

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

---

NUBAI GLOBAL INVESTMENT  
LIMITED,

Plaintiff,

v.

THOMAS M. CLARKE,

Defendant.

---

**DECLARATION OF JOHN ORAM IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION**

John Oram, pursuant to 28 U.S.C. § 1746, declares as follows:

INTRODUCTION

1. I am the Authorized Signatory for Nubai Global Investment Limited, a British Virgin Islands Corporation (“Nubai”). I am also a director of Chippewa Capital Partners, LLC, a Minnesota limited liability company (“Chippewa”) and Mesabi Metallica Company, LLC, also a Minnesota limited liability company (“Mesabi”). Nubai is the sole member of Chippewa, and Chippewa is the sole member of Mesabi.

2. I have personal knowledge of the matters addressed in this Declaration and I am competent to testify about them.

3. I make this Declaration in support of Nubai’s motion for a temporary restraining order (“TRO”) and preliminary injunction prohibiting Thomas M. Clarke (“Clarke”) from (i) representing himself as an owner, director, governor, officer, employee or agent of Chippewa or Mesabi; (ii) taking any actions purportedly on behalf

of Chippewa or Mesabi, including but not limited to, engaging with Minnesota Department of Natural Resources, the Office of the Governor of the State of Minnesota, or the noteholders of Mesabi; (iii) communicating with or instructing any Mesabi or Chippewa employee, lawyers or other advisors on matters related to Mesabi or Chippewa, respectively; (iv) revealing any confidential information of Chippewa or Mesabi; (v) using, occupying, or accessing any of Mesabi or Chippewa's offices, premises, computer or communication systems under color of authority or (vi) selling any interest in or offering securities of any kind in Mesabi or Chippewa. I also make this Declaration in order to request grant of specific relief so as to compel Clarke to (i) disclose all usernames and passwords held by him relating to Mesabi or Chippewa; and (ii) to return any and all properties, tangible and intangible, belonging to Mesabi or Chippewa in his possession or control. Clarke is a former director and officer of Mesabi and Chippewa.

4. This action is necessary because defendant Clarke has gone rogue. Without any authority, Clarke has purported to remove the other two directors in each of Chippewa and Mesabi, and anointed himself as the sole director, chief executive officer, spokesperson and leader of those companies, in which he has no ownership or contractual rights. Furthermore, he proceeded to announce these unauthorized actions to the press, employees of the two companies, and key third parties such that those parties believe that he alone has authority to take the actions on behalf of the companies. The sole owner of Chippewa and Mesabi is Nubai and it removed Clarke from all positions and offices held by him in both companies pursuant to the operating

agreements of those companies. However, Clarke has simply ignored the written resolutions removing him and instead arrogated to himself all the authority of sole owner, sole director, sole officer and sole spokesperson. At the time of making this affidavit, Clarke continues to fraudulently misrepresent himself as the sole authority to make all decisions with regard to both the companies.

### BACKGROUND

5. On July 8, 2016, Essar Steel Minnesota LLC, a Minnesota limited liability company (now known as Mesabi Metallics Company LLC) engaged in developing a massive project to mine iron ore in Minnesota and construct an integrated iron ore mine and pellet plant with an installed capacity of 7 million tons of pellets (the “Project”), filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code in Delaware, Case No. 16-11626 BLS. On April 26, 2017, after an auction, the debtors in possession, in consultation with the creditors and the backing of Nubai, elected Chippewa as the successful bidder for the reorganized bankruptcy estate. The Third Amended Plan for Reorganization of Mesabi (the “Plan”) was confirmed by the Court on June 13, 2017 and became effective on December 22, 2017. On November 3, 2017, under an Amended and Restated Member Unit Sale Agreement, plaintiff Nubai acquired 95% of the ownership interest of Chippewa from Clarke effective as of the effective date of the Plan, which date as December 22, 2017. A copy of the Unit Sale Agreement is attached hereto as Exhibit 1.

6. On May 30, 2018, Nubai entered into an Exit and Settlement Agreement (the “Exit Agreement”) with Chippewa, DSA Investments Inc., DSA Group DMCC,

ENCECO, Inc., ERP Iron Ore, LLC, Mesabi, Merida Natural Resources LLC (“Merida”), Miranda Mineral Resources, LLC and Pocahontas Natural Resources LLC to resolve certain differences and to consummate the exit of Clarke entities from Chippewa. A copy of the Exit Agreement is attached hereto as Exhibit 2. Under the Exit Agreement, Nubai obtained all the remaining five percent (5%) of the membership units of Chippewa, “free of any encumbrances and together with all rights attached or accruing to them,” from Merida, an entity owned by Clarke, and ENCECO, Inc., a nominal interest-holder aligned with Clarke. *See* Exit Agreement, § 2.1. Section 2.1(c) of the Exit Agreement further provided that “Sellers represent and warrant to the Buyer that: (i) the Units are fully paid, or credited as fully paid....”

7. Immediately after the closing of the sale of Chippewa membership units under the Exit Agreement, Clarke signed and delivered to Nubai a Membership Certificate in Chippewa (Certificate Number 5) dated June 1, 2018 (“Chippewa Member Certificate No. 5”), which certifies that Nubai was the owner of 100 membership units of Chippewa. A copy of Chippewa Member Certificate No. 5 is attached hereto as Exhibit 3.

8. Consistent with the Exit Agreement and Certificate No. 5, Clarke also updated the Member Interest Register of Chippewa on June 1, 2018 (the “Chippewa Member Register”). A copy of the Chippewa Member Register is attached hereto as Exhibit 4. The Chippewa Member Register identifies Nubai as owning 100% of the Chippewa member interests as of June 1, 2018.

9. To confirm that Nubai had obtained all the membership units of Chippewa, free of any encumbrances, on June 3, 2018, Timothy Dixon, the attorney for Clark, Merida, Pocahontas and ENCECO, wrote a letter to me (the “Dixon Letter”) in which he stated: “I hereby confirm that Membership Certificate Number 5 and the Member Interest Register are sufficient to cause Nubai to own 100% of the membership interests in Chippewa.” A copy of the Dixon Letter is attached hereto as Exhibit 5. In the Dixon Letter, Mr. Dixon further stated “this letter does confirm that none of Merida, ENCECo, *Thomas M. Clarke* nor Charles A. Ebetino, Jr. have retained any membership interest in Chippewa.” *See* Exhibit 5, p. 1 (emphasis added). These documents collectively affirm that Chippewa is owned solely by Nubai. At that time, Clarke was the Chief Executive Officer of Chippewa and signed the Exit Agreement on behalf of Chippewa, thereby obviating any doubt as to the existence or validity of the sale consummated under the Exit Agreement. Clarke personally executed the above-noted Membership Certificate No. 5, and the Chippewa Member Register.

10. The Exit Agreement also provided that “Nubai may amend and restate the Chippewa [Operating] Agreement and Mesabi [Operating] Agreement into a form acceptable to Nubai.” *See* Exhibit 2, § 4.4(h). Effective June 2, 2018, Nubai executed the Third Amended and Restated Limited Liability Company Agreement of Chippewa Capital Partners, LLC (the “Third Chippewa Operating Agreement”) and caused Chippewa to execute the Amended and Restated Limited Liability Company Agreement of Mesabi Metallics Company LLC (the “Amended Mesabi Operating Agreement”).

The Third Chippewa Operating Agreement and the Amended Mesabi Operating Agreements are attached hereto as Exhibit 6 and 7, respectively.

11. The Third Chippewa Operating Agreement controls all matters relating to the governance of Chippewa and the Amended Mesabi Operating Agreement controls all matters relating to the governance of Mesabi. Clarke was present at the meeting in which the amended and restated operating agreements were adopted.

12. Section 7.3(a) of the Third Chippewa Operating Agreement provides, in pertinent part: “The Members shall be entitled to remove any Director or Officer by Special Majority Approval at any time.”<sup>1</sup>

13. Section 7.3(a) of the Mesabi Operating Agreement similarly provides, in pertinent part: “The Members shall be entitled to remove any Director or Officer by Special Majority Approval at any time.”<sup>2</sup>

#### CLARKE’S COUP

14. After Nubai acquired 100% ownership interest in Chippewa and by extension, Mesabi, it allowed Clarke to continue as a director and the Chief Executive Officer of both the companies, it being expressly understood that Nubai had the right to remove him at any time. See Recital 10 of the Exit Agreement.

---

<sup>1</sup> Article 1 of the Operating Agreement defines Special Majority Approval as “approval by the Members holding, collectively, more than 75.1% of the aggregate Common Percentage Interest. The same provision also defines the terms, Common Percentage Interest, Common Units and Units. These provisions, collectively, make it abundantly clear that Chippewa has only one class of membership interests called Common Units, and as noted above, all of them are issued to and validly held by Nubai.

<sup>2</sup> The Mesabi Operating Agreement contains provisions identical to those set forth in footnote 1 above in the context of Chippewa.

15. During the week of July 16, 2018, I advised Thomas Clarke that Nubai had decided to replace him as Chippewa's and Mesabi's Chief Executive Officer and Clarke indicated that he would resign. To effectuate his resignation, Clarke and I had several discussions that week about arrangements for him to resign the following week.

16. Soon, Clarke abruptly reversed his position. Instead of continuing in good faith the discussions to effectuate a smooth transition, on July 22, 2018, Clarke sent to a wide group of individuals a "Notice of Removal of Nubai Directors from Boards of Chippewa Capital Partners, LLC and Mesabi Metallica Company LLC For Funding Defaults and Breaches of Fiduciary Duty" (the "Clarke Notice") and attempted to effectuate a coup of the two companies. A copy of the Clarke Notice is attached hereto as Exhibit 8. It is dated July 23, 2018, but was sent on July 22, 2018.

17. The Clarke Notice seeks to manufacture arguments resolved and released under the Exit Agreement. Clarke was paid a substantial sum of money as consideration for that agreement. Having bought out a disgruntled and disruptive equity owner for fair value, paid bargained for sums for releases fairly obtained, invested or committed to invest hundreds of millions of dollars, expended enormous time and effort in developing the Project and working with various stakeholders, and having acquired all of the ownership interest in the companies, Nubai cannot simply be subject to a coup of grand scale, design and drama by a former partial owner, director or officer.

18. Simply put, Clarke had no authority under any agreement or at law to oust the owner's representatives to the board or offices of the two companies; all the directors and officers, including Clarke, serve in their position or office at the pleasure of owner

of the companies. In this case, Nubai, which is the holder of all ownership interest in Chippewa.<sup>3</sup>

19. On July 23, 2018, pursuant to the authority vested in it under applicable law and the Chippewa Third Operating Agreement, Nubai executed a sole member resolution removing Clarke from all positions at Chippewa, including the positions of director and Chief Executive Officer (the “Chippewa Sole Member Resolution”). A copy of the Chippewa Sole Member Resolution is attached hereto as Exhibit 9.

20. Also, on July 23, 2018, Chippewa, pursuant the authority vested in it under applicable law and the Mesabi Amended Operating Agreement, executed a sole member resolution removing Clarke from all positions at Mesabi, including the positions of director and Chief Executive Officer (the “Mesabi Sole Member Resolution”). A copy of the Mesabi Sole Member Resolution is attached hereto as Exhibit 10.

21. The Chippewa and Mesabi Sole Member Resolutions were sent to Clarke on July 24, 2018 at 6:48 a.m. central time. A copy of the letter sent to Clark attaching the two resolutions is attached hereto as Exhibit 11.

22. Notwithstanding his removal, Clarke has taken and is currently taking all steps to thwart Nubai, the sole member, from running the companies and appears intent on destroying the hundreds of millions of dollars Nubai has invested in reviving the Project. He is doing so in spite of being told that he was on the wrong side of the law.

---

<sup>3</sup> Although not relevant to this motion, Clarke’s allegations concerning breaches of funding obligations and fiduciary duty are false. Nubia has invested and assumed liabilities in excess of \$250,000,000 in connection with the Project with a view to revive Mesabi, preserve and create employment in Minnesota, and revive its iron ore mining and beneficiation industry. The livelihood of many depends on the success of the Project.

23. For example, Susan Fennessey, Mesabi's General Counsel ("Fennessey") advised Clarke on July 25, 2018 that the resolutions of Chippewa's and Mesabi's sole owners were valid and enforceable. In response, Clark immediately cut off her access to the Mesabi computer systems and email server and thereafter sent her a notice suspending her from her role as General Counsel (the "GC Suspension Notice"). Nubai has informed Fennessey that she is not suspended and has requested her to assist with various essential tasks in the last week. Fennessey, however, has been unable to act because she has been shut out by Clarke from the company's computer systems and emails. There is apprehension that these systems are being or have been tampered with.

24. In addition, Clarke had meetings scheduled for July 26, 2018 with Minnesota Governor Mark Dayton and Itasca County Attorney Jack Muhar, related to the Project. In the GC Suspension Notice, Clarke forbid Mesabi's General Counsel from attending those meetings.

25. On July 26, 2018, despite having been removed from his positions in Mesabi by the sole owner, Clarke went ahead and met with Governor Dayton and County Attorney Muhar. Upon information and belief, Clarke sought to mislead both by representing to them that he maintained an equity stake in Chippewa and was the sole director and CEO of Chippewa and Mesabi.

26. Notwithstanding his removal, Clarke has also misled the media concerning his positions at Chippewa and Mesabi. For example:

- Clarke told Eyewitness News that he remains the Chief Executive Officer of Mesabi Metallics and Chippewa Capital, saying media reports that he had been ousted were incorrect. He also provided a sheet to Eyewitness News claiming

that Chippewa is a joint venture between Merida Natural Resources (Tom Clarke and his wife) and Nubai.<sup>4</sup> A copy of the article posted on the WDIO-TV website is attached hereto as Exhibit 12.

- Clarke told the Duluth News Tribune that “he maintains the role of CEO and sole director of Chippewa” and also “has the title of Chairman of the board after he removed two other board members over the weekend.” A copy of the Duluth News Tribune article is attached hereto as Exhibit 13.

27. Clarke has essentially attempted to steal Chippewa and Mesabi from Nubai and appears intent on attempting to perpetuate a fraud on the equity owner, noteholders and other interested parties associated with the Project.

28. Clarke’s action are reckless, given that Mesabi has only recently received its mineral leases from the state and is seeking to move forward with construction activities and finalization of financing. Clarke’s actions threaten to destroy Nubai’s investment and goodwill in connection with the Project. A TRO and Preliminary Injunction are required to prevent permanent damage to Mesabi and for the survival of the Project.

29. For example, at the time that Clarke launched his unlawful “takeover” of Mesabi, the company was in the process of obtaining the consent of its noteholders to extend certain deadlines from July 31, 2018 to August 31, 2018. That process, involving several key stakeholders and hundreds of millions of dollars in funds, has been disrupted by cutting off Mesabi’s General Counsel from the company’s files, systems and emails. Without timely consent, Mesabi may be held in default by its noteholders.

---

<sup>4</sup> Clarke’s statement that Chippewa is a joint venture between Merida and Nubai is belied by the Chippewa Member Register he signed on June 1, 2018 and the June 3, 2018 letter from his attorney confirming Nubai owns 100% of Chippewa.

30. Mesabi is also in litigation in United States Bankruptcy Court for the District of Delaware on the following cases:

(1) *Mesabi v. Cliffs et al.*, Adv. Proc. No. 17-51210 (BLS); and

(2) *Cleveland-Cliffs Minnesota Land Development LLC v. Mesabi Metallics Co., LLC, et al.*, Adv. Proc. No. 18-50416.

Critical decisions are to be made and instructions given to Mesabi's counsel in those cases. However, neither Nubai nor Mesabi's general counsel has access to the files and other information necessary to inform on those decisions and instructions.

31. Nubai has informed all employees of Mesabi that Clarke has been terminated as director and officer; however, apparently under some kind of fear not known to me, they continue to take instructions from Clarke, thereby jeopardizing the working of the companies.

32. Mesabi also needs to coordinate with officials at the state and county levels regarding the Project. Clarke's continued false statements to those officials and the media threatens to undermine Mesabi's credibility and the confidence of the officials and the public in the Project.

33. Further, critical environmental reporting is due on July 31, 2018. With Mesabi's General Counsel cut off from communications and files, she has not been able to review those filings. I do not believe anyone else has reviewed the draft filing or is planning on making them. Mesabi will be seriously harmed if these filings are not timely made.

34. Funding for construction activities and the preservation and protection of assets is imperative to the continuation and success of the Project. Funding is not coming from Clarke; indeed, the sole source of funds, including working capital, for Chippewa and Mesabi is Nubai and Nubai has reason to be extremely nervous as to how a non-owner director or officer could simply oust the board of the companies and assume the role of the owner and hold himself out as such.

35. Further, he has written to employees that “we are working to sell the Nubai forfeited equity to a highly credible replacement investor.” See Exhibit 14.

36. The foregoing are just some examples of critical, time-sensitive issues that Nubai and the duly appointed directors are being shut out from adequately addressing. Undoubtedly, there are other serious issues that arise almost every day. Nubai and the duly appointed directors of the companies are being deprived of any information on those issues and the right to remedy them. Clarke is taking deliberate steps to destroy the Project under delusional notions of authority.

#### CONCLUSION

37. Nubai is the sole and legitimate owner of Chippewa and Mesabi. If Clarke is allowed to continue with his rogue actions of wresting unlawful control over Chippewa and Mesabi after being lawfully terminated by the sole owner, the entire Project will fall to pieces and Nubai will be seriously challenged in putting it back together. The harm to Nubai and the Project is immediate and of alarming proportions and scale that cannot be fully remedied by recovering monetary damages at some later date.

38. For the foregoing reasons, and those stated in Nubai's Memorandum of Law in support of this motion, Nubai respectfully requests that its application for a TRO and Preliminary Injunction be granted.

Dated: July 30, 2018

For NUBAI GLOBAL INVESTMENT LIMITED

A handwritten signature in black ink, appearing to read "J. Oram", written over a horizontal line.

JOHN ORAM  
AUTHORIZED SIGNATORY

[EXHIBITS FOLLOW]

**EXHIBIT**  
3

**THE UNITS REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT EFFECTIVE UNDER SUCH ACT AND LAWS, OR (B) PURSUANT TO AN EXEMPTION FROM REGISTRATION THEREUNDER.**

Certificate No. 5

Number of Units: 100.00

**Membership Certificate**  
**CHIPPEWA CAPITAL PARTNERS, LLC**

A Minnesota Limited Liability Company

This Certifies that Nubai Global Investment Limited is the owner of 100.00 membership interest units of **CHIPPEWA CAPITAL PARTNERS, LLC**, a Minnesota Limited Liability Company (the "Company"). The Company represents that this Certificate has been duly authorized under the terms of the Company's Operating Agreement among the Company and its Members (the "Operating Agreement").

THE UNITS REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE OPERATING AGREEMENT, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL EXECUTIVE OFFICE OF THE COMPANY. NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE UNITS REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH OPERATING AGREEMENT.

In witness whereof, the Company has caused this certificate to be executed on its behalf by a duly authorized Manager of the Company.

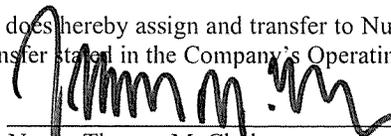
Dated: June 1, 2018

  
\_\_\_\_\_  
Chief Executive Officer

**IRREVOCABLE CERTIFICATE POWER**

For value received, Chippewa Capital Partners, LLC does hereby assign and transfer to Nubai Global Investment Limited the membership interest units represented by this certificate, subject to the conditions for transfer stated in the Company's Operating Agreement.

**TRANSFEROR'S SIGNATURE:**

  
\_\_\_\_\_  
Name: Thomas M. Clarke

**Date:** \_\_\_\_\_

**EXHIBIT**

4

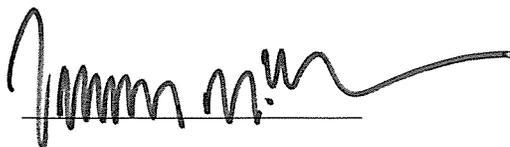
Member Interest Register of Chippewa Capital Partners, LLC

DATE ISSUED	CERT #	MEMBER'S NAME	% OF INTERESTS	CERT LOCATION	STUB RECV'D	TRANSFERRED TO	% INTERESTS TRANS	SHARE STATUS
4/06/2017	None	ENCECO, Inc.	100	N/A	N/A	Charles A. Ebetino, Jr.	100	VOID
4/27/2017	None	Charles A. Ebetino, Jr.	100	N/A	N/A	Thomas M. Clarke	100	VOID
11/3/2017	1	Thomas M. Clarke	100	192 Summerfield Court, Suite 203, Roanoke, VA 24019		CANCELLED	CANCELLED	CANCELLED
12/22/2017	1	Merida Natural Resources, LLC	3.75	192 Summerfield Court, Suite 203, Roanoke, VA 24019		Nubai Global Investment Limited	3.75	VOID
12/22/2017	2	ENCECO, Inc.	1.25	3694 Seaford Drive, Columbus, OH 43220		Nubai Global Investment Limited	1.25	VOID
12/22/2017	3	Nubai Global Investment Limited	95			Chippewa Capital Partners, LLC	34.75	VOID
4/16/2018	N/A	Chippewa Capital Partners, LLC	34.75	N/A		Nubai Global Investment Limited	34.75	VOID
4/16/2018	4	Nubai Global Investment Limited	60.25	192 Summerfield Court, Suite 203, Roanoke, VA 24019		Nubai Global Investment Limited	60.25	VOID
6/01/2018	5	Nubai Global Investment Limited	100.00	192 Summerfield Court, Suite 203, Roanoke, VA 24019				

\* The above information is provided as the date hereof and is private and confidential.

\*Last updated on June 1, 2018

Thomas M. Clarke, Chief Executive Officer



Attestation:



Astrika W. Adams, Esq.  
Attorney in Fact

**EXHIBIT**  
**5**

THE LAW OFFICE OF  
TIMOTHY E. DIXON, PA  
9801 MICHAELS WAY  
ELLCOTT CITY, MARYLAND 21042  
(410)608-9599 (VOICE)  
(443)836-9161 (FAX)  
TEDIXON@DIXONLAW.BIZ

June 3, 2018

Nubai Global Investment Limited  
Marcy Building, 2<sup>nd</sup> Floor  
Purcell Estate, PO Box 2416, Road Town  
Tortola, British Virgin Islands  
Attention: John M. Orem

**RE: Transfer of Membership Interests in Chippewa Capital Partners, LLC**

Dear Mr. Orem:

You have asked me to confirm in writing that the transfers described in this letter will result in Nubai Global Investment Limited (“Nubai”) owning 100% of the membership interests in Chippewa Capital Partners, LLC (“Chippewa”). In order to provide such confirmation, I have reviewed the following documents: (i) an Exit and Settlement Agreement dated May 30, 2018 (the “Exit Agreement”) by and among Chippewa, DSA Investments Inc., DSA Group DMC, ENCECO, Inc., ERP Iron Ore, LLC, Merida Natural Resources, LLC, Mesabi Metallics Company LLC, Miranda Mineral Resources, LLC, Nubai and Pocahontas Natural Resources LLC, (ii) Membership Certificate Number 5 of Chippewa and (iii) a Member Interest Register of Chippewa.

Section 2.1 of the Exit Agreement provides that the Sellers (defined in the Exit Agreement) shall sell and Nubai shall buy the Units (defined in the Exit Agreement) on the Closing Date (defined in the Exit Agreement) with full title guarantee, free from all Encumbrances (defined in the Exit Agreement) and together with all rights attached or accruing to them.

Based on my reviews of the foregoing, I hereby confirm to you that Membership Certificate Number 5 and the Member Interest Register are sufficient to cause Nubai to own 100% of the membership interests in Chippewa. This letter addresses only the sufficiency of the procedures used by the Sellers to transfer their ownership interests in Chippewa to Nubai. This letter is not the full title guaranty referenced in Section 2.1 of the Exit Agreement. Such full title guaranty is a contractual obligation of the Sellers. This letter does not address the presence or absence of any Encumbrances on the Sellers’ membership interests in Chippewa, provided that this letter does confirm that none of Merida, ENCECo, Inc., Thomas M. Clarke nor Charles A. Ebetino, Jr. have retained any membership interest in Chippewa.

THE LAW OFFICE OF  
TIMOTHY E. DIXON  
A PROFESSIONAL ASSOCIATION

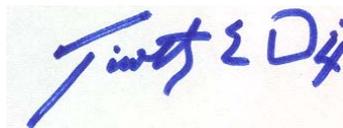
Nubai Global Investment Limited

June 3, 2018

Page 2

This letter is provided for the sole benefit of Nubai and may not be relied upon by any other party, without my prior written consent.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Timothy E. Dixon". The signature is written in a cursive, somewhat stylized font.

Timothy E. Dixon

**EXHIBIT**  
**9**

**WRITTEN CONSENT IN LIEU OF  
MEETING OF SOLE MEMBER OF  
CHIPPEWA CAPITAL PARTNERS, LLC**

THE UNDERSIGNED, being the sole member of Chippewa Capital Partners, LLC (the "Company") does hereby adopt the resolutions set forth below.

RESOLVED, that effective as of the date hereof, Thomas A. Clarke is removed from any and all positions and offices held by him in the Company, including the position of director and the office of chief executive officer; and further

RESOLVED, that effective as of the date hereof, each of Jennifer Bell and Astrika Adams is removed from any and all positions and offices held by them in the Company; and further

RESOLVED and reaffirmed that effective as of the date hereof, the following comprise all of the members of the Board of Directors of the Company: John Oram, and Gary Heasley; and further

RESOLVED, that The Law Offices of Timothy E. Dixon, PA, shall no longer serve as legal counsel to the Company.

THIS WRITTEN CONSENT shall be filed in the Minute Book of the Company and become a part of its permanent records. A facsimile or other electronic version shall be deemed original.

[The Next Page is the Signature Page]

WRITTEN CONSENT IN LIEU OF MEETING OF SOLE MEMBER OF CHIPPEWA CAPITAL PARTNERS, LLC DATED JULY 23, 2018

IN WITNESS WHEREOF, each of the undersigned has executed this Written Consent as of July 23, 2018.

NUBAI GLOBAL INVESTMENT LIMITED:

Signatures:   
\_\_\_\_\_  
John Oram, Authorized Signatory

\_\_\_\_\_

**EXHIBIT**  
**10**

**WRITTEN CONSENT IN LIEU OF  
MEETING OF SOLE MEMBER OF  
MESABI METALLICS COMPANY LLC**

THE UNDERSIGNED, being the sole member of Mesabi Metallics Company, LLC (the "Company") does hereby adopt the resolutions set forth below.

RESOLVED, that effective as of the date hereof, Thomas A. Clarke is removed from any and all positions and offices held by him in the Company, including the position of director and the office of chief executive officer; and further

RESOLVED, that effective as of the date hereof, Jennifer Bell is removed from any and all positions and offices held by her in the Company; and further

RESOLVED and reaffirmed that effective as of the date hereof, the following comprise all of the members of the Board of Directors of the Company: John Oram, and Gary Heasley.

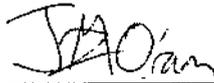
THIS WRITTEN CONSENT shall be filed in the Minute Book of the Company and become a part of its permanent records. This Written Consent may be executed in counterparts. A facsimile or other electronic version shall be deemed original.

[The Next Page is the Signature Page]

WRITTEN CONSENT IN LIEU OF MEETING OF SOLE MEMBER OF MESABI METALLICS COMPANY, LLC DATED JULY 23, 2018

IN WITNESS WHEREOF, each of the undersigned has executed this Written Consent as of July 23, 2018.

CHIPPEWA CAPITAL PARTNERS, LLC:



\_\_\_\_\_  
John Oram

\_\_\_\_\_  
Gary Heasley

\_\_\_\_\_

**EXHIBIT**  
**11**

**From:** Jaipat Jain  
**Sent:** Tuesday, July 24, 2018 7:48 AM  
**To:** Tom.Clarke@kissito.org  
**Cc:** GSaydah@ckrlaw.com; Jennifer.Bell@kissito.org; susan.fennessey@mesabimetallics.com; AAdams@erpfuels.com; oscar.pinkas@dentons.com; j.oram@dsainvestments.com; David Potter  
**Subject:** LPGM Letter to Clarke  
**Attachments:** Clarke Letter LPGM 7-23-18.pdf; Clarke Exhibits LPGM 7-23-18.pdf

Dear Mr. Clarke

Please see attached. Thank you.



**Jaipat S. Jain, Esq.**  
**Lazare Potter Giacovas & Moyle LLP**  
875 Third Avenue, 28th Floor  
New York, New York 10022  
(212) 784-2418; Mobile: (201) 615-9373  
EFax: (212) 202-4533; General: (212) 758-9300

This communication, including attachments, is confidential, may be subject to legal privileges, and is intended for the sole use of the addressee. Any use, duplication, disclosure or dissemination of this communication, other than by the addressee, is prohibited. If you have received this communication in error, please notify the sender immediately and delete or destroy this communication and all copies.



LAZARE POTTER GIACOVAS & MOYLE LLP

875 THIRD AVENUE, FLOOR 28  
NEW YORK, NEW YORK 10022  
T: 212.758.9300  
F: 212.888.0919  
LPGMLAW.COM

Jaipat S. Jain  
Partner  
(212) 784-2418  
jjain@lpgmlaw.com

July 23, 2018

Via Email

Mr. Thomas Clarke  
16620 Lee Highway  
Buchanan, VA 24066  
Tom.Clarke@kissito.org

Re: Your letter of July 23, 2018

Dear Mr. Clarke:

As you know, we represent Nubai Global Investment Limited (“Nubai”).

We are responding to your July 23, 2018 letter addressed to me and others. In that letter, you purport to remove John Oram, Manoj Madnani and Gary Heasley as directors of Chippewa Capital Partners, LLC (“Chippewa”) and Mesabi Metallics Company LLC (“Mesabi”). Please be advised that you do not have the authority to remove any directors of Chippewa or Mesabi (whether under contract or at law) and your letter claiming to have done so has no force or effect.

As you well know, Nubai is the sole owner of Chippewa. This fact is clearly demonstrated by the following attached documents provided by you and your counsel:

1. Member Interest Register of Chippewa Capital dated June 1, 2018 that you signed showing that Nubai has a 100% interest in Chippewa (Exhibit A);
2. Membership Certificate for Chippewa June 1, 2018 you signed showing that Nubai is the owner of 100 membership units of Chippewa (Exhibit B); and
3. Letter from your counsel, Timothy Dixon, Esq., confirming that Nubai is the owner of 100% of Chippewa (Exhibit C).

In turn, Chippewa owns 100% of Mesabi.

Nubai had previously obtained a majority interest in Chippewa and purchased the remaining interests in Chippewa at the closing of the May 30, 2018 Exit and Settlement Agreement (“Exit Agreement”). Section 4.4(h) of the Exit Agreement also confirmed that Nubai may amend and restate the Second Amended and Restated Limited Liability Company Agreement of Chippewa dated December 22, 2017 (the “Second Chippewa LLC Agreement”).

Thomas M. Clarke  
July 23, 18  
Page 2

Effective June 2, 2018, Nubai amended the Second Chippewa LLC Agreement with the Third Amended and Restated Limited Liability Company Agreement of Chippewa (the “Third Chippewa LLC Agreement”). In fact, you were in attendance at the Board meeting where the Third Chippewa LLC Agreement was adopted. Therefore, the references in your July 23, 2018 letter to the Second Chippewa LLC Agreement are misplaced.

Most of the allegations in your July 23, 2018 letter are based on the superseded Second Chippewa LLC Agreement. For example, you refer to Nubai’s alleged default on April 15, 2018 of a capital contribution required under the Second Chippewa LLC Agreement and the consequences thereof. The alleged past default was resolved (and released) by the Exit Agreement.

Please note that nothing in the Exit Agreement conditions transfer of the ownership interests in Chippewa to Nubai on any post-closing obligations; Nubai purchased the ownership units of Chippewa “with full title guarantee, free of all Encumbrances....” Therefore, your claim that Nubai has failed to make certain payments to you has no bearing on Nubai’s ownership of Chippewa or Chippewa’s ownership of Mesabi and could never be construed as unwinding the closing that occurred at the end of May.

Based on the foregoing, there is no factual basis to justify your unilateral attempt to remove the directors of Chippewa who were appointed by the sole member of each LLC. We are not aware of any existing director nominated by Nubai to have failed to be qualified as a director under any applicable laws, rules or regulations. Nor is there any legal support for your actions. Neither the Third Amended Chippewa Agreement nor the Amended and Restated Limited Liability Company Agreement of Mesabi Metallica Company LLC contain a provision authorizing one director to remove other directors.

In fact, both agreements provide that “the Members shall be entitled to remove any Director or Officer by Special Majority Approval at any time.” Please be advised that earlier today, the Members of Chippewa and Mesabi have removed you from all positions at each company, including director, board member and officer. The Chippewa resolution is attached hereto as Exhibit D and the Mesabi resolution is attached hereto as Exhibit E.

Please be advised that you may no longer represent that you have any role with either Chippewa or Mesabi. Senior management will be informed of your departure from these roles, and we request that you do not attempt to instruct them or otherwise communicate with them, or interfere in their business relationships. We further remind you that you remain subject to the obligations of confidentiality, including those contained in the Exit Agreement.

This letter is not intended to be an exhaustive response to the spurious allegations in your letter, all of which are denied and disputed.

Thomas M. Clarke  
July 23, 18  
Page 3

Note also that Nubai does not waive of any of its rights and remedies, all of which are hereby reserved.

Very truly yours,



Jaipat S. Jain

Enclosures

Copy to:

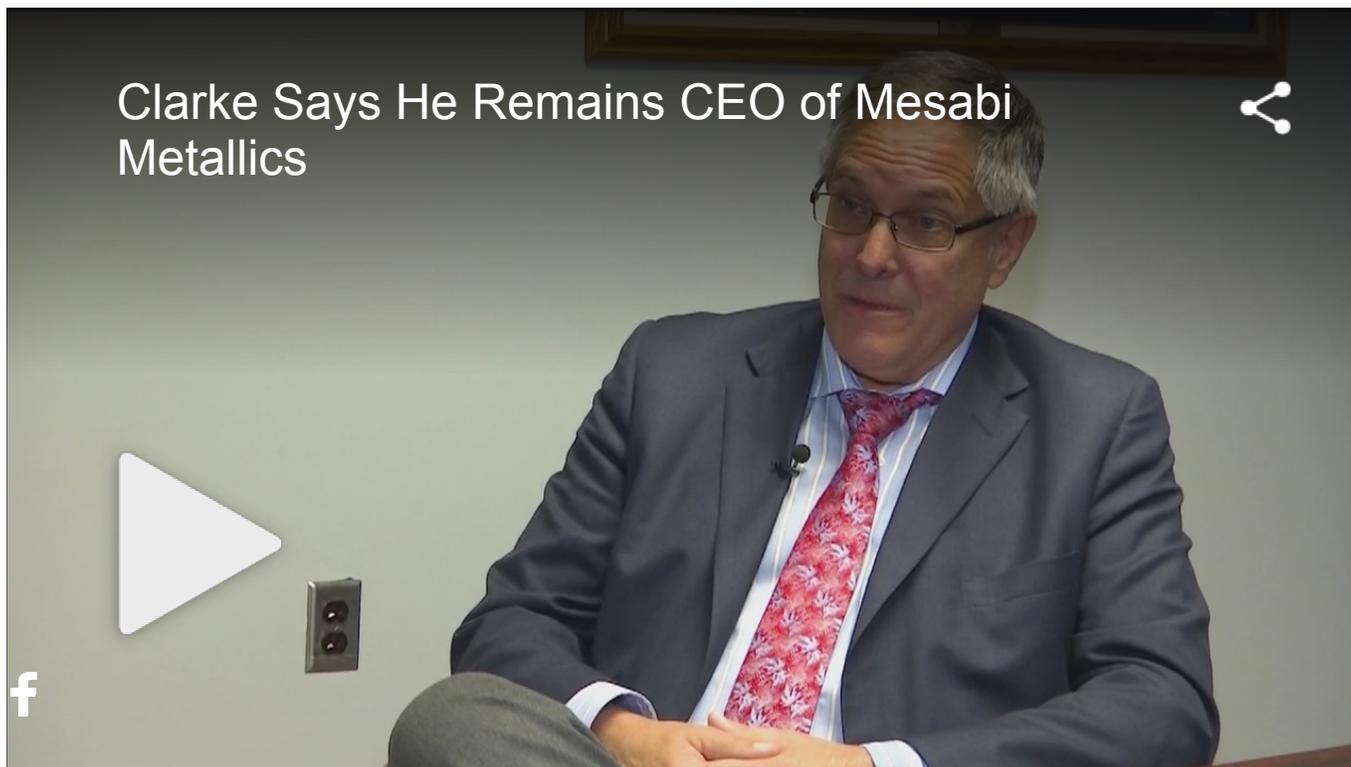
Gilbert Saydah, Esq. ([gsaydah@ckrlaw.com](mailto:gsaydah@ckrlaw.com))  
Jennifer Bell ([jennifer.bell@kissito.org](mailto:jennifer.bell@kissito.org))  
Astrika Wilhelm ([aadams@erpfuels.com](mailto:aadams@erpfuels.com))  
John Oram ([j.oram@dsainvestments.com](mailto:j.oram@dsainvestments.com))  
Susan Fennessey ([susan.fennessey@mesabimetallics.com](mailto:susan.fennessey@mesabimetallics.com))  
Charles Ebetino ([cebetino@erpfuels.com](mailto:cebetino@erpfuels.com))  
David E. Potter, Esq. ([dpotter@lpgmlaw.com](mailto:dpotter@lpgmlaw.com))  
Oscar Pinkas, Esq. ([oscar.pinkas@dentons.com](mailto:oscar.pinkas@dentons.com))

**EXHIBIT**  
**12**

<p>Duluth</p>  82° 84°   61° <a href="/weather/?zip=55814">(/weather/?zip=55814)</a>	<p>Superior</p>  82° 82°   55° <a href="/weather/?zip=54880">(/weather/?zip=54880)</a>	<p>Hibbing</p>  78° 80°   54° <a href="/weather/?zip=55746">(/weather/?zip=55746)</a>	<p>Hayward</p>  81° 83°   55° <a href="/weather/?zip=54843">(/weather/?zip=54843)</a>
---	---	--	--

LIVE VIDEO > [\(/article/12864/\)](/article/12864/) Eyewitness News at Six [\(/article/12864/\)](/article/12864/)

# Clarke Says He Remains CEO of Mesabi Metallics



*Updated: July 25, 2018 10:37 PM*

Tom Clarke tells Eyewitness News that he remains the Chief Executive Officer of Mesabi  
Metallics and Chippewa Capital, saying media reports that he had been ousted were incorrect.

11  
SHARES

Mesabi Metallics is seeking to complete construction of a mine in Nashwauk. According to a sheet sent by Tom Clarke last week, Chippewa Capital Partners owns Mesabi. Chippewa is a joint venture between Merida Natural Resources (Tom Clarke and his wife) and Nubai Global Investment, which is based out of Dubai.

Clarke told WDIO that two directors from Nubai have been removed from the board and a lawsuit will be filed against Nubai.



Tom Clarke says he remains CEO of Mesabi Metallics.

WDIO-TV file

Over the phone, he explained, "They were supposed to be \$250 million dollars into Mesabi by April 15th. They did not do that. I have been pushing them every single day. It's been more than three months now. So we terminated or removed their two directors on Sunday." Clarke said if they don't pay the \$90.5 million that is still owed, he'll bring new partners on board, from North America.

He maintains he is now the sole board member of Chippewa Capital. "We have very solid legal advice. We have all of our creditors behind us. We've communicated with all key stakeholders. Everybody knows what's happening," he said.

Clarke was in Itasca County on Wednesday to meet with county officials about another company, ERP Iron Ore, which is the former Magnetation project. He told us, "They wanted to share a lot of concerns that they had. I think we were able to assure them these are problems we are going to solve together." The county says they are owed about \$600,000, and mechanic lien holders are owed millions.

The Mesabi Daily News reported that Itasca County received a letter stating Clarke was no longer in his leadership his position, effective on Monday. Eyewitness News has requested a copy of that letter, but has not seen it as of news time on Wednesday night.

Updated: July 25, 2018 10:37 PM

Created: July 25, 2018 05:57 PM

Copyright 2018 WDIO-TV LLC, a Hubbard Broadcasting Company. All rights reserved

Advertisement



## JUST POSTED

07/30/2018  
06:04 PM

**Duluth Man Sentenced in Online Child Pornography Ring (/news/eric-robinson-duluth-man-child-pornography-ring/5010873/?cat=10335)**

07/30/2018  
06:01 PM

**Some Evacuations Lifted in Northern California (/weather/carr-wildfire-redding-california/5006576/?cat=10373)**

07/30/2018  
04:56 PM

**Representative Removed from Fond du Lac Tribal Council (/news/vanessa-northrup-removed-fond-du-lac-tribal-council/5010846/?cat=10335)**

07/30/2018

FRANK COLEMAN HAS BEEN NAMED TO THE BOARD OF DIRECTORS OF THE CHIPPewa CAPITAL LEADERSHIP

**EXHIBIT**  
**13**



Escape to a Place That's Far from Ordinary  
Bermuda Tourism Authority



DISAPPEAR HERE

# Mesabi Metallica CEO says reports of his removal are false

By Jimmy Lovrien on Jul 25, 2018 at 7:16 p.m.



Tom Clarke

Despite rumors to the contrary, Tom Clarke said Wednesday he is still very much CEO of Chippewa Capital Partners, the parent company of Mesabi Metallica.

The Mesabi Daily News and KBJR-TV reported Wednesday afternoon his role with the companies based on a letter the outlets said was sent earlier Wednesday. Mesabi Daily News in its story cited "sources ma

Recommended for you X

3M settles military earplug allegations

In a telephone interview with the News Tribune Wednesday evening, Clarke said those claims were wrong. He addressed the rumors with a quote often attributed to Mark Twain.

"The reports of my death are greatly exaggerated," Clarke said.

Ad



Escape to a Place That's Far from Ordinary

Bermuda Tourism Authority [DISAPPEAR HERE](#)

Clarke, who was in Itasca County on Wednesday meeting with county officials about unresolved mechanic's liens, said he still maintains the role of CEO and sole director of Chippewa and Mesabi Metallica, but also has the title of chairman of the board after he removed two other board members over the weekend.

Clarke said an email sent to Mesabi Metallica employees by one of those former board members, John Oram, was the source of the misinformation.

Clarke said he removed Oram and Gary Heasley of Nubai Global Investment from the board after the group only paid a portion of the \$250 million payment due in April.

Although \$160 million was paid, Clarke said, \$90 million has yet to be paid.

Clarke said that letter was circulated among Mesabi Metallica, too.

That \$250-million funding commitment is for day-to-day operations — not for the project's funding, Clarke said.

Through Mesabi Metallica, Clarke is planning to finish a taconite mine and processing center and also build an iron plant on the Nashwauk site Essar Steel Minnesota left several years ago. Earlier this month, the company met its final financing requirements to get mineral leases reinstated by the Minnesota Department of Natural Resources.

**Jimmy Lovrien**

Jimmy Lovrien is a reporter for the Duluth News Tribune. He spent the summer of 2015 as an intern hired full time in October 2017 as a reporter for the Weekly Observer. He also reported for the Lake County News-Chronicle in 2017-18. Lovrien grew up in Alexandria, Minn., but moved to Duluth in 2013 to attend The College of St. Scholastica. Lovrien graduated from St. Scholastica in 2017 with a bachelor's degree in English and history. He also spent a summer studying journalism at the University of California, Berkeley.

Recommended for you



3M settles military earplug allegations

[jlovrien@duluthweeklyobserver.com](mailto:jlovrien@duluthweeklyobserver.com)



**SPONSORED CONTENT**



**Microsoft® Outlook 2016 Access Anywhere**



**By Microsoft**

ADVERTISEMENT

Recommended for you



3M settles military earplug allegations

**EXHIBIT**  
**14**

**From:** Clarke, Tom [mailto:Tom.Clarke@kissito.org]  
**Sent:** 31 July 2018 00:57  
**To:** Narasimhan Ramakrishnan <narasimhan.ramakrishnan@mesabimetallics.com>  
**Cc:** Robb Bigelow <robb.bigelow@mesabimetallics.com>; John Oram <j.oram@dsainvestments.com>; Jennifer Bell\_[Forward] <Jennifer.Bell@clarkeinvestments.com>  
**Subject:** Re: MOR - Q2 report and US Trustee fee

Krish,

This is a temporary condition, as we are working to sell the Nubai forfeited equity to a highly credible replacement investor. I am sorry the staff has to suffer through this situation, but it is almost over. Thank-you,  
Tom

Tom Clarke  
Mobile: (540) 204-1588

On Jul 30, 2018, at 4:39 PM, Narasimhan Ramakrishnan <[narasimhan.ramakrishnan@mesabimetallics.com](mailto:narasimhan.ramakrishnan@mesabimetallics.com)> wrote:

Noted.  
Thanks.  
Krish

On Mon, Jul 30, 2018 at 3:36 PM, Clarke, Tom <[Tom.Clarke@kissito.org](mailto:Tom.Clarke@kissito.org)> wrote:

Krish,

Please “do not” make payment to the U.S. Trustee. As you know, the Nubai Funding Failure Event is limiting our cash which must be reserved for Payroll and Payroll Related Expenses.  
Thank-you,

Tom  
CEO and Sole Director of Mesabi

Tom Clarke  
Mobile: (540) 204-1588

On Jul 30, 2018, at 4:08 PM, Narasimhan Ramakrishnan <[narasimhan.ramakrishnan@mesabimetallics.com](mailto:narasimhan.ramakrishnan@mesabimetallics.com)> wrote:

The following are due by tomorrow:

1. Monthly Operating Report – Post confirmation Q2. Copy of the same is attached.

Last quarter (Q1) report was sent to Susan and I am not sure if it was forwarded to appropriate recipients. I am not sure who will receive them. Prior to emerging out of bankruptcy, I was forwarding the MOR reports to representative of Fox Rothchild. Please advise who should receive this report.

2. 1% of the total disbursement made during the quarter or \$250K whichever is less is payable as US Trustee fee.

Total disbursement during the second quarter was \$20,866,435.60 (as indicated in page 4 of the attached file) hence the trustee fee payable is \$208,664.36

Thanks,

Krish

--

**Narasimhan Ramakrishnan** | Controller | Mesabi Metallics Company LLC |

17113 County Road 58, Nashwauk, MN 55769 | United States |

Desk (218) 885-6157 | Cell (218) 966-0837 |

<MOR POST CONFIRMATION Q2 - JUNE 2018.pdf>

--

**Narasimhan Ramakrishnan** | Controller | Mesabi Metallics Company LLC |

17113 County Road 58, **Nashwauk, MN 55769** | United States |

Desk (218) 885-6157 | Cell (218) 966-0837 |

---

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.