, written, typed, recorded, transcribed, taped, photographic, or graphic mater, however produced or reproduced, including, but not limited to: any letter, correspondence, or communication of any sort; film, print or negative of photograph; sound recording; video recording; note, notebook, diary, calendar, minutes, memorandum, contract, agreement, or any amendment thereto; telex, telegram, cable; summary, report or record of telephone conversation, voice mail or voice mail

back-up, personal conversation, discussion, interview, meeting, conference, investigation, negotiation, act or activity; projection, work paper, or draft; computer or compute network output or input, hard or floppy disc, e-mail, magnetic and/or optical medias, archived or back up data on any of these medias, and documents that have been deleted but are recoverable from any of these medias; opinion or report of consultant; request, order, invoice or bill of lading; analysis, diagram, map, index, sketch, drawing, plan, chart, manual, brochure, pamphlet, advertisement, circular, newspaper or magazine clipping, press release; receipt, journal, ledger, schedule, bill, or voucher; financial statement, statement of account, bank statement, checkbook, stubs, or register, canceled check, deposit slip, charge slip, tax return (income or other), requisition, file, study, graph, tabulation, and any and all other writings and recording of whatever nature, whether signed or unsigned or transcribed, and any other data compilation from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonable usable form; including, without limitation, all things meeting the definition of “Documents” or “electronically stored information” set forth in Rule 34 of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, or meeting the definition of “writings and recordings” set forth in Rule 1001 of the Federal Rules of Evidence. Any document with any marks such as initials, comments, or notations of any kind is not deemed to be identical to one without such marks and is a separate document within the meaning of this term.

19. “GNIOP” means the trust created under that certain Trust Agreement executed December 7, 1906, by and between the Lake Superior Company, Limited, an association organized under the laws of the State of Michigan, and Louis W. Hill, James N. Hill, Walter J. Hill, and Edward T. Nichols, which trust is commonly known as Great Northern Iron Ore

Properties, and any of its respective current or former trustees, affiliates, subsidiaries, parent corporations, predecessors, or successor entities, including, but not limited to, ConocoPhillips or any beneficiary or reversionary interest holder of the trust, and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

20. “Including” means including but not limited to the referenced subject.

21. “Langdon-Warren Group” means Langdon-Warren Limited Partnership LLP, a Minnesota limited partnership; Jenny Langdon Limited Liability Company, a Colorado limited liability company; Alice Langdon, LLC, a Minnesota limited liability company, successor to Alice Langdon LLC; O’Neill Langdon LLC, a Minnesota limited liability company, successor to O’Neill Langdon Corporation; and LMGHH, LLC, a Minnesota limited liability company, successor to LMGH LLC, and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

22. “Person” means all natural persons, corporations, partnerships or other business associations and all other legal or governmental entities or associations.

23. “Petition Date” means the date upon which the Debtors commenced the Bankruptcy Case.

24. “Relate” and its variants encompass the terms “refer,” “reflect,” “constitute,” “evidence,” “in connection with,” and “concern” and shall be construed to bring within the scope of the Document Request, as applicable, all documents and information that comprise, evidence, constitute, describe, explicitly or implicitly refer to, were reviewed in conjunction with, or were generated as a result of the subject matter of the Document Request, as applicable, including, but not limited to, all documents and information that reflect, record, memorialize, discuss, evaluate,

consider, review, report, or otherwise evidence the existence of the subject matter of the Document Request, as applicable.

25. “State” or “State of Minnesota” mean and refer to the State of Minnesota, any of its agencies, and any of its respective current or former elected representatives and its agencies’, employees, agents, attorneys, advisors, and representatives, including but not limited to the Governor, officer of the Governor and any staff thereto, the Department of Natural Resources and any employees, agents, or representatives thereof.

26. “State Mineral Lease” means those certain leases for mineral rights entered into between ESML and the State of Minnesota Department of Natural Resources.

27. “SMR” means Superior Mineral Resources LLC and any of its respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successor entities and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

28. “You,” “your” and “Cliffs” shall mean and refer to Cliffs Natural Resources, Inc. and any of its respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successor entities and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

INSTRUCTIONS

29. Unless otherwise specified herein, the timeframe for these Document Requests is from January 1, 2007 to present.

30. Production Obligations. You are required to produce all responsive Documents that are in Your possession, custody or control, which includes, without limitation, any responsive Document that was or is prepared, kept, or maintained for personal use, in the

personal files, or as the personal property of any of Your Affiliates or representatives and any non-privileged Documents in the possession, custody or control of Your present and former attorneys, agents, or any other persons currently acting or who previously acted on Your behalf.

31. Redaction. Each request for Documents seeks production of the Document in its entirety, without abbreviation, modification, or redaction, including, but not limited to, all attachments, actual, proposed or contemplated envelopes, transmittal sheets, cover letters, exhibits, enclosures, or other matters affixed thereto.

32. Drafts. A request for Documents shall be deemed to include a request for all actual, proposed, or contemplated drafts or mark-ups thereof, revisions, modifications, or amendments thereto, and non-identical copies thereof, in addition to the Document itself.

33. Continuing Requests. These requests are continuing. If, after producing the requested Documents, You obtain or become aware of any further Documents responsive to these requests, You are required to produce such additional Documents.

34. Privileged or Proprietary Matter. In the event that You withhold any Document on the basis of any legal objection or privilege, You shall indicate the following information for each such withheld Document;

- a) date of Document;
- b) general character or type of Document (i.e. letter, memorandum, notes of meeting, etc.);
- c) the identity of the person in possession of the Document;
- d) the identity of the author of the Document;
- e) the identity of the original recipient or holder of the Document;
- f) relationship of the author, addressee and any other recipient;

- g) the general subject matter of the Document; and
- h) the legal basis, including, but not limited to, any legal objection or privilege for withholding the Document.

35. Lost or Destroyed Documents. If any Document that is the subject of these requests was at one time in existence, but was subsequently lost, discarded or destroyed, identify such Document as completely as possible, including the following information: (a) type of Document, (b) date of Document, (c) date when the Document became lost, discarded or destroyed, (d) circumstances under which the Document was lost, discarded or destroyed and (e) identity of all persons having knowledge of the contents of the Document.

36. Partial Production. If any Document cannot be produced in full, produce it to the extent possible, stating the reasons for Debtors' inability to produce the remainder, as well as any information, knowledge or belief it has concerning the unproduced portion.

37. No Responsive Documents. If there are no Documents responsive to a particular request, state so in writing.

DOCUMENT REQUESTS

1. All Documents Concerning any asset of the Debtors.
2. All Documents Concerning Communications between Cliffs and the State of Minnesota Concerning the Debtors, including any of the Debtors' assets.
3. All Documents Concerning any leases between ESML and the State of Minnesota, including, without limitation, Documents concerning (a) the State of Minnesota refusing to extend any deadline ESML had to perform under the State Mineral Leases, (b) any default or potential default by ESML under the State Mineral Leases, (c) the State of Minnesota terminating the State Mineral Leases with ESML, (d) Cliffs entering into mineral rights leases with the State of Minnesota regarding mineral rights that are currently or at any time were held

by ESML, and (e) ESML's infrastructure grant reimbursement obligations to the State of Minnesota or Itasca County.

4. All Documents Concerning any Communications between Cliffs and ArcelorMittal Concerning ESML.

5. All Documents Concerning Cliffs' pricing of its offtake agreement with ArcelorMittal.

6. All Documents Relating to analysis of Cliffs' market share for the sale of iron ore pellets.

7. All Documents Relating to analysis of the impact of ESML entering the market.

8. All Documents Concerning any mineral rights leases between ESML and any party other than the State of Minnesota, including, but not limited to, leases between ESML, on the one hand, and GNIOP, SMR, or the Langdon-Warren Group, on the other hand.

9. All Documents Concerning any agreements between Cliffs, on the one hand, and the State of Minnesota, GNIOP, SMR, or the Langdon-Warren Group, on the other hand, regarding mineral rights currently or at any time held by ESML.

10. All Documents Concerning any agreement between ESML and ArcelorMittal for the sale of iron ore pellets, including, without limitation, Documents Concerning (a) negotiations between Cliffs and ArcelorMittal for any offtake agreement for the purchase of iron ore pellets from Cliffs, (b) any default or potential default by ESML under any agreement with ArcelorMittal, (c) ArcelorMittal refusing to extend any deadline ESML had to perform under any agreement with ArcelorMittal, (d) ArcelorMittal's iron ore pellet requirements, (e) Cliffs' ability to meet ArcelorMittal's iron ore pellet requirements and (f) termination of ArcelorMittal's contract with ESML.

11. All Documents Concerning any agreement between Cliffs and ArcelorMittal for Cliffs to provide to ArcelorMittal iron ore pellets.

12. All Documents Concerning any Communication between Cliffs and Algoma relating to the sale of iron ore pellets, including, without limitation, Documents Concerning (a) negotiations between Cliffs and Algoma for any offtake agreement for the purchase of iron ore pellets from Cliffs, (b) any default or potential default by ESML under any agreement with Algoma, (c) Algoma refusing to extend any deadline ESML had to perform under any agreement with Algoma, (d) Algoma's iron ore pellet requirements, (e) Cliffs' ability to meet Algoma's iron ore pellet requirements, and (f) termination of Algoma's contract with ESML.

13. All Documents Concerning any acquisition by Cliffs of any asset or liability of the Debtors.

14. All Documents Concerning any Communications with any creditors of the Debtors, including, without limitation, Documents Concerning (a) the purchase by Cliffs of any of the Debtors' assets, (b) the operation by Cliffs of any of the Debtors' assets, (c) the Bankruptcy Case, (d) mineral rights currently or at any time held by ESML, and (e) ESML's ability to mine iron ore and produce iron ore pellets.

15. All Documents Concerning the quality of iron ore to which ESML currently holds mineral rights.

16. All Documents Concerning the ability of the facility in Nashwauk, Minnesota being built by the Debtors (the "**Project**") to produce iron ore pellets.

17. All Documents Concerning the ability of and cost for Cliffs' Northshore facility or any other facility owned or operated by Cliffs to produce direct-reduced iron ("**DRI**") pellets

relative to the ability of the Debtors to produce DRI pellets once the Project becomes operational.

18. All Documents Concerning any plans by Cliffs to acquire the Debtors' assets and use the Project to produce DRI pellets.

19. All Documents Concerning the cost to build a DRI pellet facility.

20. All Documents Concerning the cost to convert Cliffs' Northshore facility to a DRI pellet producing facility.

21. All Documents Relating to Your assertion that, if ESML's Plant goes online Cliffs will shut down a plant in northern Minnesota the same day.

22. All Documents Relating to Your assertion that the Project would produce "unneeded iron ore pellets capacity."

23. All Documents Relating to Your assertion that opening the Project "may displace existing Iron range jobs."

24. All Documents Relating to Your assertion that You have obtained a signed commitment from the State of Minnesota for ESML's State Mineral Leases.

25. A copy of any agreement with the State of Minnesota regarding mineral rights subject to the State Mineral Leases.

26. All Documents Relating to any agreement with the State of Minnesota regarding mineral rights subject to the State Mineral Leases.

27. All business plans Relating to the Debtors' assets, including, but not limited to, the State Mineral Leases.

28. All minutes of Cliffs' board of directors Concerning the Debtors' assets, including, but not limited to, the State Mineral Leases.

29. All Documents Concerning any investigation into or study on the impact of ESML's entry into the iron ore mining and pellet production market.

30. All Documents Concerning Cliffs' current share of the U.S., North American, and international iron ore pellet markets.

31. All Documents Concerning Cliffs' anticipated share of the U.S., North American, and international iron ore pellet markets if Cliffs acquires the Project.

32. All Documents Concerning Cliffs' view on the relevant market for iron ore pellets produced on the Western Mesabi Range.

33. All Documents Concerning analysis of the cost to enter the U.S., North American, and international iron ore pellet markets.

34. All Documents Concerning the barriers to entry into the U.S., North American, and international iron ore pellet markets.

35. All Documents Concerning Communications with the Debtors' lenders.

36. All Documents Concerning any efforts by Cliffs to acquire anything associated with the Project before or during the time when the Debtors acquired the assets in approximately 2007.

37. All Documents Concerning any Communications with the State of Minnesota, GNIOP, SMR, or the Langdon-Warren Group, regarding ESML's mineral leases.

38. All Documents Concerning any Communications with ArcelorMittal Relating to ESML's entry into the ArcelorMittal Offtake Agreement.

SCHEDULE B

DEFINITIONS AND INSTRUCTIONS

The terms and instructions below apply to the attached Deposition Topics:

1. Unless otherwise specified herein, the timeframe for these Topics is from January 1, 2007 to present.
2. Capitalized terms used but not defined herein have the meaning ascribed to them in the Motion.
3. Each reference to a corporation, partnership, joint venture, unincorporated association, government agency or other fictitious person shall be deemed to include each and all of its subsidiaries, affiliates, predecessors and successors, and with respect to each of such entities, its officers, directors, shareholders, employees, partners, limited partners, representatives, agents, accountants, attorneys and any other person who acted on its behalf.
4. Each reference to a natural person shall be deemed to include that person's agents, attorneys and any other person who acted on that person's behalf.
5. References to the singular shall include the plural and references to the plural shall include the singular; the conjunctive shall include the disjunctive and the disjunctive shall include the conjunctive.
6. "Affiliate" of any specified Person means any other Person that directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified.
7. "Algoma" means Essar Steel Algoma and any of its respective current or former affiliates, subsidiaries, parent corporation, predecessors, or successors entities; and all of its

respective current or former directors, offices, employees, agents, attorneys, advisors, and representatives.

8. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

9. “Any,” “all” and “each” shall be construed broadly, and shall mean each, any and all as necessary to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

10. “ArcelorMittal” means ArcelorMittal USA, LLC and any of its respective current or former affiliates, subsidiaries, parent corporation, predecessors, or successors entities; and all of its respective current or former directors, offices, employees, agents, attorneys, advisors, and representatives.

11. “Asset” means movable, immovable or real property of any kind.

12. “Bankruptcy Case” means the jointly administered chapter 11 cases, commenced by the Debtors in the Bankruptcy Court.

13. “Bankruptcy Code” means title 11 of the United States Code, as amended.

14. “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware or such other court as is presiding over the Bankruptcy Case.

15. “Concerning” means comprising, consisting of, referring to, reflecting, regarding, supporting, evidencing, relating to, prepared in connection with, used in preparation for, or being in any way legally, logically or factually concerned with the matter or Document described, referred to or discussed.

16. “Debtors” means, collectively, Essar Steel Minnesota LLC (“**ESML**”) and ESML Holdings Inc. (“**Holdings**”), which filed voluntary chapter 11 petitions under the Bankruptcy Code commencing the Bankruptcy Case, and any of their respective current or former affiliates, subsidiaries, parent corporation, predecessors, or successors entities; and all of their respective current or former directors, offices, employees, agents, attorneys, advisors, and representatives.

17. “GNIOP” means the trust created under that certain Trust Agreement executed December 7, 1906, by and between the Lake Superior Company, Limited, an association organized under the laws of the State of Michigan, and Louis W. Hill, James N. Hill, Walter J. Hill, and Edward T. Nichols, which trust is commonly known as Great Northern Iron Ore Properties, and any of its respective current or former trustees, affiliates, subsidiaries, parent corporations, predecessors, or successor entities, including, but not limited to, ConocoPhillips or any beneficiary or reversionary interest holder of the trust, and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

18. “Including” means including but not limited to the referenced subject.

19. “Langdon-Warren Group” means Langdon-Warren Limited Partnership LLP, a Minnesota limited partnership; Jenny Langdon Limited Liability Company, a Colorado limited liability company; Alice Langdon, LLC, a Minnesota limited liability company, successor to Alice Langdon LLC; O'Neill Langdon LLC, a Minnesota limited liability company, successor to O'Neill Langdon Corporation; and LMGHH, LLC, a Minnesota limited liability company, successor to LMGH LLC, and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

20. “Person” means all natural persons, corporations, partnerships or other business associations and all other legal or governmental entities or associations.

21. “Petition Date” means the date upon which the Debtors commenced the Bankruptcy Case.

22. “Relate” and its variants encompass the terms “refer,” “reflect,” “constitute,” “evidence,” “in connection with,” and “concern” and shall be construed to bring within the scope of the Document Request or Topic of Examination, as applicable, all documents and information that comprise, evidence, constitute, describe, explicitly or implicitly refer to, were reviewed in conjunction with, or were generated as a result of the subject matter of the Document Request or Topic of Examination, as applicable, including, but not limited to, all documents and information that reflect, record, memorialize, discuss, evaluate, consider, review, report, or otherwise evidence the existence of the subject matter of the Document Request or Topic of Examination, as applicable.

23. “State” or “State of Minnesota” mean and refer to the State of Minnesota any of its agencies, and any of its respective current or former elected representatives and its agencies’, employees, agents, attorneys, advisors, and representatives, including but not limited to the Governor, officer of the Governor and any staff thereto, the Department of Natural Resources and any employees, agents, or representatives thereof.

24. “State Mineral Lease” means those certain leases for mineral rights entered into between ESML and the State of Minnesota Department of Natural Resources.

25. “SMR” means Superior Mineral Resources, LLC and any of its respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successor entities and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

26. “You,” “your” and “Cliffs” shall mean and refer to Cliffs Natural Resources, Inc. and any of its respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successor entities and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

DEPOSITION TOPICS

1. All Documents produced in response to the Document Requests and the subject matter thereof.

2. Cliffs’ efforts to obtain mineral rights currently or at any time held by ESML pursuant to the State Mineral Leases.

3. Cliffs’ efforts to obtain mineral rights currently or at any time held by ESML pursuant to leases with any third party other than the State of Minnesota, including, without limitation, GNIOP, SMR, or the Langdon-Warren Group.

4. Cliffs’ efforts to own any assets currently or at any time owned by the Debtors, including, without limitation, the iron ore pellet facility being constructed in Nashwauk, Minnesota (the “**Project**”).

5. The quality of iron ore to which ESML currently holds or at any time held mineral rights pursuant to leases with the State of Minnesota, GNIOP, SMR, or the Langdon-Warren Group.

6. The quality of iron ore to which Cliffs currently has access for iron ore production.

7. Cliffs’ use or potential use of the Debtors’ Facility to, among other things, produce direct-reduced iron (“**DRI**”) pellets.

8. The cost, including the anticipated or estimated cost, to Cliffs of producing and shipping DRI pellets from any of its (Cliffs’) existing pellet facilities in Minnesota.

9. The cost, including the anticipated or estimated cost, to Cliffs of producing and shipping DRI pellets from the Project.

10. The cost, including the anticipated or estimated cost, to Cliffs of completing construction of the Project.

11. Cliffs' current share of the U.S., North American, and international iron ore pellet markets.

12. Cliffs anticipated share of the U.S., North American, and international iron ore pellet markets if it acquires the Project.

13. The cost of entry into the U.S., North American, and international iron ore pellet market.

14. Cliffs efforts to retain its current share of the U.S., North American, and international iron ore pellet market.

15. Competition within the U.S., North American, and international iron ore pellet market.

16. Any Communications between Cliffs and any of the creditors of the Debtors regarding Cliffs' potential purchase or acquisition of any of the Debtors' assets.

17. Any Communications between Cliffs and the State of Minnesota regarding the Debtors.

18. Any Communications between Cliffs and ArcelorMittal regarding the Debtors.

19. ESML's offtake agreement with ArcelorMittal.

20. Cliffs' offtake agreement with ArcelorMittal.

21. ESML's offtake agreement with Algoma.

22. Any discussions or agreement between Cliffs and Algoma for an offtake agreement.

23. Any efforts by Cliffs to acquire anything associated with the Project before or during the time when the Debtors first acquired the assets in 2007.

24. Any Communications with the State of Minnesota, GNIOP, SMR, or the Langdon-Warren Group, regarding acquiring all or part of the mineral rights that are the subject of ESML's mineral leases.

25. Any Communications with ArcelorMittal relating to the Debtors entry into the ArcelorMittal Offtake Agreement.

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies pursuant to Local Rule 2004-1(b) that Counsel to the Debtors and Debtors in possession has, by telephone, conferred, on the morning of August 23, 2016, with counsel for the proposed examinee, Cliffs Natural Resources Inc. (“Cliffs”), in an effort to arrange for a mutually agreeable date, time, place and scope of production. No agreement has been reached at this time. The Debtors will continue to confer with examinee’s counsel and seek to arrange for a mutually agreeable date, time, place, and scope of production and examination.

/s/ L. John Bird

L. John Bird, Esquire (#5310)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ESSAR STEEL MINNESOTA LLC and
ESML HOLDINGS INC.,¹

Debtors.

Chapter 11

Case No. 16-11626 (BLS)

(Jointly Administered)

Hearing Date: September 20, 2016 at 11:30 A.M.

Objections Due: August 30, 2016 at 4:00 P.M.

**NOTICE OF HEARING ON MOTION OF THE DEBTORS FOR ENTRY OF
AN ORDER DIRECTING DISCOVERY FROM CLIFFS NATURAL
RESOURCES INC. PURSUANT TO RULE 2004 OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE**

TO: (i) The Office of the United States Trustee for the District of Delaware, (ii) counsel to the Prepetition Secured Lenders, (iii) counsel to the Official Committee of Unsecured Creditors; and (iv) all parties requesting notices pursuant to Bankruptcy Rule 2002.

PLEASE TAKE NOTICE that Essar Steel Minnesota LLC and ESML Holdings Inc. have filed the attached **Motion of the Debtors for Entry of an Order Directing Discovery from Cliffs Natural Resources Inc. Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure** (the "Motion").

PLEASE TAKE FURTHER NOTICE that responses or objections to the Motion, if any, are to be filed on or before **August 30, 2016 at 4:00 p.m. (Prevailing Eastern Time)**. At the same time, you must serve a copy of the objection or response on the undersigned attorneys.

PLEASE TAKE FURTHER NOTICE that if any responses are timely filed in accordance with this Notice, a hearing on the Motion will be held on **September 20, 2016 at 11:30 a.m. (Prevailing Eastern Time)** before The Honorable Brendan L. Shannon at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE APPLICATION WITHOUT FURTHER NOTICE OR HEARING.

¹ The last four digits of Essar Steel Minnesota LLC's federal taxpayer identification number are 8770. The last four digits of ESML Holdings Inc.'s federal taxpayer identification number are 8071.

Dated: August 23, 2016

Respectfully submitted,

/s/ L. John Bird

Jeffrey M. Schlerf (DE No. 3047)

L. John Bird (DE No. 5310)

Courtney A. Emerson (DE No. 6229)

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