UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY AND ITS DIVISION OF INVESTMENT, on behalf of itself and all others similarly situated, Plaintiff, v. CLIFFS NATURAL RESOURCES INC., JOSEPH CARRABBA, LAURIE BRLAS, TERRY PARADIE, and DAVID B. BLAKE Defendants.	Civ. A. No. 14-CV-1031-DAP Judge Dan Aaron Polster Magistrate Judge Greg White

DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

Defendants hereby move the Court to dismiss plaintiff's Second Amended Complaint (the "SAC") under Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995, Pub. L. 104-67, 109 Stat. 737 (the "PSLRA").

As set forth in the accompanying memorandum, the SAC is deficient as a matter of law, and must be dismissed because:

1. Forward-looking statements about projected future dividends and plans for developing the Bloom Lake mine fall within the PSLRA's statutory safe harbor, and claims predicated on those statements are precluded.

2. The entire SAC rests on fraud-by-hindsight and therefore fails to plead with particularity circumstances constituting fraud, as requires by the PSLRA and Rule 9(b).

3. The SAC fails to allege any inference of scienter, much less a "strong" one that is "cogent," "compelling," and at least as plausible as competing non-fraudulent inferences.

4. The SAC fails to allege control-person liability under Section 20(a) of the Securities Exchange Act.

Accordingly, the SAC should be dismissed with prejudice.

Dated: May 15, 2015

/s/ John M. Newman, Jr.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 15, 2015, copies of the foregoing Defendants' Motion to Dismiss the Second Amended Complaint, Memorandum of Law in Support, and Declaration of Adrienne Ferraro Mueller (and the exhibits attached thereto) were filed electronically with the Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ John M. Newman, Jr.
John M. Newman, Jr.
One of the Attorneys for Defendants Cliffs Natural Resources Inc., Joseph Carrabba, Laurie Brlas, Terry Paradie, and David B. Blake

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THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY AND ITS DIVISION OF INVESTMENT, on behalf of itself and all others similarly situated, Plaintiff, v. CLIFFS NATURAL RESOURCES INC., JOSEPH CARRABBA, LAURIE BRLAS, TERRY PARADIE, and DAVID B. BLAKE Defendants.	Civ. A. No. 14-CV-1031-DAP Judge Dan Aaron Polster Magistrate Judge Greg White

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

Dated: May 15, 2015

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GLOSSARY OF DEFINED TERMS

Term	Definition
2011 10-K	Annual Report on Form 10-K filed by Cliffs Natural Resources Inc. on February 16, 2012 with the U.S. Securities and Exchange Commission for the year ending December 31, 2011
2012 10-K	Annual Report on Form 10-K filed by Cliffs Natural Resources Inc. on February 12, 2013 with the U.S. Securities and Exchange Commission for the year ending December 31, 2012
2012 Proxy	Proxy Statement filed by Cliffs Natural Resources Inc. on March 23, 2012 with the U.S. Securities and Exchange Commission
2013 Proxy	Proxy Statement filed by Cliffs Natural Resources Inc. on April 1, 2013 with the U.S. Securities and Exchange Commission
Appendix A *or* App. A	Appendix A to Plaintiff's Second Amended Complaint, ECF No. 55-1, filed March 31, 2015
Appendix B *or* App. B	"Confidential Witness Appendix" to Plaintiff's Second Amended Complaint, ECF No. 55-2, filed March 31, 2015
Appendix C *or* App. C	Appendix C to Plaintiff's Second Amended Complaint, ECF No. 55-3, filed March 31, 2015
Appendix D *or* App. D	Appendix D filed in connection with this Memorandum of Law
Appendix E *or* App. E	Appendix E filed in connection with this Memorandum of Law
Class Period	March 14, 2012 to March 26, 2013, inclusive
Cliffs *or* the Company	Cliffs Natural Resources Inc.
CW	Confidential Witness
Exchange Act	The Securities Exchange Act of 1934, Pub. L. 73–291, 48 Stat. 881
FAC	Plaintiff's Amended Class Action Complaint, ECF Docket No. 24, filed August 22, 2014
PSLRA	The Private Securities Litigation Reform Act of 1995, Pub. L. 104-67, 109 Stat. 737
Rule	Federal Rule of Civil Procedure
Rule 10b-5	17 C.F.R. § 240.10b-5
SAC or Complaint	Plaintiff's Second Amended Class Action Complaint, ECF Docket No. 55, filed March 31, 2015
Section 10(b)	Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b)
Section 20(a)	Section 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78t(a)

Citations and internal quotation marks are omitted from quotations unless otherwise indicated. Emphasis added unless otherwise indicated.

STATEMENT OF THE ISSUES

The Complaint largely attacks forward-looking statements about Cliffs' dividend and the development of the Bloom Lake mine. It charges fraud based on 20/20 hindsight, asserting in essence that because Cliffs' plans ultimately did not come to fruition, its senior management "must have known"—but failed to disclose during the Class Period—that the plans could not possibly be accomplished. And the Complaint attempts to build an inference of scienter on layers of hearsay from distorted and sketchy assertions by a handful of unknowledgeable "confidential witnesses." It does not cite any specific document seen by any defendant or any specific information known to any defendant that contradicted any public statement by Cliffs, and it offers no motive for why the defendants would try to pull off the supposed fraud. Based on the Complaint's ***particularized factual allegations*** (not its conclusions or vague assertions):

1. Should the SAC be dismissed under the PSLRA's statutory safe harbor for forward-looking statements?

2. Should the SAC be dismissed for failing to plead particularized facts showing that the defendants made public statements that they knew to be false at the time they were made (and not just that Cliffs' statements were not borne out by later events)?

3. Does the SAC raise a cogent, compelling inference of scienter that is at least as strong as the available non-fraudulent inferences (such as failure to accurately predict future events or mistaken business judgments), especially in light of the absence of any logical reason for why defendants (themselves large holders of Cliffs stock) would have tried to swindle Cliffs' shareholders?

SUMMARY OF ARGUMENTS

1. The overwhelming majority of the statements challenged in the Complaint were

forward-looking statements about Cliffs' projected future dividends and its plans for developing the new Bloom Lake mine site in northern Quebec. Those statements were accompanied by a litany of warnings about the risks of mine development, the vicissitudes of international commodities markets, and the capital-intensive nature of the Bloom Lake. Under the plain language of the PSLRA safe harbor, a Section 10(b)/Rule 10b-5 claim predicated on those statements is absolutely precluded. No consideration of particularity, scienter, or plausibility is needed—all the statute asks is whether the statements were forward-looking and accompanied by meaningful cautions, and the answer here is yes.

2. The entire Complaint is based on fraud-by-hindsight, and it therefore fails to plead with particularity circumstances constituting fraud, as required by the PSLRA and Rule 9(b). The PSLRA requires particularized facts showing, on a statement-by-statement basis, that each and every alleged misstatement was false at the time it was made, and that its speaker knew it to be false. The Complaint does not meet that requirement. It does not point to anything in any specific document provided to any defendant at any time that contradicted any contemporaneous statement by that defendant. None of the CWs had any direct contact with any defendant on any of the matters at issue, and none of the CWs is alleged to have communicated anything to any defendant, or to have heard anything from any defendant, that was at odds with any contemporaneous public statement. Asserting that the Bloom Lake project turned out badly, that the project had "problems" that "everybody" knew about, and that therefore the defendants "must" have been lying all along is the opposite of pleading fraud with particularity.

3. The Complaint fails to raise up any inference of fraud, far less a "strong" one that is "cogent," "compelling," and at least as plausible as competing non-fraudulent inferences. Here, there are obvious alternative inferences that are far more logical than the conspiracy theory

offered by the Complaint: 1) defendants may have underestimated the time it would take, or the costs that would be incurred, to bring each phase of the Bloom Lake project to completion; 2) defendants may not have expected that iron-ore prices in the year after the dividend increase would average almost 30% less than the year before; 3) defendants may have believed, as problems arose in the Bloom Lake project (as they do in any big project), that they could adopt measures that would solve those problems; 4) defendants may not have accurately predicted the geological conditions that Cliffs would encounter as Bloom Lake expanded, as it is "not always possible to anticipate what miners will face as they dig deeper." *In re Gold Resource Corp. Sec. Litig.*, 776 F.3d 1103, 1117 (10th Cir. 2015) (affirming dismissal of securities case against mining company based on allegations nearly identical to this case, including multi-phase mine expansion project in a foreign country accompanied by dividend increase). At bottom, an inference of mistaken business judgment is clearly more plausible than fraud, and it is black-letter law that mismanagement is not securities fraud. *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 479 (1977) ("Congress by § 10(b) did not seek to regulate transactions which constitute no more than internal corporate mismanagement.").

Any inference of fraud is defeated by the absence of a logical motive for the posited con: the Complaint does not allege insider trading by any defendant; there is no way the supposed fraud could have been concealed; and it would have been odd (to say the least) for defendants to try to swindle Cliffs' shareholders, given that ***they*** were large shareholders. "Without a motive to commit securities fraud, businessmen are unlikely to commit it." *City of Livonia Emps. Ret. Sys. v. Boeing Co.*, 711 F.3d 754, 758 (7th Cir. 2013) (affirming dismissal of securities complaint on scienter grounds).

PRELIMINARY STATEMENT

Although shorter than the FAC, the SAC suffers similar defects. It rests on the same dubious theory that Cliffs' management spent billions to acquire a promising mining site, adopted plans to expand that operation, and increased the dividend in anticipation of higher production and revenues, despite knowing the plans would fail and Cliffs could not sustain the dividend. It attacks forward-looking statements shielded by the PSLRA safe harbor, and it raises no inference of scienter, far less a strong one. Since the briefing on the original motion to dismiss closed, courts have dismissed securities complaints making nearly identical allegations against mining companies, and the SAC should meet the same fate. *See In re Gold Resource Corp. Sec. Litig.*, 776 F.3d 1103, 1117 (10th Cir. 2015); *In re Molycorp, Inc. Sec. Litig.*, 2015 WL 1097355 (S.D.N.Y. Mar. 12, 2015).

BACKGROUND

Cliffs is a mining company based in Cleveland. ¶11.[1] During the Class Period, it was a global supplier of iron ore (with mines in Michigan, Minnesota, Canada, and Australia) and metallurgical coal (with mines in Alabama and West Virginia).[2] The Individual Defendants were members of Cliffs' upper management. ¶12-15.[3]

In May 2011, Cliffs acquired Consolidated Thompson Iron Mines Limited ("CT"). One

[1] Unless otherwise noted, all paragraph references are to the SAC.

[2] *See* Ex. A (2011 10-K), at 5. The Court may judicially notice documents offered to "rebut the complaint's misleading statements," *In re Omnicare, Inc. Sec. Litig.*, 769 F.3d 455, 466 (6th Cir. 2014) ("*Omnicare III*"), and documents quoted by plaintiff, to "consider those quotations in their full context." *Id.* at 469. "[I]f a plaintiff references or quotes certain documents, or if public records refute a plaintiff's claim, a defendant may attach those documents to its motion to dismiss, and a court can then consider them in resolving the Rule 12(b)(6) motion without converting the motion to dismiss into a Rule 56 motion for summary judgment." *Id.* at 466. "Courts [also] may take judicial notice of information that was publicly available to reasonable investors at the time [of] the allegedly false statement." *Beaver Cty. Ret. Bd. v. LCA-Vision Inc.*, 2009 WL 806714, at *4 (S.D. Ohio Mar. 25, 2009).

[3] Mr. Carrabba was Cliffs' Chief Executive Officer; Ms. Brlas was its Chief Financial Officer and, later, President, Global Operations; Mr. Blake was SVP, North American Iron Ore Operations; and Mr. Paradie was its Chief Financial Officer starting in October 2012. ¶12-15.

of CT's holdings was a 75% interest in the Bloom Lake iron ore mine in northern Quebec, managed out of Montreal. ¶17. The Bloom Lake operation included the mine (which had recently been commissioned, in March 2010 (*see* Ex. A (2011 10-K) at 39), mining equipment, a plant for refining raw ore into saleable iron concentrate, systems to manage tailings and water from the mine, and transportation infrastructure (including a rail line) for collecting and shipping the iron concentrate to a port. ¶33, 51, 54, 69, 79.

After the acquisition, Cliffs announced a three-phase plan to expand Bloom Lake. ¶19-21. Phases I and II were in progress when Cliffs took over the mine. As production ramped up, Cliffs expected production costs would fall to $60 to $65 per ton (as costs were spread across more tons of production). ¶2, 25, 51, 53. While Phase I would upgrade existing equipment and infrastructure, Phases II and III would construct entirely new production lines and open new areas of the Bloom Lake site to mining, to enable the doubling and then tripling of output. *Id.* In March 2012, Cliffs announced that its board had increased the quarterly dividend, based partly on projections for more production at Bloom Lake. ¶32, 34.

During 2012, Cliffs gave a series of updates on the progress of the Bloom Lake project. The updates disclosed a series of setbacks and delays in the production and cost goals for Phase I and subsequent phases, and Cliffs' plans for addressing those problems:

- **April 2012:** Cliffs disclosed difficulties with the Bloom Lake production infrastructure and higher-than-expected per-ton costs, resulting in an increase in full-year per-ton cost projections. ¶44, 144. It also noted delays from a fire and told investors only some of the production loss could be recovered by year-end (¶46), and disclosed the need to continue to adjust Phase I "until we are satisfied with the product's consistency" and warned that "in the shorter term these adjustments could impact cost." ¶44, 45; Ex. B (4/26/12 Earnings Call Transcript). Cliffs hoped to mitigate these costs by improving Bloom Lake's tailings management and mining and processing flow sheets. *Id.*
- **July 2012**: Cliffs again reported higher-than-expected costs at Bloom Lake and reduced projected 2012 output. ¶49. It also announced a revised Bloom Lake strategy, focusing on producing a higher grade of iron ore (with lower silica content). Although projecting that higher-grade ore would fetch a higher sales price, it disclosed that the change would entail reduced production. ¶50, 145; Ex. C (7/25/12 Press Release) at 4-5. It also said it was facing increased costs due to updated estimates of labor, tailings, and logistics

expenses (in part due to the focus on higher-grade ore). ¶50; Ex. D (7/26/12 Earnings Call Transcript),

- at 6. Cliffs sought to counter these cost issues by implementing cost management processes, decreasing reliance on contract labor, and lowering per-ton fixed costs through the expected increase in sales volume. *Id.* at 4.
- **October 2012:** Cliffs announced Bloom Lake third quarter costs of $88/ton, a decrease in year-on-year revenue, and lower production expectations going forward, and said it was still working on getting Phase I to design levels. ¶58, 108. It noted difficulties from a "volatile pricing environment" (¶108-09), and cautioned that Bloom Lake would take priority over the dividend, stating "management remain[ed] focused on executing the Phase II expansion" and that Bloom Lake was "the future of the Company" (¶142(a)(i), 142(a)(ix)), and that curtailing the Bloom Lake expansion was "a lever we do have." Ex. E (excerpts of 10/25/12 Earnings Call Transcript), at 8-9 (in evaluating Bloom Lake development against the dividend payment, Bloom Lake was "our #1 priority").
- **November 2012**: Cliffs announced wide-ranging adjustments to the Phase I plans, delays in Phase II, a halt in planning for Phase III, and a further reduction of annual production estimates as a result of, among other things, volatility in global iron ore prices. ¶60, 92, 147; Ex. F (11/19/12 Press Release).

Even in the presence of these setbacks, however—and contrary to the SAC's characterization of Bloom Lake costs as "skyrocketing" (¶60)—Cliffs managed to reduce the per-ton cash costs at Bloom Lake every quarter during 2012. *See* ¶144-48 (cash costs per ton were $98 in Q1 2012; $91 in Q2; $88 in Q3; $86 in Q4; and in the low $70s by year end).

These events played out against volatile and adverse conditions in the iron-ore market. The ore mined at Bloom Lake was destined for overseas markets, mostly Asian (*see* Ex. A (2011 10-K), at 5), and the average price for seaborne iron ore in 2012 was more than 23% lower than the average in 2011, when the Bloom Lake expansion was announced. Ex. G (2/12/13 Press Release), at 1. In 2012, the realized sale price for Cliffs' Eastern Canadian Iron Ore operations (consisting of Bloom Lake and another, smaller mine) was "on average 29.0 percent lower per metric ton, compared to [2011]." Ex. H (2012 10-K), at 65. Though Cliffs had modeled various price scenarios in considering the dividend, including a fall to $110 per ton, prices dropped lower than that in the second half of 2012, as the SAC concedes. *Id.*; ¶108, 127; App. C.

The combination of sharply lower commodity markets (negatively affecting all of Cliffs' operations, not just Bloom Lake) and lower-than-expected production at Bloom Lake hurt Cliffs'

revenues and cash flows. In early 2013, it became clear it was no longer financially responsible to keep the dividend at its higher level, and Cliffs' Board cut the dividend in February. ¶61, 148.

ARGUMENT

The Complaint fails to allege a claim under Section 10(b) and Rule 10b-5. To state such a claim, a plaintiff must allege "(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta Inc.*, 552 U.S. 148, 157 (2008).

Besides Rule 9(b)'s command that fraud claims be pled with particularity, securities complaints must comply with the PSLRA. To get past this "elephant-sized boulder," *Omnicare III*, 769 F.3d at 461, a securities plaintiff must "specify each statement alleged to have been misleading" and "the reason or reasons why the statement is misleading." *Id.* (citing 15 U.S.C. § 78u-4(b)(1)(B)). The PSLRA also requires a plaintiff to "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." 15 U.S.C. § 78u-4(b)(2)(A). "[U]nder the PSLRA's heightened pleading instructions … the plaintiff must do more" than under the *Twombly* notice pleading standards.[4] *S. Cherry Street, LLC v. Hennessee Grp. LLC*, 573 F.3d 98, 110 (2d Cir. 2009).

I. The Safe Harbor For Forward-Looking Statements Bars Most Of the Complaint.

Before the Court need consider the insufficiency of plaintiff's allegations, the PSLRA safe harbor disposes of most of the Complaint. The statutory safe harbor allows the Court to clear away the proverbial underbrush and focus on the relatively few alleged misstatements that were not forward-looking. The great majority of the challenged statements—28 of the 39 listed

[4] These heightened standards result in nearly half of all 10b-5 complaints being dismissed. *See* Mem. in Support of Defs.' Mot. to Strike ("Mot. to Strike"), filed contemporaneously herewith, at 1-2.

in the Complaint's Appendix A[5]—were expressly forward-looking. Because Cliffs provided meaningful cautions, those statements cannot, as a matter of law, give rise to a securities claim. Applying the safe harbor is straightforward. There is no need to consider particularity or falsity or to weigh scienter inferences: if a statement was forward-looking and accompanied by meaningful cautions, then any claim based upon it must be dismissed, period.[6]

Congress enacted the safe harbor to encourage companies to provide forward-looking information without fear of facing securities claims (and the associated burdens and expense of discovery) if their expectations did not pan out. S. Rep. 104-98, at 16 (1995) ("Fear that inaccurate projections will trigger the filing of a securities fraud lawsuit has muzzled corporate management."); *id*. at 14 (recognizing that discovery costs, which "account for roughly 80% of total litigation costs in securities fraud cases," "often force defendants to settle abusive securities class actions").[7] Consistent with the PSLRA's goals, courts construe the safe harbor liberally. *See Norfolk Cnty. Ret. Sys. v. Tempur-Pedic Int'l, Inc.*, 22 F. Supp. 3d 669, 680 (E.D. Ky. 2014) (granting dismissal and recognizing that "forward-looking statements are defined broadly").

> The PSLRA, 15 U.S.C. § 78u-5(i)(1), defines a forward-looking statement as:
>
> (A) a statement containing a projection of revenues, income . . . capital expenditures, ***dividends*** . . . or other financial items;
>
> (B) a statement of the plans and objectives of management for future operations . . . ;
>
> (C) a statement of future economic performance . . . ; [or]
>
> (D) any statement of the assumptions underlying or relating to any statement described in

[5] *See* SAC App. A #1, 3-11, 13-15, 18-22, 26, 28-34, 36, 39.

[6] To assist the Court, Appendix D identifies the forward-looking statements and accompanying cautionary language that triggers the PSLRA safe harbor.

[7] Congress was concerned that review of securities complaints under Rules 9(b) and 12(b)(6) did not sufficiently protect forward-looking statements, and that securities lawsuits were chilling the provision of useful forward-looking information. *Id.* at 5 ("[T]he threat of mass shareholder litigation, whether real or perceived, has had adverse effects, especially in chilling disclosure of forward-looking information."). The safe harbor was informed by the view that market participants understand forward-looking information is contingent, but desire it nonetheless, so they can exercise their own judgments about how to use it. *Id.* at 15-16 ("Understanding a company's own assessment of its future potential would be among the most valuable information shareholders and potential investors could have about a firm.").

subparagraph (A), (B), or (C).

A forward-looking statement is not actionable if it "is identified as such and 'is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statements.'" *In re Keithley Instrs. Inc. Sec. Litig.*, 268 F. Supp. 2d 887, 904 (N.D. Ohio 2002) (*quoting* 15 U.S.C. § 78u-5(c)(1)(A)(i)).

A. The Safe Harbor Protects Forward-Looking Statements About Bloom Lake.

Many of the Bloom-Lake-related statements qualify as forward-looking, because they were "statement[s] of plans and objectives of management for future operations [or] future economic performance." 15 U.S.C. § 78u-5(i)(1)(B), (C). Statements about future cash costs per ton at Bloom Lake (such as the hope for an eventual cost in the $60-65 range) were thus forward-looking. *See* App. A #8-9, 18, 21-22, 33.[8] Likewise, statements about the mine's anticipated "run rate" and production (such as predictions about annual production rates) were forward-looking. *Id.* #3-4, 7, 10, 26, 31, 36. So, too, were statements about the expected future completion dates for mine improvements (such as predictions about when Phase I would be finished). *Id.* #1, 4, 8, 10, 26, 30-32, 36, 39.

Each forward-looking statement was accompanied by cautionary statements conveying "'substantive information about factors that realistically could cause results to differ materially from those projected in the forward-looking statements, such as, for example, information about the issuer's business.'" *Helwig v. Vencor, Inc.*, 251 F.3d 540, 558-59 (6th Cir. 2001) (en banc) (quoting H.R. Conf. Rep. No. 104-369, at 43 (1995)). Cliffs' 2011 10-K, filed a month before the start of the Class Period, included nearly eleven pages of risk factors that could impact Cliffs as well as a list of cautions directly addressing the forward-looking statements. *See* Ex. A, at

[8] For convenience, Defendants cite to Appendix A of the SAC when referring to alleged misstatements, except for misstatements alleged in the SAC but not listed in Appendix A. Defendants also note that certain statements or portions of statements listed in plaintiff's Appendix A do not appear in the SAC. *See* App. A #11, 19, 23-24, 27, 36, 39.

25-35, 92-93. In every press release and every investor call during the Class Period, Cliffs included more cautions and incorporated by reference (and urged investors to review) the risk factors in the 2011 10-K and other SEC filings. *See* App. D at n.1.[9]

The cautionary statements alerted investors that "[m]ine development projects typically require a number of years and significant expenditures during the development phase before production is possible. Such projects could experience unexpected problems and delays during development, construction and mine start-up." Ex. A, at 34-35. The 2011 10-K detailed eleven risk factors that could affect the accuracy of estimates about Bloom Lake, including:

- "changes in tonnage, grades and metallurgical characteristics of ore to be mined and processed." *Cf.* ¶50, 145 (ore grades); App. A #3-4, 7, 10, 26, 31, 36 (tonnage of ore); *id*. #8-9, 18, 21-22, 33 (inability to produce at projected cost levels);
- "adverse geotechnical conditions." *Cf.* ¶50, 70-71 (silica levels and resultant equipment problems);
- "higher input commodity and labor costs." *Cf.* ¶61, 120 (fuel, labor, and maintenance supply costs); ¶76-77 (cost of contract labor);
- "[t]he manufacturing processes that take place in our mining operations, as well as in our processing facilities, depend on critical pieces of equipment. This equipment may, on occasion, be out of service because of unanticipated failures." *Cf.* ¶42, 46, 50, 56, 64-83 (allegations about concentrator and transportation and infrastructure issues); and
- "weather or severe climate impacts." *Cf.* ¶54, 78 (rail and port infrastructure); ¶79-81 (weather impact on rail infrastructure).

Ex. A, at 34-35; *compare* App. A #1, 3-9, 11, 13-15, 18-22, 28-30, 32-34, 36, 39 (citing similar "Operational Problems" (¶63-83) as the basis for alleging statements were misleading).

The warnings directly related to forward-looking statements of which plaintiff complains, disclosing specific risk factors that actually disrupted predictions, thus rendering the statements nonactionable. *See, e.g.*, *Keithley*, 268 F. Supp. 2d at 905 ("Keithley's cautionary language

[9] *See, e.g.*, Ex. I (excerpt from 7/31/12 Investor Day Call Transcript) ("Before we get started, let me remind you that certain comments made on today's presentation will include predicative statements that are intended to be made as forward-looking within the Safe Harbor protections of the [PSLRA]. . . . Important factors that could cause results to differ materially are set forth in reports on 10-K and 10-Q and news releases filed with the SEC, which are available on our website."); Ex. J (3/13/12 Press Release).

warned explicitly" of "precisely . . . the reason for its declining prospects"). Courts have dismissed fraud claims on the basis of similar warnings about mining risks, finding cautionary language brought statements about mine-expansion plans under the safe harbor. *In re Molycorp, Inc. Sec. Litig.*, 2015 WL 1540523, at *27 (D. Colo. Mar. 31, 2015) (invoking safe harbor to dismiss claims relating to failed mine-expansion project, based on warnings about "geological and mining conditions" and "assumptions concerning future prices … [and] operating costs").

Cliffs also included specific cautionary warnings in each press release that plaintiff alleges contained misleading forward-looking statements, including warnings about:

- the ability to achieve planned production rates or levels. App. D, Row 7; *cf.* App. A #3-4, 7, 10, 26, 31, 36 (statements regarding goals for tons mined), *id.* #8-9, 18, 21-22, 33 (statements regarding expected costs at full production), ¶49, 58, 60, 92, 96, 144-47 (statements regarding actual tons mined and adjusted projections);
- internal controls over financial reporting. App. D, Row 9; *cf.* App. A #1, 3 and ¶65-66, 72, 76, 96-100, 111-16 (allegations regarding budgeting and reporting of costs);
- tons mined. App. D, Row 10; *cf.* App. A #3-4, 7, 10, 26, 31, 36 (statements regarding goals for tons mined); ¶49, 58, 60, 92, 96, 144-47 (statements regarding actual tons mined and adjusted projections);
- unanticipated geological conditions. App. D, Row 10; *cf.* ¶50, 70-71 (allegations about silica content and resultant equipment problems); App. A #1-9, 11-15, 18-25, 27-30, 32-35, 39 (alleged misstatements attributed to "Operational Problems" including silica content);
- equipment failures. App. D, Row 10; *cf.* ¶50, 55, 69-70 (allegations regarding equipment failures); ¶70-71 (allegations regarding equipment defects); ¶45-46 (statement regarding equipment failures); App. A #1, 23-25, 31 (alleged misstatements owing to issues with equipment, including the concentrator); and
- transportation. App. D, Row 10; *cf.* ¶42, 79-83 (allegations about transportation equipment defects); ¶54, 78 (statement that Bloom Lake had "established [transportation] infrastructure"); App. A #1-2, 25 (alleged misstatements about rail and transportation issues).

These warnings appeared in each press release with alleged misleading statements. *See* App. D at n.1.[10] Related warnings were broadcast in Cliffs' investor calls and 10-Qs.[11] They alerted investors to specific challenges that plaintiff claims caused a difference between Cliffs' stated

[10] *See also* Exs. C, F-G, and J-M (excerpts from various press releases).
[11] *See* Exs. B, D-E, and N-R (excerpts of various conference call transcripts and 10-Qs).

expectations for Bloom Lake and later performance and addressed the risks inherent in mining and in the goal of expanding Bloom Lake. *In toto*, the warnings were more than sufficient to put the forward-looking statements in the safe harbor. So long as "an investor has been warned of risks of a significance similar to that actually realized, she is sufficiently on notice of the danger of the investment to make an intelligent decision about it according to her own preferences for risk and reward." *Helwig*, 251 F.3d at 559; *Molycorp*, 2015 WL 1540523, at *25.

B. The Safe Harbor Protects Forward-Looking Statements About Dividends.

The safe harbor expressly applies to statements about dividends. The "PSLRA explicitly defines forward-looking statements to include 'a projection of . . . dividends,' and any statement relating to such a projection." *Marsh Grp. v. Prime Retail, Inc.*, 46 F. App'x 140, 146-47 (4th Cir. 2002)); *see* 15 U.S.C. § 78u-5(i)(1)(A), (D). In *Marsh*, plaintiffs alleged that despite knowing of setbacks that would require dividend reductions, management assured investors that future dividends were "sacred" and "sacrosanct," and "staked its reputation on its commitment to continue to pay the company's dividend"; the Fourth Circuit held that such language is *categorically* forward-looking and protected by the PSLRA. 46 F. App'x at 146-47.

All the claims about future dividends, *see, e.g.*, App. A #1, 4-6, 11, 13-15, 19-20, 28-30, 32, 34, thus fall within the safe harbor, and the statements about dividends were accompanied by cautionary language setting forth risks at Bloom Lake and elsewhere that might cause dividend results to differ from projections. *See generally* App. D.[12] Accordingly, the statements regarding dividends are not actionable. *See In re Humphrey Hospitality Trust, Inc. Sec. Litig.*, 219 F. Supp. 2d 675, 683 (D. Md. 2002) (statement that "we expect to maintain our current

[12] For example, Cliffs noted a number of potential production issues, "*any of which could have a material adverse effect on our results of operations and financial position*." Ex. A, at 35. And it warned that "downward pressure on prices" and "the ability to maintain liquidity" might "cause actual results to differ materially from those expressed or implied by forward-looking statements." App. D, Rows 2, 8, 12.

dividend rate" nonactionable because it was "accompanied by cautionary statements").

II. All Of The Claims Are Impermissible "Fraud By Hindsight."

An overarching defect is that the SAC pleads fraud by hindsight: it identifies optimistic statements and contends, with benefit of hindsight, that later setbacks to Cliffs' plans show the statements must have been false when made and their speakers must have known so. The Sixth Circuit has "flatly rejected" this technique, *In re Goodyear Tire & Rubber Co. Sec. Litig.*, 436 F. Supp. 2d 873, 903 (N.D. Ohio 2006), and affirmed dismissals when faced with a "classic fraud by hindsight case where a plaintiff alleges that the fact that something turned out badly must mean defendant knew earlier that it would." *La. Sch. Emps. Ret. Sys. v. Ernst & Young*, 622 F.3d 471, 484 (6th Cir. 2010); *Konkol v. Diebold, Inc.*, 590 F.3d 390, 403 (6th Cir. 2009).

Fraud-by-hindsight is failure to plead fraud with particularity. Its telltale symptom is lack of "contemporaneous facts showing that the defendants knew or should have been aware that [the] statements were false." *Konkol*, 590 F.3d at 402. "[W]ithout contemporaneous falsity, there can be no fraud." *In re Lululemon Sec. Litig.*, 14 F. Supp. 3d 553, 581 (S.D.N.Y. 2014) (dismissing complaint that "[did] not establish what specific contradictory information the makers of the statements had and the connection (temporal or otherwise) between that information and the statements at issue."). Our Circuit's teaching is plain: "[T]his court holds … that the falsity of a statement does not depend on whether the prediction in fact proved to be wrong." *Sinay v. Lamson & Sessions Co.*, 948 F.2d 1037, 1040, 1042 (6th Cir. 1991).

Courts are especially wary of fraud-by-hindsight in claims against mining firms, given the uncertainty of geological estimates, risks of construction and operational issues, and vicissitudes of commodity prices. One court recently called similar securities claims about a delayed mining project a "classic example of 'fraud by hindsight.'" *Molycorp*, 2015 WL 1097355, at *11. Like here, plaintiffs alleged statements about a mine's development were

fraudulent in light of problems that later arose, basing the claim on CWs. *Id.* The court dismissed the complaint, finding the CW allegations "devoid of facts demonstrating that Defendants knew they would fail to meet the announced schedule *when the statements were made*." *Id.* at *10. *See also In re Gold Res. Corp. Sec. Litig.*, 957 F. Supp. 2d 1284, 1298-99 (D. Colo. 2013), *aff'd*, 776 F.3d 1103 (10th Cir. 2015); *In re Agnico-Eagle Mines Ltd. Sec. Litig.*, 2013 WL 144041, at *17-19 (S.D.N.Y. Jan. 14, 2013) (dismissing claims that executives should have disclosed earlier that mine would be shut down, citing the "familiar rule" that "the securities laws do not recognize fraud by hindsight"), *aff'd*, 533 F. App'x 38 (2d Cir. 2013).

A. The Bloom-Lake-Related Claims Are Based On Fraud By Hindsight.

The bar against hindsight pleading dooms plaintiff's claims about developments at Bloom Lake. The SAC fails to identify ***any*** contemporaneous document or statement by a defendant that contradicted any public statement by Cliffs or that demonstrates that any defendant knew that any statement by him or her was false-when-made. The SAC relies almost entirely on allegations about CWs who opined (long after the fact) that the stated goals and schedules for Bloom Lake were infeasible (*e.g.*, ¶42, 64-83, 99) and that, due to their positions in the Company, occasional visits to Bloom Lake, and unidentified "reports," defendants "must have known" the goals could not be achieved. *E.g.*, ¶84-87, 95-101. But these vague, conclusory assertions provide no ***particularized facts*** showing that any defendant ever received any report that contradicted any defendant's statements, or that any defendant otherwise knew of, let alone agreed with, the CWs' views.[13] The ex post opinions of unnamed sources are not

[13] *See*, *e.g.*, ¶64 (failing to allege any defendant knew of supposed impossibility of reaching production goals due to shutdown days); ¶68 (alleging defendants were generally "responsible for overseeing costs at Bloom Lake" but not identifying any report showing goals were unattainable); ¶73 (claiming unspecified production and cost reports were sent to subordinate of defendant Brlas, but not Brlas herself); ¶85 (allegations identify no specific contradictory information obtained during defendants' visits to Bloom Lake). Indeed, some confidential witness allegations indicate that certain reports regarding Bloom Lake

enough for a fraud claim. *E.g., In re DRD Gold Ltd.*, 472 F. Supp. 2d 562, 571-72 (S.D.N.Y. 2007) (allegations "[b]ased on information from confidential witnesses" that "Defendants were able to accurately analyze mine profitability and therefore must have known or recklessly disregarded the fact that the [mining] restructuring could not succeed" were insufficient).

The allegations about Bloom Lake focus on two types of statements: those about production volume, including the progress of Phase II and corresponding increases in tons of ore to be mined (*see* App. A #3-4, 8, 10, 26, 31, 36); and estimates of the per-ton cash costs that could be achieved by the end of 2012. *Id.* #8-9, 18, 21-22, 33.[14] Each set of allegations fails because they do not state particularized facts demonstrating any statement was false when made and that the speaker of each statement knew it was false when he or she made it.

As to production volume, the SAC complains of statements in March, April, and July 2012 that the Phase II expansion was expected to increase production to 16 million tons by 2013, and that it was "on track" or "progressing well." App. A #3-4, 8, 10, 26. Plaintiff also lists as misstatements Cliffs' October 2012 revisions to the 2013 volume projections (reducing them to 13-14 million tons) (*id.* #31) as well as February 2013 statements that production was projected to reach 14 million tons by 2015. *Id.* #36. The SAC asserts conclusorily that these statements were misleading because the Phase II expansion, which was ultimately never completed, was not

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(if they ever reached defendants) might have *overstated* construction progress. ¶76 (cost reports sent to "Cleveland" "[didn't] necessarily correlate" to construction progress). *See also* Section IV(D), *infra*, regarding plaintiff's failure to connect confidential witness statements with knowledge of defendants.

[14] The SAC also references several statements about the status and capabilities of assets at Bloom Lake. *See* App. A #2, 7, 12, 23-25 (statements describing Bloom Lake as "premium asset" with a "low cost production base," describing concentrator as "fantastic," and stating the rail and port facilities were "working quite well"). However, like statements about production volumes and cash costs, the SAC lacks any facts showing these statements were false when made, or that the speakers knew they were false. For example, while the SAC alleges the concentrator suffered a series of breakdowns during an unspecified period beginning in late 2011 (¶70), it neither alleges the concentrator was broken down in July 2012, when the challenged statement was made, nor identifies a shred of paper seen by—or statement uttered to—Carrabba that would have caused him to believe that the concentrator was not actually "fantastic" (to say nothing of the fact that the statement amounts to non-actionable puffery).

"feasible" at the time the statements were made. *E.g.*, ¶88, 95. Plaintiff attempts to support the assertion of infeasibility with two sets of allegations: CW opinions about operational problems that supposedly kept Bloom Lake from meeting its *Phase I* production goals (¶64-66, 69-73, 76, 79-83), and CW statements regarding cost overruns for Phase II. ¶95-101.

Neither set of allegations demonstrates that Cliffs did not intend to achieve the stated volumes or complete the Phase II expansion, or that the speaker of any statement believed the goals and timetables were unattainable. For example, the SAC cites one CW opinion that by March 2012, it was "mathematically impossible" for Cliffs to achieve its *2012* production goals at Bloom Lake. ¶ 64. But the SAC confuses annual volumetric goals with projected run rates (*e.g.*, Ex. A (2011 10-K), at 6, 39, 54, 173 (speaking in terms of "ramp[ing] up capacity")), to say nothing of Cliffs' ability to meet *2013* production goals or of the status of the Phase II expansion. Moreover, it never demonstrates that the CW's opinion was held by or communicated to any defendant at any time, much less at the time of the alleged misstatements, and it does not identify anything in any document given to any defendant that said as much.[15]

The allegations about Bloom Lake cash costs also fall short. Plaintiff points to April, July, and October 2012 statements that per-ton cash costs were projected to reach the $60-65 range (App. A #8-9, 18, 21-22, 33) and complains (with 20/20 hindsight) that those statements must have been fraudulent because the goal was not achieved. Plaintiff again tries to support the

[15] Other allegations about Phase I production capacity and equipment defects also lack particulars showing statements were false when made. *E.g.*, ¶65-66 (CW opinions, as of summer and September 2011, that Bloom Lake lacked capacity to run at 8 million tons per year, but containing no allegation of any specific document or report given to any defendant at the time that said as much); ¶69-71 (CW opinions about equipment breakdowns and defects never state projected volume was unattainable or that defendants shared such a belief). As for allegations about cost overruns in Phase II (¶95-101), the SAC never draws a connection between the supposed overruns and the status or feasibility of the Phase II expansion. That the project was over-budget at some unidentified point does not mean, and the SAC never alleges, that Cliffs did not believe Phase II was progressing or that it could not achieve stated production goals.

allegations by claiming the goal was infeasible in light of operational problems at Bloom Lake. ¶67-71, 74-83. But again, the SAC alleges no *particularized facts* (as opposed to conclusory CW opinions offered long after the fact) demonstrating that Cliffs did not actually intend to achieve the $60-$65 per ton goal or that any defendant believed the goal was not viable at the time of the April, July, and October 2012 statements.[16] That Cliffs did not meet its targets, or did not do so on the original schedule, does not mean earlier statements were fraudulent.[17]

Over and over, the SAC asserts that the goals and plans for Bloom Lake could never be achieved, but it does not cite a single particularized fact to show that that was true in the contemporaneous circumstances or that any defendant believed it to be true. In over 50 pages and 160 paragraphs of pleading, the SAC does not identify a single document that contradicted, in words or in substance, a contemporaneous statement by a defendant. Nor does it cite a single private statement by any defendant that contradicted a contemporaneous public statement.

B. The Dividend-Related Claims Are Based On Fraud By Hindsight.

The claims about the dividend are likewise impermissible fraud by hindsight. The later reduction of a dividend cannot *ipso facto* render earlier statements on planned dividends knowing falsehoods. *Cf. Dailey v. Medlock*, 551 F. App'x 841, 847 (6th Cir. 2014) ("With no facts alleged to support the contention that defendants had prior knowledge [of a financial adjustment], plaintiffs make the *ipso facto* assertion that the mere fact that it ultimately was taken

[16] *See* ¶67-68 (no allegation defendants shared CW's opinion that cash cost per-ton goal "wasn't realistic"); ¶69-71 (no allegation defendants shared CW's assessment of frequency or impact of equipment breakdowns); ¶78-83 (allegations about increased costs due to rail and infrastructure problems do not demonstrate that Cliffs did not believe the problems could be overcome or that they made the $60-65 goal unattainable). The SAC alleges that "by October and November 2012, it seemed that under no scenario could Bloom Lake achieve … a cost of $60 per ton." ¶68. Not only does this allegation post-date at least the April and July statements, if not the October one; it also fails to state a single particular fact—such as citing a specific document or specific conversation with a defendant—suggesting that any defendant (as opposed to a CW) believed or knew that $60-65 per ton never could be achieved.

[17] Allegations that the cash cost goal was unrealistic due to "soaring" costs are further undermined by the SAC's admission that Cliffs reduced per-ton cash costs at Bloom Lake every single quarter of 2012. *See* ¶144-48 (cash costs of $98 in Q1; $91 in Q2; $88 in Q3; $86 in Q4; and low $70s by year end).

demonstrates such knowledge. It is hard to imagine a clearer example of alleging 'fraud by hindsight.'"). For this reason, courts consistently dismiss allegations attacking earlier dividend projections as fraud by hindsight. *E.g.*, *Graff v. Prime Retail, Inc.*, 172 F. Supp. 2d 721, 728-29 (D. Md. 2001) (finding fraud-by-hindsight and dismissing complaint regarding statements that a dividend was "sacred" and "sacrosanct" and company "committed" to it), *aff'd sub nom. Marsh Grp. v. Prime Retail, Inc.*, 46 F. App'x 140 (4th Cir. 2002).[18] Similarly, statements about "stress testing" a dividend cannot give rise to a fraud claim simply because the testing proved incorrect. *See In re Sec. Cap. Assur. Ltd. Sec. Litig.*, 729 F. Supp. 2d 569, 582-83, 595 (S.D.N.Y. 2010).

The SAC lists several purported misstatements about the dividend, some relating to future dividend payments (App. A #1, 4-6, 11, 13-15, 19-20, 32, 34) and some to the testing performed to assess the dividend's sustainability. *Id.* #5-6, 13-14, 16-17, 28-29. Plaintiff tries to demonstrate the falsity-when-made of the statements by citing CWs' after-the-fact opinions that Cliffs lacked the ability to properly "stress test" the dividend. ¶110-115. But even if these anonymous opinions are credited, they do not demonstrate that the testing was not performed or that any defendant knew at the time of his or her statement that Cliffs would reduce the dividend.

First, the fact the Cliffs' board ultimately decided to reduce the dividend in February 2013 obviously does not show that any defendant was trying to mislead anyone months earlier, when describing management's hopes and intentions to maintain the dividend: that would be the essence of fraud by hindsight. And the SAC does not point to anything in any specific document or communication to or from any defendant that even begins to suggest that a defendant did not

[18] *Accord In re CenturyLink, Inc.*, 2015 WL 500476, at *6-7 (W.D. La. Feb. 3, 2015) (recommending dismissal, as statement that defendant "should have prepped the market ahead of the dividend cut" was "nothing more than a comment made with the benefit of hindsight"); *In re Crown Am. Realty Trust Sec. Litig.*, 1997 WL 599299, at *14-15 (W.D. Pa. Sept. 15, 1997); *In re USF & G Corp. Sec. Litig.*, 1993 WL 740188, at *2, *6-7 (D. Md. Feb. 11, 1993) (dismissing allegations about commitment to dividend increase as fraud by hindsight), *aff'd sub nom. Rabinovitz v. USF & G Corp.*, 16 F.3d 411 (4th Cir. 1994).

honestly state the Company's intentions for the dividend at the time of any specific statement.[19]

Second, there is no particularized fact in the SAC to suggest that Cliffs did not actually "stress test" the new dividend under multiple scenarios before it was adopted. The SAC offers only a vague assertion from a secret source that defendant Brlas supposedly said, months after the new dividend was adopted, that Cliffs' price forecasting "did not have the rigor behind it we should have." ¶114. But the SAC does not assert that that supposed statement was in reference to dividend testing.[20] Moreover, the allegation does not say (or even suggest) that stress testing was not in fact performed; at most, it suggests that at a point months after the dividend change, the testing seemed sub-optimal in light of later developments. Because the SAC never pleads any particularized fact showing that Ms. Brlas (or any other defendant) believed any specific statement about the dividend was false at the time it was made, it does not plead a fraud claim.

III. Plaintiff Fails To Plead Facts Giving Rise To A Strong Inference Of Scienter.

The SAC also must be dismissed because it fails to allege particularized facts that support a strong inference of scienter. "'Scienter' refers to a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). When a securities fraud claim involves alleged false statements of present or historical fact, a plaintiff must show scienter in the form of "knowledge or recklessness" as to that falsity. *PR Diamonds, Inc. v. Chandler*, 364 F.3d 671, 681 (6th Cir. 2004).[21] Recklessness "is defined as highly

[19] No specific document or conversation cited in the SAC even hints that a defendant believed that Cliffs would be unable to support its dividend, but said the opposite. Indeed, by October 2012, management cautioned that the ultimate decision on the dividend would be up to the board, and that maintaining the Company's investment-grade ratings and its capital investments in Bloom Lake would take priority over the dividend. *E.g.*, Ex. E (10/25/12 Earnings Call Transcript), at 12, 14 (dividend "a Board decision"); *id.* at 8-9 (Bloom Lake "our #1 priority").

[20] Indeed, the context was completely unrelated to the dividend. *See* Mot. to Strike at 9.

[21] For a forward-looking statement that is not accompanied by meaningful cautionary statements, the required level of scienter is higher: actual knowledge. *Miller v. Champion Enters. Inc.*, 346 F.3d 660, 672 (6th Cir. 2003). If a forward-looking statement *is* accompanied by meaningful cautionary language, then it falls within the safe harbor and allegations of scienter are irrelevant. *Id.*

unreasonable conduct which is an extreme departure from the standards of ordinary care." *Id.* To avoid dismissal, a securities complaint must "state with *particularity* facts giving rise to a *strong* inference that the defendant acted with the required state of mind." 15 U.S.C. § 78u-4(b)(2)(A). To qualify as "strong," an inference "must be more than merely plausible or reasonable—it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent." *Tellabs, Inc. v. Makor Issues & Rights, Inc.*, 551 U.S. 308, 321 (2007).

The SAC falls far short of this demanding standard. First, a nonfraudulent inference is far more logical than the tale of fraud plaintiff tells. Second, plaintiff fails to plead a believable motive for the supposed fraud. Third, the overwhelming majority of the factors to which courts look in performing a holistic scienter analysis weigh heavily against a finding of scienter.

A. Fraud Is Not The Most Compelling Inference Here.

The Complaint fails to raise *any* inference of fraud, far less a "strong" one that is "cogent," "compelling," and at least as plausible as competing nonfraudulent inferences. *Id.* at 314. Rather, by far the most cogent and compelling inference is that defendants believed "that they could use their expertise . . . to achieve strong financial results" with regard to Bloom Lake and the dividend but that external forces and what, in hindsight, were errors in business judgment combined to bring about results that diverged from their expectations. *Graf v. Resilience Cap. Partners, LLC*, 2014 U.S. Dist. LEXIS 13348, at *11 (N.D. Ohio Jan. 28, 2014).

Two new cases—both decided after the briefs on the original motion to dismiss here—bear a striking resemblance to the one at bar. In both, the court concluded that a nonfraudulent inference was the most compelling. In *Gold Resource*, the Tenth Circuit affirmed dismissal of a 10b-5 case on scienter grounds. Gold Resource had announced a three-stage plan to expand production at a new mine in Mexico. 776 F.3d at 1106-07. As here, the expansion plan "also included a considerable dividend program for shareholders." *Id.* at 1107. Gold Resource issued

a press release at the start of the class period touting "record" results; its president stated, "We look forward to achieving our [annual] target as we continue on our trajectory for aggressive production and growth." *Id.* at 1109. Similar statements were made for much of the nine-month class period. For example, three months into the period, the president pointed to the dividend as evidence of "the positive outlook we have for the continued success and production trajectory of" the mine expansion. *Id.* at 1112.

But six months into the class period, Gold Resource announced production problems and lowered its production forecast. *Id.* at 1110. It attributed the problems to "infrastructure requirements," including electrical, ventilation, and water incursion problems at the mine. *Id.* at 1110, 1117. The company also encountered problems with the grade of the ore in the mine versus what had been expected. *Id.* Ultimately, at the end of the class period, the company announced a restatement reducing its revenues due to a pricing dispute with a customer. *Id.* at 1107. In response to these problems, the company's stock price plunged. *Id.* at 1111.

Plaintiff argued scienter, contending, as plaintiff does here, that the "production problems [were] obvious," the mine was a "core operation," and the defendants thus must have known their statements were false. *Id.* at 1116. Neither the trial nor the appellate court took the bait. The nonfraudulent inference—that unanticipated problems with mine infrastructure and the quality of the ore were the source of the troubles—was the more logical one. *See id.* at 1118. The Tenth Circuit noted that the defendants (i.e., company management) were "separated by nearly 2,000 miles and international borders" from on-the-ground developments at the mine, *id.* at 1116, and "the risks of the mining business were fully set out for investors," *id.* at 1117. It noted there was no allegation of insider trading (as here), and that "the absence of any allegation of a financial benefit from the alleged fraud cuts the other way"—that is, against a scienter inference. *Id.* at 1117, n.8. "[I]n the context of scienter, we must consider plausible opposing

inferences as well. Doing so paints a different picture of the mining business, one in which it is not always possible to anticipate what miners will face as they dig deeper." *Id.* at 1117.

The *Molycorp* case is also uncannily similar to ours. Molycorp announced a multi-phase mine expansion, of which Phase I was to increase output six-fold. 2015 WL 1097355, at *2. After early statements that the project was "on track," Molycorp later pushed out the completion date and announced that project costs were higher than expected due to labor and operational issues. *Id.* at *2-3. CWs alleged: there were lengthy mine shut-downs, *id.* at *10; there were many meetings about problems at the project, *id.* at *4; crucial equipment did not work, *id.*; Molycorp suffered from "inadequate oversight and rushed . . . procedures," *id.* at *14; and there was "chaos" at the mine, *id*. Several executives resigned during the class period. *Id.* at *12.

The court found the complaint failed to establish a strong inference of scienter. The CW allegations were not specific enough to show the defendants' knowledge at the time of key alleged misstatements. *Id.* at *10. Rather, the stronger inference was that management thought the mine's problems could be addressed and eventually corrected: the allegations "may show that the defendants should have been more alert and more skeptical, but nothing alleged indicates that management was promoting a fraud." *Id*. Further, although plaintiffs alleged the defendants must have known sooner than publicly indicated that problems would delay completion of Phase I, "managers are entitled to investigate for a reasonable time, until they have a full story to reveal." *Id.* at *11. As here, the *Molycorp* plaintiffs "do not point to specific, existing reports that were given to" the defendants that contradicted any later public statement. *Id*.

As in *Gold Resources* and *Molycorp*, the most cogent and compelling inference here is the unspectacular one: defendants believed Bloom Lake was a sound investment, and they believed they had a viable plan to develop the mine. They explained their strategy to investors and increased the dividend to a level they believed Cliffs could sustain. As problems arose

during the project (as will occur in any big project, and *a fortiori* in mining), the defendants believed they could adopt measures to mitigate them. But due to a series of on-the-ground setbacks (*e.g.*, high-silica-content ore, labor issues, a mine fire) and dramatic fluctuations in the price of iron ore, their hopes were frustrated. The strategy turned out to be an improvident business judgment; poor business judgments are not fraud. *See Santa Fe Indus. v. Green*, 430 U.S. 462, 477 (1977) (§ 10(b) does not extend to "instances of corporate mismanagement").[22]

B. Plaintiff Fails To Plead A Plausible Motive For Fraud.

Plaintiff's failure to offer any logical reason for defendants to perpetrate the posited con decisively undercuts an inference of scienter, for "[w]ithout a motive to commit securities fraud, businessmen are unlikely to commit it." *City of Livonia Emps. Ret. Sys. v. Boeing Co.*, 711 F.3d 754, 758 (7th Cir. 2013). Plaintiff does not allege insider trading by any defendant and is unable to identify any concrete personal benefit defendants might have hoped to gain from the alleged fraud. *Local 295/Local 851 IBT Emp'r Grp. Pension Trust & Welfare Fund v. Fifth Third Bancorp*, 731 F. Supp. 2d 689, 718 (S.D. Ohio 2010) ("[T]he lack of insider trading[] suggests . . . an uphill climb to establish . . . scienter[.]"). Rather, the only "motives" to which plaintiff points are common to all executives—and courts routinely reject them as suggestive of scienter.

Specifically, plaintiff contends defendants fabricated the "success" of the Bloom Lake plan and raised the dividend "to unsustainable levels" in order to "assuage investors' concerns"

[22] Notably, there is not one particularized allegation that supposed problems, once identified and understood, were not then incorporated into Cliffs' plans and projections. Thus, if there were rail infrastructure difficulties, what is to say that they were not taken into account in some fashion in the planning? If ore quality issues emerged, what is to say they were not factored in? The SAC does not say, but instead confines itself to asserting the existence of supposedly visible problems, without ever showing the executives' strategic assessments failed to account for whatever was known to them. Indeed, much of what the SAC alleges is garden-variety mismanagement, not fraud. Bloom Lake, plaintiff asserts, "was not a well-organized construction effort, in part because there were too many decisionmakers." ¶76. Plaintiff also complains that the mine had two general managers, and "you can't run a boat with two captains." ¶75. Cliffs' "management was prone to panic." ¶117. The entire Bloom Lake operation was a victim of "poor planning[.]" ¶97. Try as they might, Cliffs could "[not] properly project[] budgets" and "spent over half of the Bloom Lake budget before realizing that it had not been efficiently spent." ¶116.

and save "their own livelihoods." ¶30. But those kinds of generalized, career- and corporate-reputation-preserving motives don't cut it: "[C]ourts have repeatedly explained that the desire to increase officer compensation by inflating stock prices does not constitute motive." *Agnico-Eagle Mines*, 2013 WL 144041, at *11. The Sixth Circuit has held that "[a]ll corporate managers share a desire for their companies to appear successful," and "courts distinguish [such] motives common to corporations and executives generally from motives to commit fraud." *PR Diamonds*, 364 F.3d at 690. Defendants' purported desire to "save their jobs or salaries" does not support an inference of scienter. *Omnicare III*, 769 F.3d at 484.[23]

Plaintiff's theory is not only legally, but logically, absurd. If defendants knew that Bloom Lake would prove to be a bust and the new dividend would be unsustainable, surely they would not have reasoned that raising the dividend to a collapse-inducing level would *enhance* their job security. *See, e.g.*, ¶30. Much less could they hope to get away with such a hare-brained scheme; there is no way the inevitable results could be concealed. To argue otherwise is the antithesis of cogency. *See In re Carter-Wallace Sec. Litig.*, 1999 U.S. Dist LEXIS 17526, at *15 (S.D.N.Y. Nov. 9, 1999) (no scienter where motive theory did "not even make sense"); *Russo v. Bruce*, 777 F. Supp. 2d 505, 519 (S.D.N.Y. 2011) (alleged motive did not support scienter where "it [was] not clear how defendants' alleged fraud could succeed").

Adding to the absurdity of plaintiff's theory: defendants were large shareholders. At the start of the Class Period, the individual defendants owned tens of millions of dollars of Cliffs' stock. And more significantly, all four *increased* their holdings between March 2012 and March

[23] Also unavailing is the assertion that "[s]hortly after Cliffs' dramatic dividend cut and analysts' downgrade of Cliffs' stock, three of the four Individual Defendants were forced to resign from the Company." ¶134. "[W]ithout factual allegations linking Defendants' resignations to the alleged fraud, the mere fact of the resignations provides no support for a finding of scienter." *Molycorp*, 2015 WL 1097355, at *12; *see Albert Fadem Trust v. Am. Elec. Power Co.*, 334 F. Supp. 2d 985, 1014 (S.D. Ohio 2004) (proximity of executive departure and public disclosure is insufficient to plead scienter without explanation of why the departure should be viewed with unusual suspicion).

2013.[24] "[D]ozens of cases dismiss complaints on scienter grounds where . . . motive allegations were undermined by increases in [individual defendants'] total [stock] holdings." *In re eSpeed, Inc. Sec. Litig.*, 457 F. Supp. 2d 266, 290 n.182 (S.D.N.Y. 2006); *see In re Officemax, Inc. Secs. Litig.*, No 1:00-CV-2432, 2002 WL 33959993, at *14 (N.D. Ohio Mar. 26, 2002) (not only was there "no apparent financial incentive for Defendants to engage in the deceptive practices . . . given their respective shareholdings, which Defendants retained throughout the Class Period and beyond, there appears to have been a disincentive to do so"). If the fact the "[i]ndividual [defendants] actually lost [millions of dollars] in collective stock value during the class period . . . gives rise to a 'strong inference' of anything, it is that no scienter exists." *Ganey v. PEC Solutions, Inc.*, 418 F.3d 379, 390 (4th Cir. 2005).

Plaintiff's motive theory is not merely neither "strong," "cogent," nor "compelling"; it is bizarre: that the defendants plotted and planned to jeopardize their own careers, injure their company, and wreak havoc on their personal finances. *See Gold Resource*, 776 F.3d at 1117 n.8 (absence of financial motive cuts against an inference of scienter).

C. Analysis Of The *Helwig* Factors Does Not Support An Inference Of Scienter.

Allegations about motive already have been discussed and discredited. Of the remaining *Helwig* factors,[25] plaintiff tries to address only two: (1) divergence between internal reports and

[24] Mr. Carrabba's holdings of Cliffs' stock increased from 212,738 shares in March 2012 (Ex. S (2012 Proxy), at 18) to 241,556 shares in March 2013 (Ex. T (2013 Proxy), at 26). Ms. Brlas' holdings rose from 71,380 shares (Ex. S, at 18) to 87,149 shares (Ex. T, at 26). Likewise, Mr. Paradie's holdings increased from 15,778 (Ex. U (Form 4 filed 3/14/12)) to 16,594 shares (Ex. T, at 26), and Mr. Blake's from 21,563 (Ex. V (Form 4 filed 3/14/12)) to 23,076 (Ex. T, at 26).

[25] The nine *Helwig* factors are:

> (1) insider trading at a suspicious time or in an unusual amount; (2) divergence between internal reports and external statements on the same subject; (3) closeness in time of an allegedly fraudulent statement or omission and the later disclosure of inconsistent information; (4) evidence of bribery by a top company official; (5) existence of an ancillary lawsuit charging fraud by a company and the company's quick settlement of that suit; (6) disregard of the most current factual information before making statements; (7) disclosure of accounting information in such a way that its negative implications could only be understood by someone with a high degree of

external statements, and (2) closeness in time between a fraudulent statement and later disclosure of inconsistent information. *See Fifth Third*, 731 F. Supp. 2d at 718 ("absence of six of the nine *Helwig* factors, particularly the lack of insider trading, suggests that the complaint faces an uphill climb to establish that any of the Defendants acted with scienter"); *accord Omnicare III*, 769 F.3d at 473 (inference of scienter directly correlates with the number of *Helwig* factors present). And even the allegations regarding these two factors lack the requisite particularity.

1. Alleged Divergence Between Internal Reports/External Statements

Plaintiff pins its scienter hopes on the proposition that defendants knew the situation at Bloom Lake was dire but concealed it from investors, contending that this is evidenced by a divergence between internal information possessed by defendants and their statements about Bloom Lake. *See, e.g.*, ¶142. Relatedly, the SAC alleges the defendants knew but hid from the public the fact that the increased dividend was not sustainable. *Id.*

When alleging that a purported divergence supports a strong inference of scienter, a plaintiff "must include adequate corroborating details, such as the sources of her information with respect to the reports, how she learned of the reports, who drafted them, which officers received them, and an adequate description of their contents." *In re Diebold Inc. Sec. Litig.*, 2008 WL 3927467, at *6 (N.D. Ohio Aug. 22, 2008). The complaint must state "exactly what was in the reports, exactly what statements were made on the same subject, and how the information in the external statements was different from the information in the internal reports." *Id.*; *see In re Huntington Bancshares Inc. Sec. Litig*, 674 F. Supp. 2d 951, 971 (S.D. Ohio 2009).

Here, the SAC alleges (*e.g.*, ¶86, 98-101) defendants possessed internal information on the dividend and the supposed infeasibility of Bloom Lake as a result of: (i) internal reports and

sophistication; (8) the personal interest of certain directors in not informing disinterested directors of an impending sale of stock; and (9) the self-interested motivation of defendants in the form of saving their salaries or jobs.

Omnicare III, 769 F.3d at 473. The SAC is silent as to factors (1), (4), (5), (6), (7), and (8).

meetings, (ii) visits to the mine, and (iii) supposed accounting manipulations by mid-level employees. But the "ambiguous and conclusory allegations" do not come close to providing the necessary particularity to support an assertion that "[d]efendants knew or were reckless in not knowing [that Bloom Lake or the dividend] could not possibly succeed." *DRD Gold*, 472 F. Supp. 2d at 571-72. The SAC does not cite a single document, conversation, or a first-hand observation by any defendant that contradicted any contemporaneous public statement.

a. Internal Reports And Meetings

Only seven of the 168 paragraphs purport to describe internal reports about Bloom Lake or the dividend. ¶68, 72, 73, 76, 77, 99, 100.[26] And these seven lack *any* details of the contents of any specific report. Further, with one exception, *none* of the seven paragraphs even alleges that a specific defendant actually received or reviewed any of the reports.[27] Instead, the SAC asserts only that "upper management in Montreal" (¶68), "Cliffs' headquarters" (¶72, 76, 99, 100), "Jason Petrik" (¶73),"management in IT" (¶77), or "Cleveland" (¶99) received reports.[28] The sole exception is paragraph 72, which states only that "CW27 . . . described regular revenue reports that were distributed to the CFO" (¶72), but without suggesting how such a document could bear on future production rates or cash costs. What any specific report actually said—and how it supposedly contradicted any contemporaneous public statement—is left unstated. In short, while the Complaint alleges Cliffs had a variety of "reports," it fails to make a *single* allegation about specific information in *any* specific report given to *any* specific defendant at *any* specific time, much less explain how that information was at odds with a specific public

[26] This is not to say internal reports are not mentioned elsewhere in the SAC. But while other paragraphs refer to reports, they all either rely on one or more of these seven paragraphs for substance (*e.g.*, ¶85, 142(b)(iii), 142(d)(iii)), or are general allegations left entirely unsupported (*e.g.*, ¶96, 142(a)(ii)).

[27] "Fraudulent intent cannot be inferred merely from . . . alleged *access to* information." *Konkol*, 590 F.3d at 397.

[28] Other paragraphs purport to tie specific defendants to certain reports or types of reports, but they do so only by reference to one or more of these seven deficient paragraphs.

statement by a defendant. *Molycorp*, 2015 WL 1097355, at *11 (no scienter where plaintiff failed to allege "specific, existing reports" given to defendants).

Similarly, the SAC mentions only four meetings (or types of meetings) that could conceivably help show a disparity between internal information and public statements. ¶38, 65, 74, 99. And again, with only one exception, it fails to allege that *any* defendant participated in *any* of the meetings.[29] The exception is the purported meeting where Ms. Brlas supposedly said, in Mr. Carrabba's presence, that Cliffs' historic pricing data "did not have the rigor behind it we should have." ¶38. But stating that available records about a single category of input data are less extensive than would be ideal does nothing to contradict public statements, for example, that Cliffs was "stress testing [its dividend] models constantly" (¶142(e)(iii)), or that it had "tested a wide variety of pricing scenarios over the coming years" (¶36). *See supra* § II(B).

b. Visits To Bloom Lake

The SAC alleges defendants knew the Bloom Lake plans were doomed to fail because of "consistent" visits to the site (including due diligence before the CT transaction). *See, e.g.*, ¶17, 85, 86. But the SAC fails to identify a single item of negative information (i.e., any particularized fact) that any defendant actually uncovered through or any site visit. "Generalized allegations [from CWs] referring to 'senior management' are not sufficient" to satisfy Rule 9(b) or the PSLRA where "[t]he source of this information is unclear and there are no details about how the source learned such information." *Sorkin*, 2005 WL 1459735, at *7-8. Further, the SAC fails to make a single allegation about *anything* that occurred on *any* of defendants' visits. It fails to elaborate on how due diligence for the CT deal (well before the start of the class period) shows that the defendants knew that the dividend increase and Bloom Lake project were

[29] *Cf. Sorkin LLC v. Fischer Imaging Corp.*, 2005 WL 1459735, at *8 (D. Colo. June 21, 2005) (CW statements about "meetings where there were discussions about [a project] . . . too general to support" scienter inference where no "specific facts about who was present and what information was presented").

doomed to fail almost two years later. And it fails to explain why defendants would have been eager to take on projects knowing they were fool's errands.

c. Internal Accounting

The SAC makes a conclusory allegation that "senior executives in Montreal" (*i.e.*, ***not*** the defendants) engaged in accounting maneuvers to hide Phase II's unfeasibility. ¶96-97. But alleging a mid-level employee far away and on the other side of an international border—an employee not alleged to have reported to any defendant—hid information is not relevant when it comes to pleading that defendants *themselves* sought to mislead investors. Plaintiff also relies on defendants' purported receipt of "reports containing the true facts regarding the expansion" (¶96), as well as defendants' positions at Cliffs (¶98), to infer knowledge. But the "reports" allegation is wholly conclusory, *see supra* § II(A), and plaintiff declines to say what "true facts" were in any specific report. And "fraudulent intent cannot be inferred merely from the Individual Defendants' positions in the Company and alleged access to information." *PR Diamonds,* 364 F.3d at 688.[30]

2. Closeness In Time Of An Allegedly Fraudulent Statement And The Later Disclosure Of Inconsistent Information

Plaintiff also fails to raise a strong inference of scienter based on the closeness in time of allegedly fraudulent statements about the dividend and Bloom Lake and the later disclosure of inconsistent information. In March 2012, Cliffs announced it was increasing its dividend by 123%. ¶32. On February 12, 2013, Cliffs announced a 76% dividend cut, which plaintiff emphasizes was "less than one year after" the dividend increase. ¶118. The eleven-month gap between the dividend increase and the reduction is far too long to support an inference of

[30] Further, the SAC does not even attempt to particularize the alleged accounting issues. *See* ¶97. An inference of scienter related to accounting misstatements arises only where the alleged accounting violations are "so simple, basic and pervasive in nature, and so great in magnitude, that they should have been obvious." *LCA-Vision*, 2009 WL 806714, at *18 (citing *PR Diamonds*, 364 F.3d at 684).

scienter. This Court has held that gaps of four months are too long to infer scienter; the lag time here is almost triple that.[31] *See Goodyear*, 436 F. Supp. 2d at 901 ("four months is too distant in time to draw an adverse inference" of scienter); *see also CenturyLink*, 2015 WL 500476, at *5 (November 2012 statement of intent to continue dividend followed by dividend cut in February 2013 provided no support for a strong inference of scienter).

IV. The 'Confidential Witness' Allegations Do Not Bolster The Complaint.

The Sixth Circuit and other courts routinely discount allegations about anonymous witnesses in deciding motions to dismiss under the PSLRA.[32] *Ley v. Visteon Corp.*, 543 F.3d 801, 811 (6th Cir. 2008) (CW allegations "***must*** be discounted and usually that discount will be steep"). Courts recognize the substantial risk that CWs "have axes to grind. . . are lying . . . [or] don't even exist." *Higginbotham v. Baxter Int'l Inc.*, 495 F.3d 753, 757 (7th Cir. 2007). Explaining the "require[ment of] a heavy discount," Judge Posner recently wrote that "[t]he sources may be ill-informed, may be acting from spite rather than knowledge, *may be misrepresented*,[33] may even be nonexistent—a gimmick for obtaining discovery costly to the defendants and maybe forcing settlement or inducing more favorable settlement terms." *City of Livonia*, 711 F.3d at 759. The CW allegations in the SAC contribute nothing.

A. Half The CWs Left Cliffs Before Or During The Class Period.

Statements by sources who were not employed by the Company during the Class Period are irrelevant. *See, e.g.*, *Fifth Third*, 731 F. Supp. at 722 (CW information "pre-dates the class

[31] Plaintiff also grasps at statements made by Mr. Carrabba on October 24 and 25, 2012, that "we remain focused on . . . maintaining our current dividend" and "management remains focused on executing the Phase II expansion at Bloom Lake." ¶142(e)(v), 142(a)(vi). Beyond the fact that this time gap, too, is too large, *see CenturyLink*, 2015 WL 500476, at *5, both statements are wholly innocuous. The SAC does not allege that Carrabba said the dividend was certain to remain in place or that Phase II was guaranteed to proceed. Quite the contrary, his statements were aspirational—one does not "focus[] on" achieving the inevitable but, rather, on achieving goals that, while set, are far from foregone conclusions.

[32] Appendix E summarizes certain defects in the allegations about the nineteen confidential witnesses.

[33] As they have been here, *see* Mot. to Strike.

period and, thus, is irrelevant"); *Sarafin v. BioMimetic Therapeutics, Inc.*, 2013 WL 139521, at *19 (M.D. Tenn. Jan. 10, 2013) (pre-class period employees "could not have known what was in [defendant's] corporate mind at the time it issued the challenged statements"), *aff'd*, 747 F.3d 435 (6th Cir. 2014). By plaintiff's own admission, six of the secret sources (CWs 10, 14, 15, 20, 21, 24) were not employed by Cliffs at all during the Class Period, three others (CWs 5, 16, 26) left during the Class Period,[34] and *none* is a current employee. App. B. Thus, the allegations about at least nine of the nineteen[35] sources must be either disregarded or discounted even more than the "usual[] . . . steep" discount. *Ley*, 543 F.3d at 811.

B. Sources Of The CWs' Supposed 'Personal Knowledge' Are Not Explained.

To show that a confidential witness has personal knowledge, a plaintiff must allege details specifying "how or why such employee[] would have access to the information [he] purport[s] to possess." *Cal. Pub. Emps. Ret. Sys. v. Chubb Corp.*, 394 F.3d 126, 148 (3d Cir. 2004). But the SAC "fail[s] to provide key data" regarding "how each [CW] had personal knowledge of the information alleged in the Complaint." *Diebold*, 2008 WL 3927467, at *7.

A number of the secret sources were low-level employees,[36] and the SAC does not explain how or why they had information about what any defendant did or did not know on a particular topic at a particular time. *See Sarafin*, 2013 WL 139521, at *19 (lower-level CW allegations "not particularly persuasive"); *Chubb*, 394 F.3d at 149 (casting aspersions on low-level CW allegations). These low-level sources also opine on topics well beyond the scope of their job responsibilities. *Cf. Sorkin*, 2005 WL 1459735, at *7 (discounting CW allegation in

[34] *Cf. Karpov v. Insight Enters., Inc.*, 2010 WL 4867634, at *6 (D. Ariz. Nov. 16, 2010) (source who left company during the class period was unreliable).
[35] *See In re Ferro Corp. Sec. Litig.,* 2007 WL 1691358, at *12 (N.D. Ohio June 11, 2007) ("[T]he sheer number of confidential sources [does not] overcome[] the weaknesses in the[ir] statements.").
[36] *See, e.g.*, ¶77 (CW 17 an "analyst"), ¶81 (CW 20 a "Wabush employee," *i.e.*, an employee who did not even work at Bloom Lake).

absence of facts showing how she would possess information given her job title). For example, CW 18—an IT manager in Cleveland—is cited for his critique of the rail infrastructure at Bloom Lake. Even if CW 18 did offer a view on the subject—which is open to doubt (*see* Mot. to Strike at 10-12)—this topic is far outside the scope of CW 18's job. ¶83. And plaintiff relies heavily on CW 7's challenge to Cliffs' dividend modeling but fails to explain how or why CW 7 had sufficient information on the subject, given her role as a "tax director." ¶31, 115. (Moreover, plaintiff's allegations about her are badly misrepresented, *see* Mot. to Strike at 9-10.)

These serve as examples of the rampant speculation and hazy appeals to generalized knowledge that plaintiff tries to pass off as the CWs' personal knowledge. *See In re Ferro*, 2007 WL 1691358, at *12 (rejecting secret source opinions consisting of "'water-cooler gossip,' 'irrelevant speculation,' [or] 'gratuitous criticism'").

C. The CW Allegations Are Vague And Conclusory.

To have any value, anonymous witness allegations must "allege who [at the company] knew about [the alleged wrongdoing] and what, when, where, and how they knew." *Ley*, 543 F.3d at 811. "When confidential sources are used to support vague and conclusory allegations, the allegations are not accorded much weight." *Konkol*, 590 F.3d at 399. Here, the anonymous-witness allegations are invariably general and lack factual details.[37] These types of "bare-bones statements . . . are properly discounted." *Id.*; *see, e.g. Chubb*, 394 F.3d at 155 ("Generic and conclusory allegations based upon . . . conjecture" do not come close to satisfying the PSLRA.).

[37] For example, the SAC alleges CW 17 was "aware of certain projects within the Company that ran overtime" (¶77), and CW 1 thought "management was not spending money wisely and was not hiring the right people" (¶75). *See also, e.g.*, ¶18, 31, 38, 65, 72, 74, 77, 80 (allegation CW 19 believed transportation problems "cost a lot of money," without attempting to quantify the cost or specify its impact); 81 (alleging "other transportation and operational issues at Bloom Lake"), 97 (CW 16 would "inform Vallée that a particular project was going to cost a certain amount").

D. Allegations About CWs Are Unconnected To The Defendants' Knowledge.

CW allegations that fail to connect defendants to alleged improprieties have no value. *See Ind. State Dist. Council v. Omnicare, Inc.*, 583 F.3d 935, 945-46 (6th Cir. 2009) (affirming dismissal; complaint did not connect CW allegations to defendants). A plaintiff must assert specific facts linking "ground-level" problems to "corporate-level" knowledge by defendants. *See In re WatchGuard Sec. Litig.*, 2006 WL 2927663, at *7-8 (W.D. Wash. Oct. 12, 2006). Courts disregard allegations when the CW is not "alleged to have had any direct contact with [a defendant] on any topic." *City of Pontiac Gen. Emps. Ret. Sys. v. Stryker Corp.*, 865 F. Supp. 2d 811, 824-25 (W.D. Mich. 2012); *see also Fifth Third*, 731 F. Supp. 2d at 721-22 (dismissing where "no facts [are] alleged from which it can be inferred that the CW had sufficient contact with any of the defendants to impute [her] knowledge of misconduct to the defendants").

In the whole SAC, only *one* CW allegation even arguably refers to information the source allegedly made known to a defendant (¶38), and even that lacks particulars about the nature of the information or when it was supposedly relayed. The rest of the SAC levels scattershot allegations that, for example, "issues with. . . equipment at Bloom Lake were well-known and well-understood internally" (CW 10, ¶65), or that "inadequate price modeling was well-known internally" (CW 7, ¶115). *Cf. Russo*, 777 F. Supp. 2d at 525 ("conclusory allegation that . . . information was well known . . . does not create a strong inference of scienter.").

CONCLUSION

For the reasons set forth above, the Complaint must be dismissed, with prejudice.[38]

[38] Where, as here, "[P]laintiff[] do[es] not state a claim for a primary securities law violation under Rule 10b–5, dismissal of a 'control person' liability claim under 15 U.S.C. § 78t(a) [Section 20(a)] is also proper." *Dailey*, 551 F. App'x at 849.

Dated: May 15, 2015

/s/ John M. Newman, Jr.

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LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Civil Rule 7.1(f), I hereby certify that this case has not yet been assigned to a track. Pursuant to the Court's entry regarding the April 8, 2015 teleconference, the page limitation for this memorandum is thirty (30) pages. I hereby further certify that the foregoing Memorandum adheres to this limitation and is a total of 30 pages in length.

/s/ John M. Newman, Jr.
John M. Newman, Jr.
One of the Attorneys for Defendants Cliffs Natural Resources Inc., Joseph Carrabba, Laurie Brlas, Terry Paradie, and David B. Blake

APPENDIX D

Cautionary Language Directly Related to Alleged Forward-Looking Statements

Row	Cautionary Language Directly Related to Alleged Forward Looking Statements[1]	Related Risk Factors in Cliffs' 2011 Form 10-K	Alleged Forward-Looking Statements
1	"Although the Company believes that its forward-looking statements are based on reasonable assumptions, such statements are subject to risks and uncertainties relating to Cliffs' operations and business environment that are difficult to predict and may be beyond Cliffs' control."	p. 25	App. A # 1, 3-11, 13-15, 18-22, 26, 28-34, 36, 39
2	"[U]ncertainties and factors may cause actual results to differ materially from those expressed or implied by forward-looking statements for a variety of reasons including:	p. 93	App. A # 1, 3-11, 13-15, 18-22, 26, 28-34, 36, 39
3	• Uncertainty or weakness in global economic and/or market conditions…	p. 25, 26-27, 93	App. A # 1, 4-6, 11, 13-15, 19-20, 28-30, 32-34
4	• the ability to successfully integrate acquired companies and achieve post-acquisition synergies, including without limitation Consolidated Thompson…	p. 32, 34-35, 93	App. A # 1, 3-11, 13-15, 18-22, 26, 28-34, 36, 39
5	• events or circumstances that could impair or adversely impact the viability of a mine and the carrying value of associated assets…	p. 26, 93	App. A # 1, 3-11, 13-15, 18-22, 26, 28-34, 36, 39
6	• changes in sales volume or mix	p. 26-27, 93	App. A # 1, 3-11, 13-15, 18-22, 26, 28-34, 36, 39

Row	Cautionary Language Directly Related to Alleged Forward Looking Statements[1]	Related Risk Factors in Cliffs' 2011 Form 10-K	Alleged Forward-Looking Statements
7	• the ability to achieve planned production rates or levels…[2]	p. 33-34, 35	App. A # 1, 3-11, 13-15, 18-22, 26, 28-34, 36, 39
8	• the ability to maintain adequate liquidity…	p. 27, 93	App. A # 1, 4-6, 11, 13-15, 19-20, 28-30, 32-34
9	• potential existence of significant deficiencies or material weakness in our internal control over financial reporting…[3]	p. 93	App. A # 1, 3-6, 10-11, 13-15, 19-20, 26, 28-32, 34, 36, 39
10	• problems or uncertainties with productivity, third-party contractors, unanticipated geological conditions, weather conditions, natural disasters, tons mined, changes in cost factors, the supply or price of energy, equipment failures, transportation… and other risks of the mining industry…	p. 29-30, 32, 35, 93	App. A # 1, 3-11, 13-15, 18-22, 26, 28-34, 36, 39
11	• the failure of plant, equipment or processes to operate as anticipated…	p. 30	App. A #1, 3-11, 13-15, 18-22, 28-30, 32-34, 39
12	• "[D]ownward pressure on prices."[4]	p. 93	App. A # 1, 4-6, 11, 13-15, 19-20, 28-30, 32-34
13	• "[R]educed market demand."[5]	p. 93	App. A # 11, 13-15, 19-20, 28-30, 32-34
14	The information contained herein speaks as of the date of this release and may be superseded by subsequent events."	p. 92	App. A # 1, 3-6, 8-11, 13-15, 18-22, 26, 28-34, 36, 39

[1] This cautionary language is taken from Cliffs' March 13, 2012 press release cited by the Complaint. Substantially identical language is included (unless otherwise noted) in all press releases in which the Plaintiff alleges forward-looking statements, including those dated March 13, April 25, July 25, October 24, and November 19 of 2012, and February 12, 2013. Each of these also incorporated by reference the cautionary language "set forth in the Company's most recently filed reports with the Securities Exchange Commission."

Excerpts from each press release are attached to the Mueller Declaration, with the full text available at http://ir.cliffsnaturalresources.com/English/investors/news-releases/default.aspx.

Substantially identical cautionary language was also included (unless otherwise noted) in all of Cliffs' Form 10-Q filings in which the Plaintiff alleges forward-looking statements, including those dated April 26 (p. 54-55, 57), July 26 (p. 62-63, 65-66), and October 25 of 2012 (p. 66-67, 68-69).

Cliffs' Form 10-K for 2011, filed February 16, 2012, in which Plaintiff alleges additional forward-looking statements, addresses substantially these and other risk factors in great detail. Cliffs' SEC filings are available on its website or from the SEC at http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0000764065&owner=exclude&count=40&hidefilings=0.

At each teleconference cited in the Complaint, Cliffs urged investors to review the cautionary statements contained its SEC filings and press releases. The transcripts of such calls were generally available online to investors and contained additional cautionary language. Excerpts from the transcript of each investor call cited in the SAC, including the warnings regarding forward-looking statements, are attached as exhibits to the Mueller declaration.

[2] This risk factor appears in each cited Cliffs' Form 10-Q (including those dated April 26 (p. 54-55), July 26 (p. 62-63), and October 25 of 2012 (p. 66-67)) and each press release except the press release dated April 25, 2012.

[3] This risk factor appears in each cited press release and Cliffs' Form 10-Q dated October 25, 2012 (p. 66-67).

[4] This risk factor appears in Cliffs' 2011 Form 10-K (p. 93) and in each Form 10-Q pled filed during 2012, including those dated April 26 (p. 54), July 26 (p. 62), and October 25 (p. 66).

[5] This risk factor appears in each Form 10-Q filed during 2012, including those dated April 26 (p. 54), July 26 (p. 62), and October 25 (p. 66).

APPENDIX E

BASES FOR DISCOUNTING EACH CONFIDENTIAL WITNESS ALLEGATION

Confidential Witness	Paragraph #	Topic of Statement	Lack of Personal Knowledge/Rumor	Vague & Conclusory	Statements Not Connected to Defendants	Departed Before or During Class Period	Background Statements Unrelated to Claims	Relies Entirely on Earlier Paragraphs Attributed to CW
CW 1	64	Shutdowns at Bloom Lake		X	X		X	
	75	Management and Staffing at Bloom Lake	X	X	X			
	85	Visits to Bloom Lake		X	X			
	86	Oversight of Bloom Lake		X	X			
	142(a)(iii)	Shutdowns at Bloom Lake		X	X			X
	142(c)(ii)	Visits to Bloom Lake		X	X			X
	142(c)(iii)	Oversight of Bloom Lake		X	X			X
CW 2[1]	67	Production Goals	X	X	X	X		
	68	Production Goals	X	X	X	X		
	85	Visits to Bloom Lake	X	X	X	X		
	116	Bloom Lake Budget Problems	X	X	X	X	X	
	117	Management Practices	X	X	X	X		
	142(a)(iii)	Production Goals	X	X	X	X		X
	142(b)(ii)	Visits to Bloom Lake	X	X	X	X		X[2]
CW 5	76	Costs and Accounting at Bloom Lake		X	X	X	X	
CW 7	31	Reason to Increase Dividend	X		X		X	
	38	Dividend Testing and Pricing Data		X			X	
	74	Phase Program Viability and Impairment	X	X	X			
	87	Impairment Analysis		X	X			
	115	Price Forecasting		X	X			
	142(a)(iv)	Impairment Analysis	X	X	X			X

[1] The italicized CWs have provided declarations under penalty of perjury attesting that the SAC's allegations about them are untrue or misrepresented. *See* Mot. to Strike.

[2] Neither cited paragraph contains a shred of information from CW 2 supporting the allegations found in paragraph 142(b)(ii).

Confidential Witness	Paragraph #	Topic of Statement	Lack of Personal Knowledge/Rumor	Vague & Conclusory	Statements Not Connected to Defendants	Departed Before or During Class Period	Background Statements Unrelated to Claims	Relies Entirely on Earlier Paragraphs Attributed to CW
	142(e)(ii)	Pricing Data		X			X	X
	142(f)(ii)	Testing and Sustainability of the Dividend		X			X	X
CW 10	18	Due Diligence at Bloom Lake	X	X	X	X	X	
	65	Bloom Lake Production Issues		X	X	X		
	86	Management and Due Diligence at Bloom Lake	X	X	X	X		
	142(a)(ii)	Due Diligence at Bloom Lake	X	X	X	X		X
	142(a)(iii)	Attendance at Montreal Meetings		X	X	X		X
	142(b)(iii)	Attendance at Montreal Meetings		X	X	X		X
	142(d)(i)	Due Diligence at Bloom Lake	X	X	X	X	X	X
CW 11	70 & n.4	Concentrator Issues		X	X		X	
CW 14	71	Concentrator Issues	X		X	X	X	
CW 15	71 n.5	Concentrator and Infrastructure Issues	X	X	X	X[3]	X	
CW 16	81 n.6	Conveyor Issues	X		X	X	X	
	85	Visits to Bloom Lake	X	X	X	X		
	97	Vallée Accounting Manipulations		X	X	X		
	98	Vallée Accounting Manipulations		X	X	X		
	99	Phase II and Budgeting Issues		X	X	X		
	101	Delay of Phase II Expansion	X	X	X	X		
CW 17	77	Staffing at Bloom Lake		X	X			
	86	Oversight of Bloom Lake	X		X			

[3] Not a Cliffs' employee; employed by CIMA+. Appendix B to SAC.

Confidential Witness	Paragraph #	Topic of Statement	Lack of Personal Knowledge/Rumor	Vague & Conclusory	Statements Not Connected to Defendants	Departed Before or During Class Period	Background Statements Unrelated to Claims	Relies Entirely on Earlier Paragraphs Attributed to CW
	142(b)(iii)	Budget Overages	X	X	X			X[4]
CW 17	142(c)(iii)	Due Diligence at Bloom Lake	X		X			X
CW 18	83	Rail System at Bloom Lake	X	X	X			
CW 19	80	Transportation System at Bloom Lake		X	X		X	
CW 20	81	Operational Issues at Bloom Lake	X	X	X	X	X	
CW 21	82	Transportation System	X	X	X	X	X	
CW 24	112	Dividend and Financial Modeling	X	X	X	X		
	113	Dividend and Financial Modeling	X	X	X	X	X	
CW 25	68	Oversight of Bloom Lake	X	X	X			
	85	Visits to Bloom Lake		X	X			
	142(a)(ii)	Visits to Bloom Lake		X	X			X
	142(a)(iii)	Oversight of Bloom Lake	X	X	X			X[5]
	142(c)(ii)	Visits to Bloom Lake		X	X			X
	142(c)(iv)	Oversight of Bloom Lake	X	X	X			X[6]
CW 26	85	Visits to Bloom Lake			X	X		
	142(a)(ii)	Visits to Bloom Lake			X	X		X[7]
	142(b)(ii)	Visits to Bloom Lake			X	X		X[8]

[4] Three of the four paragraphs cited in support do not even reference CW 17.

[5] Only one of the two cited paragraphs mentions CW 25.

[6] Only one of the two cited paragraphs mentions CW 25.

[7] Exaggerates content of the cited CW 26 allegation.

[8] Only one of the two cited paragraphs mentions CW 26. Exaggerates content of cited allegation.

Confidential Witness	Paragraph #	Topic of Statement	Lack of Personal Knowledge/Rumor	Vague & Conclusory	Statements Not Connected to Defendants	Departed Before or During Class Period	Background Statements Unrelated to Claims	Relies Entirely on Earlier Paragraphs Attributed to CW
CW 27	72	Revenue Issues at Bloom Lake	X	X	X	X		
	142(b)(iii)	Revenue Issues at Bloom Lake	X	X	X	X		X
	142(d)(ii)	Bloom Lake Accounting	X	X	X	X		X
CW 29	18	Due Diligence at Bloom Lake	X	X	X			
	66	Production at Bloom Lake	X	X	X			
	68	Production at Bloom Lake		X	X			
	73	Bloom Lake Financial Reports		X	X			
	77	Management Turnover at Bloom Lake	X	X	X			
	85	Visits to Bloom Lake		X	X			
	86	Due Diligence and Management at Bloom Lake	X	X	X			
	142(a)(ii)	Due Diligence at Bloom Lake		X	X			X
	142(b)(ii)	Visits to Bloom Lake	X	X	X			X[9]
	142(b)(iii)	Bloom Lake Financial Reports		X	X			X
	142(c)(ii)	Due Diligence at Bloom Lake		X	X			X
	142(c)(iii)	Management at Bloom Lake		X	X			X

[9] Exaggerates content of the cited CW 29 allegations.