C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF **MONTRÉAL**

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. 36, as amended)

N°: **500-11-048114-157**

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

TWIN FALLS POWER CORPORATION

CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED

Mises-en-cause

OUTLINE OF ARGUMENTS[1]

(In response to the *Motion by Twin Falls Power Corporation to dismiss the Application for Lack of Jurisdiction and for Forum Non Conveniens* and to Churchill Falls (Labrador) Corporation Limited's *Contestation* ("**Contestation**"))

---

[1] Except as otherwise provided for herein, all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Bloom Lake Initial Order (as defined herein), the Wabush Initial Order (as defined herein), the Plan (as defined herein) and the CBCA Motion (as defined herein).

1. THE FACTS

1.1 Overview

1. The present outline addresses the question of where the adjudication of one of the final disputed issues in a CCAA process that has been before the Québec Superior Court (the "**CCAA Court**") since January 27, 2015, ought to be heard. For the reasons set out below, the CCAA Parties and the Monitor[2] respectfully submit that the CCAA Court is the only just and appropriate venue for the CBCA Motion to be adjudicated.

2. The moving parties, Twin Falls Power Corporation ("**Twinco**") and Churchill Falls (Labrador) Corporation Limited ("**CFLCo**"), after having delayed and deferred engagement with the CCAA Parties for years, would have the matter be adjudicated before the courts of Newfoundland and Labrador ("**Newfoundland**")

3. The CCAA Parties take the position that it is a matter for the CCAA Court, in Québec, where the coordinated sale of the CCAA Parties' assets and wind-down of their operations has been overseen for over half a decade, and where the CCAA Court has rightfully asserted its jurisdiction over that of Newfoundland in the very same CCAA proceedings since their commencement five years ago.

1.2 Procedural Background

4. On January 27, 2015, the CCAA Court issued an Initial Order (the "**Bloom Lake Initial Order**") commencing these proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of the Petitioners Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC and the Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited (collectively, the "**Bloom Lake CCAA Parties**").

5. On May 20, 2015, the CCAA Court issued an Initial Order (as subsequently amended, rectified and/or restated the "**Wabush Initial Order**") extending the scope of the CCAA Proceedings to the Petitioners Wabush Iron Co. Limited ("**Wabush Iron**") and Wabush Resources Inc. ("**Wabush Resources**"; Wabush Resources, together with Wabush Iron, "**Wabush**") and the Mises-en-cause Wabush Mines, Wabush Lake Railway Company Limited, and Arnaud Railway Company (and collectively, the "**Wabush CCAA Parties**"; the Wabush CCAA Parties, together with the Bloom Lake CCAA Parties, the "**CCAA Parties**").

6. FTI Consulting Canada Inc. was appointed as monitor in respect of the CCAA Parties (the "**Monitor**").

7. On November 5, 2015, the CCAA Court issued an order (as amended, the "**Amended Claims Procedure Order**"), *inter alia*, approving a procedure for the submission, evaluation and adjudication of claims against the CCAA Parties and their current and former directors and officers (the "**Claims Process**").

8. Twinco filed a proof of claim in the Claims Process against Wabush for approximately $780,000. The claim was allowed by the Monitor in 2016.

9. On June 29, 2018, Mr. Justice Hamilton issued an order sanctioning the Joint Plan of Compromise and Arrangement dated as of May 16, 2018. On July 30, 2018, Mr. Justice Hamilton issued the Plan Modification Order dated July 30, 2018, pursuant to which minor modifications were made to the Plan to avoid unanticipated tax consequences.

10. Interim distributions have been made by the Monitor, and the CCAA Parties have sold all of their assets other than Wabush's interest in Twinco. The monetization of this remaining asset, and the resolution of certain disputes surrounding the asset, are one of the last material steps to be taken before the CCAA Parties can wind down the proceedings.

1.3 Twinco & The Twinco Plant

11. Moving party Twinco is an incorporated joint venture formed under the *Canada Business Corporations Act* (the "**CBCA**") on February 18, 1960 among moving party CFLCo, CCAA Parties Wabush Iron and Wabush Resources, and the Iron Ore Company of Canada ("**IOC**"), among others.

12. As at December 31, 2019, Twinco was owned 33.3% by CFLCo, 49.6% by IOC, 4.6% by Wabush Iron and 12.5% Wabush Resources. Wabush Iron and Wabush Resources together hold 17.062% of the equity in Twinco (the "**Twinco Interest**").

13. In 1961, CFLCo licenced to Twinco the rights to develop a 225-megawatt hydroelectric generating plant on the Unknown River in Labrador (the "**Twinco Plant**"). The Twinco Plant was formerly used to supply power to the local mines, towns and the construction of the Churchill Falls hydroelectric generating station in Churchill Falls, Newfoundland (the "**Churchill Falls Plant**").

14. In 1974, CFLCo took over the Twinco Plant and diverted water away from the Twinco Plant to the Churchill Falls Plant. In connection with this take-over, CFLCo and Twinco, CLFCo undertook maintenance obligations in respect of the Twinco Plant, and indemnified Twinco in respect of environmental liabilities at the Twinco Plant.

15. Without a sufficient water supply, the Twinco Plant was placed into extended shut-down in 1974, where it has remained for the last approximately 46 years. Over that time, significant potential environmental liability may have accrued in respect of the Twinco Plant. The CCAA Parties are of the view that the responsibility for any environmental liability lies squarely with CFLCo and not Twinco, pursuant to the latter's maintenance obligations and indemnities.

16. Twinco has approximately $6.1 M in cash and cash equivalent assets (the "**Twinco Cash**") and approximately $46,000 of liabilities, as admitted in paragraph 24 of Exhibit C-1 filed in support of the CFLCo's Contestation. In addition to the Twinco Cash, it is not clear to the CCAA Parties whether, and to what extent, Twinco may have funded maintenance or environmental remediation that was CFLCo's responsibility, and accordingly may have a claim for reimbursement from CFLCo.

17. Pursuant to Twinco's Articles of Continuance dated August 1, 1980 the shareholders are entitled to share rateably in the remaining property of Twinco upon dissolution.

18. For years, both prior to and after the commencement of the CCAA Proceedings, the CCAA Parties, with the support of IOC, have sought to obtain a distribution of the Twinco Cash to Twinco's shareholders, but such distribution has been continuously resisted by Twinco and CFLCo. The CCAA Parties believe that the resistance to make a distribution is primarily because CFLCo is attempting to ensure that the Twinco Cash remains available to address any environmental liabilities, notwithstanding that CFLCo is responsible for such environmental liabilities.

19. $6.1 million dollars of Twinco Cash is a significant sum, and the actual amount may increase to the extent Twinco has reimbursement claims against CFLCo. These amounts ought to be properly adjudicated, determined, realized and made available to creditors pursuant to the CCAA process.

20. While the CCAA Parties had been hopeful that a consensual resolution could be achieved, they have concluded that based on the responses received from Twinco and CFLCo and the lack of desire of Twinco and CFLCo to engage in a constructive manner, a consensual resolution will not be possible.

1.4 The CBCA Motion

21. Accordingly, on November 16, 2020, the CCAA Parties filed a motion in this Court for the *Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief*, pursuant to section 11 of the CCAA and sections 214 and 241 of the CBCA, to be heard on a *pro forma* basis (the "**CBCA Motion**").

22. The CBCA Motion seeks the issuance of an Order against Twinco and CFLCo:

a) confirming CFLCo's liability for Twinco's maintenance obligations and environmental liabilities related to the Twinco Plant from and after July 1, 1974;

b) compelling an accounting from Twinco of all monies expended by Twinco in respect of maintenance and environmental costs that have not been reimbursed by CFLCo pursuant to the CFLCo Indemnity and CFLCo Maintenance Obligations (as defined therein; collectively, the "**Reimbursable Environmental/Maintenance Costs**");

c) directing CFLCo to reimburse all Reimbursable Environmental/Maintenance Costs (such amount to be reimbursed by CFLCo, being the "**CFLCo Reimbursement**") to Twinco for distribution to the shareholders as part of the winding up and dissolution of Twinco pursuant to the relief requested in paragraph (d) below;

d) directing the winding up and dissolution of Twinco pursuant to section 214 and/or section 241(3)(l) of the CBCA and a distribution of: (i) the Twinco Cash net of all reasonable fees and expenses incurred by Twinco to implement and complete the wind up and dissolution being sought in this Motion (the "**Remaining Twinco Cash**"), and (ii) the CFLCo Reimbursement to Twinco's shareholders, including

Wabush, on a pro rata basis, a solution to which Twinco and CFLCo seem amenable;

e) in the alternative to (d), directing Twinco and/or CFLCo to purchase the shares of Twinco held by Wabush pursuant to section 214(2) and/or section 241(3)(f) of the CBCA for a purchase price equal to the amount of Wabush's pro-rata share of: (i) the Twinco Cash, and (ii) the CFLCo Reimbursement; and

f) such further and other relief as this Honourable Court deems just.

(collectively, the "**Requested Relief**").

2. THE CCAA COURT HAS JURISDICTION TO DECIDE THE CBCA MOTION

2.1 The Nature of the Requested Relief

23. The CBCA Motion requests relief based on Sections 214 and 241 of the CBCA.

24. Section 214 of the CBCA permits the court to order the liquidation and dissolution of a corporation and such other order under 214 or 241 as "it thinks fit" where the court is satisfied that, among other things:

a) in respect of the corporation or any of its affiliates, there is: (i) any act or omission of the corporation or any of its affiliates that effects a result, (ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or (iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer ("**Oppressive Conduct**"); or

b) it is just and equitable to do so.

- *Canada Business Corporations Act,* R.S.C. 1985, c. C-44, section 214. **(Tab 1)**

25. Accordingly, Section 241 of the CBCA permits the court to make an order for the liquidation and dissolution of a corporation or directing a corporation or any other person to purchase securities of a security holder, where the court is satisfied that there is Oppressive Conduct.

- *Canada Business Corporations Act,* R.S.C. 1985, c. C-44, section 241. (Tab 1)

26. CFLCo is clearly amenable to this solution having filed its own Motion seeking the liquidation of Twinco.

2.2 The CCAA Court Ought to Take Jurisdiction over the Requested Relief pursuant to the "Single-Control" Model which Applies in Insolvency Proceedings

2.2.1 The "Single-Control" Model

27. Insolvency proceedings are governed by the "single-control" model which clearly favours the CCAA Court's jurisdiction to hear the CBCA Motion and grant the Requested Relief.

28. Indeed, in *Sam Lévy & Associés v. Azco Mining Inc.* ("***Sam Lévy***"), Binnie J., writing for the Supreme Court of Canada, stated that the "single-control" model applies to insolvency proceedings, which favours litigation involving an insolvent company to be dealt with in one jurisdiction.

- *Sam Lévy & Associés v. Azco Mining Inc.*, 2001 SCC 92 (CanLII), at para 27. **(Tab 2)**

29. While *Sam Lévy* involved a proceeding under the BIA, Courts have reiterated that the single-control model now also applies to CCAA proceedings.

- *Essar Steel Algoma Inc., Re.*, 2016 ONSC 595, at paras 29-30 **(Tab 3)**:

> [29] The "single control" model also favours a CCAA court to deal with the issues between Essar Algoma and Cliffs. In *Eagle River International Ltd., Re* 2001 SCC 92 (CanLII), [2001] 3 S.C.R. 978 ["*Sam Lévy*"] Binnie J. referred to and adopted a "single control" model that favours litigation involving an insolvent company to be dealt with in one jurisdiction. He stated: […]
>
> [30] *Sam Lévy* involved a BIA proceeding. In it, Binnie J. referred to *Stewart*, a winding-up application. I see no reason why the principles in *Sam Lévy* should not be applicable in a CCAA proceeding. In *Century Services* it was noted that the harmonization of insolvency law common to the BIA and CCAA is desirable to the extent possible. The central nature of insolvency and the resolution of issues caused by insolvency are common to both BIA and CCAA proceedings and so too should the underlying principles. […]
>
> [Emphasis Added]

- *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, para 22. **(Tab 4)**

- *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67, para 21. **(Tab 5)**

- *Montréal, Maine & Atlantic Canada Co., Re.,* 2013 QCCS 5194 (C.S. Que.), at paras 24-25. **(Tab 6)**

30. More specifically, in 2017, the Honourable Stephen W. Hamilton, j.s.c., acting as sitting judge in these very CCAA Proceedings, recalled the clear efficiencies resulting from the

single control of insolvency proceedings and refused to refer issues relating to the interpretation of the Newfoundland and Labrador *Pension Benefits Act* to the Supreme Court of Newfoundland.

- *Bloom Lake General Partner Ltd., Re.*, 2017 QCCS 284, at paras 29-33. **(Tab 7)**

> [29] In principle, all issues relating to a debtor's insolvency are decided before a single court. This rule is based on the "public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse." This public interest favours a "single control" of insolvency proceedings by one court as opposed to their fragmentation among several courts.
>
> [30] The Supreme Court in Sam Lévy concluded as follows with respect to the relevant test: […]
>
> [31] Although the Sam Lévy case was decided in the context of the Bankruptcy and Insolvency Act ("BIA"), the same principles apply in the context of the other insolvency legislation, including the CCAA. The CCAA court has jurisdiction to deal with all of the issues that arise in the context of the CCAA proceedings. The stay of proceedings under the CCAA gives effect to this principle by preventing creditors from bringing proceedings outside the CCAA proceedings without the authorization of the CCAA court.
>
> [32] There are clear efficiencies to having a single court deal with all of the issues in a single judgment.
>
> [33] The general rule is therefore that the Court should rule on all issues that arise in the context of these insolvency proceedings.
>
> [Emphasis Added]

31. As such, the CCAA Parties respectfully submit that CFLCo's Contestation fails to consider that while the general principles of international law may, to a certain extent, provide guidance to the CCAA Court in adjudicating its jurisdiction, they remain limited in insolvency proceedings as they fail to take into account important principles of public policy.

32. Indeed, in the words of Binnie J. writing for the Supreme Court of Canada in *Sam Lévy*, the court overseeing insolvency proceedings (unlike the court sitting in civil proceedings) is pursuing the objectives of a federal statute that establishes a centralized "command centre" for all proceedings related to the debtor. As such, the Québec Superior Court sitting in the CCAA Proceedings is, in a very real sense, sitting as a national court.

- *Sam Lévy & Associés v. Azco Mining Inc.*, 2001 SCC 92 (CanLII), at paras 73, 74, 76, 77. (Tab 2)

> 73. In the first place, as stated, the *Amchem* approach has to be applied here with full regard to the context of Canadian bankruptcy legislation. This appeal involves the allocation of a particular

> bankruptcy matter within a single national bankruptcy scheme created by the Act. As shown in *Holt Cargo Systems*, *supra*, consideration of the allocation of a matter having different aspects (e.g. maritime law and bankruptcy law), as between Canadian courts and foreign courts operating under quite different legislative or other schemes, may raise different problems.
>
> 74. Secondly, *Amchem* and its progeny involved private litigation. Here, as explained in Holt Cargo Systems, supra, there is the important public interest aspect mentioned above. The Court looks not only at the *Amchem* factors, but must strive to give effect to Parliament's intent to create an economical and efficient national system for the administration of bankrupt estates, as evidenced in the Act. […]
>
> 76. In the present case, we are confronted with a federal statute that prima facie establishes one command centre or "single control" (Stewart, supra, at p. 349) for all proceedings related to the bankruptcy (s. 183(1)). Single control is not necessarily inconsistent with transferring particular disputes elsewhere, but a creditor (or debtor) who wishes to fragment the proceedings, and who cannot claim to be a "stranger to the bankruptcy", has the burden of demonstrating "sufficient cause" to send the trustee scurrying to multiple jurisdictions. Parliament was of the view that a substantial connection sufficient to ground bankruptcy proceedings in a particular district or division is provided by proof of facts within the statutory definition of "locality of a debtor" in s. 2(1). The trustee in that locality is mandated to "recuperate" the assets, and related proceedings are to be controlled by the bankruptcy court of that jurisdiction. The Act is concerned with the economy of winding up the bankrupt estate, even at the price of inflicting additional cost on its creditors and debtors.
>
> 77. The "balancing test" advocated by the appellant based on the *Amchem* factors and general principles of private international law fails to take these important public policies into account. The Québec Superior Court sitting in Bankruptcy is, in a very real sense, sitting as a national court.
>
> [Emphasis Added]

33. Thus, keeping in line with the single-control model, the court must first turn to the interpretation of the provisions of the CCAA to determine whether it has jurisdiction to hear the CBCA Motion and grant the Requested Relief.

- *Essar Steel Algoma Inc., Re*, 2016 ONSC 595, at para 27. (Tab 3)

34. In the case at bar, the provisions of the CCAA give the Québec Superior Court's jurisdiction to hear the CBCA Motion and grant the Requested Relief. Indeed, CCAA courts across the country have relied on section 11 CCAA to "make any order that [they consider] appropriate in the circumstances" and section 42 CCAA to "import remedies from other statutory schemes" to make orders comparable to the Requested Relief.

- *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, s. 11 and 42. **(Tab 8)**:

> 11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.
>
> […]
>
> 42. The provisions of this Act may be applied together with the provisions of any Act of Parliament, or of the legislature of any province, that authorizes or makes provision for the sanction of compromises or arrangements between a company and its shareholders or any class of them.
>
> [Emphasis Added]

35. More precisely, in *Lightstream*, the Queen's Bench of Alberta relied on these two sections to find that it had jurisdiction to grant the oppression remedy under the *Alberta Business Corporations Act* in CCAA proceedings.

- *Lightstream Resources Ltd (Re)*, 2016 ABQB 665, at para 52. **(Tab 9)**

36. Likewise, in *Stelco*, the Ontario Court of Appeal concluded that it had authority, pursuant to the CCAA, to grant the oppression remedy under the CBCA. In doing so, the court imported the oppression remedy provided by the CBCA and similar provincial statutes into proceedings under the CCAA.

- *Stelco Inc., Re,* [2005] O.J. No. 1171, at paras 52 – 54 **(Tab 10)**:

> 52. The fact that s. 11 does not itself provide the authority for a CCAA judge to order the removal of directors does not mean that the supervising judge is powerless to make such an order, however. Section 20 [42] of the CCAA offers a gateway to the oppression remedy and other provisions of the CBCA and similar provincial statutes. Section 20 [42] states:
>
> > The provisions of this Act may be applied together with the provisions of any Act of Parliament or of the legislature of any province that authorizes or makes provision for the sanction of compromises or arrangements between a company and its shareholders or any class of them.
>
> 53. The CBCA is legislation that "makes provision for the sanction of compromises or arrangements between a company and its shareholders or any class of them". Accordingly, the powers of a judge under s. 11 of the CCAA may be applied together with the provisions of the CBCA, including the oppression remedy provisions

> of that statute. I do not read s. 20 as limiting the application of outside legislation to the provisions of such legislation dealing specifically with the sanctioning of compromises and arrangements between the company and its shareholders. The grammatical structure of s. 20 mandates a broader interpretation and the oppression remedy is, therefore, available to a supervising judge in appropriate circumstances. […]
>
> [Emphasis Added]

37. Accordingly, the Requested Relief being sought in the CBCA Motion is grounded on a finding by the Court of Oppressive Conduct by Twinco and or CFLCo under the CBCA, which is substantially similar to the oppression remedy in *Stelco* and *Lightstream*.

38. Lastly, the CCAA Parties respectfully submit that in alleging that the Newfoundland court should have exclusive jurisdiction to hear any motion relating to the dissolution or liquidation of Twinco pursuant to sections 207 and 214 CBCA merely because Twinco's registered office is in Newfoundland, CFLCo's Contestation fails to appreciate that section 42 CCAA is focused on the remedies that can be imported from other statutes, not the court or the jurisdictional requirements associated with them.

39. Indeed, finding otherwise would be tantamount to asserting that certain requirements under provincial and federal statutes can prevent this CCAA court from applying the provisions thereunder, on the grounds that it lacks jurisdiction to do so. Clearly, this is an absurd outcome that must be rejected.

40. For instance, the Ontario's *Business Corporations Act* ("**OBCA**") defines "court" as the Superior Court of Ontario. Accordingly, any CCAA court located outside of Ontario would be prevented from importing or using remedies found in the OBCA as the legislation is limited to the Ontario Superior Court. The same is true for most *Personal Property Security Act(s*) ("**PPSA(s)**") throughout Canada, among other statutes. This would arrest this CCAA court from utilizing any statute that is linked to a court outside of Québec, greatly reducing the utility of section 42 - if not eliminating it altogether.

41. Evidently, such an outcome would not only counteract Parliament's intent in enacting sections 11 and 42 CCAA or the Supreme Court's reasoning in laying out the single-control model: it would undermine the very nature of a Canada's insolvency regime. [Emphasis Added]

2.2.2 Twinco and CFLCo Are not "Strangers to the Bankruptcy"

42. In *Sam Lévy*, the Supreme Court of Canada held that a creditor who wished to fragment the proceedings, in spite of the single-control model, had the burden of demonstrating sufficient cause to send the "trustee scurrying to multiple jurisdictions."

- *Sam Lévy & Associés v. Azco Mining Inc.*, 2001 SCC 92 (CanLII), at para 76. (Tab 2)

43. As stated by the Supreme Court of Canada, such cause may be demonstrated where the dispute relates to a matter that is outside even a generous interpretation of the administration of the bankruptcy.

- *Sam Lévy & Associés v. Azco Mining Inc.*, 2001 SCC 92 (CanLII), at paras 36, 39 and 40. (Tab 2)

> … the courts in Canada have generally hewn ever since 1874 to the basic dividing line between disputes related to the administration of the bankrupt estate and disputes with "strangers to the bankruptcy". The principle is that if the dispute relates to a matter that is outside even a generous interpretation of the administration of the bankruptcy, or the remedy is not one contemplated by the Act [BIA], the trustee must seek relief in the ordinary civil courts. ...If the trustee's claim is in relation to a stranger to the bankruptcy, i.e. "persons or matters outside of [the] Act" or lacks the "complexion of a matter in bankruptcy" it should be brought in the ordinary civil courts and not the bankruptcy court...The issue is whether the contractual dispute between it and the respondent trustee properly relates to the bankruptcy.
>
> [Emphasis Added]

44. In other words, such cause may be demonstrated where the opposite party is a "stranger to the bankruptcy."

- *Essar Steel Algoma Inc., Re*, 2016 ONSC 595, at para 33. (Tab 3)

45. On the other hand, however, courts have routinely found that the filing of a proof of claim in insolvency proceedings amounts to an attornment and consent by the filing party to the CCAA court.

- *Van Breda v Village Resorts Ltd*, 2012 SCC 17, at para 79. **(Tab 11)**

- *Microbiz Corp v Classic Software Systems Inc*, [1996] OJ no 5094, at para 1 (SCJ). **(Tab 12)**

- *Joint Venture c. Iannitello et Associés inc*, 2018 QCCA 504, at para 23. **(Tab 13)**

46. More importantly, Québec case law has also been consistent in assessing jurisdiction of the Superior Court's civil and commercial divisions and determining that where an action seeks to revendicate property that is in the debtor's patrimony, the parties in possession of the property will not be considered strangers to the insolvency proceedings and the commercial division will maintain jurisdiction. In other words, where the ultimate objective of the action is to recover assets belonging to the debtor's patrimony, the court sitting in bankruptcy shall have jurisdiction, even if the action itself would normally be heard by the civil division of the Court, especially as this approach facilitates the prompt resolution of insolvency cases.

- *Cantore v. Nemaska Lithium Inc.*, 2020 QCCA 1333, at paras. 9-10. **(Tab 14)**

- *Compagnie de pavage d'asphalte Beaver ltée v Morency*, 1991 CanLII 3680 (QC CA), at paras. 7-9. **(Tab 15)**

47. In the present case, it is abundantly clear that Twinco and CFLCo are not "strangers to the bankruptcy" (or the CCAA proceedings) as the Monitor clearly stands to recoup

assets which belong to the estate, being Wabush's portion of Twinco's cash on hand and any other amount which may become payable to the latter. More precisely:

a) the CBCA Motion relates to the administration of the CCAA Parties' estate, as it is in respect of an asset of the CCAA Parties, being the Wabush Interest;

b) the Wabush Interest is a material asset of the CCAA Parties. If the Requested Relief is granted by the CCAA Court, it would have a material impact on the Plan creditors as it would increase the amounts available to them in any future distributions under the Plan;

c) Twinco has filed a proof of claim in these CCAA Proceedings which has been accepted by the Monitor, making Twinco a creditor of the CCAA Parties in these CCAA Proceedings;

d) by filing its proof of claim with the Monitor, Twinco has attorned and consented to the jurisdiction of the CCAA Court; and

e) the action seeks to revendicate debtor's property that remains in their possession.

48. In light of the foregoing, the CCAA Parties submit that the CCAA Court clearly and unequivocally has jurisdiction.

2.3 Subsidiarily, the CCAA Court Should not Decline to Exercise its Jurisdiction on the Basis of *Forum non Conveniens*

49. For the reasons set out above, the CCAA Parties respectfully submit that in the present CCAA Proceedings, the "single-control" model as developed by the Supreme Court of Canada has clear and unambiguous precedence over the principles of private international law. Twinco and CFLCo argue that even if jurisdiction is established, the CCAA Court should nevertheless decline to hear the CBCA Motion and refer it to a Newfoundland court based on the doctrine of *forum non conveniens*.

50. Thus, this section is subsidiary – the CCAA Parties only address the doctrine of *forum non conveniens* to underline that Twinco and CFLCo unequivocally fail to meet the required burden for this Court to decline jurisdiction on such grounds.

51. The application of the doctrine of *forum non conveniens* is contextual and the factors that the court will consider vary in each case. The jurisprudence has identified the following non-exhaustive list of factors:

> (i) the location of the parties; (ii) the contractual provisions that specify applicable law or accord jurisdiction; (iii) the avoidance of a multiplicity of proceedings; (iv) the geographical factors suggesting the natural forum; (v) the jurisdiction in which the factual matters arose; (vi) the place of business of the parties; (vii) the location in which the majority of witnesses reside; (viii) the cost of transferring the case or declining the stay; (ix) the impact of a transfer on the conduct of the litigation or on related parallel proceedings; (x) the possibility of conflicting judgements; (xi) the location of evidence; (xii) the applicable law; and (xiii) the recognition and enforcement of a judgement.

- *Van Breda v. Village Resorts Ltd*, 2012 SCC 17, at para 105 and 110. (Tab 11)

52. Moreover, while the court may find that an alternate forum exists to hear the dispute, such finding is not dispositive of the matter. Indeed, in *Van Breda*, the Supreme Court of Canada held that the court "should not exercise its discretion … solely because it finds, once all relevant concerns and factors are weighed, that comparable forums exist in other provinces". The Supreme Court of Canada further held that the party raising the doctrine must show that the alternative forum is "clearly" more appropriate, and that it would be "fairer and more efficient" to transfer the proceedings to it. [emphasis added]

- *Van Breda v. Village Resorts Ltd*, 2012 SCC 17, at paras 108-109. (Tab 11):

> [108] Regarding the burden imposed on a party asking for a stay on the basis of forum non conveniens, the courts have held that the party must show that the alternative forum is clearly more appropriate. The expression "clearly more appropriate" is well established. It was used in *Spiliada* and *Amchem*. On the other hand, it has not always been used consistently and does not appear in the CJPTA or any of the statutes based on the CJPTA, which simply require that the party moving for a stay establish that there is a "more appropriate forum" elsewhere. Nor is this expression found in art. 3135 of the *Civil Code of Québec*, which refers instead to the exceptional nature of the power conferred on a Quebec authority to decline jurisdiction: ". . . it may exceptionally and on an application by a party, decline jurisdiction . . .".
>
> [109] The use of the words "clearly" and "exceptionally" should be interpreted as an acknowledgment that the normal state of affairs is that jurisdiction should be exercised once it is properly assumed. The burden is on a party who seeks to depart from this normal state of affairs to show that, in light of the characteristics of the alternative forum, it would be fairer and more efficient to do so and that the plaintiff should be denied the benefits of his or her decision to select a forum that is appropriate under the conflicts rules. The court should not exercise its discretion in favour of a stay solely because it finds, once all relevant concerns and factors are weighed, that comparable forums exist in other provinces or states. It is not a matter of flipping a coin. A court hearing an application for a stay of proceedings must find that a forum exists that is in a better position to dispose fairly and efficiently of the litigation. But the court must be mindful that jurisdiction may sometimes be established on a rather low threshold under the conflicts rules. Forum non conveniens may play an important role in identifying a forum that is clearly more appropriate for disposing of the litigation and thus ensuring fairness to the parties and a more efficient process for resolving their dispute.
>
> [emphasis added]

53. In *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, Justice Lebel, writing for the Supreme Court of Canada, emphasized the fact that in Québec, pursuant to section 3135 of the *Civil Code of Québec* ("**C.c.Q.**"), a trial judge's discretion to decline to hear

an action on the basis of *forum non conveniens* was only to be exercised in exceptional circumstances.

- *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78, para 77 **(Tab 16)**:

> 77. In addition, it should be kept in mind that, when applying art. 3135, the motions or trial judge's discretion to decline to hear the action on the basis of *forum non conveniens* is only to be exercised exceptionally. This exceptional character is reflected in the wording of art. 3135 and is also emphasized in the case law. In particular, in *Amchem*, supra, at p. 931, Sopinka J. noted that the first step of the test for an anti-suit injunction set out in SNI Aérospatiale v. Lee Kui Jak, [1987] 3 All E.R. 510 (P.C.), which involves asking whether the domestic forum is the natural forum, should be modified when a stay of proceedings is requested on the ground of forum non conveniens:
>
> > Under this test [the test for forum non conveniens] the court must determine whether there is another forum that is clearly more appropriate. The result of this change in stay applications is that where there is no one forum that is the most appropriate, the domestic forum wins out by default and refuses a stay, provided it is an appropriate forum.
>
> [Emphasis Added]

54. In the present context, the CCAA Parties respectfully submit that there is nothing that would suggest that transferring the CBCA Motion to Newfoundland would be "clearly" more appropriate. On the contrary, they submit that it would lead to unfair and inefficient results as:

a) the parties would incur additional expenses in transferring the CBCA Motion to Newfoundland;

b) transferring the CBCA Motion would result in a multiplicity of proceedings;

c) the CCAA Court is seized of and is deeply familiar with the details of the CCAA Proceedings and the CCAA Parties, as opposed to the Newfoundland court;

d) the CBCA Motion is in respect of a material asset of the CCAA Parties and has an impact on and relates to the CCAA Proceedings and the administration of the CCAA Parties estate;

e) except for the interpretation of certain contractual provisions where the laws of Newfoundland are elected as applicable law, none of the issues in the CBCA Motion are related to Newfoundland law as the issues are in respect of federal corporate legislation, in which the CCAA Court is particularly specialized;

f) in a global pandemic context, factors of geographical nature are not relevant since evidence will be adduced electronically and any hearing will most likely be conducted in a virtual manner; and

g) having already found that the CCAA Court has jurisdiction to hear the CBCA Motion, transferring it would offend the "single-control" model discussed above.

55. Moreover, it must be underlined that this CCAA Court has also already heard and decided a *forum non conveniens* matter in these CCAA Proceedings which involved legislations from competing jurisdictions and was in relation to, among other things, Newfoundland's *Pension Benefit Act*. Recalling the clear efficiencies of the single-control model and the low weight given to the fact that a dispute was governed by foreign law in a *forum non conveniens* analysis, the CCAA Court ruled that it would not refer the matter to Newfoundland.

- *Bloom Lake General Partner Ltd., Re.*, 2017 QCCS 284, at para 29-33, 46, 70 and 73 (Tab 7) :

> [29] In principle, all issues relating to a debtor's insolvency are decided before a single court. This rule is based on the "public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse." This public interest favours a "single control" of insolvency proceedings by one court as opposed to their fragmentation among several courts.
>
> [32] There are clear efficiencies to having a single court deal with all of the issues in a single judgment.
>
> [33] The general rule is therefore that the Court should rule on all issues that arise in the context of these insolvency proceedings.
>
> […]
>
> [46] Further, pursuant to these rules, Québec courts regularly hear matters governed by foreign law. The Court of Appeal recently held that the fact that a dispute is governed by foreign law does not have much weight in a *forum non conveniens* analysis:
>
> > [98] Si on revoie les considérations du Juge, portant sur dix points, pour conclure que le for géorgien est préférable, deux aspects principaux en ressortent, soit les coûts et la loi applicable.
> >
> > [99] Quant à cette dernière considération, elle n'est pas d'un grand poids, à mon avis. Parce que le débat porte sur les faits plutôt que sur le droit. Parce que la *common law* est tout de même familière aux tribunaux québécois. Parce que faire la preuve de la loi d'un État américain n'est pas un grand défi, c'est même chose courante.
> >
> > [100] Et surtout, parce que le critère de la loi applicable ne constitue pas en soi un facteur important. Dans tout litige international, les conflits de lois sont l'ordinaire et non l'exception.
>
> […]

> [70] The Court will not refer issues of Québec law or federal law to the NL Court, and if those issues are too closely interrelated to the NLPBA issues, or if in the interests of simplicity and expediency they should all be decided by the same court, then the solution is not to refer any issues to the NL Court.
>
> […]
>
> [73] On balance, the legal considerations do not favour referring the issues to the NL Court.

56. As such, the CCAA Parties point out that the fact this Court will have to apply and interpret certain contractual provisions of the agreements which provide that the laws of Newfoundland are applicable does not at all bar this Court from exercising its jurisdiction. Indeed, this Court has already exercised such jurisdiction over these matters when it was asked to interpret a series of contracts governed by the laws of Newfoundland to determine if Wabush Iron Co. Ltd had the obligation to pay mining royalties to Canadian Javelin Foundries & Machine Works Limited.

- *Bloom Lake General Partner Ltd., Re.*, 2018 QCCS 996, at para 35 and *ff*. **(Tab 17)**

57. In addition, it must also be underlined that this CCAA Court has extensive expertise in hearing complex commercial law matters. Any application based in substance on the *Canada Business Corporations Act* is required to be brought to the Québec Superior Court Commercial Division. Thus, the CCAA Court routinely hears and decides complex commercial matters that, among other things, are the subject of the CBCA Motion.

- General Rules of the Québec Superior Court Commercial Division, section 209(a). **(Tab 18)**

58. Lastly, and contrary to the moving parties' allegations, the CCAA Parties respectfully submit that CFLCo's *Originating Application for Issuance of a Court-Supervised Liquidation and Dissolution Order* filed on January 14th, 2020, in the Newfoundland Court should not be considered as an existing proceeding in another jurisdiction. Indeed, the latter was filed simultaneously with the Contestation.

59. Accordingly, the CCAA Parties submit that Twinco and CFLCo have failed to meet their burden and that the CCAA Court should not exercise its discretion to apply the doctrine of *forum non conveniens.* Indeed, while the CBCA Motion does not raise any issues that would make the Newfoundland court a "clearly" more appropriate forum to hear it, it must also be recalled that even this were the case, this CCAA Court is, unlike the Québec Superior Court sitting in civil proceedings, sitting as a national court. Accordingly, while it may be guided by general principles of private international law, these principles are limited in the context of insolvency proceedings as they fail to consider important public policies principles.

3. CONCLUSION

60. In light of the foregoing, the CCAA Parties respectfully submit that the criteria necessary for establishing the jurisdiction of the CCAA Court to decide the CBCA Motion have been met, and Twinco's Motion and CFLCo's Contestation should be dismissed.

THE WHOLE, RESPECTFULLY SUBMITTED.

Montréal, August 4, 2021

Blake, Cassels & Graydon L.L.P.

BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Petitioners and the Mises en cause
(Court Code: BB-8098)
1, Place Ville-Marie, bureau 3000
Montreal, Quebec H3B 4N8
M^e^ Bernard Boucher
Bernard.boucher@blakes.com
Telephone : 514-982-4006
M^e^ Philippe Dubois
Philippe.dubois@blakes.com
Telephone : 514-982-4290
Fax : 514-982-4099
Our reference: 11573-375

Nº: 500-11-048114-157

SUPERIOR COURT
DISTRICT OF MONTREAL
(Commercial Division)

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

BLOOM LAKE GENERAL PARTNER LIMITED & AL.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP & AL.

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

TWIN FALLS POWER CORPORATION
CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED

Mises-en-cause

OUTLINE OF ARGUMENTS

(IN RESPONSE TO THE *MOTION BY TWIN FALLS POWER CORPORATION TO DISMISS THE APPLICATION FOR LACK OF JURISDICTION AND FOR FORUM NON CONVENIENS AND TO CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED'S CONTESTATION*)

ORIGINAL

M^tre Bernard Boucher **BB-8098**
BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
1 Place Ville Marie, Suite 3000
Montréal, Québec H3B 4N8
Telephone: 514-982-4006 / Fax: 514-982-4099
Email: bernard.boucher@blakes.com
Our File: 11573-374