

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

C.A.:

S.C.: 500-11-048114-157

COURT OF APPEAL

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

**CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED**, a legal person with offices at 500 Columbus Drive, P.O. Box 12400, St. John's, NL, A1B 4K7

**APPLICANT** – Mise-en-cause

v.

**BLOOM LAKE GENERAL PARTNER LIMITED**, a legal person with offices at 508-1155 Robert-Bourassa Boulevard, Montréal, QC, H3B 3A7

- and -

**QUINTO MINING CORPORATION**, a legal person with offices at 508-1155 Robert-Bourassa Boulevard, Montréal, QC, H3B 3A7

- and -

**CLIFFS QUÉBEC IRON MINING ULC**, a legal person with offices at 2600-595 Burrard Street, Vancouver, BC, V7X 1L3

- and -

**WABUSH IRON CO. LIMITED**, a legal person with offices at 200 Public Square, Suite 3300, Cleveland, Ohio, United States, 44114

- and -

**WABUSH RESOURCES INC.**, a legal person with offices at 4000-199 Bay Street, Toronto, ON, M5L 1A9

**RESPONDENTS** – Petitioners

- and -

**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP**, a legal person with offices at 4000-199 Bay Street, Toronto, ON, M5L 1A9

- and -

**BLOOM LAKE RAILWAY COMPANY LIMITED**, a legal person with offices at 508-1155 Robert-Bourassa Boulevard, Montréal, QC, H3B 3A7

- and -

**WABUSH MINES**, a legal person with offices at 4000-199 Bay Street, Toronto, ON, M5L 1A9

- and -

**ARNAUD RAILWAY COMPANY**, a legal person with offices at 3000-1 Place Ville-Marie, Montréal, QC, H3B 4N8

- and -

**WABUSH LAKE RAILWAY COMPANY LIMITED**, a legal person with offices at 235 Water Street, Suite 1100, St. John's, NL, A1C 1B6

- and -

**TWIN FALLS POWER CORPORATION**, a legal person with offices at 500 Columbus Drive, P.O. Box 12400, St. John's, NL, A1B 4K7

**MISES-EN-CAUSE** – Mises-en-cause

- and -

**FTI CONSULTING CANADA INC.**, a legal person with offices at 1200 Waterfront Centre, 200 Burrard Street, Vancouver, BC, V6C 3L6

**MONITOR**

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**APPLICATION FOR LEAVE TO APPEAL A JUDGMENT RENDERED IN THE  
COURSE OF PROCEEDINGS**

**(Sections 13 and 14 of the *Companies' Creditors Arrangement Act* (the "CCAA")  
and Articles 31 and 357 of the *Code of Civil Procedure*)**

**TO ONE OF THE HONOURABLE JUDGES OF THE COURT OF APPEAL, THE APPLICANT SUBMITS:**

**I. INTRODUCTION**

1. Churchill Falls (Labrador) Corporation Limited (“**CF(L)Co**” or the “**Applicant**”), hereby requests leave to appeal the judgment and order rendered on August 12, 2021 (the “**Judgment**”) by the Honourable Michel A. Pinsonnault, of the Superior Court of Quebec, Commercial Division, District of Montreal (the “**CCAA Judge**”) in court file 500-11-048114-157 (the “**CCAA Proceedings**”) which declares that the Superior Court of Québec (Commercial Division), standing as a CCAA Court, has the jurisdiction to hear and dispose of a petition for the dissolution and liquidation of a solvent corporation that is registered and located in the Province of Newfoundland and Labrador, on the sole and limited basis that two CCAA debtors, Wabush Iron Co. Limited (“**Wabush Iron**”) and Wabush Resources Inc. (“**Wabush Resources**”, together with Wabush Iron, “**Wabush**”), are minority shareholders in this solvent corporation. A copy of the Judgment is attached hereto as Schedule 1.
2. The Judgment states that the Court of Newfoundland and Labrador (the “**NL Court**”) does not have the “*exclusive jurisdiction to hear any motion relating to the dissolution or the liquidation of Twinco pursuant to sections 207 and 214 of the CBCA merely because Twinco’s registered offices is in Newfoundland.*” The facts however extend far beyond a registered office, such that both Twin Falls Power Corporation (“**Twinco**”) and its majority shareholders (including the Applicant) have absolutely no ties to Quebec and in this regard, the Judgment makes important errors in law by extending the CCAA Court’s discretionary powers to force solvent third party corporations to liquidate and litigate matters in a Quebec Court, despite the clear provisions of the *Canada Business Corporations Act* (the “**CBCA**”) and the doctrine of *forum non conveniens*.
3. In this regard, the Judgment causes irreparable harm to the Applicant, since it is now forced (i) to engage in liquidation proceedings in Quebec, and (ii) suspend indeterminately the Twinco liquidation proceedings (described below) which have already been filed before the NL Court.

## II. OVERVIEW OF THE RELEVANT FACTS

### A) *The CCAA Proceedings*

4. On January 27, 2015, the Superior Court of Quebec issued an Initial Order commencing the CCAA proceedings in respect of 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.
5. On May 20, 2015, the CCAA Court issued an Initial Order extending the scope of the CCAA Proceedings to Wabush and the Mises-en-cause Wabush Mines, Wabush Lake Railway Company Limited, and Arnaud Railway Company. Pursuant to these initial orders, the Monitor was appointed in respect of the business and financial affairs of all of these CCAA parties, including Wabush.
6. Wabush holds a combined 17.062% equity interest in Twinco. Twinco is otherwise owned (i) 33.3% by CF(L)Co, and (ii) 49.6% by the Iron Ore Company of Canada ("IOC"). Neither CF(L)Co or IOC have registered offices in the Province of Quebec, nor have they been implicated, in any way, in these CCAA Proceedings.

### B) *The Action Instituted Against the Applicant and Twinco in the CCAA Proceedings*

7. On November 16, 2020, in the context of these CCAA Proceedings, Wabush, as a minority shareholder of Twinco, filed the *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* (the "**Dissolution Motion**", attached as **Schedule 2** hereto), on the basis that it was seeking to monetize its last assets (i.e. its shares in Twinco), which, according to Wabush, require that the following orders, amongst others, be granted by the CCAA Court as against Twinco and the Applicant:
  - a) an order confirming that the Applicant is liable for Twinco's maintenance obligations and environmental liabilities related to a power generating plant (the "**Twinco Plant**") in Newfoundland and Labrador from and after July 1, 1974;

- b) 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 (as such term is defined in the Dissolution Motion) net of all reasonable fees and expenses incurred by Twinco to implement and complete the wind up and dissolution being sought in the Dissolution Motion, and (ii) the CF(L)Co Reimbursement to Twinco's shareholders, including Wabush, on a *pro rata* basis; and
- c) in the alternative to (b), directing Twinco and/or CF(L)Co 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 CF(L)Co Reimbursement.

8. The Applicant and Twinco contested the jurisdiction relating to the Dissolution Motion on the basis that (i) sections 207 and 214 of the CBCA provide, in no uncertain terms, that only a court in the territorial jurisdiction of the corporation's registered office may order the liquidation and dissolution of said corporation, and accordingly, the liquidation and dissolution of Twinco should occur before the NL Court, and not the Quebec CCAA Court, and (ii) there is no real and substantial connection to Quebec, such that the NL Court is the more appropriate forum to hear the Dissolution Motion. A copy of the *Modified Motion by Twin Falls Power Corporation to Dismiss the Application for Lack of Jurisdiction and for Forum Non-Conveniens* dated May 17, 2021 is attached as **Schedule 3**. A copy of the Applicant's *Amended Contestation of the Petitioners' Motion for the Winding up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* dated May 19, 2021 is attached as **Schedule 4** (the "**Amended Contestation**").
9. In accordance with section 207 of the CBCA, CF(L)Co instituted liquidation proceedings pursuant to section 214(1) of the CBCA before the NL Court (the "**Liquidation Application**"), which application is currently suspended as the question of jurisdiction to hear the Dissolution Motion before the CCAA Court was debated. A copy of the Liquidation Application is attached as **Schedule 5**.

10. Wabush then filed the *Motion for the Expansion of the Monitor's Powers* (the “**Expansion Motion**”), in which it sought orders (the “**Investigation Order**”) granting the Monitor with unprecedented investigative powers relating to the remedies sought by Wabush against CF(L)Co in the Dissolution Motion. A copy of the Expansion Motion is attached hereto as **Schedule 6**.
11. On July 14, 2021, the CCAA Judge granted the Investigation Order (the “**Investigation Order Judgment**”). The Applicant has already filed an application for leave to appeal from this Investigation Order Judgment. The Investigation Order Judgment is attached hereto as **Schedule 7**.

### **C) The Judgment**

12. Following an approximately 3 hour hearing on August 6, 2021, the CCAA Judge rendered the Judgment on August 12, 2021, relying on sections 11 and 42 of the CCAA, as well as the “single control” model, to determine that the Quebec CCAA Court has jurisdiction, over the NL Court, to oversee the liquidation of Twinco, and in doing so:
  - a) decided that section 42 of the CCAA overrides sections 207 and 214 CBCA, such that even though the CBCA states, in no uncertain terms, that only a court in the territorial jurisdiction of the corporation's registered office may order the liquidation and dissolution of said corporation, in the context of a CCAA, a Court can use section 42 to order the liquidation of a solvent corporation that is not a CCAA party, debtor or related entity;
  - b) held that the “single control” model applies to the case at hand, and that because the CCAA Court sits as a national court, it can oversee “*all proceedings related to a debtor*”.<sup>1</sup> In doing so, it concluded that the court-supervised liquidation of a solvent third party, who is not a debtor in the CCAA Proceedings, still relates to the CCAA debtors, since they are minority shareholders in this corporation and are seeking to monetize their shares therein. This conclusion disregards the

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<sup>1</sup> Judgment, para. 56.

interests of the other shareholders of Twinco, who (i) are not debtors, nor even creditors in these CCAA proceedings, (ii) hold approximately 83% of the shares of Twinco, and (iii) are extra-provincially registered corporations in the Province of Newfoundland and Labrador; and

- c) concluded that the CCAA Court should not decline to exercise its jurisdiction based on the doctrine of *forum non conveniens* and article 3135 of the CCQ despite the real and substantial connection with the forum of Newfoundland, and the complete lack of connection with Quebec. In doing so, the CCAA Court relied on the decision rendered by Hamilton J. in *Bloom Lake General Partner Ltd., Re*, 2017 QCCS 284, to conclude that just because a matter is governed by a foreign law, it does not mean it should be referred to another jurisdiction. With respect, the case and issues at hand differ substantially, in that in the 2017 Bloom Lake decision, there were multiple factors which justified proceeding in QC, including that the issue at hand was the substantial liabilities of the CCAA debtors and the potential of the scope of a deemed trust on Quebec assets, in addition to the fact that the question was not whether it should decline jurisdiction, but rather whether it needed assistance from the NL Court. <sup>2</sup>

13. The Applicant submits that:

- a) the CCAA Judge made a palpable and overriding error of law by concluding that Sections 11 and 42 of the CCAA allow him to override the clear provisions of section 207 and 214 of the CBCA which state that only a court in the territorial jurisdiction of the corporation's registered office may order the liquidation and dissolution of said corporation. In this regard, the Applicant submits that it has not found a single case where the liquidation of a corporation was ordered by a Court outside of its territorial jurisdiction. In this regard, in the *Proposals for a New Business Corporations Law for Canada: Commentary* (1971), often referred to as the "Dickerson Report", it is confirmed that the intent of the legislature in drafting the liquidation provisions, was to ensure that in the context of a liquidation or

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<sup>2</sup> [Arrangement relatif à Bloom Lake](#), 2017 QCCS 284, paras. 41 to 73.

dissolution, the only Courts with jurisdiction are those where the corporation has its registered office<sup>3</sup>;

- b) the CCAA Judge committed palpable and overriding errors of law and fact, by assuming jurisdiction over Twinco and the Applicant, despite the fact that pursuant to articles 3134 and 3135 of the CCQ, as well as the factors outlined in *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78<sup>4</sup>, the more appropriate jurisdiction to hear this matter is Newfoundland and Labrador, considering that (i) CF(L)Co and Twinco are not domiciled or residing in Quebec, (ii) CF(L)Co and Twinco do not have establishments in Quebec, (iii) there has been no fault or injury that was suffered in Quebec since Wabush itself is not domiciled in Quebec, and (iv) neither CF(L)Co nor Twinco has submitted to the jurisdiction of Quebec in connection with the liquidation and/or dissolution of Twinco; and
- c) More specifically, the CCAA Judge made an error in law and fact by setting aside the following facts, despite not being able to point to any real and substantial connection to Quebec or the CCAA Proceedings, other than the fact that Wabush wants to monetize its minority shares in Twinco (which it can do through a liquidation in Newfoundland):
  - i. Both Twinco and CF(L)Co's head and registered offices are located in the Province of Newfoundland and Labrador, and neither entity has any place of business in the Province of Québec;<sup>5</sup>

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<sup>3</sup> Robert WV Dickerson, John L Howard & Leon Getz, *Proposals for a New Business Corporations Law for Canada: Commentary*, vol 1 (Ottawa: Information Canada, 1971) at 148: “**442.** Generally, under the Draft Act, applications may be made or actions brought in any Canadian superior court—defined in s. 1.02(1)(j). **One exception is in Part 17.00 [re: Liquidation and Dissolution]** and others are in Parts 14.00 and 18.00 (see ss. 17.01, 14.17(17) and 18.01) where the **only** courts with jurisdiction will be those in the place where the corporation has its registered office. **It seems to us that the convenience of the corporation was paramount when the question was liquidation and dissolution**, the paying of shareholders who dissent from a fundamental change in the corporation, or the ordering of an inspection.” (our emphasis)

<sup>4</sup> *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78, paras. 71 and ff.

<sup>5</sup> Amended Contestation (Schedule 4), paras. 15 to 17.



- ii. The shareholders of Twinco, namely CF(L)Co, Wabush Iron, Wabush Resources, and Iron Ore Company of Canada are all extra-provincially registered in the Province of Newfoundland and Labrador;<sup>6</sup>
- iii. The Dissolution Motion raises environmental issues that have arisen in connection with the Twinco Plant located in Newfoundland and Labrador. These environmental issues concern land exclusively located in Newfoundland and Labrador and their resolution will largely (if not exclusively) be governed by provincial law;<sup>7</sup>
- iv. Each of the agreements that are at issue in the Dissolution Motion were negotiated and executed in the Province of Newfoundland and Labrador, and are governed by the laws of Newfoundland and Labrador;<sup>8</sup>
- v. CF(L)Co has filed the Liquidation Application in the Newfoundland Court, in accordance with the provisions of the CBCA, which, if granted, will achieve similar results as those being sought the Dissolution Motion<sup>9</sup>; and
- vi. All of the assets of CF(L)Co and Twinco, against whom orders are sought, are located in the Province of Newfoundland and Labrador, and neither CF(L)Co nor Twinco have any assets in the Province of Québec.<sup>10</sup>

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<sup>6</sup> Amended Contestation (Schedule 4), para. 18.

<sup>7</sup> Amended Contestation (Schedule 4), para. 19.

<sup>8</sup> Amended Contestation (Schedule 4), paras. 21 to 23.

<sup>9</sup> Amended Contestation (Schedule 4), paras. 24 and 25.

<sup>10</sup> Amended Contestation (Schedule 4), para. 27.

### **III. GROUND FOR APPEAL**

#### ***A) The Significance of the Issues in the Action***

14. The issues are significant and will cause irreparable harm to the Applicant, in that the Judgment concludes that it is Quebec and not Newfoundland that has the jurisdiction to oversee the liquidation of Twinco, and adjudicate all of the issues relating thereto, despite the fact that liquidation proceedings in connection with Twinco have been properly instituted in Newfoundland. By reason of the Judgment, the Applicant and Twinco are prevented from pursuing the liquidation in Newfoundland without risking being in contempt of the Judgment.
15. Moreover, they are forced to defend themselves against allegations relating to certain agreements and environmental obligations in a Quebec Court, despite the fact that these issues are governed entirely by the laws of Newfoundland. As a result, the Applicant will be required to engage counsel both in Quebec and Newfoundland, resulting in substantial and unnecessary costs, considering that this entire matter could be resolved efficiently through the proceedings initiated in Newfoundland (i.e. the Liquidation Application).

#### ***B) The Significance of the Issues to the Practice***

16. Ultimately, the Judgment would permit any CCAA debtor, who holds a minority stake in a solvent foreign corporation, to force said solvent corporation to engage in CCAA proceedings in order to debate its potential liquidation on the sole basis that the CCAA debtor is seeking to monetize any and all of its assets. To the Applicant's knowledge, this has never been done, particularly when considering all of the factors outlined above, which confirm that the appropriate forum is not Quebec, or a CCAA Court sitting in Quebec, but rather a NL Court.
17. While it is true that a CCAA Court may oversee oppression claims under section 241 of the CBCA in respect of CCAA debtors<sup>11</sup>, if it chooses to do so, it must still determine

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<sup>11</sup> Judgment, para. 47.

whether the appropriate forum is the CCAA Court, and not an alternative jurisdiction. In this regard, courts have, on a number of occasions, refused jurisdiction to hear oppression claims, specifically because there was no real and substantial connection to the jurisdiction in which the action was instituted.<sup>12</sup> This must be particularly true when, as is the case at hand, the alleged oppressive conduct is in respect of a solvent corporation domiciled in another jurisdiction (with no ties to Quebec) and the relief requested is the actual liquidation of a solvent corporation registered in a foreign jurisdiction, and both of the defendants to the Dissolution Motion (Twinco and CF(L)Co are registered in Newfoundland with no assets or ties to Quebec).

18. While the CCAA is a flexible statute that grants broad discretionary powers to a CCAA judge, there must be “common sense” limits to this discretion, particularly when its exercise violates the statutory provisions of another federal statute (such as sections 207 and 214 of the CBCA).
19. As such, given the question the Applicant purports to raise has never been answered by this Court and considering the broad judicial discretion conferred under Section 11 of the CCAA, which could now be argued to extend to overseeing liquidations of third party solvent corporations, the matter on appeal is of great significance to the practice of insolvency in Canada.
20. The Applicant respectfully submits that the palpable and overriding errors made by the CCAA Judge establish a precedent and should be corrected by this court to prevent serious prejudice, not only in these proceedings but in future proceedings as well.

### **C) The Proposed Appeal is *Prima Facie Meritorious***

21. The Applicant respectfully submits that the foregoing submissions demonstrate that the appeal is *prima facie* meritorious.

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<sup>12</sup> [Incorporated Broadcasters Ltd. v. Canwest Global Communications Corp.](#), 2003 CanLII 52135 (ON CA), paras. 48 and 72; [3017970 Nova Scotia Co. v. Johnstone](#), [2001] C.C.S. No. 13840, paras. 37 and 38; [RJM56 Holdings Inc. v. Bazinet](#), 2018 ONCA 791, para. 1.

***D) The Proposed Appeal Will not Unduly Hinder the Progress of the Proceedings***

22. A plan of arrangement has already been approved by Wabush's creditors, and interim distributions have already taken place in August and September 2018 and May 2021. It is incorrect to now argue that this shareholder litigation, that was only instituted by Wabush in November 2020, is suddenly unduly hindering the progress of the CCAA proceedings.
23. Moreover, the liquidation can proceed efficiently in Newfoundland, such that any delays are caused instead by the insistence that Wabush, as a minority shareholder, control the liquidation of Twinco through its own CCAA Proceedings. There is no evidence to the effect that a liquidation and dissolution process supervised by a NL Court will take longer than it would, should it be supervised by the CCAA Judge.

**IV. CONCLUSIONS SOUGHT**

24. To the best of the Applicant's knowledge, the present case concerns the first time a CCAA Court has ruled that it has the jurisdiction to order the liquidation of a third party solvent corporation (who is not a debtor or related party in the context of the CCAA proceedings), despite the contestation of a solvent shareholder of this same corporation.
25. The Applicant will ask the Court of Appeal to:
  - a) ALLOW the appeal;
  - b) REVERSE the judgment in first instance;
  - c) GRANT the Amended Contestation;
  - d) DISMISS the Dissolution Motion;
  - e) ORDER the respondents to pay the legal costs both in first instance and on appeal.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** this *Application for Leave to Appeal a Judgment Rendered in the Course of Proceedings*;

**GRANT** the applicant leave to appeal the judgment rendered on August 12, 2021 by the Honourable Michel A. Pinsonnault of the Superior Court of Québec in file number 500-11-048114-157;

**THE WHOLE**, with costs to follow the outcome of the appeal.

**MONTREAL**, September 2, 2021



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**Attorneys for the Applicant**

**Churchill Falls (Labrador) Corporation Limited**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

COURT OF APPEAL

C.A.:  
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IN THE MATTER OF THE PLAN OF COMPROMISE  
OR ARRANGEMENT OF:

CHURCHILL FALLS (LABRADOR)  
CORPORATION LIMITED

APPLICANT – Mise-en-cause

vs.

BLOOM LAKE GENERAL PARTNER LIMITED  
QUINTO MINING CORPORATION  
CLIFFS QUÉBEC IRON MINING ULC  
WABUSH IRON CO. LIMITED  
WABUSH RESOURCES INC.

RESPONDENTS – 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  
TWIN FALLS POWER CORPORATION

MISES-EN-CAUSE – Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

MONITOR

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**AFFIDAVIT OF NATHALIE NOUVET**

(Dated September 2, 2021)

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I, the undersigned, Nathalie Nouvet, attorney, exercising my profession at 1155 René-Lévesque Blvd. West, Suite 4100, Montréal, Québec, H3B 3V2, solemnly affirm as follows:

1. I am the one of the attorneys for the Applicant;
2. All of the facts alleged in the *Application for Leave to Appeal a Judgment Rendered in the Course of Proceedings* are true.

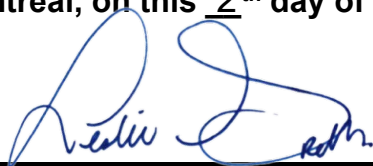
**AND I HAVE SIGNED**



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NATHALIE NOUVET

**Solemnly declared before me in  
Montreal, on this 2<sup>th</sup> day of September 2021**



#235055

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**Commissioner for the taking of oaths for  
the province of Québec**

**NOTICE OF PRESENTATION**

**TO: The Service List**

**NOTICE IS HEREBY GIVEN** that the *Application for Leave to Appeal a Judgment Rendered in the Course of Proceedings* will be presented before a judge of the Court of Appeal sitting at Édifice Ernest-Cormier, located at 100 Notre-Dame Street East, in Montreal, on **September 22, 2021, at 9:30 a.m., in Courtroom RC-18.**

**DO GOVERN YOURSELF ACCORDINGLY.**

**MONTRÉAL, September 2, 2021**

***Stikeman Elliott***

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**Attorneys for the Applicant**

**Churchill Falls (Labrador) Corporation Limited**



**LIST OF SCHEDULES IN SUPPORT OF THE  
APPLICATION FOR LEAVE TO APPEAL A JUDGMENT  
RENDERED IN THE COURSE OF PROCEEDINGS**

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- SCHEDULE A:** Notice of Appeal, dated September 2, 2021
- SCHEDULE 1:** Judgment rendered on August 12, 2021 by the Honourable Michel A. Pinsonnault, of the Superior Court of Quebec, District of Montreal in court file 500-11-048114-157
- SCHEDULE 2:** Copy of Wabush's *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* dated November 16, 2021
- SCHEDULE 3:** Copy of the *Modified Motion by Twin Falls Power Corporation to Dismiss the Application for Lack of Jurisdiction and for Forum Non-Conveniens* dated May 17, 2021
- SCHEDULE 4:** Copy of CF(L)Co's *Amended Contestation of the Petitioners' Motion for the Winding up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* dated May 19, 2021
- SCHEDULE 5:** Copy of CF(L)Copy of CF(L)Co's *Originating Application for the Issuance of a Court-Supervised Liquidation and Dissolution Order pursuant to section 214(1)(b)(ii), 215 and 217 of the Canada Business Corporations Act* dated January 14, 2021
- SCHEDULE 6:** Copy of Wabush's *Motion for the Expansion of the Monitor's Powers* dated May 6, 2021

**SCHEDULE 7:** Judgment rendered on July 14, 2021 by the Honourable Michel A. Pinsonnault, of the Superior Court of Quebec, District of Montreal in court file 500-11-048114-157

**MONTREAL**, September 2, 2021

*Stikeman Elliott*

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**Attorneys for the Applicant**

**Churchill Falls (Labrador) Corporation Limited**

# **SCHEDULE A**

CANADA

COURT OF APPEAL

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

C.A.:

S.C.: 500-11-048114-157

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OR ARRANGEMENT OF:

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**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP**, a legal person with offices at 4000-199 Bay Street, Toronto, ON, M5L 1A9

- and -

**BLOOM LAKE RAILWAY COMPANY LIMITED**, a legal person with offices at 508-1155 Robert-Bourassa Boulevard, Montréal, QC, H3B 3A7

- and -

**WABUSH MINES**, a legal person with offices at 4000-199 Bay Street, Toronto, ON, M5L 1A9

- and -

**ARNAUD RAILWAY COMPANY**, a legal person with offices at 3000-1 Place Ville-Marie, Montréal, QC, H3B 4N8

- and -

**WABUSH LAKE RAILWAY COMPANY LIMITED**, a legal person with offices at 235 Water Street, Suite 1100, St. John's, NL, A1C 1B6

- and -

**TWIN FALLS POWER CORPORATION**, a legal person with offices at 500 Columbus Drive, P.O. Box 12400, St. John's, NL, A1B 4K7

**MISES-EN-CAUSE** – Mises-en-cause

- and -

**FTI CONSULTING CANADA INC.**, a legal person with offices at 1200 Waterfront Centre, 200 Burrard Street, Vancouver, BC, V6C 3L6

**MONITOR**

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**NOTICE OF APPEAL**

**(Sections 13 and 14 of the *Companies' Creditors Arrangement Act* (the "CCA") and Article 352 of the *Code of Civil Procedure*)**

**TO ONE OF THE HONOURABLE JUDGES OF THE COURT OF APPEAL, THE APPELLANT SUBMITS:**

**I. INTRODUCTION**

1. Churchill Falls (Labrador) Corporation Limited (“**CF(L)Co**” or the “**Appellant**”), hereby gives notice of its intention to appeal the judgment and order rendered on August 12, 2021 (the “**Judgment**”) by the Honourable Michel A. Pinsonnault, of the Superior Court of Quebec, Commercial Division, District of Montreal (the “**CCAA Judge**”) in court file 500-11-048114-157 (the “**CCAA Proceedings**”) which declares that the Superior Court of Québec (Commercial Division), standing as a CCAA Court, has the jurisdiction to hear and dispose of a petition for the dissolution and liquidation of a solvent corporation that is registered and located in the Province of Newfoundland and Labrador, on the sole and limited basis that two CCAA debtors, Wabush Iron Co. Limited (“**Wabush Iron**”) and Wabush Resources Inc. (“**Wabush Resources**”, together with Wabush Iron, “**Wabush**”), are minority shareholders in this solvent corporation. A copy of the Judgment is attached hereto as Schedule 1.
2. The Judgment states that the Court of Newfoundland and Labrador (the “**NL Court**”) does not have the “*exclusive jurisdiction to hear any motion relating to the dissolution or the liquidation of Twinco pursuant to sections 207 and 214 of the CBCA merely because Twinco’s registered offices is in Newfoundland.*” The facts however extend far beyond a registered office, such that both Twinco Falls Power Corporation (the “**Twinco**”) and its majority shareholders (including the Appellant) have absolutely no ties to Quebec and in this regard, the Judgment makes important errors in law by extending the CCAA Court’s discretionary powers to force solvent third party corporations to liquidate and litigate matters in a Quebec Court, despite the clear provisions of the *Canada Business Corporations Act* (the “**CBCA**”) and the doctrine of *forum non-conveniens*.

## II. OVERVIEW OF THE RELEVANT FACTS

### ***A) The CCAA Proceedings***

3. On January 27, 2015, the Superior Court of Quebec issued an Initial Order commencing the CCAA proceedings in respect of 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.
4. On May 20, 2015, the CCAA Court issued an Initial Order extending the scope of the CCAA Proceedings to Wabush and the Mises-en-cause Wabush Mines, Wabush Lake Railway Company Limited, and Arnaud Railway Company. Pursuant to these initial orders, the Monitor was appointed in respect of the business and financial affairs of all of these CCAA parties, including Wabush.
5. Wabush holds a combined 17.062% equity interest in Twinco. Twinco is otherwise owned (i) 33.3% by CF(L)Co, and (ii) 49.6% by the Iron Ore Company of Canada ("IOC"). Neither CF(L)Co or IOC have registered offices in the Province of Quebec, nor have they been implicated, in any way, in these CCAA Proceedings.

### ***B) The Action Instituted Against the Appellant and Twinco in the CCAA Proceedings***

6. On November 16, 2020, in the context of these CCAA Proceedings, Wabush, as a minority shareholder of Twinco, filed the *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* (the "**Dissolution Motion**", attached as **Schedule 2** hereto), on the basis that it was seeking to monetize its last assets (i.e. its shares in Twinco), which, according to Wabush, require that the following orders, amongst others, be granted by the CCAA Court as against Twinco and the Appellant:

- a) an order confirming that the Appellant liable for Twinco's maintenance obligations and environmental liabilities related to a power generating plant (the "**Twinco Plant**") in Newfoundland and Labrador from and after July 1, 1974;
  - b) 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 (as such term is defined in the Dissolution Motion) net of all reasonable fees and expenses incurred by Twinco to implement and complete the wind up and dissolution being sought in the Dissolution Motion, and (ii) the CF(L)Co Reimbursement to Twinco's shareholders, including Wabush, on a *pro rata* basis; and
  - c) in the alternative to (b), directing Twinco and/or CF(L)Co 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 CF(L)Co Reimbursement.
7. The Appellant and Twinco contested the jurisdiction relating to the Dissolution Motion on the basis that (i) sections 207 and 214 of the CBCA provide, in no uncertain terms, that only a court in the territorial jurisdiction of the corporation's registered office may order the liquidation and dissolution of said corporation, and accordingly, the liquidation and dissolution of Twinco should occur before the NL Court, and not the Quebec CCAA Court, and (ii) there is no real and substantial connection to Quebec, such that the NL Court is the more appropriate forum to hear the Dissolution Motion. A copy of the *Modified Motion by Twin Falls Power Corporation to Dismiss the Application for Lack of Jurisdiction and for Forum Non Conveniens* dated May 17, 2021 is attached as **Schedule 3**. A copy of the Appellant's *Amended Contestation of the Petitioners' Motion for the Winding up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* dated May 19, 2021 is attached as **Schedule 4** (the "**Amended Contestation**").



8. In accordance with section 207 of the CBCA, CF(L)Co instituted liquidation proceedings pursuant to section 214(1) of the CBCA before the NL Court (the “**Liquidation Application**”), which application is currently suspended as the question of jurisdiction to hear the Dissolution Motion before the CCAA Court was debated. A copy of the Liquidation Application is attached as **Schedule 5**.
9. Wabush then filed the *Motion for the Expansion of the Monitor’s Powers* (the “**Expansion Motion**”), in which it sought orders (the “**Investigation Order**”) granting the Monitor with unprecedented investigative powers relating to the remedies sought by Wabush against CF(L)Co in the Dissolution Motion. A copy of the Expansion Motion is attached hereto as **Schedule 6**.
10. On July 14, 2021, the CCAA Judge granted the Investigation Order (the “**Investigation Order Judgment**”). The Appellant has already filed an application for leave to appeal from this Investigation Order Judgment. The Investigation Order Judgment is attached hereto as **Schedule 7**.

### ***C) The Judgment***

11. Following an approximately 3 hour hearing on August 6, 2021, the CCAA Judge rendered the Judgment on August 12, 2021, relying on sections 11 and 42 of the CCAA, as well as the “single control” model, to determine that the Quebec CCAA Court has jurisdiction, over the NL Court, to oversee the liquidation of Twinco, and in doing so:
  - a) decided that section 42 of the CCAA overrides sections 207 and 214 CBCA, such that even though the CBCA states, in no uncertain terms, that only a court in the territorial jurisdiction of the corporation’s registered office may order the liquidation and dissolution of said corporation, in the context of a CCAA, a Court can use section 42 to order the liquidation of a solvent corporation that is not a CCAA party, debtor or related entity;

- b) held that the “single control” model applies to the case at hand, and that because the CCAA Court sits as a national court, it can oversee “*all proceedings related to a debtor*”.<sup>1</sup> In doing so, it concluded that the court-supervised liquidation of a solvent third party, who is not a debtor in the CCAA Proceedings, still relates to the CCAA debtors, since they are minority shareholders in this corporation and are seeking to monetize their shares therein. This conclusion disregards the interests of the other shareholders of Twinco, who (i) are not debtors, nor even creditors in these CCAA proceedings, (ii) hold approximately 83% of the shares of Twinco, and (iii) are extra-provincially registered corporations in the Province of Newfoundland and Labrador; and
- c) concluded that the CCAA Court should not decline to exercise its jurisdiction based on the doctrine of *forum non conveniens* and article 3135 of the CCQ despite the real and substantial connection with the forum of Newfoundland, and the complete lack of connection with Quebec. In doing so, the CCAA Court relied on the decision rendered by Hamilton J. in *Bloom Lake General Partner Ltd., Re*, 2017 QCCS 284, to conclude that just because a matter is governed by a foreign law, it does not mean it should be referred to another jurisdiction. With respect, the case and issues at hand differ substantially, in that in the 2017 Bloom Lake decision, there were multiple factors which justified proceeding in QC, including that the issue at hand was the substantial liabilities of the CCAA debtors and the potential of the scope of a deemed trust on Quebec assets, in addition to the fact that the question was not whether it should decline jurisdiction, but rather whether it needed assistance from the NL Court.<sup>2</sup>

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<sup>1</sup> Judgment, para. 56.

<sup>2</sup> [Arrangement relatif à Bloom Lake](#), 2017 QCCS 284, paras. 41 to 73.

12. The Appellant submits that:

- a) the CCAA Judge made a palpable and overriding error of law by concluding that Sections 11 and 42 of the CCAA allow him to override the clear provisions of section 207 and 214 of the CBCA which state that only a court in the territorial jurisdiction of the corporation's registered office may order the liquidation and dissolution of said corporation. In this regard, the Appellant submits that it has not found a single case where the liquidation of a corporation was ordered by a Court outside of its territorial jurisdiction. In this regard, in the *Proposals for a New Business Corporations Law for Canada: Commentary* (1971), often referred to as the "Dickerson Report", it is confirmed that the intent of the legislature in drafting the liquidation provisions, was to ensure that in the context of a liquidation or dissolution, the only Courts with jurisdiction are those where the corporation has its registered office<sup>3</sup>;
- b) the CCAA Judge committed palpable and overriding errors of law and fact, by assuming jurisdiction over Twinco and the Appellant, despite the fact that pursuant to articles 3134 and 3135 of the CCQ, as well as the factors outlined in *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78<sup>4</sup>, the more appropriate jurisdiction to hear this matter is Newfoundland and Labrador, considering that (i) CF(L)Co and Twinco are not domiciled or residing in Quebec, (ii) CF(L)Co and Twinco do not have establishments in Quebec, (iii) there has been no fault or injury that was suffered in Quebec since Wabush itself is not domiciled in Quebec, and (iv)

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<sup>3</sup> Robert WV Dickerson, John L Howard & Leon Getz, *Proposals for a New Business Corporations Law for Canada: Commentary*, vol 1 (Ottawa: Information Canada, 1971) at 148: "**442. Generally, under the Draft Act, applications may be made or actions brought in any Canadian superior court—defined in s. 1.02(1)(j). One exception is in Part 17.00 [re: Liquidation and Dissolution] and others are in Parts 14.00 and 18.00 (see ss. 17.01, 14.17(17) and 18.01) where the only courts with jurisdiction will be those in the place where the corporation has its registered office. It seems to us that the convenience of the corporation was paramount when the question was liquidation and dissolution, the paying of shareholders who dissent from a fundamental change in the corporation, or the ordering of an inspection." (our emphasis)**

<sup>4</sup> [Spar Aerospace Ltd. v. American Mobile Satellite Corp.](#), 2002 SCC 78, paras. 71 and ff.

neither CF(L)Co nor Twinco has submitted to the jurisdiction of Quebec in connection with the liquidation and/or dissolution of Twinco; and

- c) More specifically, the CCAA Judge made an error in law and fact by setting aside the following facts, despite not being able to point to any real and substantial connection to Quebec or the CCAA Proceedings, other than the fact that Wabush wants to monetize its minority shares in Twinco (which it can do through a liquidation in Newfoundland):
- i. Both Twinco and CF(L)Co's head and registered offices are located in the Province of Newfoundland and Labrador, and neither entity has any place of business in the Province of Québec;<sup>5</sup>
  - ii. The shareholders of Twinco, namely CF(L)Co, Wabush Iron, Wabush Resources, and Iron Ore Company of Canada are all extra-provincially registered in the Province of Newfoundland and Labrador;<sup>6</sup>
  - iii. The Dissolution Motion raises environmental issues that have arisen in connection with the Twinco Plant located in Newfoundland and Labrador. These environmental issues concern land exclusively located in Newfoundland and Labrador and their resolution will largely (if not exclusively) be governed by provincial law;<sup>7</sup>
  - iv. Each of the agreements that are at issue in the Dissolution Motion were negotiated and executed in the Province of Newfoundland and Labrador, and are governed by the laws of Newfoundland and Labrador;<sup>8</sup>

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<sup>5</sup> Amended Contestation (Schedule 4), paras. 15 to 17.

<sup>6</sup> Amended Contestation (Schedule 4), para. 18.

<sup>7</sup> Amended Contestation (Schedule 4), para. 19.

<sup>8</sup> Amended Contestation (Schedule 4), paras. 21 to 23.

- v. CF(L)Co has filed the Liquidation Application in the Newfoundland Court, in accordance with the provisions of the CBCA, which, if granted, will achieve similar results as those being sought the Dissolution Motion;<sup>9</sup> and
- vi. All of the assets of CF(L)Co and Twinco, against whom orders are sought, are located in the Province of Newfoundland and Labrador, and neither CF(L)Co nor Twinco have any assets in the Province of Québec<sup>10</sup>.

### **III. GROUNDS FOR APPEAL**

- 13. The issues are significant and will cause irreparable harm to the Appellant, in that the Judgment concludes that it is Quebec and not Newfoundland that has the jurisdiction to oversee the liquidation of Twinco, and adjudicate all of the issues relating thereto, despite the fact that liquidation proceedings in connection with Twinco have been properly instituted in Newfoundland. By reason of the Judgment, the Appellant and Twinco are prevented from pursuing the liquidation in Newfoundland without risking being in contempt of the Judgment.
- 14. Moreover, they are forced to defend themselves against allegations relating to certain agreements and environmental obligations in a Quebec Court, despite the fact that these issues are governed entirely by the laws of Newfoundland. As a result, the Appellant will be required to engage counsel both in Quebec and Newfoundland, resulting in substantial and unnecessary costs, considering that this entire matter could be resolved efficiently through the proceedings initiated in Newfoundland (i.e. the Liquidation Application).

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<sup>9</sup> Amended Contestation (Schedule 4), paras. 24 and 25.

<sup>10</sup> Amended Contestation (Schedule 4), para. 27.

15. Ultimately, the Judgment would permit any CCAA debtor, who holds a minority stake in a solvent foreign corporation, to force said solvent corporation to engage in CCAA proceedings in order to debate its potential liquidation on the sole basis that the CCAA debtor is seeking to monetize any and all of its assets. To the Appellant's knowledge, this has never been done, particularly when considering all of the factors outlined above, which confirm that the appropriate forum is not Quebec, or a CCAA Court sitting in Quebec, but rather the NL Court.
16. While it is true that a CCAA Court may oversee oppression claims under section 241 of the CBCA in respect of CCAA debtors<sup>11</sup>, if it chooses to do so, it must still determine whether the appropriate forum is the CCAA Court, and not an alternative jurisdiction. In this regard, courts have, on a number of occasions, refused jurisdiction to hear oppression claims, specifically because there was no real and substantial connection to the jurisdiction in which the action was instituted.<sup>12</sup> This must be particularly true when, as is the case at hand, the alleged oppressive conduct is in respect of a solvent corporation domiciled in another jurisdiction (with no ties to Quebec) and the relief requested is the actual liquidation of a solvent corporation registered in a foreign jurisdiction, and both of the defendants to the Dissolution Motion (Twinco and CF(L)Co are registered in Newfoundland with no assets or ties to Quebec).
17. While the CCAA is a flexible statute that grants broad discretionary powers to a CCAA judge, there must be "common sense" limits to this discretion, particularly when its exercise violates the statutory provisions of another federal statute (such as sections 207 and 214 of the CBCA).
18. As such, given the question the Appellant purports to raise has never been answered by this Court and considering the broad judicial discretion conferred under Section 11 of the CCAA, which could now be argued to extend to overseeing

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<sup>11</sup> Judgment, para. 47.

<sup>12</sup> [Incorporated Broadcasters Ltd. v. Canwest Global Communications Corp.](#), 2003 CanLII 52135 (ON CA), paras. 48 and 72; [3017970 Nova Scotia Co. v. Johnstone](#), [2001] C.C.S. No. 13840, paras. 37 and 38; [RJM56 Holdings Inc. v. Bazinet](#), 2018 ONCA 791, para. 1.

liquidations of third party solvent corporations, the matter on appeal is of great significance to the practice of insolvency in Canada.

19. The Appellant respectfully submits that the palpable and overriding errors made by the CCAA Judge establish a precedent and should be corrected by this court to prevent serious prejudice, not only in these proceedings but in future proceedings as well.

#### **IV. CONCLUSIONS SOUGHT**

20. To the best of the Appellant's knowledge, the present case concerns the first time a CCAA Court has ruled that it has the jurisdiction to order the liquidation of a third party solvent corporation (who is not a debtor or related party in the context of the CCAA Proceedings), despite the contestation of a solvent shareholder of this same corporation.
21. The Appellant will ask the Court of Appeal to:
  - a) **ALLOW** the appeal;
  - b) **SET ASIDE** the judgment in first instance;
  - c) **GRANT** the Amended Contestation;
  - d) **DISMISS** the Dissolution Motion;
  - e) **ORDER** the respondents to pay the legal costs both in first instance and on appeal.

This notice of appeal has been served on the Respondents, has been notified to the Service List (including the attorneys who represented the Respondents in first instance) and to the Office of the Superior Court of Quebec, Commercial Division, District of Montreal.

MONTREAL, September 2, 2021

*Stikeman Elliott*

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**Churchill Falls (Labrador) Corporation Limited**



**LIST OF SCHEDULES IN SUPPORT OF THE  
NOTICE OF APPEAL\***

**\*NOTE: The Schedules in support of the Notice of Appeal were filed in support of the Application for Leave to Appeal a Judgment Rendered in the Course of Proceedings**

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**SCHEDULE 1:** Judgment rendered on August 12, 2021 by the Honourable Michel A. Pinsonnault, of the Superior Court of Quebec, District of Montreal in court file 500-11-048114-157

**SCHEDULE 2:** Copy of Wabush's *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* dated November 16, 2021

**SCHEDULE 3:** Copy of the *Modified Motion by Twin Falls Power Corporation to Dismiss the Application for Lack of Jurisdiction and for Forum Non-Conveniens* dated May 17, 2021

**SCHEDULE 4:** Copy of CF(L)Co's *Amended Contestation of the Petitioners' Motion for the Winding up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* dated May 19, 2021

**SCHEDULE 5:** Copy of CF(L)Co's *Originating Application for the Issuance of a Court-Supervised Liquidation and Dissolution Order pursuant to section 214(1)(b)(ii), 215 and 217 of the Canada Business Corporations Act* dated January 14, 2021

**SCHEDULE 6:** Copy of Wabush's *Motion for the Expansion of the Monitor's Powers* dated May 6, 2021

**SCHEDULE 7:** Judgment rendered on July 14, 2021 by the Honourable Michel A. Pinsonnault, of the Superior Court of Quebec, District of Montreal in court file 500-11-048114-157

**MONTREAL**, September 2, 2021

*Stikeman Elliott*

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**Churchill Falls (Labrador) Corporation Limited**

# **SCHEDULE 1**

**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-048114-157

DATE: August 12, 2021

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**BY THE HONOURABLE MICHEL A. PINSONNAULT, J.S.C.**

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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**

Twinco Mises-en-cause

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**JUDGMENT ON MOTION BY TWIN FALLS POWER CORPORATION TO DISMISS  
FOR LACK OF JURISDICTION AND FOR *FORUM NON-CONVENIENS* AND ON  
CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED'S CONTESTATION**

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## **OVERVIEW**

[1] Twin Falls Power Corporation (“**Twinco**”) with the support of Churchill Falls (Labrador) Corporation Limited (“**CFLCo**”), is seeking the dismissal of the Petitioners’ and of the Mises-en-cause’s *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief*, pursuant to section 11 of the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) and sections 214 and 241 of the *Canada Business Corporations Act* (the “**CBCA**”) (the “**CBCA Motion**”).

[2] The dismissal of the CBCA Motion is sought by Twinco<sup>1</sup> on the basis that this Court lacks jurisdiction to entertain and rule on the same as, *inter alia*, the Twinco Mises-en-cause are both residing in Newfoundland with no place of business or any assets in the Province of Québec (the “**Twinco Motion to dismiss**”).

[3] Should the Court nevertheless find that it has jurisdiction herein, Twinco offers a subsidiary argument based on the doctrine of *forum non conveniens* as article 3135<sup>2</sup> of the *Civil Code of Québec* (“**CCQ**”) stipulates that even if a Québec Court determines it has jurisdiction, it may decline jurisdiction where it considers the courts of another jurisdiction “*are in a better position to decide the dispute*”.

[4] In other words, Twinco and CFLCo would have the matter and issues raised in the CBCA Motion be adjudicated before the courts of Newfoundland and Labrador (collectively “**Newfoundland**”).

[5] The CCAA Parties<sup>3</sup> take the position that it is a matter for the Commercial Division of the Superior Court of Québec (the “**CCAA Court**”), 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 already asserted its jurisdiction over that of Newfoundland in the present CCAA Proceedings<sup>4</sup> since their commencement five years ago in 2015.

[6] At this juncture, the CCAA Court is not called upon to rule on the merits of the CBCA Motion, but solely on the Twinco Motion to dismiss based on a declinatory exception.

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<sup>1</sup> With the support of its shareholder CFLCo.

<sup>2</sup> **3135**. Even though a Québec authority has jurisdiction to hear a dispute, it may, exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another State are in a better position to decide the dispute.

<sup>3</sup> As defined hereafter in paragraph 8.

<sup>4</sup> *Ibid.*

## 1. THE PROCEDURAL BACKGROUND

[7] 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 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**”).

[8] On May 20, 2015, the CCAA Court issued an Initial Order (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 and Wabush Iron are collectively referred to hereafter as “**Wabush**”) and the Mises-en-cause Wabush Mines, Wabush Lake Railway Company Limited, and Arnaud Railway Company (collectively, the “**Wabush CCAA Parties**”) (the Wabush CCAA Parties and the Bloom Lake CCAA Parties are collectively referred to hereafter as the “**CCAA Parties**”).

[9] FTI Consulting Canada Inc. was appointed as monitor in respect of the CCAA Parties (the “**Monitor**”).

[10] On November 5, 2015, the CCAA Court issued an Order (the “**Amended Claims Procedure Order**”) approving, *inter alia*, 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**”).

[11] Incidentally, Twinco filed a proof of claim pursuant to the Claims Process against Wabush for approximately \$780,000<sup>5</sup>. The claim was allowed by the Monitor in 2016.

[12] On June 29, 2018, Mr. Justice Stephen W. Hamilton (“**Hamilton J.**”) issued an Order sanctioning the Joint Plan of Compromise and Arrangement dated as of May 16, 2018, that was submitted by the CCAA Parties (the “**Plan**”).

[13] On July 30, 2018, Hamilton J. issued the Plan Modification Order, pursuant to which minor modifications were made to the Plan to avoid unanticipated tax consequences.

[14] In furtherance of the Plan, the CCAA Parties, with the assistance of the Monitor, have been working to wind down the estates of the CCAA Parties so that the net proceeds from such recoveries and realizations can finally be distributed to the creditors of the Participating CCAA Parties<sup>6</sup> in accordance with the terms and conditions of the Plan as soon as possible.

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<sup>5</sup> R-14 of the Motion to expand the powers of the Monitor.

<sup>6</sup> As defined in the Plan.

[15] So far, subject to the resolution and collection of certain outstanding tax refunds, the CCAA Parties have sold or realized on all their assets other than the combined 17.062% equity interest held in Twinco by Wabush (the “**Twinco Interest**”).

[16] The initial interim distributions to the creditors with proven claims under the Plan took place in August and September 2018.

[17] A second interim distribution to such creditors with proven claims took place in mid-of May 2021.

[18] A final distribution will not occur until the realization or collection of all material assets of the CCAA Parties including the Twinco Interest.

[19] With respect to the aforesaid distributions, the CCAA Parties were informed by the Monitor that a significant majority of the Wabush creditors are former employees of Wabush Mines, many of whom are elderly, and who are reasonably assumed to be anxious to receive their final distributions as soon as possible.

[20] The monetization and realization of the remaining asset (the Twinco Interest), and the resolution of certain disputes surrounding tax issues, are one of the last material steps to be taken before the CCAA Parties can finally wind down the CCAA Proceedings.

## 2. **THE CBCA MOTION**

[21] Based on the CBCA Motion, the Court retained the following relevant facts for the purposes hereof:

- Twinco is an incorporated joint venture formed under the CBCA on February 18, 1960, among CFLCo, Wabush Iron, Wabush Resources and Iron Ore Company of Canada (“**IOC**”), among others;
- As at December 31, 2019, Twinco was owned 33.3% by CFLCo, 49.6% by IOC, and 17.062% interest held jointly by Wabush<sup>7</sup>;
- Pursuant to Twinco’s fiscal year 2019 Audited Financial Statements, Twinco has approximately \$6.1M in cash and cash equivalent assets (the “**Twinco Cash**”) and approximately \$46,000 of liabilities<sup>8</sup>;
- The history of the Twinco Plant<sup>9</sup> is long and complicated and is set out in significant detail in the CBCA Motion. However, the highlights are set out hereafter;

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<sup>7</sup> 4.6% held by Wabush Iron Co. Limited and 12.5% by Wabush Resources Inc.

<sup>8</sup> **R-2** of the CBCA Motion.

<sup>9</sup> As defined below.

- In 1961, CFLCo licensed to Twinco the rights to develop a 225-megawatt hydroelectric generating plant on the Unknown River in Labrador (the “**Twinco Plant**”);
- In addition to the Twinco Plant, Twinco owned a number of other assets including (i) the physical building which houses the Twinco Plant (the “**Twinco Building**”); (ii) the transmission lines from the Twinco Plant to its consumers (the “**Twinco Transmission Lines**”); and (iii) the equipment which comprises the Twinco Plant and which was used in the production of hydroelectric power (the “**Twinco Machinery**”) (collectively, with the Twinco Building and Twinco Transmission Lines, and such other assets of Twinco the “**Twinco Assets**”);
- In 1974, CFLCo took over the Twinco Plant and the Twinco Assets and undertook comprehensive maintenance obligations in respect of the Twinco Plant (the “**CFLCo Maintenance Obligations**”), and indemnified Twinco in respect of those obligations and environmental liabilities in connection with the Twinco Plant and Twinco Assets (the “**CFLCo Indemnity**”)<sup>10</sup>;
- The Twinco Plant was placed into an extended shutdown in 1974. Since that time until today, based on various environmental assessments commissioned by Twinco over the years as summarized in various Audited Financial Statements of Twinco, the CCAA Parties understand that potential environmental liabilities may have occurred in respect of the Twinco Plant and Twinco Assets (the “**Potential Environmental Liabilities**”);
- The CCAA Parties are of the view that the responsibility for any environmental liability lies with CFLCo and not Twinco, pursuant to CFLCo’s Maintenance Obligations and CFLCo Indemnity<sup>11</sup>;
- It is not clear to the CCAA Parties and the Monitor whether, and to what extent, Twinco may have funded maintenance or environmental remediation that was CFLCo’s responsibility, and for which Twinco may have a claim against CFLCo for reimbursement;
- As stated in the CBCA Motion, for years, both prior to and after the commencement of the present CCAA Proceedings, the CCAA Parties, with the support of IOC who is not contesting the CBCA Motion, have sought to obtain a distribution of the Twinco Cash to Twinco’s shareholders, but such distribution has been continuously resisted by Twinco and by CFLCo;
- The CCAA Parties have reasons to believe that CFLCo did not support further distributions to the Twinco shareholders because it wants to ensure a cash pool

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<sup>10</sup> As more fully detailed in the CBCA Motion.

<sup>11</sup> R-6 of the CBCA Motion.



from Twinco to pay for the Potential Environmental Liabilities notwithstanding the CFLCo Indemnity and CFLCo Maintenance Obligations;

- Pursuant to Twinco's Articles of Continuance dated August 1, 1980<sup>12</sup>, the shareholders are entitled to share rateably in the remaining property of Twinco upon dissolution;
- Wabush's share of the Remaining Twinco Cash<sup>13</sup> is approximately \$1,040,000, a material amount, together with their *pro rata* share of what other money may be subject to reimbursement claims against CFLCo;
- As the information to determine the amount of maintenance and other indemnifiable expenses that may be subject to reimbursement by CFLCo is within the knowledge of Twinco, an accounting is requested in the CBCA Motion;
- Without this information, it is impossible for the CCAA Parties or the Monitor to calculate what the approximate true value of the Twinco Interest may be to ensure that the CCAA Parties' creditors receive appropriate recovery from the Twinco Interest.

## 2.1 The CBCA Motion and the relief sought

[22] The history of the CCAA Parties' repeated attempts to engage in a constructive dialogue with Twinco and its majority shareholder CFLCo, is more fully set out in detail in the CBCA Motion, which has been continued *sine die* until now pending the outcome of Twinco's Motion to dismiss.

[23] While the CCAA Parties were hopeful that a consensual resolution could be achieved, they concluded that based on the lack of desire of Twinco and CFLCo to engage in a constructive manner, a consensual resolution was not possible.

[24] Accordingly, on November 16, 2020, the CCAA Parties filed the CBCA Motion before the CCAA Court, seeking the issuance of the following orders 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

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<sup>12</sup> R-4.

<sup>13</sup> As defined below.

Maintenance Obligations (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; and

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.

[the “**Requested Relief**”]

[25] Some 61 days later, on January 15, 2021, concurrently with its Contestation of the CBCA Motion, CFLCo filed before the Supreme Court of Newfoundland and Labrador (the “**NL Court**”), an Originating Application for the Issuance of a Court-supervised Liquidation and Dissolution Order regarding Twinco (the “**Twinco Liquidation Application**”) pursuant to sections 214 (1)(b)(ii), 215, and 217 of the CBCA, seeking, *inter alia*, the court-supervised liquidation of Twinco<sup>14</sup>.

[26] Both this CCAA Court and the NL Court adjourned *sine die* the CBCA Motion and the Twinco Liquidation Application<sup>15</sup>, in order to allow the parties an opportunity to explore the possibility of a consensual resolution of the matters raised in those proceedings which essentially boils down to disposing of the Twinco Interest.

[27] As those negotiations did not proceed in any meaningful way, the CCAA Parties sought to obtain the information necessary to determine with greater certainty the Twinco Interest by presenting their *Motion for the Expansion of the Monitor’s Powers* (“**Expanded Monitor Powers Motion**”) to facilitate the recovery of assets for the benefit of the CCAA

<sup>14</sup> C-1 (Court File No. 2021 01G 0432).

<sup>15</sup> As defined below.

Parties' creditors and the winding up of the CCAA Parties' estate and the termination of the CCAA Proceedings.

[28] The Expanded Monitor Powers Motion related essentially to the Twinco Interest which is, to all intents and purposes, the last asset to monetize and realize in the context of the CCAA proceedings.

[29] Until the presentation of the Expanded Monitor Powers Motion on June 3, 2021, Twinco and its shareholder CFLCo had been steadfastly blocking all attempts of the CCAA Parties and the Monitor to monetize the Twinco Interest in the furtherance of the Plan, which involved obtaining the relevant and necessary documentation required to determine with reasonable certainty the value of the Twinco Interest in the context of the present CCAA Proceedings.

[30] Twinco's and CFLCo's refusal to deal with the Twinco Interest has left little alternative but to seek the wind down and the dissolution of Twinco in the context of the present CCAA Proceedings to finally permit the CCAA Parties, with the assistance of the Monitor, to realize this asset of Wabush, complete the final distribution to the Plan creditors and terminate at last the CCAA Proceedings that have been ongoing since 2015.

[31] By judgment rendered on July 14, 2021<sup>16</sup> (the "**Expanded Monitor Powers Judgment**"), this CCAA Court granted the relief sought in the Expanded Monitor Powers Motion, thus granting additional powers to the Monitor to seek from Twinco and CFLCo the necessary documentation and information that would enable the Monitor to once and for all determine the approximate true value of the Twinco Interest, bearing in mind that should the proper information be communicated to the Monitor, it may lead to the conclusion that it is not financially reasonable for the CCAA Parties to pursue the avenue sought with the CBCA Motion, should the Twinco Interest be mainly limited to the Wabush's share of the Twinco Cash.

[32] The Court was informed by the counsel for Twinco that despite CFLCo's present attempt to seek leave to appeal the same<sup>17</sup>, the latter's Québec counsel had started communicating some document and information to the Monitor but nevertheless insisted on proceeding with the Twinco Motion to dismiss regardless of the outcome on the information communication process presently engaged and the Application for leave to appeal of CFLCo.

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<sup>16</sup> 2021 QCCS 2946 (Application for leave to appeal this judgment by CFLCo only is presently pending).

<sup>17</sup> Twinco's counsel also informed the Court that unlike CFLCo, its client was not seeking leave to appeal the judgment of July 14, 2021, and was in agreement to proceed to its dissolution and liquidation, which is now requested by the CCAA Parties in the CBCU Motion filed in Québec and by CFLCo with the Twinco Liquidation Application filed subsequently in Newfoundland.

### 3. **THE QUESTIONS AT ISSUE**

[33] The Twinco Motion to dismiss and CFLCo's Contestation of the CBCA Motion raise essentially the lack of jurisdiction of this CCAA Court to hear and rule on the CBCA Motion and consequently, this CCAA Court should yield to the NL Court to hear and dispose of the Twinco Liquidation Application and the CBCA Motion.

[34] Should this CCAA Court find that it has nevertheless jurisdiction to hear the CBCA Motion, it should apply article 3135 CCQ stipulating that even if a Québec Court determines it has jurisdiction, it may decline jurisdiction where it considers the courts of another jurisdiction "*are in a better position to decide the dispute*".

[35] To sum it all up, this CCAA Court has to determine the following questions at issue:

- Does this CCAA Court lack the jurisdiction to hear and dispose of the CBCA Motion?
- In the affirmative, this CCAA Court should dismiss the CBCA Motion;
- In the negative and on a subsidiary basis, should this CCAA Court nevertheless decline jurisdiction in favour of the NL Court with respect to the matters and issues raised and the Requested Relief sought in the CBCA Motion based on the provisions of article 3135 CCQ and in application of the doctrine of *forum non convenience*?

### 4. **ANALYSIS**

[36] With all due respect and upon due consideration of the evidence and arguments put forward by counsel for Twinco and CFLCo, this CCAA Court finds that as a "*national court*", it has jurisdiction to hear and dispose of the CBCA Motion.

[37] This CCAA Court also finds that it would not be appropriate to apply the doctrine of *forum non conveniens* in this matter and nevertheless decline jurisdiction in favour of the NL Court with respect to the matters and issues raised and the Requested Relief sought in the CBCA Motion.

[38] Here is why.

#### **4.1 This CCAA Court has jurisdiction to decide the CBCA Motion**

[39] It is important to bear in mind that for lack of any success in their previous attempts to resolve their issues with Twinco and CFLCo on an amicable and consensual basis, the CBCA Motion is essentially a mean and an attempt by the Wabush shareholders of Twinco (with the assistance of the Monitor) to finally monetize and realize their shares in said corporation that has been essentially inactive since 1974, the whole for the purpose

of distributing the realized proceeds of their shares to their creditors under the Plan approved by this CCAA Court in Québec.

[40] CFLCo is clearly amenable to this solution having filed its own Application seeking the dissolution and liquidation of Twinco some two months after the CBCA Motion.

[41] Moreover, at the hearing, counsel for Twinco confirmed that its client was now also in agreement to proceed with its dissolution and liquidation.

#### 4.1.1 The CCAA and sections 214 and 241 CBCA

[42] The Requested Relief sought pursuant to the CBCA Motion are based on sections 214<sup>18</sup> and 241 CBCA, the latter dealing with oppression remedies.

[43] Upon the application of a shareholder, section 214 CBCA permits the Court<sup>19</sup> 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.

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<sup>18</sup> 214 (1) A court may order the liquidation and dissolution of a corporation or any of its affiliated corporations on the application of a shareholder,

- (a) if the court is satisfied that in respect of a corporation or any of its affiliates
    - (i) any act or omission of the corporation or any of its affiliates 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; or
  - (b) if the court is satisfied that
    - (i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or
    - (ii) it is just and equitable that the corporation should be liquidated and dissolved.
- (2) On an application under this section, a court may make such order under this section or section 241 as it thinks fit.
- (3) Section 242 applies to an application under this section.

<sup>19</sup> In Québec, this jurisdiction is exercised by the Commercial Division of the Superior Court, being the CCAA Court as well.

[44] Therefore, in addition to the relief offered by sections 214 and 241 CBCA also permits the CCAA Court to make an order for the liquidation and dissolution of a corporation and even an order directing a corporation or any other person to purchase securities of a security holder, where the Court is satisfied that there is Oppressive Conduct.

[45] This CCAA Court agrees with counsel for the CCAA Parties that in the present instance, the provisions of the CCAA grant the Québec Superior Court (Commercial Division) jurisdiction to hear the CBCA Motion and grant the Requested Relief.

[46] Indeed, across Canada, CCAA courts have relied on section 11<sup>20</sup> CCAA to “*make any order that [they consider] appropriate in the circumstances*” and section 42<sup>21</sup> CCAA to “*import remedies from other statutory schemes*” to make orders comparable to the Requested Relief.

[47] More precisely, CCAA courts have found that they had jurisdiction to grant oppression remedies even when the oppression remedies were sought under a provincial business corporation act or statute.<sup>22</sup>

[48] The Court also shares the view of the counsel for the CCAA Parties that in alleging that the NL Court should have exclusive jurisdiction to hear any motion relating to the dissolution or the 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.

[49] 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.

[50] With all due respect, this line of reasoning defies the purpose sought by the federal legislator by enacting section 42<sup>23</sup> CCAA and more importantly, it would reduce greatly

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<sup>20</sup> 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.

[Emphasis added]

<sup>21</sup> 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]

<sup>22</sup> *Lightstream Resources Ltd (Re)*, 2016 ABQB 665, at paragraph 52; *Stelco Inc., Re*, [2005] O.J. No. 1171, at paragraphs 52–54.

<sup>23</sup> Previously, section 20 CCAA.

the utility of section 42 CCAA if not eliminating it altogether. This would arrest this CCAA Court from utilizing any statute that is linked to a court outside of Québec.

[51] Moreover, the approach advocated by Twinco and CFLCo undermines the very nature of a Canada's insolvency regime by failing to take into consideration the Supreme Court's reasoning in laying out the "single-control" model.

#### 4.1.2 The "Single Control" Model

[52] In the case of *Sam Lévy & Associés v. Azco Mining Inc.*<sup>24</sup> ("**Sam Lévy**"), the Supreme Court of Canada stated that the "single-control" model applied to insolvency proceedings, a model which favours litigation involving an insolvent company to be dealt within a single jurisdiction:

[27] Stewart was, as stated, a winding-up case, but the legislative policy in favour of "single control" applies as well to bankruptcy. There is the same public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse. Section 188 (1) [BIA] ensures that orders made by a bankruptcy court sitting in one province can and will be enforced across the country.

[Emphasis added]

[53] While the *Sam Lévy* case involved proceedings under the *Bankruptcy and Insolvency Act* ("**BIA**"), courts have adopted the position that the "single control" model now also applies to CCAA proceedings.<sup>25</sup>

[54] This CCAA Court must not ignore the fact that in the present instance, in 2017, Hamilton J., then acting as case managing judge in these very CCAA Proceedings since 2015, ruled as follows on the "single control" model:

##### 1- The jurisdiction of the CCAA Court

[29] In principle, all issues relating to a debtor's insolvency are decided before a single court.<sup>26</sup> This rule is based on the "public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse."<sup>27</sup> This public interest favours a "single control" of insolvency proceedings by one court as opposed to their fragmentation among several courts.<sup>28</sup>

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<sup>24</sup> *Sam Lévy & Associés v. Azco Mining Inc.*, 2001 SCC 92.

<sup>25</sup> *Essar Steel Algoma Inc., Re.*, 2016 ONSC 595, paragraphs 29–30; *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, paragraph 22.; *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67, paragraph 21.; *Montréal, Maine & Atlantic Canada Co., Re.*, 2013 QCCS 5194, at paragraphs 24–25.

<sup>26</sup> *Sam Lévy & Associés Inc. v. Azco Mining Inc.*, 2001 SCC 92, par. 25-28.

<sup>27</sup> *Ibid*, par. 27.

<sup>28</sup> *Ibid*, par. 64.

[30] The Supreme Court in *Sam Lévy* concluded as follows with respect to the relevant test:

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.<sup>29</sup>

(Emphasis added [by Hamilton J.]

[31] Although the *Sam Lévy* case was decided in the context of the *Bankruptcy and Insolvency Act* (“BIA”),<sup>30</sup> the same principles apply in the context of the other insolvency legislation, including the CCAA.<sup>31</sup> The CCAA court has jurisdiction to deal with all of the issues that arise in the context of the CCAA proceedings.<sup>32</sup> 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.<sup>33</sup>

<sup>29</sup> *Ibid*, par. 76.

<sup>30</sup> R.S.C. 1985, c. B-3.

<sup>31</sup> *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, par. 22; *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67, par. 21; *Montreal, Maine & Atlantic Canada Co./Montréal, Maine & Atlantique Canada Cie (Arrangement relatif à)*, 2013 QCCS 5194, par. 24-25; *Re Nortel Networks Corporation et al*, 2015 ONSC 1354, par. 24; *Re Essar Steel Algoma Inc.*, 2016 ONSC 595, par. 29–30, judgment of Court of Appeal ordering (i) Cliffs to seek leave to appeal the Order, (ii) the hearing of the leave to appeal motion be expedited, and (iii) the issuance of a stay pending the disposition of the leave to appeal motion, 2016 ONCA 138.

<sup>32</sup> Section 16 CCAA provides that the orders of the CCAA court are enforced across Canada.

[16] *Every order made by the court in any province in the exercise of jurisdiction conferred by this Act in respect of any compromise or arrangement shall have full force and effect in all the other provinces and shall be enforced in the court of each of the other provinces in the same manner in all respects as if the order had been made by the court enforcing it.*

<sup>33</sup> *Arrangement relatif à Bloom Lake*, 2017 QCCS 284 (January 30, 2017).



[Emphasis added]

[55] At the time, Hamilton J. refused to refer issues relating to the interpretation of the Newfoundland and Labrador *Pension Benefits Act* to the Supreme Court of Newfoundland.

#### 4.1.3 The Superior Court of Québec (Commercial Division) sits as a national court

[56] In the *Sam Lévy* case, the Supreme Court of Canada stated that 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 a debtor:

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]

[57] As such, the Québec Superior Court (Commercial Division) sitting in the present CCAA Proceedings *is, in a very real sense, sitting as a national court.*

#### 4.1.4 Twinco and CFLCo are not “Strangers to the Bankruptcy”

[58] Bearing in mind that the teachings in the *Sam Lévy* case also apply to proceedings governed by the CCAA, the Supreme Court of Canada held that a creditor who cannot claim to be a “*stranger to the bankruptcy*” but wishes to *fragment the proceedings*, in spite of the single-control model, has the burden of demonstrating sufficient cause to send the “*trustee scurrying to multiple jurisdictions.*”

[59] The Supreme Court of Canada indicated that 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*:

36 Despite the fact that England is a unitary state without the constitutional limitations imposed by our division of powers, 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 if the remedy is not one contemplated by the Act, the trustee must seek relief in the ordinary civil courts. [...]

[60] In other words, such cause may be demonstrated where the opposite party is a “*stranger to the bankruptcy*”.

[61] This might explain why in the Twinco Motion to dismiss, Twinco alleged that it and its shareholder CFLCo were strangers to the present CCAA Proceedings:

10. Neither Twinco nor CFLCo is asking for their contractual rights to be determined by this Honourable Court. Further, neither Twinco nor CFLCo is a party to the CCAA Proceedings, nor is either corporation a party governed by the original or any subsequent order issued in the CCAA Proceedings. **Rather, both Twinco and CFLCo are strangers to the CCAA Proceedings in which the Wabush Motion has been brought.**

[Emphasis added]

[62] This CCAA Court already broached this issue in the Expanded Monitor Powers Judgment and found that Twinco’s assertion was inaccurate at best if not misleading:

[48] In connection with the last argument<sup>34</sup> put forward by both Twinco and CFLCo that there is a limit to the statutory discretion under section 11 of the CCAA, they added that the present CCAA Proceedings which aim at restructuring corporations as opposed to their liquidation, are not the appropriate vehicle for investigation of third parties to the CCAA Proceedings.

[49] In line with the forgoing, Twinco makes the astonishing if not misleading affirmation that it is a third party (a stranger) herein, with no link to the CCAA Proceedings:

17. Further, neither Twinco nor CFLCo is a party to the CCAA Proceedings, nor is either corporation a party governed by the original or any subsequent order issued in the CCAA Proceedings.

18. Rather, both Twinco and CFLCo are strangers to the CCAA Proceedings in which the Wabush Motion has been brought.

117. Here, Twinco is a third party, with no link with the CCAA Proceedings. [...] Twinco is neither the debtor, **nor a creditor**, an employee, a director, a shareholder, nor another party doing business with the insolvent company. It has no interest whatsoever in the recovery, and now, in the liquidation of the CCAA Parties.<sup>35</sup>

[50] **Contrary to the foregoing assertions, Twinco is not a “stranger to the CCAA Proceedings”.**

[51] Pursuant to the Claims Process<sup>36</sup> authorized by the Court, Twinco filed a proof of claim against Wabush for approximately \$780,000<sup>37</sup>. Twinco’s claim was allowed by the Monitor in 2016<sup>38</sup>.

[52] The Court understands that Twinco even received a partial distribution in respect of its claim under the Plan and is likely to participate in the final distribution.

[Emphasis added]

[63] The Expanded Monitor Powers Judgment essentially granted additional powers enabling the Monitor to obtain from Twinco and CFLCo the relevant information and documentation that would permit at last the determination of the true value of the Twinco Interest for realization purposes. Until that time, Twinco and CFLCo had steadfastly denied the requested information.

<sup>34</sup> [47] [...] The statutory discretion under section 11 of the CCAA does not extend to the Expanded Monitor Powers sought by the CCAA Parties in the Motion.

<sup>35</sup> Paragraphs 17, 18 and 117 of the Twinco’s Argument Plan.

<sup>36</sup> On November 5, 2015, the CCAA Court issued an 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**”).

<sup>37</sup> **R-14.**

<sup>38</sup> *Ibid.*

[64] This led the Court to make the following comments in the Expanded Monitor Powers Judgment:

[61] The Court also understands that it is the steadfast and the somewhat inexplicable refusal of Twinco and of its shareholder CFLCo to provide any of the Twinco Requested Information<sup>39</sup> to the CCAA Parties and to the Monitor that prevents the latter from determining with a minimum of accuracy what is the estimated value of the Twinco Interest.

[62] This determination expected to be performed by the Monitor relates directly to an asset of the CCAA Parties that is covered by the Plan sanctioned by this Court, and such a determination falls squarely on the tasks, duties and responsibilities of the Monitor within the present CCAA Proceedings regardless of the eventual dissolution or not of Twinco.

[63] Moreover, of obvious significance in the eyes of the Court, Twinco filed a proof of claim for \$780,000 that was accepted by the Monitor pursuant to the Claims Process approved by the Court.

[64] It is somewhat incomprehensible that Twinco would nevertheless affirm that it is a third party, a “stranger” with no link with the CCAA Proceedings and that it is neither the debtor, nor a creditor, an employee, a director, a shareholder, nor another party doing business with the CCAA Parties that include two of its shareholders (Wabush).

[65] How can Twinco seriously pretend that it has no interest whatsoever in the recovery, and presently, in the liquidation of the CCAA Parties when it filed a proof of claim for \$780,000?

[66] Twinco even stands to retrieve by way of the final distribution, a portion of the Twinco Interest once realized by the Monitor, as the case may be.

[67] Moreover, didn't Twinco attorn to the jurisdiction of the Québec Superior Court (Commercial Division) by deciding to file a proof of claim against the Wabush shareholders in the present CCAA Proceedings?<sup>40</sup>

[Emphasis added]

[65] The Court must answer to the latter question in the affirmative.

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<sup>39</sup> Purposely limiting the same to documents that the Wabush shareholders already have.

<sup>40</sup> *Bouygues Building Canada inc. v. Iannitello et Associés inc.*, 2018 QCCA 504:

[23] By submitting a proof of claim to the Trustee and appealing the disallowance, the Joint Venture attorned to the jurisdiction of the Québec Superior Court sitting in bankruptcy matters. It could hardly blame the Trustee after the fact as it did for having decided on the validity of the claim as submitted, since the Trustee was obliged to do so. The Joint Venture did not seek permission to continue the Ontario proceedings with a view to qualifying its contingent claim prior to filing a proof of claim with the Trustee.

[References omitted]

[66] As 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<sup>41</sup>, this CCAA Court also finds that by filing a proof of claim with the Monitor, Twinco has already attorned and consented to the jurisdiction of this CCAA Court.

[67] Be that as it may, it is highly relevant to point out that with the present CCAA Proceedings and more particularly, via the CBCA Motion, the CCAA Parties with the assistance of the Monitor are endeavoring to realize the Twinco Interest in order to distribute the proceeds to their creditors which includes Twinco.

[68] First and foremost, the CBCA Motion purports to monetize and revendicate the Twinco Interest which constitutes, in the eyes of the Court, a property that forms part of the CCAA Parties' patrimony and that is subject to the court-sanctioned Plan.

[69] The Court believes that the parties that are in possession of that property, namely the Twinco Interest, and who refuse to cooperate with the Monitor in the execution of its court-granted powers to implement the Plan, are no "*strangers*" to the present CCAA Proceedings especially if Twinco is a creditor of the Wabush who filed a \$780,000 proof of claim that was accepted by the Monitor.

[70] Therefore, the Commercial Division of the Québec Superior Court clearly has jurisdiction herein.

[71] In other words, the Court finds that where the ultimate objective of the CBCA Motion is to recover assets belonging to the Wabush patrimony, this Court sitting as a CCAA Court who has been managing these CCAA Proceedings since 2015, has jurisdiction herein, especially since this approach facilitates the prompt resolution of insolvency cases.<sup>42</sup>

#### **4.1.5 Conclusion on the jurisdiction of this CCAA Court**

[72] In conclusion, this CCAA Court finds that it has jurisdiction to hear the CBCA Motion.

[73] To reach that conclusion, the Court shares the opinion of the counsel for the CCAA Parties that in the present matter, Twinco and CFLCo are no "*strangers to the bankruptcy*" (or the CCAA Proceedings) as the Monitor stands to recover assets which belong to the CCAA Parties' estate, being the Wabush portion of the Twinco Cash on hand and any other amount which may become payable to the latter.

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<sup>41</sup> *Van Breda v. Village Resorts Ltd*, 2012 SCC 17, at paragraph 79; *Microbiz Corp v. Classic Software Systems Inc.*, [1996] OJ no 5094, at paragraph 1 (SCJ); *Joint Venture c. Iannitello et Associés inc.*, footnote 39.

<sup>42</sup> *Cantore v. Nemaska Lithium Inc.*, 2020 QCCA 1333, at paragraphs 9–10; *Compagnie de pavage d'asphalte Beaver Itée v. Morency*, 1991 CanLII 3680 (QC CA), at paragraphs 7-9.

[74] 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 Twinco Interest;
- b) the Twinco Interest is a material asset of the CCAA Parties. If the Requested Relief is granted by this 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 this CCAA Court; and
- e) the CBCA Motion essentially seeks to revendicate the Wabush's property (the Twinco Interest) that remains in their possession.

**4.2 Subsidiarily, this CCAA Court should not decline to exercise its jurisdiction based on the doctrine of *forum non conveniens***

[75] At the outset, it is relevant to bear in mind, with all due respect, that Twinco and CFLCo failed to meet the required burden for this CCAA Court to decline jurisdiction for the reasons more fully discussed above.

[76] Under such circumstances, Twinco offered a subsidiary argument based on article 3135 CCQ that gives rise to the doctrine of *forum non conveniens* by stipulating that even if a Québec Court determines it has jurisdiction, it may decline jurisdiction where it considers the courts of another jurisdiction "*are in a better position to decide the dispute*".

[77] The application of the doctrine of *forum non conveniens* is contextual and the factors that the court will consider vary in each case.

[78] 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 judgments; (xi) the

location of evidence; (xii) the applicable law; and (xiii) the recognition and enforcement of a judgment.

[79] Relying on many of those factors, Twinco's counsel<sup>43</sup> argued that in light of the issues raised in the CBCA Motion leading to the Requested Relief (the "**Issues**"), the Superior Court of Québec is not an appropriate forum to hear and dispose of those Issues.

[80] In fact, the real and substantial connection between the said Issues and the forum of Newfoundland is evident for the following reasons:

- Twinco and CFLCo are not domiciled or resident in Québec; they are headquartered and chiefly operate in Newfoundland and Labrador;
- All material agreements referred to in the CBCA Motion are not governed by the laws of Québec; two of those agreements expressly provide that they are governed by the laws of Newfoundland (now Newfoundland and Labrador); the third one is silent on jurisdiction but is a subsidiary document of one of the other two agreements mentioned above;
- Any consideration of any potential environmental liabilities that Twinco might have would arise exclusively under the laws of Newfoundland and Labrador;
- Moreover, the jurisdiction of Newfoundland and Labrador is where witnesses and evidence required for the determination of the aforementioned Issues are located; and
- On January 15, 2021, CFLCo, in its capacity of shareholder of Twinco, filed the Twinco Liquidation Application before the NL Court seeking the issuance of a liquidation and dissolution order in respect of Twinco pursuant to the CBCA with Wabush Resources and Wabush Iron being parties to these proceedings.

[81] In light of the foregoing, the NL Court would be the court having a real and substantial connection to Twinco and CFLCo, the material agreements raised in the CBCA Motion and with the laws which govern them.

[82] According to Twinco and CFLCo, the NL Court is a clearly the more appropriate forum and, as such, it is, in the interest of justice, better suited to take jurisdiction of this matter.

[83] Twinco's counsel also argued that the only thing connecting Twinco to the CCAA Proceedings was that Wabush Resources and Wabush Iron collectively own a total of 17.062% of the shares of Twinco, the remainder being held by Iron Ore Company of

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<sup>43</sup> With the support of the counsel for CFLCo.

Canada<sup>44</sup> (IOC) (49.6%) and CFLCo (33.3%), it does not constitute a “connecting factor” under article 3148 CCQ.

[84] However, setting aside the finding that Twinco attorned to the jurisdiction of this CCAA Court by filing a proof of claim, the undersigned did not come to the conclusion that this CCAA Court had jurisdiction herein based on article 3138 CCQ.

[85] Twinco also argued that the existence of proceedings pending between the parties in another jurisdiction (Newfoundland) militated in favour of the CBCA Motion being heard before the NL Court, as otherwise, there is a risk of contradictory judgments resulting from the multiplication of proceedings.

[86] With all due respect, the Court finds it difficult to entertain the idea of conflicting judgments with both proceedings actually being heard in Québec and in Newfoundland, given that they both seek the dissolution and liquidation of Twinco which also involves in all instances the determination and the realization of the Wabush Twinco Interest.

[87] Be that as it may, this CCAA Court understands that the discretion to decline to hear legal proceedings on the basis of the doctrine of *forum non conveniens* as it is conferred pursuant to article 3135 CCQ, must only be exercised by the judge in exceptional circumstances<sup>45</sup>.

[88] More recently in 2012, in the case of *Van Breda*, the Supreme Court of Canada reiterated that principle and held that:

- the party raising the doctrine of *forum non conveniens* 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; and
- 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*”.<sup>46</sup>

[89] With all due respect, this CCAA Court agrees with the counsel for the CCAA Parties that in the present context, the combination of the relevant facts raised by Twinco and CFLCo do not lead to a finding that it is “*clearly*” more appropriate and warranted to decline jurisdiction and to transfer the CBCA Motion to the NL Court.

[90] On the contrary, such an exercise of its judicial discretion would lead to unfair and inefficient results as:

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<sup>44</sup> Incidentally, IOC with 49.6% of Twinco’s shares, is one of the CCAA Parties and is not contesting the CBCA Motion.

<sup>45</sup> *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78, at paragraph 77.

<sup>46</sup> *Van Breda v. Village Resorts Ltd*, 2012 SCC 17, at paragraphs 105,108, 109 and 110.



- a) the parties would incur additional expenses in transferring the CBCA Motion to the NL Court;
- b) transferring the CBCA Motion would result in a multiplicity of proceedings;
- c) as this CCAA Court as case manager is seized of and is already familiar with the details of the CCAA Proceedings and the CCAA Parties, as opposed to the NL 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, the administration of the CCAA Parties' estate and the implementation of the court-sanctioned Plan;
- 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 most of the Issues are in respect of federal corporate legislation, in which this CCAA Court is particularly familiar with;
- f) in a global pandemic context which unfortunately seems to continue for the time being, factors of geographical nature are not relevant since evidence can be adduced electronically and any hearing will most likely be conducted in a virtual manner;
- g) having already found that this CCAA Court has jurisdiction to hear the CBCA Motion, transferring the same would offend the "single-control" model previously discussed; and
- h) lastly, contrary to the allegations of Twinco and CFLCo, the Twinco Liquidation Application filed on January 15, 2021, in the NL Court cannot be considered as an existing proceeding in another jurisdiction as it was filed simultaneously with CFLCo's Contestation some 61 days after the CBCA Motion.

[91] The fact that this CCAA Court will be called upon to apply and interpret certain contractual provisions of agreements which provide that the laws of Newfoundland are applicable does not at all bar this CCAA Court from exercising its jurisdiction.

[92] In fact, in the present CCAA Proceedings, this CCAA 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 had the obligation to pay mining royalties to Canadian Javelin Foundries & Machine Works Limited.<sup>47</sup>

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<sup>47</sup> *Bloom Lake General Partner Ltd., Re.*, 2018 QCCS 996, at paragraphs 36 and ff.

[37] Wabush Mines produced the report of Kevin F. Stamp, Q.C., who is licensed and qualified to practice law in the Province of Newfoundland and Labrador since 1978.<sup>47</sup> His report was not contested by MFC and he did not testify at the trial.

[93] Moreover, this is not the first time where this CCAA Court is called upon to consider the application of the doctrine of *forum non conveniens* in these CCAA Proceedings which previously involved legislation from competing jurisdictions which happened to be in relation to, among other things, Newfoundland's *Pension Benefit Act*.

[94] Although everyone recognized the jurisdiction of this CCAA Court at the time, certain parties<sup>48</sup> requested that Hamilton J. should seek the aid of the NL Court to interpret and rule on contracts governed by the laws of Newfoundland.

[95] In the previously mentioned judgment rendered on January 30, 2017, Hamilton J. ruled that he would not refer the matter involving Newfoundland's *Pension Benefit Act* to the NL Court<sup>49</sup>.

[96] Recalling the clear efficiency of the "single control" model<sup>50</sup>, Hamilton J. made the following comments about the legal considerations that militated in favour of a referral to the NL Court and pointing, *inter alia*, on the fact that a dispute is governed by foreign law does not have much weight in a *forum non conveniens* analysis:

[41] This is the key argument [the legal considerations] put forward by the parties suggesting that the NLPBA issues be referred to the NL Court: the issues relate to the NLPBA, and the NL Court is best qualified to interpret the NLPBA.

[42] The Court accepts as a starting point that the NLPBA applies in the present matter: the pension plans are regulated by the NL Superintendent in accordance with the NLPBA (although OSFI also regulates the Union Plan in accordance with the PBSA) and the plans expressly provide that they are interpreted in accordance with the NLPBA.

[43] The Court also accepts the obvious proposition that the NL Court is more qualified to deal with an issue of Newfoundland and Labrador law than the courts of Québec, particularly since Newfoundland and Labrador is a common law jurisdiction and Québec is a civil law jurisdiction.

[44] However, that does not mean that the Court will automatically refer every issue governed by the law of another jurisdiction to the courts of that other jurisdiction.

[45] First, there are rules in the *Civil Code* with respect to how Québec courts deal with issues governed by foreign law. Articles 3083 to 3133 C.C.Q. set out the rules to determine which law is applicable to a dispute before the Québec courts, and Article 2809 C.C.Q. sets out how the foreign law is proven before the Québec courts.

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<sup>48</sup> With the objection of the Monitor, *inter alia*.

<sup>49</sup> *Bloom Lake General Partner Ltd., Re.*, *supra* note 33.

<sup>50</sup> *Ibid.*, paragraphs 32–33.

[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.<sup>51</sup>

[47] In other words, the mere fact that a dispute is governed by foreign law is not a good reason to send the case to the foreign jurisdiction. This principle was applied in a CCAA context in the *MMA* case.<sup>52</sup>

[48] There are examples in the insolvency context of the court with jurisdiction over the insolvency declining to send an issue governed by foreign law to the foreign court. In *Sam Lévy*, the Supreme Court declined to send an insolvency matter to British Columbia simply because there was a choice of B.C. law, stating, "The Québec courts are perfectly able to apply the law of British Columbia."<sup>53</sup>

[...]

[50] The Monitor submitted cases in which Québec courts have interpreted different provisions of the pension laws of other provinces.<sup>54</sup> The Court also notes that it dealt to a more limited extent with the deemed trust under the NLPBA in its decision dated June 26, 2015<sup>55</sup>.

[...]

[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

<sup>51</sup> *Stormbreaker Marketing and Productions Inc. c. Weinstock*, 2013 QCCA 269, par. 98–100.

<sup>52</sup> *Montreal, Maine & Atlantic Canada Co./Montréal, Maine & Atlantique Canada Cie (Arrangement relatif à)*, 2013 QCCS 5194, paragraph 20.

<sup>53</sup> *Sam Lévy*, *supra* note 23, par. 61.

<sup>54</sup> *Emerson Électrique du Canada Itée c. Chatigny*, 2013 QCCA 163; *Bourdon c. Stelco inc.*, 2004 CanLII 13895 (QC CA).

<sup>55</sup> 2015 QCCS 3064.

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.

[97] With all due respect, based on the facts of the case at bar, this CCAA Court does not find any compelling reasons justifying declining jurisdiction in favour of the NL Court with respect to the CBCA Motion as requested by Twinco and CFLCo.

[98] In conclusion, this CCAA Court having jurisdiction with respect to the matter and the Issues raised in the CBCA Motion, shall dismiss the Twinco Motion to dismiss and CFLCo's Contestation.

**FOR THOSE REASONS, THE COURT:**

[99] **DECLARES** that the Superior Court of Québec (Commercial Division) standing as a CCAA Court, has jurisdiction to hear and dispose of the matter and the issues raised by the Petitioners and the Mises-en-cause in the *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* dated November 16, 2020 [the "**Application**"];

[100] **DISMISSES** the *Modified Motion by Twin Falls Power Corporation to dismiss the Application for lack of jurisdiction and for forum non-conveniens* dated May 17, 2021, and *Churchill Falls (Labrador) Corporation Limited's Amended Contestation of the Petitioners' Motion for the winding up and dissolution, distribution of assets, reimbursement of monies and additional relief* dated May 19, 2021;

[101] **THE WHOLE** with judicial costs payable by Twin Falls Power Corporation and Churchill Falls (Labrador) Corporation Limited.

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**MICHEL A PINSONNAULT, J.S.C.**

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Hearing date: August 6, 2021

## **SCHEDULE 2**

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF **MONTREAL**

N°: **500-11-048114-157**

**SUPERIOR COURT**

Commercial Division

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

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**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

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**MOTION FOR THE WINDING UP AND DISSOLUTION, DISTRIBUTION OF ASSETS,  
REIMBURSEMENT OF MONIES AND ADDITIONAL RELIEF<sup>1</sup>**  
(Section 11 of the *Companies' Creditors Arrangement Act* and Sections 214 and 241 of the  
*Canada Business Corporations Act*)

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<sup>1</sup> 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) and the Wabush Initial Order (as defined herein).

**TO THE HONOURABLE MR. JUSTICE MICHEL PINSONNAULT, J.S.C. OR ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTRÉAL, THE PETITIONERS AND THE MISES-EN-CAUSE SUBMIT:**

**1. BACKGROUND**

1. On January 27, 2015, Mr. Justice Martin Castonguay, J.S.C., issued an Initial Order (as subsequently amended, rectified and/or restated, 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 ("**BLGP**"), Quinto Mining Corporation, 8568391 Canada Limited ("**8568391**") and Cliffs Québec Iron Mining ULC ("**CQIM**") and the Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership ("**BLLP**") and Bloom Lake Railway Company Limited (collectively, the "**Bloom Lake CCAA Parties**"), as appears from the Initial Order dated January 27, 2015, which forms part of the Court record.
2. Pursuant to the Bloom Lake Initial Order, *inter alia*, FTI Consulting Canada Inc. was appointed as monitor to the businesses and financial affairs of the Bloom Lake CCAA Parties (the "**Monitor**") and a stay of proceedings was ordered in respect of the Bloom Lake CCAA Parties until February 26, 2015 (the "**Bloom Lake Stay Period**").
3. On May 20, 2015, Mr. Justice Hamilton 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**", and collectively with Wabush Iron, "**Wabush**") and the Mises-en-cause Wabush Mines and Arnaud Railway Company (collectively, the "**Wabush CCAA Parties**", and collectively with the Bloom Lake CCAA Parties, the "**CCAA Parties**"), the whole as appears from the Court record.
4. Pursuant to the Wabush Initial Order, *inter alia*, the Monitor was appointed as the monitor to the businesses and financial affairs of the Wabush CCAA Parties and a stay of proceedings was granted until June 19, 2015 (collectively with the Bloom Lake Stay Period, the "**Stay Period**").
5. The Stay Period has been extended on several occasions, most recently on February 19, 2020, and currently expires on November 30, 2020, as appears from the Court record.
6. On July 30, 2018, Mr. Justice Hamilton issued an order sanctioning the Amended and Restated Joint Plan of Compromise and Arrangement dated as of May 16, 2018, as modified (the "**Plan**"), the whole as appears from the Court record.
7. On July 31, 2018, the Monitor issued the Plan Implementation Date Certificate, confirming the implementation of the Plan on July 31, 2018, the whole as appears from the Court record.
8. During the CCAA Proceedings, the CCAA Parties have sold all of their assets other than Wabush's interest in Twin Falls Power Corporation ("**Twinco**").



9. Pursuant to the Plan, the net proceeds of sales and other recoveries are to be distributed to the creditors of the Participating CCAA Parties in accordance with the terms and conditions of the Plan.
10. Since the implementation of the Plan, the CCAA Parties, with the assistance of the Monitor, have been working to wind down the estates of the CCAA Parties so that the net proceeds from such recoveries and realizations can be finally distributed to their creditors as soon as possible.
11. The initial interim distributions to Affected Creditors with Proven Claims under the Plan took place in August and September 2018.
12. The CCAA Parties have been informed by the Monitor that a significant majority of the creditors of Wabush are former employees of Wabush Mines, many of whom are elderly, and who are reasonably assumed to be anxious to receive their final distributions as soon as possible.

## 2. ORDER SOUGHT

13. On this Motion, the CCAA Parties hereby seek the issuance of an Order:
  - a) confirming Churchill Falls (Labrador) Corporation Limited's ("**CFLCo**") liability for Twinco's maintenance obligations and environmental liabilities related to the Twinco Plant (as defined below) 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 (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 *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the "**CBCA**") and a distribution of: (i) the Twinco Cash (as defined below) 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;
  - 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;

substantially in the form of the draft order communicated herewith as **Exhibit R-1** (the “**Draft Order**”).

### **3. OVERVIEW OF FACTS**

#### **3.1 Twin Falls Power Corporation**

14. Twinco is an incorporated joint venture formed under the CBCA on February 18, 1960 among CFLCo, Wabush Iron, Wabush Resources, and the Iron Ore Company of Canada (“**IOC**”), among others.
15. Until July 1, 1974, Twinco operated a power generating plant (the “**Twinco Plant**”) in Newfoundland & Labrador.
16. According to the FY2019 Audited Financial Statements of Twinco as at December 31, 2019 (the “**FY2019 Audited Financial Statements**”), Twinco is owned 33.3% by CFLCo, who holds all Class A Common Shares, and 49.6% by IOC, 4.6% by Wabush Iron and 12.5% Wabush Resources, who hold the Class B Common Shares. Wabush Iron and Wabush Resources together hold 17.062% of the equity in Twinco (the “**Twinco Interest**”). A copy of the FY2019 Audited Financial Statements is communicated herewith as **Exhibit R-2**.
17. Pursuant to Twinco’s Articles of Continuance dated August 1, 1980 (“**Articles of Continuance**”): (i) the shareholders are entitled to share rateably in the remaining property of Twinco upon dissolution; and (ii) each Class A Common Share is entitled to four votes per share, while each Class B Common Share is entitled to one vote per share. Accordingly, the voting rights of Twinco are held by CFLCo at 66.7%, IOC at 24.8% and Wabush at 8.5%. A copy of Twinco’s Articles of Continuance as obtained from Twinco’s counsel is communicated herewith as **Exhibit R-3**.
18. Pursuant to the Participation Agreement (as defined below), CFLCo has the right to appoint three directors of Twinco for every director nominated by IOC, Wabush Resources and Wabush Iron.
19. On July 14, 2017, the then two nominee directors of Wabush, Patrick Ryan and Clifford Smith, resigned in conjunction with the sale by Wabush of the Scully Mine, which was the last material asset of the CCAA Parties to be sold in these CCAA Proceedings. No replacement nominees of Wabush have been appointed to the Twinco Board.
20. According to a Federal Corporation Information Report dated as of August 19, 2020, the current directors of Twinco are Oral Burry, James Meany, Dana Pope, Michael Roberts, James Haynes, Benoit Palmer and Maurice McClure. Based on the names of their employers as noted in their LinkedIn profiles, it is the CCAA Parties’ understanding that Benoit Palmer and Maurice McClure are IOC nominees and the remaining five directors, being employees of Nalcor Energy (“**Nalcor**”), which is the parent company of CFLCo, are CFLCo nominees. A copy of Federal Corporation Information Report is communicated herewith as **Exhibit R-4**.
21. Pursuant to a water power Sublease and Site and Easement Sublease (each as defined below) with CFLCo, Twinco obtained, among other things, the rights to develop a 225 megawatt hydroelectric generating plant on the Unknown River in Labrador (the “**Twinco**”).

**Plant**") which was formerly used to supply power to the iron ore mines in Labrador City, the Town of Wabush, Wabush Iron and IOC, among others, and for the construction of the Churchill Falls hydroelectric generating station in Churchill Falls, Newfoundland (the "**Churchill Falls Plant**").

22. CFLCo owns and operates the Churchill Falls Plant, a hydro-electric generating station, located twenty-five miles from the Twinco Plant. CFLCo is controlled through a 65.8% interest by Newfoundland and Labrador Hydro ("**NL Hydro**"), whose parent company is Nalcor.
23. Pursuant to Twinco's FY2019 Audited Financial Statements, Twinco has approximately \$6.1 million in cash and cash equivalent assets (the "**Twinco Cash**") and approximately \$46,000 of liabilities.
24. Throughout its lifetime, Twinco has owned a number of assets, including: (i) the physical building which houses the Twinco Plant and which is built into the rockface of the Twin Falls (the "**Twinco Building**"); (ii) the transmission lines from the Twinco Plant to its consumers (the "**Twinco Transmission Lines**"); and (iii) the equipment which comprises the Twinco Plant and was used in the production of hydro-electric power (the "**Twinco Machinery**", and collectively with the Twinco Building and Twinco Transmission Lines, and such other assets of Twinco, the "**Twinco Assets**").
25. Twinco has informed the CCAA Parties in the Nalcor Response (as defined below) that all of the Twinco Assets have been transferred or reverted to CFLCo, among others, with the result that Twinco currently owns no assets other than the Twinco Cash.

### **3.2 Rights and Agreements**

26. There are three main documents which govern the Twinco joint venture: the Sublease dated November 15, 1961 (as amended, the "**Sublease**"), the Operating Lease dated November 30, 1967 (as amended, the "**Operating Lease**"), and the Participation Agreement dated January 2, 1977 (the "**Participation Agreement**", and collectively, the "**Material Agreements**"). Copies of the Sublease, Operating Lease, and the Participation Agreement are communicated herewith as **Exhibit R-5**, **Exhibit R-6**, and **Exhibit R-7**, respectively.

#### **3.2.1 The Participation Agreement**

27. The Participation Agreement serves as the *de facto* unanimous shareholders' agreement for the Twinco joint venture.
28. Section 12 of the Participation Agreement provides that certain fundamental decisions of Twinco require the unanimous approval of the shareholders, which approval shall not be withheld unreasonably from the standpoint of the self-interest of the corporation withholding such approval.
29. Fundamental decisions of Twinco include making any "major corporate change" such as the sale of substantially all of Twinco's assets. A winding up and dissolution would constitute a "major corporate change".

30. Pursuant to Twinco's bylaws, decisions of the Twinco Board of Directors not expressly requiring unanimous shareholders' approval are decided by majority vote of the directors. A copy of Twinco's bylaws as obtained from Twinco's counsel is communicated herewith as **Exhibit R-8**.
31. The Participation Agreement grants certain preferential rights to CFLCo to acquire shares of the other shareholders or the Twinco Assets and restrictions on shareholders' dealing with their Twinco shares, including the following:
  - a) Under Section 8(d) of the Participation Agreement, CFLCo has an option to purchase the shares held by Wabush and IOC after the expiration of their respective Amended Power Contracts (the "**Share Purchase Option**");
  - b) If CFLCo does not exercise the Share Purchase Option, Section 14 provides CFLCo with the right to purchase the moveable machinery, plants and other articles under the Sublease (the "**Asset Purchase Option**"). The Asset Purchase Option is exercised by providing notice to Twinco at least one month before the expiry of the tenancy, and giving CFLCo two months to pay the purchase price, to be agreed upon by Twinco and CFLCo. If a price cannot be agreed upon, it will be settled by arbitration as set out in the Participation Agreement. The CCAA Parties understand that neither the Share Purchase Option nor Asset Purchase Option have been exercised by CFLCo; and
  - c) Section 7 of the Participation Agreement restricts shareholders from disposing of their shares in Twinco to a third party absent the exercise of a right of first refusal in favour of all other shareholders.

### **3.2.2 The Sublease**

32. The *British Newfoundland Corporation Limited (Brinco) Act*, No. 63 Nfld., 1953 granted an option to the hydro-electric production rights of the province of Newfoundland and Labrador to the British Newfoundland Corporation Limited ("**Brinco**"). This included the hydro-electric production rights to Twin Falls, which are two waterfalls located on the Unknown River, a tributary of the Churchill River, which Brinco assigned to Hamilton Falls Power Corporation Limited, now CFLCo. CFLCo exercised the above option pursuant to the *Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961* (the "**Water Rights Lease**").
33. Additionally, the Government of Newfoundland and Labrador granted to CFLCo: (i) a lease for the land upon which the Twinco Plant would be built, a landing strip and certain access roads; and (ii) an easement for the installation of transmission lines (together, the "**Site and Easement Lease**").
34. On November 15, 1961, CFLCo entered into a number of agreements with Twinco, including subleases pursuant to which CFLCo granted to Twinco: (i) its rights under the Site and the Easement Lease (the "**Site and Easement Sublease**"); and (ii) its exclusive right under the Sublease to, among other things, harness and make use of the Unknown River to produce hydro-electric power at the Twinco Plant and to transmit throughout the Province of Newfoundland any hydro-electric power generated at the site. These rights were granted to Twinco until December 31, 2014, after which time the rights would expire and revert back to CFLCo.

35. Part II, Clause 6 of the Sublease contained certain obligations for Twinco to keep and maintain in good working order all structures, works, and plants erected for the development of the Twinco Plant, to attend to all necessary repairs in order to secure the satisfactory working of all structures, works, and plants and to indemnify and hold CFLCo harmless from damages that resulted from Twinco's improper use of its rights or failure to comply with its covenants under the Sublease (the "**Twinco Sublease Obligations**").
36. As discussed below, the Twinco Sublease Obligations were subsequently assumed by CFLCo under the Operating Lease upon the suspension of the Sublease in 1974.
37. Most importantly, Part IV, Clause 8 of the Sublease permitted CFLCo, as the sublessor, to suspend Twinco's hydro-electric rights in order to make more efficient use of the Unknown River for the balance of the term of the Sublease.
38. More than 46 years ago, CFLCo exercised this suspension right with effect from July 1, 1974 and began diverting the flow of water from the Twinco Plant. As such, the Twinco Plant was placed into an extended shut-down at such time.
39. In a memorandum to the Board of Directors of Twinco dated June 20, 1994, CFLCo had confirmed that it was not financially feasible to resume operations at the Twinco Plant and that there was no possibility of Twinco being brought back to a functional state and resuming to carry on the business for which it was formed. A copy of the CFLCo memorandum to Twinco's Board of Directors is communicated herewith as **Exhibit R-9**.
40. In consideration of its suspension of rights, during the unexpired term of the Sublease, CFLCo was required to deliver to Twinco substitute power and to maintain the Twinco Plant and the Twinco Machinery.
41. Accordingly, Twinco was obliged to purchase power from CFLCo for an amount equal to the average annual cost of operating the Twinco Plant for previous historical periods, which Twinco in turn sold to Wabush and IOC pursuant to power contracts (each as amended and extended, the "**Amended Power Contracts**"). In addition, as set out in Twinco's FY2013 Audited Financial Statements for the year ended December 31, 2013, Twinco was required to pay an annual rental fee and royalty to CFLCo. A copy of FY2013 Audited Financial Statements is communicated herewith as **Exhibit R-10**.
42. The term of each of the Sublease, Site and Easement Sublease and the Amended Power Contracts, expired on December 31, 2014, and was not renewed thereafter.

### **3.2.3 The Operating Lease**

43. In anticipation of the suspension of the Sublease, the Operating Lease was entered into among CFLCo and Twinco, the Government of Newfoundland, IOC, Wabush Iron and others.
44. The Operating Lease was operative from the date of suspension of the Sublease on July 1, 1974.
45. Pursuant to the Operating Lease, CFLCo, among other things, obtained the right to export and transmit hydroelectric power over the Twinco Transmission Lines. Additionally, CFLCo agreed to assume broad maintenance and indemnity obligations as set out in more

detail below, which together in the CCAA Parties' view, result in CFLCo having sole responsibility for all Potential Environmental Liabilities (as defined below).

CFLCo Indemnity Obligations

46. Pursuant to Section IX of the Operating Lease, CFLCo agreed to: "indemnify and hold harmless Twinco from and against any and all liability to any third parties for injuries to persons or damages to property that may result from [CFLCo's] exercise or improper exercise of any of the rights, or from its use and enjoyment of any assets, hereby leased and granted, or from failure of [CFLCo] to carry out any of its covenants under [the Operating Lease]" (the "**CFLCo Indemnity**"). [Emphasis Added]
47. There is no express expiry of the CFLCo Indemnity, and it is the view of the CCAA Parties that the CFLCo Indemnity applies from and after July 1, 1974 in respect of the Twinco Plant and other Twinco Assets and continues in full force and effect today.

CFLCo Maintenance Obligations

48. In addition to the CFLCo Indemnity, CFLCo agreed to assume the following obligations of Twinco under the Sublease (collectively, the "**CFLCo Maintenance Obligations**"):
  - a) pursuant to Clause VI of the Operating Lease, CFLCo assumed "to the entire exoneration of Twinco", all of the Twinco Sublease Obligations;
  - b) pursuant to Clause VII of the Operating Lease, CFLCo assumed "to the entire exoneration of [Twinco]", all of Twinco's obligations to pay all those expenses of operation which are contemplated by Exhibit A to the Amended Power Contracts which included salaries and benefits, operating supplies, maintenance materials and contracts, among others as more particularly set out therein. A copy of Exhibit A to the Amended Power Contracts is communicated herewith as **Exhibit R-11**; and
  - c) pursuant to Clause VIII of the Operating Lease, CFLCo agreed to "keep and maintain in good working order all structures, works and plant erected from time to time for the [Twinco Plant] and all modifications and expansions made hereunder and shall attend to all necessary repairs in order to secure the normal and satisfactory working of all such structures, works, plant, modifications and expansions, the whole at the sole expense of CFLCo."
49. As a result of the CFLCo Indemnity and CFLCo Maintenance Obligations, CFLCo is solely responsible for the costs and expenses related to the Potential Environmental Liabilities.

**3.3 The Expiration of the Main Twinco Documents on December 31, 2014**

50. As noted above, suspension of the Sublease by CFLCo occurred on July 1, 1974. Since that time, CFLCo has been in possession and control of Twinco's Assets, and subject to broad operating, repair and maintenance obligations as set out in the Operating Lease.
51. Additionally, each of the Sublease, the Site and Easement Sublease and the Amended Power Contracts expired on December 31, 2014, among other agreements, and as confirmed by Twinco in a letter dated August 6, 2018 from Robert L. Hull, the President of

Twinco, to CFLCo (the “**2018 Twinco Letter**”) and by Twinco, Nalcor and CFLCo in the Nalcor Response (as defined below), the expiration of these agreements have resulted in the following:

- a) rights to the land upon which the Twinco Plant and related Twinco Assets are located on, have reverted to CFLCo; and
- b) Twinco does not own any assets, other than the Twinco Cash, as the remainder of Twinco Assets, other than the Twinco Cash, have either reverted to CFLCo upon the expiration of the Sublease, or have been sold or transferred to CFLCo or other related parties.

52. In addition, the 2018 Twinco Letter confirms that as a result of the termination of the agreements, Twinco no longer has any activity or purpose: “with the termination of Twinco’s land leases and power purchase agreements ... between CFLCo and Twinco, Twinco no longer has any activity or purpose and management is considering recommending to the Board that Twinco be formally wound-up.” [Emphasis Added]. A copy of the 2018 Twinco Letter is communicated herewith as **Exhibit R-12**.

### **3.4 Twinco’s Environmental Liabilities**

53. Based on various environmental assessments commissioned by Twinco over the years, as summarized in various Audited Financial Statements of Twinco, the CCAA Parties understand there to be potential environmental liability relating to, among other things, the following:

- a) the disposal of polychlorinated biphenyls (“**PCBs**”) and the remediation of water contamination as set out in the FY2014 Audited Financial Statements of Twinco (the “**FY2014 Audited Financial Statements**”), a copy of which is communicated herewith as **Exhibit R-13**. On or about 2010-2012, Twinco had engaged in a PCB clean-up, however, some of the PCB equipment was missed at that time. Twinco has indicated that it intends to conduct an environmental inspection to be carried out in 2020 and remedy the missed PCB equipment;
- b) dioxins and furans (“**D&F**”) related to a PCB cable fire that occurred in 2015 at the Twinco Plant as described in the FY2019 June Unaudited Financial Statements of Twinco at Note 7, a copy of which is communicated herewith as **Exhibit R-14**; and
- c) total petroleum hydrocarbons (“**TPH**”) and PCBs in sediment and PCBs and D&F in fish as described in the FY2014 Audited Financial Statements at Note 16.

(collectively the “**Potential Environmental Liabilities**”).

54. Specifically, with respect to PCBs, the CCAA Parties are of the view that as the person with care and custody and maintenance obligations and then eventual ownership, CFLCo has had and continues to have obligations under statute for Twinco’s Potential Environmental Liabilities related to PCBs for the following reasons:

- a) the CCAA Parties understand that the federal statutory PCB clean up obligations only came into force after CFLCo obtained possession and control of the Twinco Assets in 1974;

- b) the current *PCB Regulations*, SOR/2008-273 (the “**PCB Regulations**”), generally regulate the use, storage, release, labelling and registration of PCB equipment; and
  - c) generally, the PCB Regulations impose: (i) storage requirements and standards on a person who owns, controls or possesses PCBs or products containing PCBs or the owner or operator of a PCB storage site; (ii) labelling requirements on the owner of PCB equipment or the owner or operator of a PCB storage site; (iii) end-of-use requirements prohibiting the use of PCB equipment beyond certain specified dates; (iv) reporting requirements on the owner of PCB equipment or the person who owns and stores PCBs or products with PCBs over 50ppm; and (v) record keeping requirements on (a) the owner of PCBs or products containing PCBs; (b) the person who is engaged in any of these activities; and (c) the owner or operator of a PCB storage site, among other things.
55. Accordingly, pursuant to the CFLCo Indemnity and the PCB Regulations, and as the person with care and custody and maintenance obligations, CFLCo has had sole responsibility for Twinco’s Potential Environmental Liabilities since July 1, 1974.

#### **4. CURRENT STATUS**

##### **4.1 Attempts by the CCAA Parties to Obtain a Release of the Twinco Cash and Wind Up and Dissolve Twinco**

56. After the expiry of the Sublease, Site and Easement Agreement and Amendment and Amended Power Contracts, and prior to the commencement of the CCAA Proceedings, the CCAA Parties attempted to sell the Twinco Interest to CFLCo pursuant to the provisions of the Participation Agreement but CFLCo declined to take up such offer.
57. After the commencement of the CCAA Proceedings, the CCAA Parties undertook a comprehensive sale and investment solicitation process (“**SISP**”) for the assets and business of the CCAA Parties that was approved by the Court on April 17, 2015.
58. The Twinco Interest was included as part of the assets offered for sale in the SISP even though there was a low likelihood that the CCAA Parties would find a buyer for the Twinco Interest given that the Twinco Plant had ceased operations over 45 years ago and the Amended Power Contracts had expired in 2014.
59. Not surprisingly, no buyer for the Twinco Interest was found as a result of the SISP.
60. 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 resisted by CFLCo as described in more detail below.
61. The CCAA Parties believe that CFLCo did not support further distributions to the shareholders because it wants to ensure a cash pool from Twinco to pay for the Potential Environmental Liabilities notwithstanding the CFLCo Indemnity and CFLCo Maintenance Obligations.



62. As a temporary measure, on December 10, 2012, Twinco's Board of Directors resolved to "suspend temporarily" the payment of dividends to shareholders in order to allow Twinco the opportunity to obtain certainty as to its future cash obligations. Given that the Twinco Plant had ceased operations over 45 years prior, and the Sublease, Site and Easement Sublease and the Amended Power Contracts all expired at the end of 2014, the only potential material cash obligations of Twinco, if Twinco were held to actually be responsible for such liabilities given the CFLCo Indemnity and Maintenance Obligations, related to the Potential Environmental Liabilities.
63. Five years later, in July 2017, the last major asset of the CCAA Parties, being the Scully Mine, was sold, and the CCAA Parties instructed their counsel, to reach out to IOC's counsel to discuss what could be done to obtain a release of the Twinco Cash.
64. Discussions and correspondence ensued between IOC's counsel and the CCAA Parties' counsel and in March 2018, IOC's counsel contacted the CCAA Parties' counsel to discuss the possibility of a wind up and dissolution of Twinco if it could obtain a confirmation from CFLCo of its environmental indemnity. IOC indicated that it was meeting with the management of Twinco and that it would revert to the CCAA Parties' counsel after such meeting, however, no further update from IOC was received.
65. On August 14, 2018, counsel for Nalcor/CFLCo contacted the Monitor to inquire about the status of the Twinco shares held by Wabush and to remind the Monitor of IOC's and CFLCo's right of first refusal contained in the Participation Agreement.
66. On August 15, 2018, the CCAA Parties' counsel spoke with Nalcor/CFLCo's counsel and informed him that there is no pending sale of the Twinco Interest and reiterated the CCAA Parties' strong desire for a distribution of the Twinco Cash as soon as possible. At that time, the CCAA Parties' counsel proposed to Nalcor/CFLCo's counsel that in lieu of a distribution, CFLCo could purchase the Twinco Interest.
67. Nalcor/CFLCO's counsel indicated that he would seek instructions. The CCAA Parties' counsel followed up numerous times with Nalcor/CFLCo's counsel, who finally informed the CCAA Parties' counsel that a decision would not be made before Twinco's next Board Meeting on November 19, 2018.
68. On October 1, 2018, the CCAA Parties' counsel received from Twinco's counsel a copy of the 2018 Twinco Letter, described above that had been previously sent by Twinco's counsel, in which Twinco proposed to CFLCo a wind up and dissolution of Twinco, and requested an environmental indemnity from CFLCo to cover all shareholders and directors of Twinco in exchange for CFLCo receiving all cash held by Twinco less the estimated administrative expenses for the wind up (the "**Twinco Proposal**").
69. Although the 2018 Twinco Letter indicated that Wabush was supportive of the Twinco Proposal, other than the brief aforementioned discussion in March 2018 with IOC, the details of the Twinco Proposal had not been discussed with the CCAA Parties. In particular, there was no discussion with, nor any agreement by, the CCAA Parties about a proposal that would result in zero recovery to shareholders.
70. Although there was a near absence of consultation on the Twinco Proposal, the CCAA Parties are supportive of the following conclusions made by Twinco's President in the

2018 Twinco Letter as related to CFLCo's liabilities under the existing CFLCo Indemnity and CFLCo Maintenance Obligations, that formed the basis for the wind up and dissolution of Twinco that formed the foundation of the Twinco Proposal:

"Twinco's counsel has advised us with respect to the broad scope of persons that may be held liable for adverse environmental conditions under federal and provincial laws with counsel advising, [i]n particular, that under provincial law, a person responsible would include the owner or occupier of land on which an adverse environmental effect has or may occur, the owner or operator of an undertaking or a previous owner, or a person who has management or control of a site. In considering this proposal, we invite CF(L) Co to consider this scope of persons that may be held responsible for the Environmental Liabilities, the limited assets of Twinco remaining to cover any of the Environmental Liabilities, and the fact that CF(L) Co has been in control and possession of the Twinco assets since the early 1970s and had broad operating, repair and maintenance obligations under the Operating Lease with indemnification obligations with respect to these repair and maintenance obligations provided to Twinco under the Operating Lease. We also invite CF(L) Co to consider the fact that, with respect to the decommissioning liabilities, in particular, based upon legal advice to Twinco, that pursuant to the governing leases/sub-leases between Twinco and CF(L) Co, the land upon which these assets referenced in the financial statements are located are now owned by CF(L) Co and in the possession of CF(L) Co or third parties through arrangements with CF(L) Co, and Twinco had no obligation to remove or decommission these assets upon termination of the lease/sublease arrangements. Twinco's view, therefore, is that any future decommissioning/removal responsibilities would be the sole obligation of CF(L) Co in any event. In summary, although Twinco is of the view that it will not have Environmental Liabilities, it believes the contingency should be dealt with and the provision by CF(L) Co of an indemnity as proposed would be an appropriate way to do so in the circumstances." [Emphasis Added.]

71. By letter dated November 19, 2018, Nalcor, on behalf of CFLCo, informed Twinco that CFLCo summarily rejected the Twinco Proposal. A copy of this letter, which was provided to the CCAA Parties' counsel by Twinco's counsel, is communicated herewith as **Exhibit R-15**.
72. In response to CFLCo's rejection of the Twinco Proposal, a conference call was held on May 3, 2019 with the representatives of the CCAA Parties, Twinco, CFLCo and IOC to discuss wind-down options. There was no consensus reached on the call.
73. The CCAA Parties are not supportive of any of the options proposed by Twinco, as none of the options would result in any distribution to Wabush of the Twinco Cash, either directly or indirectly, and instead only serve to perpetuate a continuance of the status quo and ensuring further delay.
74. By letter dated December 20, 2019 from the CCAA Parties' counsel to Twinco's counsel which copied various representatives of CFLCo and IOC, as well as the Monitor and its counsel (the "**December 2019 Letter**"), the CCAA Parties proposed another conference

call with the representatives of Twinco, CFLCo, IOC and the Monitor, to be held at the latest during the week of January 23, 2020 in an attempt to progress matters. A copy of the December 2019 Letter is communicated herewith as **Exhibit R-16**.

75. In the December 2019 Letter, the CCAA Parties expressed their frustration with the delay and lack of progress in obtaining a resolution and advised Twinco and its other shareholders that the CCAA Parties were of the view that it is just and equitable for Twinco to be wound up and dissolved and the Twinco Cash to be distributed to the shareholders.
76. The CCAA Parties also expressed their desire to work cooperatively with the stakeholders, but cautioned that if it was not possible to come to a consensual resolution, in order to protect the interests of the Wabush creditors, the CCAA Parties would have no other alternative but to bring an application under the CBCA to seek a winding up and dissolution of Twinco.
77. By letter dated January 16, 2020, Twinco's counsel responded to the December 2019 Letter indicating that the Twinco representatives were seeking to engage with the other shareholders of Twinco and that they would revert back to the CCAA Parties. A copy of the January 16, 2020 letter is communicated herewith as **Exhibit R-17**.
78. The CCAA Parties' counsel responded with another letter dated January 21, 2020, which copied various representatives of CFLCo and IOC, as well as the Monitor and its counsel, and after several subsequent emails, a conference call among representatives of the CCAA Parties, Twinco and its other shareholders, and the Monitor was scheduled on February 10, 2020 (the "**February 2020 Call**"). A copy of the January 21, 2020 letter is communicated herewith as **Exhibit R-18**.
79. The February 2020 Call occurred as scheduled but no resolution was reached in respect of the Twinco Cash or the wind up and dissolution of Twinco.
80. Following the February 2020 Call, on February 13, 2020, the CCAA Parties' counsel again reached out to Twinco's counsel, asking to schedule another conference call in order to discuss certain follow-up questions the CCAA Parties and the Monitor had arising from the February 2020 Call.
81. Twinco's counsel indicated that he had not been able to obtain instructions from Twinco to participate on a call and instead suggested that the CCAA Parties' counsel provide him with a list of follow-up questions in writing, that he would then share with Twinco's other shareholders.
82. On February 18, 2020, as requested by Twinco's counsel, a written list of questions was provided to Twinco's counsel (the "**Follow-up Questions**"). In addition, the CCAA Parties suggested scheduling a conference call to discuss Twinco's responses to the Follow-Up Questions. A copy of the email setting out the Follow-up Questions is communicated herewith as **Exhibit R-19**.
83. After multiple emails to Twinco's counsel requesting a response to the Follow-up Questions, on May 26, 2020, a response to the Follow-up Questions as prepared by Todd S. Newhook, senior legal counsel at Nalcor (the "**Nalcor Response**"), was forwarded to the CCAA Parties' counsel by Twinco's counsel, purporting to be responses provided on

Twinco's behalf. As noted above, Nalcor is the majority shareholder of CFLCo. A copy of the Nalcor Response is communicated herewith as **Exhibit R-20**.

84. The CCAA Parties reviewed and considered the Nalcor Response with the Monitor, and concluded that they disagreed with the positions stated therein with regard to the respective liabilities of Twinco and CFLCo for environmental costs and liabilities related to the Twinco Plant, equipment and other assets.
85. On August 5, 2020, the CCAA Parties' counsel advised Twinco's counsel, copying various representatives of CFLCo and IOC, that while the CCAA Parties had been hopeful that a consensual resolution could be achieved, they have concluded that based on the February 2020 Call, the Nalcor Response, and the lack of desire of Twinco and CFLCo to engage in a constructive manner, a consensual resolution was no longer possible. The CCAA Parties' counsel further advised that it had been instructed by the CCAA Parties to prepare court materials for relief under Sections 214 and 241 of the CBCA. No response was received. A copy of the August 5, 2020 letter is communicated herewith as **Exhibit R-21**.
86. In a final attempt to find some kind of negotiated resolution, on October 26, 2020, the CCAA Parties' counsel sent a without prejudice letter to Twinco, advising that if acceptable settlement terms could not be agreed in short order, the CCAA Parties would bring this Motion. No resolution was found within the timelines set out in the letter.

#### **4.2 Twinco's and CFLCo's Refusal to Cooperate in the Distribution of the Twinco Cash or the Winding Up and Dissolution of Twinco**

87. As stated above, Twinco was established as a joint venture among CFLCo, IOC and Wabush, among others, to produce electricity for its customers, including two of its shareholders, Wabush and IOC.
88. The various restrictions on dealing with the shares of Twinco contained in the Participation Agreement reinforce the notion that the joint venture was designed for a common purpose to which only certain entities could participate.
89. Consistent with this purpose, Twinco and CFLCo entered into a number of agreements, including but not limited to, the Sublease, the Site and Easement Sublease, the Operating Lease, and the Amended Power Contracts.
90. Due to the suspension of the Sublease since July 1974 and the consequential transfer of possession and control of the Twinco Plant and other Twinco Assets to CFLCo and other related parties, the expiry of each of the Sublease, the Site and Easement Sublease, and the Amended Power Contracts on December 31, 2014 and the reversion and or sale of all of Twinco's assets to CFLCo and other related parties, these events together have rendered it impossible for Twinco to carry on the business for which it was formed and resulted in Twinco losing its corporate purpose and "substratum".
91. More specifically:
  - a) Twinco has not produced any power and has been inactive since at least as early as July 1, 1974, over 46 years ago;

- b) Twinco no longer owns any of the Twinco Assets, as all such assets have been transferred to CFLCo and other related parties - accordingly, it is impossible for Twinco to produce or transmit any power as it has no physical assets and therefore no ability to do so; and
- c) all of the relevant material agreements that Twinco was party to relating to the Twinco Plant have been terminated or expired.

In short, as confirmed by Twinco itself in the 2018 Twinco Letter, "Twinco no longer has any activity or purpose".

- 92. Accordingly, it has been the reasonable expectation of the CCAA Parties that within a reasonable period of time after it had become impossible for Twinco to carry on the business for which it was formed, that Twinco would be wound up and dissolved and that any net cash proceeds remaining would be distributed to Twinco's shareholders on a pro rata basis. Indeed, as evidenced by the 2018 Twinco Letter, it has even been Twinco's own expectation that it would be wound up and dissolved given that it no longer "has any purpose".
- 93. Despite the termination of the material agreements in December 2014 and Twinco's own admission in the 2018 Twinco Letter that it no longer "has any purpose", CFLCo, as the controlling shareholder of the Board of Directors of Twinco, has repeatedly refused to cooperate or enter into good faith discussions with respect of the distribution of the Twinco Cash to Twinco's shareholders and the winding up and dissolution of Twinco.
- 94. As illustrated by the foregoing, there is a clear persistent and fundamental disagreement amongst Twinco's shareholders and it is clear that this disagreement is not temporary in nature given that it has been unresolved since at least the end of 2014 after the Sublease, Site and Easement Agreement and the Amended Power Contracts all expired and possibly even as far back to as July 1, 1974 when CFLCo initially took over possession and control of Twinco's Assets pursuant to the Operating Lease.
- 95. Given the permanent cessation of the business and the long-standing attempts by the CCAA Parties to resolve the matter, Twinco and CFLCo have demonstrated a blatant disregard for the interests of Wabush and its creditors, many of whom are retired employees.
- 96. It is the CCAA Parties' belief that it is being treated unfairly by CFLCo and Twinco, to the ultimate detriment and prejudice of vulnerable creditors of Wabush. In doing so, Twinco is acting in an oppressive and unfairly prejudicial manner that has unfairly disregarded Wabush's interests in preventing a distribution of the Twinco Cash to Twinco's shareholders and a winding up and dissolution of Twinco when there has not been a corporate purpose for the company since at least the end of 2014.

#### **4.3 CFLCo has Failed to Pay for Twinco's Maintenance and Environmental Liabilities**

- 97. As outlined above, pursuant to the Operating Lease, CFLCo has agreed to indemnify Twinco for environmental and maintenance related costs relating to the Twinco Plant and other Twinco Assets. However, it appears that CFLCo has not been reimbursing Twinco for monies previously expended by Twinco in respect of maintenance and environmental

costs that should have been paid by CFLCo pursuant the CFLCo Indemnity and CFLCo Maintenance Obligations.

98. For example, Twinco has paid for:
- a) a 2010-2012 environmental clean-up at the Twinco Plant;
  - b) the cost in respect of a fire that occurred at the Twinco Plant in 2015;
  - c) expanded efforts to remove PCBs over the past ten years;
  - d) the majority of costs associated with compliance with the PCB regulations relating to the removal of oil-filled electrical equipment in the generating station containing PCBs; and
  - e) an upcoming environmental inspection to be conducted by AMEC in respect of the PCB clean-up of equipment at the Twinco Plant.

**4.3.1 Entitlement to Pro Rata Share of Reimbursement of Amounts Paid by Twinco for Maintenance and Environmental Liabilities**

99. To the extent that Twinco has paid for any costs or expenses associated with the Potential Environmental Liabilities (such as maintenance, remediation, or assessment related expenses), these amounts are recoverable from CFLCo in accordance with its broad liability, maintenance and indemnity obligations under the Operating Lease.
100. As noted above, under the CFLCo Indemnity, CFLCo promised to “indemnify and hold harmless Twinco from and against any and all liability” and pursuant to the CFLCo Maintenance Obligations, CFLCo assumed to the “entire exoneration of Twinco”, broad maintenance obligations.
101. As such, CFLCo is obligated to reimburse Twinco for amounts paid by Twinco for all maintenance and environmental liability related costs that should have been paid by CFLCo, and Twinco’s shareholders are entitled to their *pro rata* share of such reimbursement from CFLCo as part of the requested winding up and dissolution of Twinco that the CCAA Parties are seeking.
102. It is unclear as to the exact quantum of what Twinco may have paid for environmental and maintenance matters that are recoverable from CFLCo pursuant to the CFLCo Indemnity and CFLCo Maintenance Obligations under the Operating Lease because the Twinco financial statements are not clear and do not provide a full accounting of the monies expended by Twinco on maintenance and environmental related costs. For these reasons, the CCAA Parties are requesting a full accounting from Twinco for all such costs paid for environmental and maintenance obligations since 1974.

## 5. RELIEF SOUGHT

### 5.1 Declaration confirming the CFLCo Indemnity and the CFLCo Maintenance Obligations

103. Despite the clear contractual language of the CFLCo Indemnity, CFLCo has refused to confirm its liability for any Twinco's environmental costs or Potential Environmental Liabilities.
104. In connection with its motion seeking the winding up and dissolution of Twinco, the CCAA Parties are also seeking a declaration from the Court confirming CFLCo's obligations under the CFLCo Indemnity and the CFLCo Maintenance Obligations for the Reimbursable Environmental/Maintenance Costs and the Potential Environmental Liabilities.

### 5.2 Accounting and Reimbursement of Environmental and Maintenance Costs Paid by Twinco

105. Given the lack of an accounting for the costs and expenses paid by Twinco for environmental and maintenance matters from and after July 1, 1974, the CCAA Parties request that the Court direct that: (i) Twinco provide to the shareholders of Twinco a full accounting of all monies expended by Twinco on maintenance and environmental liabilities, and (ii) CFLCo reimburse Twinco for all Reimbursable Environmental/Maintenance Costs prior to the winding up and dissolution of Twinco or the purchase of the Twinco Interest by CFLCo or Twinco, as applicable.

### 5.3 The Winding Up and Dissolution of Twinco and the Distribution of the Remaining Twinco Cash and CFLCo Reimbursement

106. The CCAA Parties are seeking an order, with the support of the Monitor, pursuant to section 214 and/or section 241 of the CBCA for: (i) the winding up and dissolution of Twinco; and (ii) the distribution of all remaining cash and cash equivalents held by Twinco to the Twinco shareholders on a pro rata basis, including the Twinco Cash (net of reasonable costs and expenses incurred by Twinco to complete the winding up and dissolution) and the CFLCo Reimbursement.
107. Section 214 of the CBCA permits the court to order the liquidation and dissolution of a corporation and such other order as "it thinks fit" where the court is satisfied that: (i) in respect of the corporation or any of its affiliates, there is: (a) any act or omission of the corporation or any of its affiliates that effects a result, (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or (c) 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 (ii) it is just and equitable to do so.
108. Section 241 of the CBCA permits the court to make any order as "it thinks fit", including an order for the liquidation and dissolution of a corporation where the court is satisfied that there is Oppressive Conduct.
109. Both Twinco and the nominees of CFLCo on the Twinco Board of Directors are engaging in Oppressive Conduct by failing to pursue payment of the CFLCo Reimbursement and to

implement the wind up and dissolution of Twinco and a distribution of the Twinco Cash and the CFLCo Reimbursement.

110. Currently, it is impossible for Wabush to access its rightful share of the Twinco Cash, unless CFLCo permits it. As CFLCo controls the Board, it is using its blocking position to prevent a distribution of the Twinco Cash or a winding up and dissolution of Twinco. Being a minority shareholder, outside of the relief being requested under section 214 and/or 241, Wabush has no ability as a minority shareholder to force a distribution of the Twinco Cash or a winding up and dissolution of Twinco under the Participation Agreement.
111. CFLCo, through its control of the Twinco Board of Directors and as controlling shareholder of Twinco, has used its position to block the distribution of the Twinco Cash and the winding up and dissolution of Twinco, to further its own interests at the expense of other shareholders. Accordingly, the board nominees of CFLCo have not acted in the best interests of Twinco or with fair regard to the interests of all of Twinco's shareholders, but rather in the best interest of CFLCo only. The CFLCo board nominees on the Twinco Board are focussed solely on protecting CFLCo against its clear contractual and statutory liabilities to Twinco. In addition, the board nominees of CFLCo have also failed to act honestly and in good faith with a view to the best interests of Twinco, in breach of their fiduciary duty.
112. As there is no longer any purpose for Twinco to exist and as Twinco has no assets other than the Twinco Cash, it is just and equitable that Twinco be wound up and dissolved as soon as possible and that Wabush be able to access its pro rata share of the Twinco Cash for distribution to its creditors, which include former employees of Wabush.

#### **5.4 The Purchase or Repurchase of the Twinco Interest**

113. In the alternative to a winding up and dissolution of Twinco, the CCAA Parties are seeking an order pursuant to section 214 and/or section 241 of the CBCA, directing Twinco and/or CFLCo to purchase Wabush's interest in Twinco for a purchase price equal to the amount of Wabush's pro rata share of the Twinco Cash and the CFLCo Reimbursement.

#### **5.5 Monitor's Support**

114. The CCAA Parties have been informed by the Monitor that the Monitor supports this Motion.

#### **6. PROCEDURAL MATTERS**

115. The Petitioners submit that the notices given of the presentation of the present Motion are proper and sufficient.
116. Pursuant to paragraph 54 of the Bloom Lake Initial Order and to paragraph 56 of the Wabush Initial Order, all motions in these CCAA Proceedings are to be brought on not less than ten (10) calendar days' notice to all Persons on the service list. Each motion must specify a date (the "**Initial Return Date**") and time for the hearing.
117. The service of the present Motion serves as notice pursuant to paragraph 54 of the Bloom Lake Initial Order and paragraphs 47 and 56 of the Wabush Initial Order.



118. Paragraph 57 of the Bloom Lake Initial Order and paragraph 59 of the Wabush Initial Order provide that the Monitor shall communicate with the Judge and the service list with respect to the Hearing Details.

**7. CONCLUSIONS**

119. In light of the foregoing, the Petitioners hereby respectfully seek the issuance of an order substantially in the form of the Draft Order (Exhibit R-1).

120. The present Motion is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present Motion;

**ISSUE** an order substantially in the form of the Draft Order (Exhibit R-1) communicated in support hereof;

**WITHOUT COSTS**, save and except in case of contestation.

Montréal, November 16, 2020

*Blake, Cassels & Graydon LLP*

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**BLAKE, CASSELS & GRAYDON LLP**  
Attorneys for the Petitioners and the Mises-en-  
cause


**AFFIDAVIT**

I, the undersigned, James Graham, the General Counsel & Secretary of Bloom Lake General Partner Limited, Cliffs Québec Iron Mining ULC, Quinto Mining Corporation, Wabush Resources Inc., Bloom Lake Railway Company Limited, Wabush Iron Co. Limited, and the Secretary of Arnaud Railway Company and Wabush Lake Railway Company Limited, having a place of business at 200 Public Square, Cleveland, Ohio, solemnly affirm that all the facts alleged in the present *Motion for the Issuance of an Order for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* are true.

AND I HAVE SIGNED:

  
James Graham

SOLEMNLY DECLARED before me at  
Cleveland, Ohio, on this  
17<sup>th</sup> day of November, 2020

  
Notary Public



ANNETTE ANTHONY  
NOTARY PUBLIC  
STATE OF OHIO  
Recorded in  
Cuyahoga County  
My Comm. Exp. 11/12/2022

**NOTICE OF PRESENTATION**

**TO: Service List**

**Twin Falls Power Corporation**  
c/o  
**Cox & Palmer**  
Scotia Centre,  
Suite 1100, 235 Water St,  
St. John's, NL A1C 1B6

Shawn M. Kavanagh  
[skavanagh@coxandpalmer.com](mailto:skavanagh@coxandpalmer.com)  
Todd Stanley  
[tstanley@coxandpalmer.com](mailto:tstanley@coxandpalmer.com)

**Churchill Falls (Labrador) Corporation Limited**  
c/o  
**Stikeman Elliott LLP**  
1155 René-Lévesque Blvd. West  
41st Floor  
Montréal, Quebec H3B 3V2

Nathalie Nouvet  
[nnouvet@stikeman.com](mailto:nnouvet@stikeman.com)  
Guy P. Martel  
[gmartel@stikeman.com](mailto:gmartel@stikeman.com)

**TAKE NOTICE** that the present *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* will be presented on a **pro forma** basis before the Honourable Michael A. Pinsonnault, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on **November 27, 2020, at 9:00 am by Video Conference in accordance with the instructions to be provided by the Court and circulated to the parties on the Service List and posted on the Monitor's website at: <http://cfcanda.fticonsulting.com/bloomlake/>.**

**DO GOVERN YOURSELF ACCORDINGLY.**

Montréal, November 16, 2020

*Blake, Cassels & Graydon LLP.*

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**BLAKE, CASSELS & GRAYDON LLP**  
Attorneys for the Petitioners and the Mises-en-  
cause

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF **MONTREAL**

**SUPERIOR COURT**

Commercial Division

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

---

N<sup>o</sup>: **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

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**LIST OF EXHIBITS**

(In support of the *Motion for the Winding Up and Dissolution, Distribution of Assets,  
Reimbursement of Monies and Additional Relief*)

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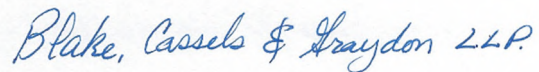
**R-1**

Draft Order;

- R-2** FY2019 Audited Financial Statements of Twinco as at December 31, 2019;
- R-3** Twinco's Articles of Continuance dated August 1, 1980;
- R-4** Federal Corporation Information Report for Twin Falls Power Corporation Limited;
- R-5** Sublease dated November 15, 1961, as amended;
- R-6** Operating Lease dated November 30, 1967, as amended;
- R-7** Participation Agreement dated January 2, 1977;
- R-8** Twinco By-Laws;
- R-9** CFLCo memorandum to Twinco's Board of Directors dated June 20, 1994;
- R-10** FY2013 Audited Financial Statements of Twinco dated December 31, 2013;
- R-11** Exhibit A to the Amended Power Contracts;
- R-12** Letter dated August 6, 2018 from Twinco, to CFLCo (2018 Twinco Letter);
- R-13** FY2014 Audited Financial Statements of Twinco dated December 31, 2014;
- R-14** FY2019 June Unaudited Financial Statements of Twinco, dated June 30, 2019;
- R-15** Letter dated November 19, 2018 from Nalcor, on behalf of CFLCo, to Twinco;
- R-16** Letter dated December 20, 2019 from CCAA Parties' counsel to Twinco's counsel (December 2019 Letter);
- R-17** Letter dated January 16, 2020 from Twinco's counsel to CCAA Parties' counsel (January 16, 2020 letter);

- R-18** Letter dated January 21, 2020 from CCAA Parties' counsel to Twinco's counsel (January 21, 2020 letter);
- R-19** Email setting out the Follow-up Questions provided to Twinco's counsel on February 18, 2020;
- R-20** Response from Nalcor to the Follow-up Questions forwarded to CCAA Parties' counsel by Twinco's counsel on May 26, 2020;
- R-21** Letter dated August 5, 2020 from CCAA Parties' counsel to Twinco's counsel (August 5, 2020 letter).

Montréal, November 16, 2020

A handwritten signature in blue ink that reads "Blake, Cassels & Graydon LLP". The signature is written in a cursive style and is positioned above a horizontal line.

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**BLAKE, CASSELS & GRAYDON LLP**  
Attorneys for the Petitioners and the Mises-en-cause

N°: 500-11-048114-157

---

**SUPERIOR COURT  
DISTRICT OF MONTREAL  
(Commercial Division)**

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**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

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**MOTION FOR THE WINDING UP AND DISSOLUTION,  
DISTRIBUTION OF ASSETS, REIMBURSEMENT OF  
MONIES AND ADDITIONAL RELIEF, AFFIDAVIT, NOTICE  
OF PRESENTATION AND LIST OF EXHIBITS**  
(Section 11 of the CCAA and sections 214 and 241 of the  
CBCA)

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**ORIGINAL**

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The logo for the law firm Blakes, featuring the word "Blakes" in a stylized, cursive script font.

**M<sup>re</sup> 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](mailto:bernard.boucher@blakes.com)

Our File: 11573-375

# **SCHEDULE 3**



C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

N° 500-11-048114-157

S U P E R I O R C O U R T  
(Commercial Division)

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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

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**MODIFIED MOTION BY TWIN FALLS POWER CORPORATION TO  
DISMISS THE APPLICATION FOR LACK OF JURISDICTION AND FOR FORUM  
NON-CONVENIENS**

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**TO THE HONOURABLE MR. JUSTICE MICHEL PINSONNAULT, J.S.C. OR ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTRÉAL, THE MISES-EN-CAUSE, TWIN FALLS POWER CORPORATION STATES AS FOLLOWS:**

**Overview**

1. The present proceeding is an application in the context of a CCAA proceeding commenced on January 27, 2015 and subject to various subsequent orders in respect of proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of the Petitioners and the Mises-en-cause (collectively the "**CCAA Parties**"), the whole as appears from the Court record and as set out in paragraphs 1 - 7 of the Wabush Motion as defined below (the "**CCAA Proceedings**").
2. On 16 November 2020, the CCAA Parties brought a motion (the "**Wabush Motion**") seeking a series of orders with regard to Twin Falls Power Corporation ("**Twinc**o"). The Wabush Motion was brought pursuant to section 11 of the CCAA, and sections 214 and 241 of the *Canada Business Corporation Act* (the "**CBCA**").
3. The Wabush Motion seeks the following orders, the whole as set out at paragraph 13 of the Wabush Motion (collectively the "**Orders**" and each, an "**Order**"):
  - (a) confirming Churchill Falls (Labrador) Corporation Limited's ("**CFLCo**") liability for Twinc
  - (b) compelling an accounting from Twinc
  - (c) directing CFLCo to reimburse all Reimbursable Environmental/Maintenance Costs (such amount to be reimbursed by CFLCo, being the "**CFLCo Reimbursement**") to Twinc

- (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 (as defined in paragraph 23 of the Wabush Motion) 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 Iron Co. Limited and Wabush Resources Inc. (collectively the “**Wabush Parties**”), on a pro rata basis;
  - (e) in the alternative to (d), directing Twinco and/or CFLCo to purchase the shares of Twinco held by the Wabush Parties pursuant to section 214(2) and/or section 241(3)(f) of the CBCA for a purchase price equal to the amount of the Wabush Parties’ respective 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.
4. The central issues to the Wabush Motion raised by the CCAA Parties are as follows (the “**Issues**”):
- (i) a determination and calculation of any outstanding contractual liabilities as between Twinco and CFLCo (the “**Contractual Claims**”);
  - (ii) whether it is just and equitable to order the liquidation and dissolution of Twinco (the “**Wind-Up Claim**”); and
  - (iii) whether: (i) in respect of Twinco: (a) there is any act or omission of Twinco that effects a result; (b) the business or affairs of Twinco are or have been carried on or conducted in a manner; or (c) the powers of the directors of Twinco are or have been exercised in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the Wabush Parties and, if so, what is the appropriate remedy (the “**Oppression Claims**”).
5. Twinco submits that Québec courts do not have jurisdiction to hear the Issues raised in the Wabush Motion.
6. In the alternative Twinco submits that, if it is determined Québec courts do have jurisdiction to hear the Issues, that this Honourable Court should decline jurisdiction on the basis that the Supreme Court of Newfoundland and Labrador is in a better position to decide the Issues, pursuant to article 3135 of the *Civil Code of Québec* (“**CCQ**”).

### **Jurisdiction of Contractual Claims**

7. Orders (a), (b) and (c) sought by the Wabush Motion relate to the determination of contractual rights and liabilities between Twinco and CFLCo.

8. Order (a) would require a determination as to the contractual liabilities for maintenance and environmental liabilities as between Twinco and CFLCo, on the basis of the interpretation of a series of Material Agreements (as defined at paragraph 26 of the Wabush Motion and attached thereto as Exhibits R-5, R-6 and R-7) between Twinco and CFLCo (and other parties) dating since 1961. Order (b) requires an accounting of all monies spent by Twinco assuming the determination in Order (a). Order (c) requires the identification of an amount owing by CFLCo to Twinco as a result of the determination in Orders (a) and (b), and an order against CFLCo for the payment of this amount.
9. Orders (a), (b) and (c) therefore require the determination of both the legal rights between Twinco and CFLCo under the Material Agreements, and an accounting of a history of transactions and activities by Twinco since potentially 1961 (the date of the oldest of the Material Agreements).
10. Neither Twinco nor CFLCo is asking for their contractual rights to be determined by this Honourable Court. Further, neither Twinco nor CFLCo is a party to the CCAA Proceedings, nor is either corporation a party governed by the original or any subsequent order issued in the CCAA Proceedings. Rather, both Twinco and CFLCo are strangers to the CCAA Proceedings in which the Wabush Motion has been brought.
11. The Wabush Motion is anchored in section 11 of the CCAA, which relates to the general power of a CCAA court on application “in respect of a debtor company”. However, notably, section 11 only refers to applications “in respect of a debtor company”.
12. Twinco submits that the Wabush Motion, while framed as part of the CCAA Proceedings, is not an application in respect of a debtor company. Rather, Twinco submits that the Motion is, in substance, an application primarily in respect of Twinco and its affairs. It requires adjudication of Twinco’s contractual rights, a review and accounting of Twinco’s history of transactions, and the winding up of Twinco or an order for Twinco to purchase the shares of the Wabush Parties. As such, Twinco submits that this Honourable Court does not have jurisdiction to decide the issues on the basis of section 11 of the CCAA.
13. Further, none of the 5 factors grounding jurisdiction of Québec Courts under article 3148 CCQ are present in this case. Conversely, the following facts demonstrate the lack of a connection to the jurisdiction of Québec:
  - (i) Twinco has its registered office and chief place of business in Newfoundland and Labrador;
  - (ii) Twinco has no operations in the province of Québec, has no place of business in Québec, nor any assets in the province of Québec;

- (iii) there is no allegation in the Wabush Motion that any contractual obligation for any of the parties would have to be performed in Québec, or that any prejudice would have been suffered in Québec;
  - (iv) the Material Agreements are not governed by the laws of Québec; and
  - (v) Twinco has not attorned to the jurisdiction of Québec.
14. For these foregoing reasons, the Québec Courts do not have jurisdiction to hear the Issues arising out of the Wabush Motion.

*Forum non conveniens*

15. In the alternative, if this Honourable Court determines that it has jurisdiction to hear the Wabush Motion, Twinco submits that this Honourable Court is not the most convenient or appropriate forum to determine the Issues, and that this Honourable Court should instead decline its jurisdiction on the basis that the Supreme Court of Newfoundland and Labrador is clearly the most appropriate forum, pursuant to article 3135 CCQ.
16. The connection between the Issues and the forum of Newfoundland and Labrador is plainly evident. First, both Twinco and CFLCo are headquartered and chiefly operate in Newfoundland and Labrador. Second, the Material Agreements are not governed by the laws of Québec. Two of the Material Agreements, the Sublease and the Participation Agreement (each as defined in paragraph 26 of the Wabush Motion), expressly provide that they are governed by the laws of Newfoundland (now Newfoundland and Labrador); the third Material Agreement, the Operating Lease (as defined at paragraph 26 of the Wabush Motion) is silent on jurisdiction but is a subsidiary document of the Sublease.
17. Furthermore, any consideration of any potential environmental liabilities that Twinco might have would arise exclusively under the laws of Newfoundland and Labrador
18. The only connecting factor of Twinco or the Material Agreements to the CCAA Proceedings is that the Wabush Parties collectively own a total of 17.062% of the shares of Twinco, the remainder being held by Iron Ore Company of Canada (“**IOC**”) (49.6%) and CFLCo (33.3%).
19. In conclusion, there is no real and substantial connection or any connecting factor to connect the jurisdiction of the Superior Court of Québec and the Contractual Claims of the CCAA Parties. Twinco submits that the Québec Courts should not determine the respective rights and liabilities of Twinco and CFLCo, two Newfoundland and Labrador-based corporations, under the Material Agreements.

### **Jurisdiction of Oppression Claims and the Wind-Up Claim**

20. Orders (d) and (e) sought by the CCAA Parties seek to wind up Twinco or, in the alternative, force Twinco to buy out the Wabush Parties' respective equity holdings in Twinco. Both Orders (d) and (e) also seek to mandate the respective amounts to be paid by Twinco to the Wabush Parties in either scenario. Importantly, these pay-out amounts are related to, and reliant upon, the amounts which would be determined in the course of granting Orders (a), (b) and (c).
21. Per the Wabush Motion, Orders (d) and (e) are requested pursuant to sections 214 and 241 of the CBCA, on the basis that Twinco and the CFLCo nominees on the Twinco Board of Directors have engaged in oppressive conduct which oppresses, unfairly prejudices and/or unfairly disregards the interests the Wabush Parties. Order (d) is also requested pursuant on the basis that it is just and equitable to liquidate and dissolve Twinco.
22. Relying upon the facts set out in paragraphs 13 and 16 to 18, Twinco submits that there is no real and substantial connection or any connecting factor whatsoever to connect the jurisdiction of the Superior Court of Québec and the Oppression Claims and the Wind-Up Claim of the CCAA Parties. Further, Twinco submits that it is contrary to the statutory provisions of the CBCA and the CCAA for the Superior Court of Québec to consider or grant Orders (d) and (e).

#### **Jurisdiction under CBCA**

23. Section 207 of the CBCA states that, for Part XVIII (which includes Section 214), "court" means a court having jurisdiction in the place where the corporation has its registered office". The registered office for Twinco is located in St. John's, Newfoundland and Labrador, as demonstrated by the CBCA registration record included as Exhibit R-4 filed with the Court in support of the Wabush Motion. As a result, pursuant to the CBCA the "court" with jurisdiction over a claim under section 214 would be the Supreme Court of Newfoundland and Labrador.
24. Section 241 of the CBCA provides a court the authority, upon a finding of oppressive conduct, to grant either remedy (d) or (e) as possible remedies. Section 241 is not subject to section 207; under the CBCA generally, the Québec Superior Court would have similar jurisdiction as the Supreme Court of Newfoundland and Labrador. However, as is discussed above, there lacks a real and substantial connection between the underlying subject matter of the Oppression Claims and the jurisdiction of Québec.

#### **Jurisdiction under CCAA**

25. Alternatively, section 9(1) of the CCAA relates to the jurisdiction of a court to receive applications related to the more broadly defined term "company". Section 9(1) specifies that the court with jurisdiction in the province within which the head office or chief place of business of a "company" is located would have jurisdiction

over an application under any provision of the CCAA. Twinco again notes that its head office and chief place of business is in Newfoundland and Labrador and relies upon the facts set out in paragraphs 13 and 16 to 18. As such, any application which primarily and significantly relates to Twinco's affairs should be brought in the jurisdiction of Newfoundland and Labrador.

26. While pursuant to section 42 of the CCAA a CCAA Court may apply provisions of the CBCA as part of a CCAA process, Twinco submits it may only do so where (i) the matter is under the jurisdiction of the CCAA court and (ii) where the requested relief is consistent with the purposes of the CCAA.
27. As stated above in paragraph 10, both Twinco and CFLCo are strangers to the CCAA Proceedings. They are not subject to the orders in the CCAA Proceedings and have not entered the CCAA Proceedings as creditors of the CCAA companies. The only connection of Twinco to the CCAA proceedings is having the Wabush Parties as minority shareholders; CFLCo has no connection to the CCAA Proceedings.
28. The purpose of the CCAA Proceedings relates to the liquidation of the CCAA Parties. The Issues in the Wabush Motion, however, do not relate to the relationship between the Wabush Parties and their creditors, but rather requires an adjudication of the affairs of Twinco or CFLCo, both of which are strangers to the CCAA Proceedings. Twinco submits that the relief requested in the Wabush Motion is outside the scope of section 11 of the CCAA.

Forum non conveniens

29. Article 3135 CCQ recognizes that even if a Québec Court determines it has jurisdiction, it may decline jurisdiction where it considers the courts of another jurisdiction "are in a better position to decide the dispute".
30. Twinco submits that all Issues, including the Contractual Claims, the Oppression Claims and the Wind-Up Claim raised by the Wabush Motion are most appropriately determined by the Supreme Court of Newfoundland and Labrador. The Supreme Court of Newfoundland and Labrador would be the court having a real and substantial connection to Twinco and CFLCo, and the Material Agreements and the laws which govern them. As well, the jurisdiction of Newfoundland and Labrador is where witnesses and evidence required for the determination of the Issues and the required monetary calculations for the Orders are located.
31. Twinco submits that even if this Court determines it has jurisdiction, this matter would be an appropriate context to decline to exercise jurisdiction on the basis that the Supreme Court of Newfoundland and Labrador is in a better position to decide the Issues arising out of the requested relief sought by the Wabush Parties and other CCAA Parties under the Wabush Motion.

**Petitioner's Motion for the Expansion of the Monitor's Powers**

32. On May 6, 2021, the CCAA Parties filed a Motion for the Expansion of the Monitor's Powers pursuant to sections 11 and 23 of the CCAA, specifically sections 23(1)(c) and (k).
33. Just like the Wabush Motion, the Motion for the Expansion of the Monitor's Powers is anchored in section 11 of the CCAA, which relates to the general power of a CCAA court on application "in respect of a debtor company".
34. Twinco submits that just like the Wabush Motion, the Motion for the Expansion of the Monitor's Powers, while framed as part of the CCAA Proceedings, is not an application in respect of a debtor company.
35. To repeat, neither Twinco nor CFLCo is a party to the CCAA Proceedings, nor is either corporation a party governed by the original or any subsequent order issued in the CCAA Proceedings. Rather, both Twinco and CFLCo are strangers to the CCAA Proceedings in which the Motion for the Expansion of the Monitor's Powers has been brought.
36. As such, for the same reasons as stated above, Twinco submits that this Honourable Court does not have jurisdiction to issue an order expanding the powers of the monitor in the CCAA Proceedings pursuant of section 11 of the CCAA.
37. In the alternative Twinco submits that, if it is determined Québec courts do have jurisdiction to hear the Issues, that this Honourable Court should, for the same reasons as stated above, decline jurisdiction on the basis that the Supreme Court of Newfoundland and Labrador is in a better position to decide the Issues, pursuant to article 3135 CCQ.
38. Alternatively, if this Court were to decide that it had jurisdiction to make such an order, Twinco respectfully submits that the CCAA does not permit the monitor's powers to be expanded in the manner suggested by the CCAA Parties.
39. The CCAA Parties are seeking the issuance of an order expanding the powers of the monitor in the CCAA Proceedings so that it may, directly or through its counsel, do the following:
  - (a) compel the production, from time to time, from any Person having possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the Twinco Interest, CFLCo Indemnity and CFLCo Maintenance



Obligations (each as defined below), including the Twinco Requested Information (as defined below) (the “Requested Information”) in respect of the period from and after January 1, 2010 and such earlier periods as may be approved by further order of the Court (the “Disclosure Period”);

- (b) require any Requested Information to be delivered within thirty (30) days of the Monitor’s request or such longer period as the Monitor may agree to in its discretion; and
- (c) conduct investigations from time to time, including examinations under oath of **any Person** reasonably thought to have knowledge relating to the Requested Information, in respect of the Disclosure Period.

[Our emphasis.]

- 40. The powers provided for in sections 23(1)(c) and (k) of the CCAA are not broad enough to cover the powers claimed by the CCAA Parties in their *Motion for the Expansion of the Monitor’s Powers*. Moreover, those powers only relate to a debtor company.
- 41. Section 21(1)(c) provides that the monitor shall “make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of **the company’s** business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor’s findings” (our emphasis).
- 42. Section 21(1)(k) provides that the monitor shall “carry out any other functions in relation to the company that the court may direct.”
- 43. “Company” necessarily means “debtor company” as referred to in paragraph 1 of this provision:

23 (1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of **a debtor company**, [...]

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company’s business and financial affairs and the cause of its

financial difficulties or insolvency and file a report with the court on the monitor's findings;

[...]

(k) carry out any other functions in relation to the company that the court may direct.

[Our emphasis.]

44. The CCAA Parties' suggestion that the monitor should be able to investigate "any person" goes well beyond the powers provided for in the CCAA, which only provide for investigations in respect of a debtor company.
45. To be clear, Twinco is not a debtor company within the meaning of the CCAA.
46. Therefore, it is not appropriate for this Court to grant the CCAA Parties' *Motion for the Expansion of the Monitor's Powers*.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**AS FOR PETITIONER'S MOTION FOR THE WINDING UP AND DISSOLUTION, DISTRIBUTION OF ASSETS, REIMBURSEMENT OF MONIES AND ADDITIONAL RELIEF:**

**DISMISS OR STAY** the Petitioner's motion; or

**ALTERNATIVELY**

**DECLINE** jurisdiction in favour of the Courts of Newfoundland and Labrador.

**THE WHOLE** with costs.

**AS FOR PETITIONER'S MOTION FOR THE EXPANSION OF THE MONITOR'S POWERS:**

**DISMISS** the Petitioner's motion; or

**ALTERNATIVELY**

**DECLINE** jurisdiction in favour of the Courts of Newfoundland and Labrador.

**THE WHOLE** with costs.

**MONTREAL**, this 17<sup>th</sup> day of May 2021

imk LLP

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M<sup>e</sup> Doug Mitchell

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Lawyer for the Mises-en-cause

TWIN FALLS POWER CORPORATION

Our file: 5667-1

BI0080

**NOTICE OF PRESENTATION  
COMMERCIAL (ROOM 16.10)**

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**1. PRESENTATION OF THE *MOTION BY TWIN FALLS POWER CORPORATION TO DISMISS THE APPLICATION FOR LACK OF JURISDICTION***

**BE ADVISED** that the Mises-en-cause will present the present *Modified Motion by Twin Falls Power Corporation to dismiss the application for lack of jurisdiction* in practice division of the Superior Court of Québec - Commercial Division, sitting in and for the Judicial District of Montreal, in a room to be determined of the Montreal Courthouse, located at 1, Notre-Dame St. East, Montreal, on **Friday May 21<sup>st</sup>, 2021** at **9: 30 a.m, in room 12.61.**

**2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL IN PRACTICE DIVISION**

**The coordinates to join the calling of the roll in room 12.61 are as follows:**

a) **Using Teams:** to open the permanent link established for room 12.61, click [here](#)<sup>1</sup>;

You must then fill in your name and click “Join Now”. In order to facilitate the process and the identification of the parties, we invite you to fill in your name in the following manner:

Attorneys: Mtre. Name, Surname (name of the party being represented)

Parties not represented by an attorney: Name, Surname (specify: Plaintiff, Defendant or other)

For persons attending a public hearing: you can simply indicate “public”.

**By telephone:**

Canada (Toll free number): (833) 450-1741

Canada, Québec (Charges will apply): +1 581-319-2194  
Conference ID: 820 742 874#

**By videoconference:** [teams@teams.justice.gouv.qc.ca](mailto:teams@teams.justice.gouv.qc.ca)

VTC Conference ID: 11973653703

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<sup>1</sup> The permanent links for the Montreal courthouse rooms can also be found in the document entitled *Liens TEAMS pour rejoindre les salles du Palais de justice de Montréal en matière commerciale, civile et familiale* under the heading *Audiences virtuelles* found on the Superior Court of Québec website at : <https://coursuperieureduquebec.ca/roles-de-la-cour/audiences-virtuelles>.

**In person**, if and only if the above-mentioned means are not available.

1 Notre-Dame St. East, Montréal, Québec

### **3. FAILURE TO ATTEND THE CALLING OF THE ROLL**

**TAKE NOTICE** that should you fail to attend the calling of the roll, a judgment by default could be rendered against you at the hearing of the proceeding, without further notice or delay.

### **4. OBLIGATIONS**

#### 4.1 Duty of cooperation

**TAKE NOTICE** that you are duty-bound to co-operate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and to make sure that relevant evidence is preserved. (*Code of Civil Procedure*, art. 20).

#### 4.2 Dispute prevention and resolution processes

**TAKE NOTICE** that before referring your dispute to the courts, you must consider private dispute prevention and resolution processes which are negotiation between the parties, and mediation and arbitration, in which the parties call on a third person to assist them (*Code of Civil Procedure*, art. 1 and 2)

**PLEASE GOVERN YOURSELVES ACCORDINGLY.**

**MONTREAL**, this 17<sup>th</sup> day of May 2021

*imk LLP*

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M<sup>e</sup> Doug Mitchell

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Lawyer for the Mises-en-cause

TWIN FALLS POWER CORPORATION

Our file: 5667-1

BI0080

N° 500-11-048114-157

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SUPERIOR COURT (Commercial Division)  
DISTRICT OF MONTREAL  
PROVINCE OF QUEBEC

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**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

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**MODIFIED MOTION BY TWIN FALLS POWER  
CORPORATION TO DISMISS THE APPLICATION  
FOR LACK OF JURISDICTION AND FOR  
FORUM NON-CONVENIENS  
AND NOTICE OF PRESENTATION**

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ORIGINAL



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**BI0080**

# **SCHEDULE 4**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-048114-157

SUPERIOR COURT  
Commercial Division

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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  
TWIN FALLS POWER CORPORATION  
CHURCHILL FALLS (LABRADOR)  
CORPORATION LIMITED

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

Monitor

**CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED'S AMENDED  
CONTESTATION OF THE PETITIONERS' (i) MOTION FOR THE WINDING UP AND  
DISSOLUTION, DISTRIBUTION OF ASSETS, REIMBURSEMENT OF MONIES  
AND ADDITIONAL RELIEF AND (ii) MOTION FOR THE EXPANSION OF THE  
MONITOR'S POWERS**



**I. INTRODUCTION**

1. On November 16, 2020, the CCAA Parties, including, in particular, Wabush Iron Co. Limited ("**Wabush Iron**") and Wabush Resources Inc. ("**Wabush Resources**", collectively, "**Wabush**"), filed a *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* (the "**Dissolution Motion**"), in which they seek the following orders:
  - (a) an order confirming Churchill Falls (Labrador) Corporation Limited's ("**CF(L)Co**") liability for Twin Falls Power Corporation Limited's ("**Twinco**") 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 CF(L)Co pursuant to the alleged CF(L)Co Indemnity and CFLCo Maintenance Obligations (as such terms are defined in the Dissolution Motion, collectively, the "**Reimbursable Environmental/Maintenance Costs**");
  - (c) directing CF(L)Co 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 *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the "**CBCA**") and a distribution of: (i) the Twinco Cash (as such term is defined in the Dissolution Motion) net of all reasonable fees and expenses incurred by Twinco to implement and complete the wind up and dissolution being sought in the Dissolution Motion, and (ii) the CFLCo Reimbursement to Twinco's shareholders, including Wabush, on a *pro rata* basis; and
  - (e) in the alternative to (d), directing Twinco and/or CF(L)Co 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.
2. CF(L)Co submits that:
  - (a) This Court does not have jurisdiction to hear the Dissolution Motion or make the orders sought by the CCAA Parties. The Supreme Court of

Newfoundland and Labrador (the “**Newfoundland Court**”) has the exclusive jurisdiction to liquidate and dissolve Twinco pursuant to sections 207 and 214 of the CBCA; and/or

- (b) This Court is not the appropriate forum to hear the Dissolution Motion, since most of the legal issues raised through the above-mentioned orders are governed by the CBCA and/or the provincial law of the Province of Newfoundland and Labrador. As such, the more appropriate forum is the Newfoundland Court.
3. In this regard, and as will be described in greater detail below, on January 15, 2021, CF(L)Co filed an *Originating Application for the Issuance of a Court-Supervised Liquidation and Dissolution Order* (the “**Liquidation Application**”) before the Newfoundland Court pursuant to sections 214(1)(b)(ii), 215, and 217 of the CBCA, seeking, *inter alia*, the court-supervised liquidation of Twinco. A copy of the Liquidation Application is communicated herewith as **Exhibit C-1**.
- 3.1 On January 27, 2021, this Court agreed to adjourn the Dissolution Motion, as well as the present contestation, so that the interested parties to the litigation could engage in meaningful negotiation discussions.
- 3.2 Similarly, the presentation of the Liquidation Application was adjourned *sine die*, as appears from an email dated February 22, 2021, filed herewith as **Exhibit C-4**.
- 3.3 The negotiations relating to the proposed liquidation and corresponding relief were unsuccessful, and accordingly, on May 6, 2021, Wabush’s counsel informed Twinco and CF(L)Co that it intended to proceed with the debate on jurisdiction in connection with its Dissolution Motion, as well as a “*motion to expand the powers of the Monitor to permit the Monitor to compel production of documents related to the Twinco Interest and related powers*”, as appears from a copy of a letter from Milly Chow dated May 6, 2021, communicated as Exhibit R-12 to the Expansion Motion.
- 3.4 On May 6, 2021, Wabush filed a *Motion for the Expansion of the Monitor’s Powers* (the “**Expansion Motion**”) in which it seeks, *inter alia*, the following orders (the “**Investigation Order**”), in what is a clear effort to circumvent the procedural safeguards and rights of the defendants to the Dissolution Motion, including their right to raise and debate preliminary exceptions prior to proceeding with an exhaustive discovery process:
- (a) The Monitor is authorized and empowered to compel any person with possession, custody or control to disclose to the Monitor and produce and deliver any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the Twinco Interest, CFLCo Indemnity and CFLCo Maintenance Obligations, including the

Twinco Requested Information (the “Requested Information”) in respect of the period from and after January 1, 2010; and

- (b) The monitor is authorized and empowered to conduct investigations, including examinations under oath of any person reasonably thought to have knowledge relating to the Twinco Interest, CFLCo Indemnity and CFLCo Maintenance Obligations, including the Twinco Requested Information, in respect of the Disclosure Period.

3.5 In fact, and as will be described in greater detail below, the information that is being sought by the Monitor through these extensive powers are core to the allegations and conclusions contained in the Dissolution Motion, as confirmed in fact by Wabush’s counsel in its letter dated May 6, 2021 (Exhibit R-12).

3.6 As such, CF(L)Co submits that the Expansion Motion should be dismissed for the following reasons:

- (a) The CCAA proceedings are not the proper forum, and any litigation amongst the parties should occur in Newfoundland and Labrador, and in particular, through the proposed liquidation process as outlined in the Liquidation Application;
- (b) The Expansion Order is a clear attempt to circumvent the rights of the defendants to the Dissolution Motion, and accordingly, if CF(L)Co and Twinco are unsuccessful in contesting jurisdiction, any discovery should take place within the context of the litigation itself and in accordance with a negotiated litigation timetable;
- (c) As a result of the Monitor’s active role in the negotiations and adjudication of the Dissolution Motion, there is a real or perceived conflict of interest for the Monitor to now act as a super-monitor, with the unprecedented investigative powers requested in the Investigation Order; and
- (d) This Court does not have the jurisdiction to grant the Monitor with the power to compel and conduct investigations into third parties that are strangers to the CCAA proceedings.

4. All capitalized terms not defined herein shall have the meaning ascribed to them in the Dissolution Motion.

II. **THIS COURT DOES NOT HAVE JURISDICTION TO HEAR THE DISSOLUTION MOTION OR MAKE THE ORDERS SOUGHT**

5. CF(L)Co respectfully submits that this Court does not have jurisdiction to hear the Dissolution Motion or make the orders sought by Wabush pursuant to the CBCA.

6. Sections 207 and 214 of the CBCA provide that only a court in the territorial jurisdiction of the corporation's registered office may order the liquidation and dissolution of said corporation. The same restriction applies to the forced share purchase sought by Wabush in the alternative pursuant to section 214(2) CBCA.

*207 In this Part, court means a court having jurisdiction in the place where the corporation has its registered office.*

*[...]*

***214 (1)** A court may order the liquidation and dissolution of a corporation or any of its affiliated corporations on the application of a shareholder,*

*(a) if the court is satisfied that in respect of a corporation or any of its affiliates*

*(i) any act or omission of the corporation or any of its affiliates 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; or*

*(b) if the court is satisfied that*

*(i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or*

*(ii) it is just and equitable that the corporation should be liquidated and dissolved.*

*(2) On an application under this section, a court may make such order under this section or section 241 as it thinks fit.*

*[...] (underlining added)*

7. In the case at hand:

- (a) Twinco's registered office is situated at P.O. Box 12400, St. John's, Newfoundland and Labrador, A1B 4K7, as appears from a copy of Twinco's Federal Corporation Information Report (Exhibit R-4 to the Dissolution Motion);
  - (b) Twinco's head office is located at 500 Columbus Drive, St-John's, Newfoundland and Labrador, A1B 3T5; and
  - (c) Since May 2, 1960, Twinco has been registered as an extra-provincial company in Newfoundland and Labrador.
8. Accordingly, pursuant to section 207 CBCA, the courts of Newfoundland and Labrador have the exclusive jurisdiction to hear any motion relating to the dissolution or liquidation of Twinco pursuant to section 214 CBCA.
9. In this regard, and in accordance with section 207 of the CBCA, CF(L)Co has instituted liquidation proceedings pursuant to section 214(1) of the CBCA before the Newfoundland Court, and any debate relating to the potential liability of CF(L)Co should be held in the context of this liquidation process, including any discovery relating thereto.

### III. **THIS COURT IS NOT THE APPROPRIATE FORUM**

10. In the alternative, if this Court concludes that it does have jurisdiction to hear the Dissolution Motion, CF(L)Co respectfully submits that this Court should nevertheless decline to exercise its jurisdiction pursuant to the doctrine of *forum non conveniens*, as codified by Article 3135 of the *Civil Code of Québec* (the "CCQ"):
- 3135. Even though a Québec authority has jurisdiction to hear a dispute, it may, exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another State are in a better position to decide the dispute.*
11. Pursuant to article 3135 of the CCQ, the Court may decline to exercise its jurisdiction on the basis of fairness and efficiency if it considers that an alternative jurisdiction is in a better position to decide the dispute.
12. The facts of this case and the applicable law clearly demonstrate that the Newfoundland Court is in a better position to resolve the matters relating to Twinco, including its liquidation or dissolution.
13. The Court of Appeal of Québec established the criteria to determine if another jurisdiction is in a better position to resolve the dispute in the case of *Oppenheim Forfait GmbH c. Lexus Maritime inc.*, [1998] J.E. 98-1592 (C.A.), which was

confirmed by the Supreme Court of Canada in *Spar Aerospace Ltée v. American Mobile Satellite Corp.*, [2002] 4 R.C.S. 205, 2002 CSC 78. These criteria, none of which are determinative on their own, are summarized as follows:

- (a) The parties' residence and that of witnesses and experts;
  - (b) The location of the material evidence;
  - (c) The place where a contract was negotiated and executed;
  - (d) The existence of proceedings pending between the parties in another jurisdiction;
  - (e) The location of the defendant's assets;
  - (f) The applicable law;
  - (g) The advantages conferred upon the plaintiff by its choice of forum, if any;
  - (h) The interest of justice;
  - (i) The interests of the parties; and
  - (j) The need to have the judgment recognized in another jurisdiction.
14. As will be described in greater detail below, the applicable factors above indicate that the Newfoundland Court is the more appropriate forum in the present case.

***(a) The parties' residence and that of witnesses and experts and the location of the material evidence***

15. Twinco's head and registered offices are located in the Province of Newfoundland and Labrador and five (5) of Twinco's seven (7) directors reside in the Province of Newfoundland and Labrador, the whole as appears from a copy of Twinco's Federal Corporation Information Report (Exhibit R-4 to the Dissolution Motion).
16. Similarly, CF(L)Co's registered office is located in the Province of Newfoundland and Labrador and six (6) of CF(L)Co's eight (8) directors reside in the Province of Newfoundland and Labrador, the whole as appears from a copy of CF(L)Co's corporate profile with Corporations Canada, communicated herewith as **Exhibit C-2**.
17. Furthermore, neither Twinco nor CF(L)Co have any places of business in the Province of Québec.

18. The shareholders of Twinco, namely CF(L)Co, Wabush Iron, Wabush Resources, and Iron Ore Company of Canada are all extra-provincially registered in the Province of Newfoundland and Labrador, as appears from screen captures of their respective company profiles in the Newfoundland and Labrador Companies and Deeds Online database, communicated herewith *en liasse* as **Exhibit C-3**.
19. The Dissolution Motion raises environmental issues that have arisen in connection with the power generating plant (the "**Twinco Plant**") in Newfoundland and Labrador. These environmental issues concern land exclusively located in Newfoundland and Labrador, and in this regard, their resolution will be governed, at least in part, by provincial law.
20. In light of the foregoing, any fact witnesses will, for the most part, be located in Newfoundland and Labrador, as will any material evidence.

**(b) *The place where a contract was negotiated and executed***

21. The Dissolution Motion, at paragraph 26, states that the following three documents govern the Twinco joint venture:
  - (a) the Participation Agreement dated January 2, 1977 (the "**Participation Agreement**", Exhibit R-7 to the Dissolution Motion), which serves as a Unanimous Shareholder Agreement, as stated in the Twinco's by-laws;
  - (b) the Sublease dated November 15, 1961 (as amended, the "**Sublease**", Exhibit R-5 to the Dissolution Motion); and
  - (c) the Operating Lease dated November 30, 1967 (as amended, the "**Operating Lease**", Exhibit R-6 to the Dissolution Motion, together with the Sublease and the Participation Agreement, the "**Governing Documents**").
22. Each of these agreements were negotiated and executed in the Province of Newfoundland and Labrador, and as will be outlined below, are governed by the laws of Newfoundland and Labrador.
23. In addition, the Lieutenant-Governor of the Province of Newfoundland in Council "*caused the Great Seal of the Province of Newfoundland*" to be affixed to each of the Sublease and Operating Lease, in addition to signing each of these agreements as an intervenor.

**(c) *The existence of proceedings between the parties in another jurisdiction***

24. CF(L)Co has filed the Liquidation Application in the Newfoundland Court, in accordance with the provisions of the CBCA, which, if granted, will achieve similar

results as those being sought the Dissolution Motion. More specifically, the Liquidation Application, as mentioned above, seeks the following orders:

- (a) an order ordering the court-supervised liquidation of Twinco;
  - (b) an order staying all proceedings and remedies taken or that might be taken in respect of Twinco and its property; and
  - (c) an order appointing PricewaterhouseCoopers Inc. (the "**Liquidator**") as liquidator of the assets of Twinco in these proceedings. The Liquidator will be able to assist Twinco in resolving any disputes regarding potential claims and distribution of assets to the respective shareholders of Twinco.
25. In addition, if necessary, the Newfoundland Court will be able to adjudicate any dispute between the stakeholders of Twinco relating to the distribution of Twinco's assets, including the claims relating to the alleged CFLCo Indemnity and CFLCo Maintenance Obligations.
26. In summary, since, as explained throughout this contestation, the claims raised by Wabush in the Dissolution Motion are governed by agreements executed in Newfoundland and Labrador and governed by the provincial law therefrom, there is no doubt that the Newfoundland Court is the more appropriate jurisdiction, in the circumstances.

**(d) The location of CF(L)Co and Twinco's assets**

27. All of the assets of CF(L)Co and Twinco, against whom orders are sought, are located in the Province of Newfoundland and Labrador, and neither CF(L)Co nor Twinco have any assets in the Province of Québec.

**(e) The applicable law**

28. The Governing Documents confirm that the issues and matters relating to Twinco will be governed [...] by the law of the Province of Newfoundland and Labrador:
- (a) Section 17 of the Participation Agreement (Exhibit R-7) provides that it shall be "*construed in accordance with the laws of the Province of Newfoundland [...]*".
  - (b) Section 12 of the Sublease (Exhibit R-5) provides that it "*shall be construed and interpreted in accordance with the laws of Newfoundland.*"
  - (c) The Operating Lease goes hand in hand with the Sublease, which is governed by the laws of Newfoundland. It is registered at the Registry of Deeds for Newfoundland and relates, in its entirety, to land located in



Newfoundland. The execution of the Operating lease, and the amendments thereto, were consented to by the Lieutenant-Governor of the Province of Newfoundland.

29. In addition, any environmental issues that may arise in connection with the dissolution of Twinco will be governed, at least in part, by the provincial laws of Newfoundland and Labrador.
30. Considering the foregoing, and as outlined below, each of the conclusions being sought in the Dissolution Motion are governed by the laws of Newfoundland and Labrador and, in certain circumstances, the CBCA:

<b>Relief requested by Wabush:</b>	<b>Allegations and/or requested relief are based on:</b>	<b>Governing Law</b>
13. (a): <i>confirming CF(L)Co's liability for Twinco's maintenance obligations and environmental liabilities related to the Twinco Plant from and after July 1, 1974;</i>	The Sublease and Operating Lease	Newfoundland and Labrador
13. (b): <i>compelling an accounting from Twinco of all monies expended by Twinco in respect of maintenance the Reimbursable Environmental/Maintenance Costs;</i>	The Sublease and Operating Lease	Newfoundland and Labrador
13. (c): <i>directing CFLCo to reimburse all Reimbursable Environmental/Maintenance Costs to Twinco for distribution to the shareholders as part of the winding up and dissolution of Twinco;</i>	The Sublease, the Operating Lease and Section 214 of the CBCA	Newfoundland and Labrador and Part XVIII of the CBCA (including Section 207, which provides that the location of Twinco's registered office determines jurisdiction).
13 (d): <i>directing the winding up and dissolution of Twinco pursuant to section 214 and/or section 241(3)(l) of 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, and</i>	The Sublease, the Operating Lease, the Participation Agreement and	Newfoundland and Labrador and Part XVIII of the CBCA

<i>(ii) the CF(L)Co Reimbursement to Twinco's shareholders, including Wabush, on a pro rata basis;</i>	Section 214 of the CBCA	
<i>13. (e): 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.</i>	The Sublease, the Operating Lease, the Participation Agreement and Section 214 and 241 of the CBCA	Newfoundland and Labrador and Part XVIII of the CBCA

***(f) The interest of justice and the interests of the parties***

31. Considering the above factors, it is in the best interest of justice and all of the parties that the liquidation and dissolution of Twinco and any related questions be adjudicated by the Newfoundland Court.
32. Hearing this matter in the Province of Newfoundland and Labrador will not, in any way, negatively impact Wabush's interests.
33. Moreover, CF(L)Co respectfully submits that the hearing of this matter will not be accelerated by proceeding before this Court as opposed to the Newfoundland Court, as liquidation proceedings under the CBCA are similarly flexible, and will allow for prompt adjudication.
34. For all of the above reasons, CF(L)Co respectfully asks the Court to dismiss the Dissolution Motion due to this Court's lack of jurisdiction pursuant to the CBCA, or in the alternative, to decline to exercise its jurisdiction.

**IV. THE EXPANSION MOTION SHOULD BE DISMISSED**

**(a) The Investigation Order Seeks to Undermine and Circumvent the Litigation Process Relating to the Dissolution Motion**

35. The Investigation Order seeks to provide the Monitor with the power to compel third parties to submit to examinations under oath and provide documentation in an effort to investigate and conduct a discovery on the issues that are core to the ongoing litigation amongst Wabush, Twinco and CF(L)Co. In particular, as it relates to CF(L)Co, the Investigation Order seeks to obtain any and all information relating to the alleged indemnity (the CFLCo Indemnity) and the maintenance obligations (the CFLCo Maintenance Obligations), which are two concepts that are discussed and raised throughout the Dissolution Motion.

36. In fact, in the Dissolution Motion, Wabush seeks the following orders relating specifically to the CFLCo Indemnity and CFLCo Maintenance Obligations:

“13. On this Motion, the CCAA Parties hereby seek the issuance of an Order:

(a) confirming Churchill Falls (Labrador) Corporation Limited’s (“CFLCo”) liability for Twinco’s maintenance obligations and environmental liabilities related to the Twinco Plant (as defined below) from and after July 1, 2010;

(b) compelling an accounting from Twinco for 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 [...]”

37. As stated throughout this Contestation, CF(L)Co takes the position that the Dissolution Motion, which can include the various allegations and conclusions raised therein, should be adjudicated in the Province of Newfoundland and Labrador, and accordingly, has filed the Liquidation Application in an effort to liquidate Twinco in an orderly fashion through the supervision of a Court-appointed liquidator.
38. Seeking to proceed with a liquidation of Twinco in the Province of Newfoundland and Labrador is far from a strategy attempt to control the liquidation, as alleged in paragraph 65 of the Expansion Motion, but rather, is reflective of a willingness to proceed with the requested relief in the appropriate province, for the very clear reasons outlined herein.
39. Nonetheless, the Monitor and Wabush are deliberately and explicitly seeking to obtain broad investigative powers prior to a debate on jurisdiction, despite having previously agreed to debate this preliminary matter before proceeding with any sort of discovery.
40. The Monitor and Wabush, in attempting to circumvent the litigation process, are not acting in good faith, and accordingly, their actions should not be sanctioned by the Court.

**(b) Section 23 of the CCAA Does not Grant the Monitor the Power to Investigate Third Parties**

41. Sections 11 and 23(c) and (k) of the CCAA do not provide this Court with the requisite jurisdiction to order the Monitor to engage in broad investigations of third parties, particularly when the stated goal is to obtain information relating to the litigation instituted by Wabush against these same third parties.

42. The Expansion Motion requests that this Court exercise its discretionary powers, in a case when it is not even necessary, since the same discovery can take place, if deemed appropriate (a) either in the context of the Dissolution Motion, if Twinco and CF(L)Co fail on their contestation of jurisdiction, or (b) in the context of the proposed court-supervised liquidation of Twinco in the Province of Newfoundland and Labrador.
43. In any event, there is no basis in the CCAA, or otherwise, to grant the requested investigation powers to the Monitor, which powers are akin to those typically reserved for regulatory or investigative bodies.

**(c) The Investigation Powers Place the Monitor in a Real of Perceived Conflict of Interest**

44. As an officer of the court, the Monitor must act with impartiality and neutrality, and when he cannot, such as in the case at hand, where he is intimately and actively aligned with Wabush in pursuing the Dissolution Motion, he should not be granted expanded powers to investigate and compel the third parties to the litigation to submit to interviews under oath and provide documentation relating to the ongoing litigation issue. There is no question that any effort to do so undermines the public's trust in our system of justice.
45. In light of the foregoing, it is submitted that in the circumstances, this Court should not grant such broad and investigative powers to the Monitor, particularly in light of the (a) ongoing litigation on the same issues, (b) the lack of jurisdiction under s. 11 and 23 of the CCAA, and (c) the real conflict of interest that is raised as a result of these expanded and unprecedented investigative powers.

**WHEREFORE, MAY THIS COURT:**

**GRANT** *Churchill Falls (Labrador) Corporation Limited's Contestation of the Petitioners' Motion for the Winding up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief;*

**DISMISS** *the Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief;*

**DISMISS** *the Motion for the Expansion of the Monitor's Powers;*

**WITH COSTS.**

**MONTREAL**, May 19, 2021

*Stikeman Elliott LLP*

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CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-048114-157

SUPERIOR COURT  
Commercial Division

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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

TWIN FALLS POWER CORPORATION

CHURCHILL FALLS (LABRADOR)  
CORPORATION LIMITED

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

Monitor

**AMENDED LIST OF EXHIBITS IN SUPPORT OF CHURCHILL FALLS  
(LABRADOR) CORPORATION LIMITED'S AMENDED CONTESTATION OF THE  
PETITIONERS' (i) MOTION FOR THE WINDING UP AND DISSOLUTION,  
DISTRIBUTION OF ASSETS, REIMBURSEMENT OF MONIES AND ADDITIONAL  
RELIEF AND (ii) MOTION FOR THE EXPANSION OF THE MONITOR'S POWERS**

- Exhibit C-1:** Liquidation Application
- Exhibit C-2:** CF(L)Co's corporate profile with Corporations Canada
- Exhibit C-3:** (*En liasse*) Screen captures of CF(L)Co, Wabush Iron, Wabush Resources, and Iron Ore Company of Canada's company profiles in the Newfoundland and Labrador Companies and Deeds Online database
- Exhibit C-4:** Email dated February 22, 2021

**MONTREAL**, May 19, 2021

*Stikeman Elliott LLP*

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**Attorneys for Churchill Falls (Labrador)  
Corporation Limited**

## Stéphanie Larche

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**Objet:** TR: Cause 2021 01G 0432 - initial return date of 23 Feb 2021 at 10 AM for Originating Application by Churchill Falls (Labrador) Corporation Limited

**Importance:** Haute

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**De :** [jsmith@scwlegal.com](mailto:jsmith@scwlegal.com) <[jsmith@scwlegal.com](mailto:jsmith@scwlegal.com)>

**Envoyé :** Monday, February 22, 2021 7:53 AM

**À :** [inquiries@supreme.court.nl.ca](mailto:inquiries@supreme.court.nl.ca); [michellehillier@supreme.court.nl.ca](mailto:michellehillier@supreme.court.nl.ca)

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**Objet :** Cause 2021 01G 0432 - initial return date of 23 Feb 2021 at 10 AM for Originating Application by Churchill Falls (Labrador) Corporation Limited

**Importance :** Haute

**Michelle:**

**Please be advised that counsel for each of the parties has agreed that the presentation of the Originating Application is to be adjourned generally (*sine die*).**

**Regards,**

**Jamie M. Smith, Q.C.**

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**SUPERIOR COURT**  
Commercial Division

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N° : 500-11-048114-157

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**CANADA**  
**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**

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**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**  
**TWIN FALLS POWER CORPORATION**  
**CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED**

Mises-en-cause

-and-

**FTI CONSULTING CANADA INC.**

Monitor

BS0350

File: 030192-1029

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**CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED'S AMENDED  
CONTESTATION OF THE PETITIONERS' (i) MOTION FOR THE WINDING UP  
AND DISSOLUTION, DISTRIBUTION OF ASSETS, REIMBURSEMENT OF  
MONIES AND ADDITIONAL RELIEF AND (ii) MOTION FOR THE EXPANSION  
OF THE MONITOR'S POWERS**

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ORIGINAL

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# **SCHEDULE 5**

Court File No. 2021 01G \_\_\_\_\_

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION**

**IN THE MATTER OF** the *Canada Business  
Corporation Act*, R.S.C. 1985, c. C-44, as  
amended (the "CBCA")

**AND IN THE MATTER OF THE LIQUIDATION  
OF TWIN FALLS POWER CORPORATION  
LIMITED**

**BETWEEN:**

**CHURCHILL FALLS (LABRADOR)  
CORPORATION LIMITED** **APPLICANT**

**AND:**

**PRICEWATERHOUSECOOPERS INC.** **PROPOSED LIQUIDATOR**

**AND:**

**THE DIRECTOR UNDER THE CBCA** **FIRST RESPONDENT**

**AND:**

**TWIN FALLS POWER CORPORATION  
LIMITED** **SECOND RESPONDENT**

**AND:**

**WABUSH RESOURCES INC.** **THIRD RESPONDENT**

**AND:**

**WABUSH IRON CO. LIMITED** **FOURTH RESPONDENT**

**AND:**

**IRON ORE COMPANY OF CANADA** **FIFTH RESPONDENT**

**Originating Application  
(*Inter Partes*)**

**For Issuance of a Court-Supervised Liquidation and Dissolution Order  
(Sections 214(1)(b)(ii), 215 and 217 of the *Canada Business Corporations Act*)**

**TO THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR OR ONE OF THE JUDGES THEREOF:**

The application of Churchill Falls (Labrador) Corporation Limited ("**CF(L)Co**" or the "**Applicant**"), the Applicant herein says,

**I. NATURE OF THE ORIGINATING APPLICATION**

1. The Applicant, in its capacity as a shareholder of Twin Falls Power Corporation Limited ("**Twinco**"), hereby seeks the issuance of orders pursuant to sections 214(b)(ii), 215 and 217 of the CBCA, in respect of Twinco.
2. More specifically, the Applicant seeks the issuance of a liquidation order (the "**Liquidation Order**"), a copy of which is attached hereto as **Exhibit P-1**:
  - a) ordering the court-supervised liquidation of Twinco;
  - b) staying all proceedings and remedies taken or that might be taken in respect of Twinco and its property (the "**Stay Period**"); and
  - c) appointing PricewaterhouseCoopers Inc. ("**PwC**" or the "**Liquidator**") as liquidator of the assets of Twinco in these proceedings.
3. As more fully explained below, the Applicant submits that considering, among other things, that: (i) Twinco is no longer actively operating; (ii) its defunct power generating plant and facilities are located in Newfoundland and Labrador; and (iii) its registered office is in Newfoundland and Labrador, it is just and equitable that Twinco be liquidated and dissolved under supervision of the Supreme Court of Newfoundland and Labrador.

**II. OVERVIEW OF TWINCO'S BUSINESS AND AFFAIRS**

**a. Corporate Structure**

4. Twinco is an incorporated joint venture formed under the CBCA on February 18, 1960, among CF(L)Co, Wabush Iron Co. Limited ("**Wabush Iron**"), Wabush Resources Inc. ("**Wabush Resources**", and, collectively with Wabush Iron, "**Wabush**"), and the Iron Ore Company of Canada ("**IOC**"). Since May 2, 1960, Twinco has been registered as an Extra-Provincial Company in Newfoundland and Labrador, as appears from a screen capture of Twinco's detailed company information in the Newfoundland and Labrador Companies and Deeds Online database (the "**CADO Profile**"), attached hereto as **Exhibit P-2**.
5. Up until July 1, 1974, Twinco operated a power generating plant (the "**Twinco Plant**") in Newfoundland and Labrador.
6. As appears from Twinco's 2019 Audited Financial Statements for the year ended December 31, 2019 (the "**2019 Financial Statements**"), Twinco is owned by the

following entities:

- a) 33.3% by CF(L)Co, who holds all Class A Common Shares;
- b) 49.6% by IOC;
- c) 4.6% by Wabush Iron; and
- d) 12.5% by Wabush Resources, who along with IOC and Wabush Iron, hold the Class B Common Shares.

A copy of the 2019 Financial Statements is attached hereto as **Exhibit P-3**.

7. Pursuant to Twinco's Articles of Continuance dated August 1, 1980 (the "**Articles of Continuance**"):
  - a) The shareholders of Twinco are entitled to share rateably in the remaining property of Twinco upon liquidation or dissolution; and
  - b) Each Class A Common Share is entitled to 4 votes per share, while each Class B Common Share is entitled to one vote per share. Accordingly, the voting rights of Twinco are held by (i) CF(L)Co at 66.7%, (ii) IOC at 24.8% and (iii) Wabush at 8.5%.

A copy of the Articles of Continuance is attached hereto as **Exhibit P-4**.

8. The Twinco joint venture is governed, in large part, by a Participation Agreement dated January 2, 1977 (the "**Participation Agreement**"), which serves as a Unanimous Shareholder Agreement, as stated in the Twinco's by-laws. A copy of the Participation Agreement and by-laws are attached hereto as **Exhibits P-5** and **P-6**, respectively.
9. Twinco's registered office is situated at P.O. Box 12400, St. John's, Newfoundland and Labrador, A1B 4K7, as appears from a copy of Twinco's corporate profile with Corporations Canada, attached hereto as **Exhibit P-7**. Twinco's registered office, as an Extra-Provincial Company in Newfoundland and Labrador, is Hydro Place, Columbus Drive, P.O. Box 12500, St. John's, NL, A1B 3T5, as appears from the CADO Profile (**Exhibit P-2**).

#### **b. Twinco's Business**

10. Twinco was formed for the sole purpose of building and operating the Twinco Plant in Twin Falls, Newfoundland and Labrador, to supply electricity: (i) to mines in Labrador City, operated by Wabush and IOC; (ii) to the Towns of Labrador City and Wabush; and (iii) for the construction of the Churchill Falls Generating Station. There are two main documents that govern the Twinco joint venture:
  - a) the *Sublease* dated November 15, 1961 (as amended, the "**Sublease**"), a copy of which is attached hereto as **Exhibit P-8**; and

- b) the *Operating Lease* dated November 30, 1967 (as amended, the "**Operating Lease**"), a copy of which is attached hereto as **Exhibit P-9**.

The Sublease

11. The *British Newfoundland Corporation Limited (Brinco) Act*, No. 63 Nfld., 1953 granted an option to the hydro-electric production rights of the Province of Newfoundland and Labrador to the British Newfoundland Corporation Limited ("**Brinco**"). This included the hydro-electric production rights to Twin Falls, which are two waterfalls located on the Unknown River, a tributary of the Churchill River, which Brinco assigned to Hamilton Falls Power Corporation Limited, now CF(L)Co. CF(L)Co exercised the above option pursuant to the *Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961*.
12. Additionally, the Government of Newfoundland and Labrador granted to CF(L)Co: (i) a lease for the land upon which the Twinco Plant would be built, a landing strip and certain access roads; and (ii) an easement for the installation of transmission lines (together, the "**Site and Easement Lease**").
13. On November 15, 1961, CF(L)Co entered into a number of agreements with Twinco, including subleases pursuant to which CF(L)Co granted to Twinco: (i) its rights under the Site and Easement Lease; and (ii) its exclusive right under the Sublease to, among other things, harness and make use of the Unknown River to produce hydro-electric power at the Twinco Plant and to transmit throughout the Province of Newfoundland and Labrador any hydro-electric power generated at the site. These rights were granted to Twinco until December 31, 2014, after which time the rights would expire and revert back to CF(L)Co.
14. Part IV, Clause 8 of the Sublease permitted CF(L)Co, as the sublessor, to suspend Twinco's hydro-electric rights in order to make more efficient use of the Unknown River for the balance of the term of the Sublease, which it did, on July 1, 1974.
15. As such, as of July 1, 1974, the Twinco Plant was placed into an extended shut-down.
16. In a memorandum to the Board of Directors of Twinco dated June 20, 1994, CF(L)Co confirmed that it was not financially feasible to resume operations at the Twinco Plant and that there was no possibility of Twinco being brought back to a functional state so that it could continue to carry on the business for which it was formed. A copy of the CF(L)Co memorandum to Twinco's Board of Directors is attached hereto as **Exhibit P-10**.
17. During the unexpired term of the Sublease, CF(L)Co delivered substitute power to Twinco in order to maintain the Twinco Plant and related machinery.
18. Accordingly, Twinco purchased power from CF(L)Co for an amount equal to the average annual cost of operating the Twinco Plant for previous historical periods, which Twinco in turn sold to Wabush and IOC pursuant to power contracts (each as amended and extended, the "**Amended Power Contracts**").

19. The term of each of the Sublease, Site and Easement Lease and the Amended Power Contracts, expired on December 31, 2014, and were not renewed thereafter.

The Operating Lease

20. On July 1, 1974, CF(L)Co, Twinco, the Government of Newfoundland and Labrador, IOC, Wabush Iron and others entered into the Operating Lease.
21. Pursuant to the Operating Lease, CF(L)Co, among other things, obtained the right to export and transmit hydroelectric power over the Twinco transmission lines.

**c. Employees**

22. As of the date hereof, Twinco has no employees.
23. According to Twinco's corporate profile with Corporations Canada (**Exhibit P-7**), the current directors of Twinco are James Meaney, Dana Pope, Michael Roberts, Benoit Palmer, Maurice McClure, Oral Burry, and James Haynes.

**III. TWINCO'S ASSETS AND LIABILITIES**

**a. Assets**

24. As appears from Twinco's unaudited Condensed Interim Financial Statements for the period ended September 30, 2020 (the "**2020 Financial Statements**"), as of September 30, 2020, Twinco had, on a consolidated basis, total assets with a book value of \$6,107,000, which include the following:
- a) Cash and cash equivalents: \$6,077,000;
  - b) Other receivables: \$29,000; and
  - c) Prepayments: \$1,000.

A copy of the 2020 Financial Statements is attached hereto as **Exhibit P-11**.

25. Twinco does not currently own any operating assets, such as equipment or real estate.

**b. Liabilities**

26. As appears from the 2020 Financial Statements (**Exhibit P-11**), as of September 30, 2020, the approximate principal outstanding indebtedness of Twinco amounted to \$103,000, broken down as follows:
- a) Payables: \$80,000; and
  - b) Environmental Liabilities: \$23,000.

27. As appears from the foregoing, Twinco is currently able to satisfy its liabilities as they

become due and expects that it has sufficient assets to discharge all of its obligations and satisfy its liabilities in full.

**c. Contingent Liabilities / Pending Litigation**

28. There are potential environmental liabilities in connection with the decommissioning and cleanup of the Twinco Plant, although the scope and an amount of these liabilities remains uncertain.
29. There is no pending litigation against Twinco, with the exception of a Dissolution Motion that was filed in Quebec and which is more fully described below. The Dissolution Motion is contested by both Twinco and CF(L)Co.

**IV.   GROUNDS FOR THE COURT-ORDERED LIQUIDATION OF TWINCO**

30. For the reasons outlined below, it is just and equitable that Twinco should be liquidated and dissolved under the supervision of The Supreme Court of Newfoundland and Labrador.

**a. The Cessation of Twinco's Operations**

31. As stated above, Twinco is no longer operating. The Twinco Plant has been shut down since 1974, and there is no reasonable prospect that it will be reactivated.
32. Twinco currently exists only as an "empty shell" to hold cash and cash-equivalent assets, without any operating assets. As Twinco no longer conducts the sole business for which it was formed, Twinco has no reason to continue to exist.

**b. The Shareholder Dispute**

33. On November 16, 2020, Wabush filed a *Motion for the Winding up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* (the "**Dissolution Motion**"), in the context of proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") instituted in the Superior Court of Quebec on January 27, 2015, in respect of a number of parties<sup>1</sup>, including Wabush Iron and Wabush Resources (following an extension of the scope of the initial order and a corresponding stay of proceedings on May 20, 2015). A copy of the May 20, 2015 Initial Order is attached hereto as **Exhibit P-12**. A copy of the Dissolution Motion is attached hereto as **Exhibit P-13**.
34. Pursuant to the Dissolution Motion, Wabush is seeking, among other things, the following relief:

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<sup>1</sup> 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.



- a) an order confirming CF(L)Co's liability for Twinco's maintenance obligations and environmental liabilities related to the Twinco Plant from and after July 1, 1974;
  - b) an order compelling an accounting from Twinco of all monies expended by Twinco in respect of maintenance and environmental costs that have not been reimbursed by CF(L)Co pursuant to its alleged obligations, indemnity and maintenance obligations (collectively, the "**Reimbursable Environmental/Maintenance Costs**");
  - c) an order directing CF(L)Co to reimburse all Reimbursable Environmental/Maintenance Costs to Twinco for distribution to the shareholders as part of the winding up and dissolution of Twinco;
  - d) an order 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 Twinco's assets to the shareholders; and
  - e) in the alternative to the winding up, an order directing Twinco and/or CF(L)Co to purchase the shares of Twinco held by Wabush pursuant to section 214(2) and/or section 241(3)(f) of the CBCA.
35. The Dissolution Motion is being contested by both Twinco and CF(L)Co, including, without limitation, on the grounds that the Quebec Superior Court does not have jurisdiction to order the liquidation of Twinco or that the proper forum to institute any liquidation proceedings in regards to Twinco is in the Province of Newfoundland and Labrador.
36. More specifically, the Applicant submits that this Court has the exclusive territorial jurisdiction to hear the present Originating Application and render any orders regarding liquidation and dissolution that it sees fit, pursuant to the CBCA, for the following reasons:
- a) Twinco's registered office is located in St. John's, Newfoundland and Labrador; and
  - b) The Twinco Plant is located in Twin Falls, Newfoundland and Labrador.

## V. RELIEF SOUGHT

### a. General

37. The Applicant believes that it is wholly appropriate for this Court to issue the Liquidation Order attached hereto as **Exhibit P-1** to allow the distribution of Twinco's assets and the discharge of its liabilities in a coordinated and orderly manner, for the benefit of all its stakeholders.

## **b. Liquidation**

38. For the reasons set out above, the Applicant submits that it is just and equitable that Twinco should be liquidated and dissolved.
39. Since Twinco's shareholders have been unable to reach an agreement regarding the liquidation and dissolution of Twinco, a voluntary liquidation is impossible, and accordingly, the Applicant requests that this Court order the liquidation of Twinco pursuant to the provisions of the CBCA.
40. The court-ordered liquidation will allow the assets of Twinco to be distributed in an equitable manner, for the benefit of all of Twinco's shareholders. As stated above, Twinco is no longer operating, and the shareholders' capital contributions currently serve no business purpose. It is therefore in the best interest of Twinco and its shareholders to proceed with an orderly and court-supervised liquidation.
41. Furthermore, the liquidation will allow the parties, with the assistance of the Court and Liquidator, if necessary, to expeditiously resolve any disputes between the shareholders.
42. In these circumstances, a court-ordered liquidation is just and equitable.

## **c. Stay of Proceedings**

43. The Applicant submits that all legal actions against Twinco should be stayed. Certain creditors may take steps or other actions that could be detrimental to a successful, orderly and coordinated liquidation. Absent a stay of proceedings, the Applicant submits that the initiation of legal proceedings against Twinco may cause the depletion of Twinco's estate or require time and other resources, to the detriment of all stakeholders, and jeopardize the ongoing efforts to liquidate its assets in a coordinated and orderly fashion.
44. Accordingly, Twinco requires the protection of this Court in the event that a potential creditor decides to initiate recovery measures against Twinco, which may prevent the coordinated and orderly liquidation of Twinco for the benefit of all its stakeholders. The stay of proceedings is thus required in order to prevent creditors from enforcing certain rights, remedies or recourses to the detriment of the other creditors during the liquidation.

## **d. Appointment of the Liquidator**

45. Given the nature of its business and assets, the number of parties that will be directly or indirectly affected by the liquidation and the need to conduct an independent process for the review and assessment of its liabilities (and in particular, potential and alleged environmental liabilities), the Applicant submits that it is appropriate for this Court to appoint a liquidator to supervise the liquidation and report to this Court from time to time, as necessary or useful.

46. PwC has agreed to act as Liquidator in these proceedings, subject to approval by this Court.
47. In its capacity as Liquidator, PwC will explore alternatives to dispose of Twinco's remaining assets with a view to distributing all cash proceeds as part of the Liquidation. PwC will also review and assess Twinco's outstanding liabilities.
48. PwC will also, in its capacity as Liquidator and in its discretion, determine the amount and timing of the distribution(s) to be made to Twinco's shareholders.
49. The Applicant believes that it is in the best interests of all stakeholders that this Court appoint PwC as Liquidator.
50. In addition to any powers or duties provided for by the CBCA, the Applicant hereby requests that this Court grant the Liquidator the powers, rights, duties and protections detailed in the draft Liquidation Order.

**e. Distributions and Cancellation of Shares**

51. Twinco expects to proceed with one or more distributions to its shareholders after satisfaction of all its liabilities.
52. The Liquidator will hold undistributed cash or other assets of Twinco as a reserve to satisfy the costs of the liquidation, as well as its ultimate dissolution. Once the liquidation has been fully implemented, the Liquidator will proceed with a final distribution of the remaining assets of Twinco, if any.
53. Prior to such final distribution, Twinco intends to cancel all of its outstanding shares.

**f. Dissolution**

54. Following the Liquidator having rendered a final account to this Court after the completion of the liquidation, Twinco will be dissolved through the filing by the Liquidator of articles of dissolution and the issuance by the CBCA Director of a certificate of dissolution.

**VI. CONCLUSIONS**

55. For the reasons set forth above, the Applicant believes that it is both appropriate and necessary that the relief sought in the draft Liquidation Order be granted. With such relief, the Applicant will be able to proceed, through the Liquidator, with the distribution of its assets and the discharge of its liabilities and its dissolution thereafter, in an orderly fashion, for the benefit of all stakeholders.
56. Considering the circumstances outlined herein, the Applicant respectfully submits that the notices given for the presentation of this Originating Application are proper and sufficient.

57. The Applicant respectfully submits that this Originating Application be granted as requested and on the terms proposed.

**WHEREFORE, MAY THIS COURT:**

1. **GRANT** the within Originating Application.
2. **ISSUE** an order substantially in the form of the draft order attached hereto as **Exhibit P-1** in support of this Application.

**THE WHOLE WITHOUT COSTS**, save and except in case of contestation.

**DATED** at St. John 's, in the Province of Newfoundland and Labrador, on the 14<sup>th</sup> of January, 2021.

**Solicitors for the Applicant**



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**Smith Law Offices**

Whose address for service is:  
The Law Chambers, 2<sup>nd</sup> Floor  
263 Duckworth Street  
St. John's, NL A1C 1G9

Jamie M. Smith, Q.C.  
709-753-1306  
[jsmith@scwlegal.com](mailto:jsmith@scwlegal.com)

and



---

**Stikeman Elliott LLP**

Whose address for service is:  
1155 René-Lévesque Blvd. W.  
41<sup>st</sup> Floor  
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Simon Ledsham  
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[sledsham@stikeman.com](mailto:sledsham@stikeman.com)

TO: The Director Appointed Under the  
*Canada Business Corporations Act*  
Corporations Canada  
C.D. Howe Building  
235 Queen Street  
Ottawa, Ontario  
K1A 0H5

Twin Falls Power Corporation  
Limited  
Hydro Place  
500 Columbus Drive  
P.O. Box 12500  
St. John's, NL  
A1B 3T5

Wabush Resources Inc.  
c/o Cox & Palmer  
Suite 1000, Scotia Centre  
235 Water Street  
St. John's, NL  
A1C 1B6

Wabush Iron Co. Limited  
c/o Cox & Palmer  
Suite 1100, Scotia Centre  
235 Water Street  
St. John's, NL  
A1C 1B6

Iron Ore Company of Canada  
c/o McInnes Cooper  
P.O. Box 5939  
5th Floor, 10 Fort William Place  
St. John's, NL  
A1C 5X4

TO: PricewaterhouseCoopers Inc.  
Cogswell Tower  
2000 Barrington St., Suite 1101  
Halifax, NS  
B3J 3K1

Court File No. 2021 \_01G \_\_\_\_\_

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION

IN THE MATTER OF the *Canada Business Corporation Act*, R.S.C. 19845, c. C-44, as amended (the "CBCA")

AND IN THE MATTER OF THE LIQUIDATION  
OF TWIN FALLS POWER CORPORATION  
LIMITED

BETWEEN:

CHURCHILL FALLS (LABRADOR)  
CORPORATION LIMITED

APPLICANT

AND:

PRICEWATERHOUSECOOPERS INC.

PROPOSED LIQUIDATOR

AND:

THE DIRECTOR UNDER THE CBCA

FIRST RESPONDENT

AND:

TWIN FALLS POWER CORPORATION  
LIMITED

SECOND RESPONDENT

AND:

WABUSH RESOURCES INC.

THIRD RESPONDENT

AND:

WABUSH IRON CO. LIMITED

FOURTH RESPONDENT

AND:

IRON ORE COMPANY OF CANADA

FIFTH RESPONDENT

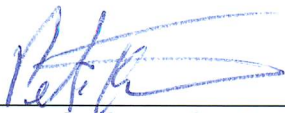
**Affidavit**

I, James Haynes, of Conception Bay South, Newfoundland and Labrador, affirm and say as follows:

1. I have read and I understand the foregoing *Originating Application for the Issuance of a Court-Supervised Liquidation and Dissolution Order (Sections 214(1)(b)(ii), 215 and 217 of the Canada Business Corporations Act)* (the "**Application**").
2. I am the Executive Vice President of Power Supply of the applicant Churchill Falls (Labrador) Corporation Limited and a duly authorized representative for the purposes hereof. As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. All the facts alleged in the Application of which I have personal knowledge are true to the best of my knowledge, information, and belief, and where I have obtained facts alleged in the Application from others, I believe them to be true.

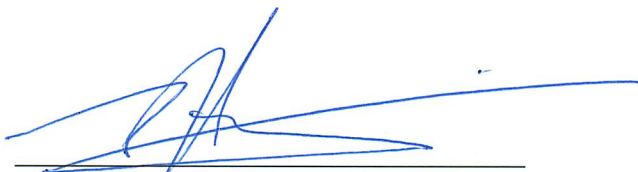
**AFFIRMED**

at St. John's, Newfoundland and  
Labrador on the 14<sup>th</sup> of  
January, 2021, before me



Commissioner for Oaths  
for the Province of  
Newfoundland and Labrador

Peter Hickman - Barrister - Newfoundland & Labrador



James Haynes



Court File No. 2021 01G \_\_\_\_\_

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION**

**IN THE MATTER OF** the *Canada Business Corporation Act*, R.S.C. 19845, c. C-44, as amended (the "**CBCA**")

**AND IN THE MATTER OF THE LIQUIDATION  
OF TWIN FALLS POWER CORPORATION  
LIMITED**

**BETWEEN:**

**CHURCHILL                      FALLS  
(LABRADOR)                  CORPORATION  
LIMITED**

**APPLICANT**

**AND:**

**PRICEWATERHOUSECOOPERS  
INC.**

**PROPOSED LIQUIDATOR**

**AND:**

**THE DIRECTOR UNDER THE  
CBCA**

**FIRST RESPONDENT**

**AND:**

**TWIN              FALLS              POWER  
CORPORATION LIMITED**

**SECOND RESPONDENT**

**AND:**

**WABUSH RESOURCES INC.**

**THIRD RESPONDENT**

**AND:**

**WABUSH IRON CO. LIMITED**

**FOURTH RESPONDENT**

**AND:**

IRON ORE COMPANY OF  
CANADA

FIFTH RESPONDENT

**Notice to the Respondents**

You are hereby notified that you must attend before a judge presiding in chambers at the Courthouse at 309 Duckworth Street, St. John's, Newfoundland and Labrador, on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_ to set a date for the hearing of the application in the above noted matter.

**AND TAKE FURTHER NOTICE** that the judge may make an order in favour of the applicant in your absence and without further notice unless you or your solicitor appear at the time and place noted above.

TO: The Director Appointed Under the  
*Canada Business Corporations  
Act*  
Corporations Canada  
C.D. Howe Building  
235 Queen Street  
Ottawa, Ontario  
K1A 0H5

Twin Falls Power Corporation  
Limited  
Hydro Place  
500 Columbus Drive  
P.O. Box 12500  
St. John's, NL  
A1B 3T5

Wabush Resources Inc.  
c/o Cox & Palmer  
Suite 1000, Scotia Centre  
235 Water Street  
St. John's, NL  
A1C 1B6

Wabush Iron Co. Limited  
c/o Cox & Palmer  
Suite 1100, Scotia Centre  
235 Water Street  
St. John's, NL  
A1C 1B6

Iron Ore Company of Canada  
c/o McInnes Cooper  
P.O. Box 5939  
5th Floor, 10 Fort William Place  
St. John's, NL  
A1C 5X4

PricewaterhouseCoopers Inc.  
Cogswell Tower  
2000 Barrington St., Suite 1101  
Halifax, NS  
B3J 3K1

# **SCHEDULE 6**

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF **MONTREAL**

N<sup>o</sup>: **500-11-048114-157**

**SUPERIOR COURT**

Commercial Division

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

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**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

---

**MOTION FOR THE EXPANSION OF THE MONITOR'S POWERS<sup>1</sup>**  
(Sections 11 and 23 of the *Companies' Creditors Arrangement Act*)

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<sup>1</sup> 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), and the CBCA Motion (as defined herein).

**TO THE HONOURABLE MR. JUSTICE MICHEL PINSONNAULT, J.S.C. OR ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTRÉAL, THE PETITIONERS AND THE MISES-EN-CAUSE SUBMIT:**

**1. BACKGROUND**

1. On January 27, 2015, the CCAA Court issued an Initial Order (as subsequently amended, rectified and/or restated 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 (“**8568391**”) 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 (all such parties together (other than 8568391 from and after November 21, 2019 when 8568391 ceased to be a CCAA Party upon its wind-up and dissolution), the “**Bloom Lake CCAA Parties**”), as appears from the Initial Order dated January 27, 2015, which forms part of the Court record.
2. On May 20, 2015, the CCAA Court issued an Initial Order (as subsequently amended, rectified and/or restated the “**Wabush Initial Order**”; the Wabush Initial Order, together with the Bloom Lake Initial Order, the “**Initial Orders**”) 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**”).
3. Pursuant to the Bloom Lake Initial Order and the Wabush Initial Order, a stay of proceedings was ordered in respect of the CCAA Parties, which has been extended on several occasions, most recently on November 27, 2020, and currently expires on May 31, 2021, as now appears from the Court record.
4. Pursuant to the Bloom Lake Initial Order and the Wabush Initial Order, FTI Consulting Canada Inc. (“**FTI**”) was appointed as monitor in respect of the business and financial affairs of the CCAA Parties (the “**Monitor**”).
5. On June 29, 2018, Mr. Justice Hamilton issued an order sanctioning the Joint Plan of Compromise and Arrangement dated as of May 16, 2018 (as subsequently amended, rectified and/or restated, the “**Plan**”), the whole as appears from the Court record.
6. On July 31, 2018, the Monitor issued the Plan Implementation Date Certificate, confirming the implementation of the Plan on July 31, 2018, the whole as appears from the Court record.
7. During the CCAA Proceedings, the CCAA Parties have sold all of their assets other than the combined 17.062% equity interest (the “**Twinco Interest**”) held by Wabush Iron and Wabush Resources in Twin Falls Power Corporation (“**Twinco**”).

8. Pursuant to the Plan, the net proceeds of sales and other recoveries are to be distributed to the creditors of the Participating CCAA Parties (as defined therein) in accordance with the terms and conditions of the Plan.
9. Since the implementation of the Plan, the CCAA Parties, with the assistance of the Monitor, have been working to wind down the estates of the CCAA Parties so that the net proceeds from such recoveries and realizations can finally be distributed to the creditors of the CCAA Parties as soon as possible.
10. The initial interim distributions to Affected Creditors with Proven Claims under the Plan (as defined therein) took place in August and September 2018.
11. A second interim distribution to such Affected Creditors with Proven Claims is anticipated to take place at or around the mid-of May, 2021.
12. The CCAA Parties have been informed by the Monitor that a significant majority of the creditors of Wabush are former employees of Wabush Mines, many of whom are elderly, and who are reasonably assumed to be anxious to receive their final distributions as soon as possible.
13. Subject to the resolution and collection of certain outstanding tax refunds, the CCAA Parties have realized on all of their assets other than Twinco Interest.
14. On November 16, 2020, in furtherance of the CCAA Parties' efforts to monetize the Twinco Interest, the CCAA Parties filed a *Motion for the Winding up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* (the "**CBCA Motion**") on a *pro forma* basis, which was subsequently scheduled by the Court to be heard on January 29, 2021. A copy of the CBCA Motion is communicated herewith as **Exhibit R-1**.
15. On January 27, 2021, this Court adjourned the CBCA Motion, the CFLCo Contestation (as defined below) and the Twinco Dismissal Motion (as defined below), *sine die*, and on February 22, 2021, the Supreme Court of Newfoundland and Labrador (the "**Newfoundland Court**") adjourned the Twinco Liquidation Motion (as defined below), in order to allow the parties an opportunity to explore the possibility of a consensual resolution of the matters raised in those proceedings.
16. Those negotiations did not proceed in any meaningful way, and the CCAA Parties are seeking this *Motion for the Expansion of the Monitor's Powers* to facilitate the recovery of assets for the benefit of the CCAA Parties' creditors and the winding up of the CCAA Parties' estate and termination of the CCAA Proceedings.
17. In addition, and concurrent with the filing of this Motion, the CCAA Parties will also make the CBCA Motion returnable on a *pro forma* basis on the same date.

## 2. ORDER SOUGHT

18. On this Motion, the CCAA Parties hereby seek the issuance of an Order expanding the powers of the Monitor so that it may, directly or through its counsel, do the following:
  - a) compel the production, from time to time, from any Person having possession, custody or control of any books, records, accountings, documents,

correspondences or papers, electronically stored or otherwise, relating to the Twinco Interest, CFLCo Indemnity and CFLCo Maintenance Obligations (each as defined below), including the Twinco Requested Information (as defined below) (the “**Requested Information**”) in respect of the period from and after January 1, 2010 and such earlier periods as may be approved by further order of the Court (the “**Disclosure Period**”);

- b) require any Requested Information to be delivered within thirty (30) days of the Monitor’s request or such longer period as the Monitor may agree to in its discretion; and
- c) conduct investigations from time to time, including examinations under oath of any Person reasonably thought to have knowledge relating to the Requested Information, in respect of the Disclosure Period.

### 3. OVERVIEW OF FACTS

#### 3.1 Twin Falls Power Corporation

- 19. Twinco is an incorporated joint venture formed under the *Canada Business Corporations Act* (the “**CBCA**”) on February 18, 1960 among Churchill Falls (Labrador) Corporation Limited (“**CFLCo**”), Wabush Iron and Wabush Resources, and the Iron Ore Company of Canada (“**IOC**”), among others.
- 20. As at December 31, 2019, Twinco was owned 33.3% by CFLCo, 49.6% by IOC, 4.6% by Wabush Iron and 12.5% by Wabush Resources.
- 21. Pursuant to the Participation Agreement, dated January 2, 1977, which serves as the *de facto* unanimous shareholders’ agreement for the Twinco joint venture, CFLCo has the right to appoint three directors of Twinco for every director nominated by IOC, Wabush Resources and Wabush Iron.
- 22. On July 14, 2017, the then two nominee directors of Wabush, Patrick Ryan and Clifford Smith, resigned in conjunction with the sale by Wabush of the Scully Mine, which was the last material asset of the CCAA Parties to be sold in these CCAA Proceedings. No replacement nominees of Wabush have been appointed to the Twinco Board.
- 23. According to a Federal Corporation Information Report dated as of August 19, 2020, the current directors of Twinco are Oral Burry, James Meany, Dana Pope, Michael Roberts, James Haynes, Benoit Palmer and Maurice McClure. Based on the names of their employers as noted in their LinkedIn profiles, it is the CCAA Parties’ understanding that Benoit Palmer and Maurice McClure are IOC nominees and the remaining five directors, being employees of Nalcor Energy (“**Nalcor**”), which is the parent company of CFLCo, are CFLCo nominees. Accordingly, CFLCo is the controlling shareholder of the Board of Directors of Twinco. A copy of the Federal Corporation Information Report is communicated herewith as **Exhibit R-2**.
- 24. Pursuant to Twinco’s FY2019 Audited Financial Statements, Twinco has approximately \$6.1M in cash and cash equivalent assets (the “**Twinco Cash**”) and approximately \$46,000 of liabilities. A copy of Twinco’s 2019 Audited Financial Statements is communicated herewith as **Exhibit R-3**.



25. The history of the Twinco Plant (as defined below) is long and complicated and is set out in significant detail in the CBCA Motion, the highlights of which is set out below.
26. In 1961, CFLCo licensed to Twinco the rights to develop a 225-megawatt hydroelectric generating plant on the Unknown River in Labrador (the “**Twinco Plant**”).
27. In addition to the Twinco Plant, Twinco had owned a number of other assets including: (i) the physical building which houses the Twinco Plant (the “**Twinco Building**”); (ii) the transmissions lines from the Twinco Plant to its consumers (the “**Twinco Transmission Lines**”); and (iii) the equipment which comprises the Twinco Plant and was used in the production of hydro-electric power (the “**Twinco Machinery**”), and collectively, with the Twinco Building and Twinco Transmission Lines, and such other assets of Twinco, the “**Twinco Assets**”).
28. In 1974, CFLCo took over the Twinco Plant and undertook comprehensive maintenance obligations in respect of the Twinco Plant (the “**CFLCo Maintenance Obligations**”), and indemnified Twinco in respect of those obligations and environmental liabilities in connection with the Twinco Plant and Twinco Assets (the “**CFLCo Indemnity**”), each as more particularly detailed in the CBCA Motion.
29. The Twinco Plant was placed into an extended shutdown in 1974. Since that time until today, based on various environmental assessments commissioned by Twinco over the years as summarized in various Audited Financial Statements of Twinco, the CCAA Parties understand there to be potential environmental liability that may have occurred in respect of the Twinco Plant and Twinco Assets (the “**Potential Environmental Liabilities**”).
30. The CCAA Parties are of the view that the responsibility for any environmental liability lies squarely with CFLCo and not Twinco, pursuant to CFLCo’s Maintenance Obligations and CFLCo Indemnity.
31. It is not clear to the CCAA Parties and the Monitor whether, and to what extent, Twinco may have funded maintenance or environmental remediation that was CFLCo’s responsibility, and for which Twinco may have a claim against CFLCo for reimbursement.
32. As stated in the CBCA Motion, 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.
33. The CCAA Parties believe that CFLCo did not support further distributions to the shareholders because it wants to ensure a cash pool from Twinco to pay for the Potential Environmental Liabilities notwithstanding the CFLCo Indemnity and CFLCo Maintenance Obligations.
34. 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. A copy of Twinco’s Articles of Continuance as obtained from Twinco’s counsel is communicated herewith as **Exhibit R-4**.

35. Wabush Iron and Wabush Resources' share of the Remaining Twinco Cash (as defined below) is approximately \$1,040,000, a material amount, together with their *pro rata* share of what other monies may be subject to reimbursement claims against CFLCo.
36. As the information to determine the amount of maintenance and other indemnifiable expenses that may be subject to reimbursement by CFLCo is within the knowledge of Twinco, an accounting was requested in the CBCA Motion.
37. Without this information, it is impossible for the CCAA Parties or the Monitor to calculate what the true approximate value of the Twinco Interest may be to ensure that the CCAA Parties' creditors receive appropriate recovery from the Twinco Interest.

### 3.2 The CBCA Motion

38. The history of the CCAA Parties repeated attempts to engage in a constructive dialogue with Twinco and its majority shareholder CFLCo, is set out in detail in the CBCA Motion.
39. While the CCAA Parties had been hopeful that a consensual resolution could be achieved, they concluded that based on the lack of desire of Twinco and CFLCo to engage in a constructive manner, a consensual resolution was not possible.
40. Accordingly, on November 16, 2020, the CCAA Parties filed the CBCA Motion, seeking 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 (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;
  - 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.

### 3.3 **Twinco's and CFLCo's Conduct After the Adjournment of the Adjourned Proceedings**

41. In response to the CBCA Motion, Twinco filed a Motion by Twin Falls Power Corporation to Dismiss the Application for Lack of Jurisdiction and for Forum Non-Conveniens dated January 15, 2021, to dismiss the CCAA Parties' CBCA Motion for lack of jurisdiction of this Court to hear the CBCA Motion and for *forum non-conveniens* (the "**Twinco Dismissal Motion**"), and CFLCo filed a Contestation to the CBCA Motion dated January 15, 2021 (the "**CFLCo Contestation**"), both to be heard by this Court on January 29, 2021, along with the CBCA Motion. A copy of the Twinco Dismissal Motion and the CFLCo Contestation are communicated herewith as **Exhibit R-5** and as **Exhibit R-6**, respectively.
42. In the CFLCo Contestation, CFLCo advised the CCAA Parties that despite years of resisting to do so, CFLCo was going to imminently commence an originating application for a court supervised liquidation and dissolution of Twinco in the Newfoundland Court (the "**Twinco Liquidation Motion**"), a copy of which was attached to the CFLCo Contestation as Exhibit C-1.
43. The Twinco Liquidation Motion was formally issued on January 21, 2021, to be heard on February 23, 2021. A copy of the Twinco Liquidation Motion as issued is communicated herewith as **Exhibit R-7**.
44. Subject to receipt of the Twinco Dismissal Motion and CFLCo Contestation and the CBCA Motion hearing date, the parties agreed to seek an adjournment of the CBCA Motion, Twinco Dismissal Motion, the CFLCo Contestation and the Twinco Liquidation Motion, in each case without prejudice to each party's right to seek a new hearing date for any of such proceedings on 14 days' prior written notice to the other parties.
45. On January 27, 2021, this Court adjourned *sine die* the CBCA Motion, the Twinco Dismissal Motion, and the CFLCo Contestation and on February 22, 2021, CFLCo confirmed the adjournment *sine die* of the Twinco Liquidation Motion with the Newfoundland Court (all such adjourned proceedings, the "**Adjourned Proceedings**").
46. By letter dated February 1, 2021 (the "**February 1 Letter**"), counsel for the CCAA Parties sought to confirm its understanding of the terms of the adjournment of the Adjourned Proceedings as amongst the parties. A copy of the February 1 Letter is communicated herewith as **Exhibit R-8**.
47. In the February 1 Letter, CCAA Parties' counsel also set out the documents and information that was to be provided by Twinco and CFLCo in furtherance of the proposed efforts to reach a potential consensual resolution. The requested documents and information were to be provided, within 30 days of the letter, or within a reasonably anticipated time that would be required to obtain any requested information that was not readily available for delivery to the CCAA Parties.
48. The requested documents and information were intended to provide the CCAA Parties and the Monitor with a general understanding of the approximate range of Reimbursable Environmental/Maintenance Costs that could be at issue to better enable the CCAA Parties and Monitor to understand the approximate potential value of the Twinco Interest. Without this information, a potential consensual resolution would be extremely difficult, if not impossible, to reach.

49. The requested documents and information in the February 1 Letter, included, among other things, the following information:
- a) amount of cash and cash equivalents held by Twinco as at January 31, 2021 and a budget of expenses anticipated to be incurred by Twinco to the date of the wind-up and liquidation that are not currently anticipated to be subject to any reimbursement or sharing obligation;
  - b) copies of audited financial statements for Twinco for the years ended December 31, 1974 to 2019 (excluding audited financial statements for the years ended December 31, 2004, 2005, 2008, 2013-2019); and
  - c) a summary of all expenses incurred by Twinco in respect of environmental and maintenance and other costs in respect of the Twinco Plant, Twinco Building and equipment located thereon for which Twinco has not received full reimbursement from CFLCo or any other party, for the period from July 1974 to December 31, 2020, as described in more detail in the February 1 Letter.

(the requested documents in the February 1 Letter, the “**Twinco Requested Information**”).

50. The CCAA Parties note that as shareholders, Wabush Iron and Wabush Resources are already entitled to copies of all annual financial statements of Twinco pursuant to Section 155 of the CBCA. The balance of the information requested are in the nature of information relating to expenses incurred by Twinco relating to maintenance and environmental liabilities and Twinco’s updated cash position as at January 31, 2021 and Twinco’s go forward budget to the anticipated date of its wind-up and dissolution.
51. However, respective counsel for Twinco and CFLCo both denied any undertaking to use good faith efforts to provide any of the Twinco Requested Information to the CCAA Parties and Monitor and both strongly resisted the production of any documentation to the CCAA Parties and Monitor.
52. By letter dated February 4, 2021, counsel for Twinco stated that Twinco made no such undertakings, any request would be taken under consideration – “nothing more”, that they would not, without specific direction from the Twinco directors, offer to provide any documents, and that it would seek instructions from Twinco’s directors in respect of the Twinco Requested Information and whether it was reasonable to “even consider” undertaking to provide the Twinco Requested Information. [Emphasis Added] A copy of the February 4, 2021 letter is communicated herewith as **Exhibit R-9**.
53. Likewise, by letter dated February 5, 2021, CFLCo’s counsel denied any good faith undertaking to provide any information requested by the CCAA Parties and stated that the “ultimate decision to provide the requested documentation lies with Twinco”. A copy of the February 5, 2021 letter is communicated herewith as **Exhibit R-10**.
54. On February 16, 2021, Twinco’s counsel sent a subsequent letter to the CCAA Parties’ counsel confirming that Twinco’s board of directors, a majority of who are CFLCo’s nominees, decided that Twinco would not provide any of the Twinco Requested Information to the CCAA Parties, as there was no “use” in such undertaking. Instead, Twinco’s counsel informed the CCAA Parties that Twinco’s directors have decided only to

provide the CCAA Parties with Twinco's audited financial statements from 2013 – 2019, which financial statements the February 1 Letter already expressly noted were excluded from the CCAA Parties' request (as the CCAA Parties already have copies of these financial statements). A copy of the February 16, 2021 letter (without attachments) is communicated herewith as **Exhibit R-11**.

55. While counsel for Twinco and CFLCo expressed concern that the CCAA Parties' requests went back to 1974, neither counsel proposed to narrow the scope of the information request to a shorter time period but instead issued blanket refusals and denied any good faith undertaking to engage in the disclosure of such information. The Monitor's expanded powers being sought in this Motion are initially proposed to go back to January 1, 2010 only, with an ability to request the Court to expand the time period to include earlier periods.
56. CCAA Parties' counsel and the Monitor's counsel sought to engage Twinco and CFLCo's counsel to try to find a resolution to the disclosure impasse and have been informed by Twinco's counsel that Twinco is not prepared to provide any additional documentation beyond the financial statements it provided which the CCAA Parties already had.
57. By letter dated May 6, 2021, counsel for the CCAA Parties expressed their disappointment and frustration over the lack of good faith demonstrated by Twinco and CFLCo towards pursuing a consensual resolution and the resulting delay that ensued since January 27, 2021 when the Adjourned Proceedings were adjourned. In that letter, Twinco and CFLCo were advised that the CCAA Parties have no alternative but to seek this Motion and to make the CBCA Motion returnable on a *pro forma* basis on the same date. A copy of the letter is communicated herewith as **Exhibit R-12**.

#### **4. RELIEF SOUGHT**

58. The CCAA Parties are seeking an order, with the support of the Monitor, pursuant to sections 11 and 23 of the CCAA, specifically sections 23(1)(c) and (k), for the expansion of the powers of the Monitor in these CCAA Proceedings, so that it may, directly or through its counsel:
  - a) compel the production, from time to time, from any Person with possession, custody or control of the Requested Information in respect of the Disclosure Period;
  - b) require any Requested Information to be delivered within thirty (30) days of the Monitor's request or such longer period as the Monitor may agree to in its discretion; and
  - c) conduct investigations from time to time, including examinations under oath of any Person reasonably thought to have knowledge relating to the Requested Information, in respect of the Disclosure Period.
59. These powers are necessary to enable the Monitor to: (i) assist the CCAA Parties with the recovery of value for the CCAA Parties' creditors from the last remaining asset of the CCAA Parties' estate outside of tax refunds, (ii) fulfill its statutory duties to investigate and properly value, the assets and the liabilities of the CCAA Parties, and (iii) facilitate the winding-up and termination of these CCAA Proceedings.

60. For the reasons noted in this Motion, the true value of the Twinco Interest is unknown as both Twinco and CFLCo have continued to refuse to provide the CCAA Parties or the Monitor with any information in respect of the nature and quantum of the Reimbursable Environmental/Maintenance Costs that would assist the CCAA Parties and Monitor to properly value the Twinco Interest.
61. The valuation of the Twinco Interest is of particular importance as, among other things:
  - a) the Twinco Interest is the last asset of the CCAA Parties that has not yet been monetized in these CCAA Proceedings, apart the collection of outstanding tax refunds;
  - b) the Twinco Interest would increase the Plan creditors' recoveries;
  - c) the monetization of the Twinco Interest is one of the last material steps to be taken in these CCAA Proceedings, apart from the collection of the outstanding tax refunds, before the CCAA Parties can complete their wind-up of these CCAA Proceedings and provide a Final Distribution to the Plan creditors;
  - d) expanding the Monitor's powers would permit it to further the valid purpose of the CCAA engaged in the present circumstances of maximizing recovery for the CCAA Parties' creditors; and
  - e) the monetization of the Twinco Interest would fulfill the purpose of the Plan which, as outlined in section 2.1 therein, is to distribute the net proceeds of the Participating CCAA Parties' assets to the Plan creditors.
62. Twinco's and CFLCo's continuous refusal to constructively engage with the CCAA Parties and the Monitor has only served to perpetuate the status quo, resulting in further delays to the ability of the CCAA Parties' creditors to obtain a Final Distribution and complete the winding-up and termination of these CCAA Proceedings.
63. Twinco and CFLCo have continued to demonstrate that they will not cooperate in connection with the realization of the Twinco Interest and instead will engage in actions that seek only to preserve the status quo by frustrating and delaying all realization efforts by the CCAA Parties. Therefore, it is respectfully submitted that the requested relief is necessary and appropriate in the circumstances and is in the best interests of all the CCAA Parties' stakeholders.
64. The CCAA Parties submit that the valuation of the Twinco Interest is of particular importance to these CCAA Proceedings and should be conducted by the Monitor for the benefit of the creditors irrespective of the proposed liquidation and wind-down of Twinco.
65. Given the inextricable conflict of CFLCo and its new strategic attempt to control the liquidation and wind-down process of Twinco in Newfoundland and Labrador, which it had previously steadfastly opposed to frustrate the CCAA Parties, it is appropriate for this Court to grant this Motion, expand the powers of the Monitor and allow it to proceed with the long-delayed valuation of the Twinco Interest without further obfuscation from CFLCo.
66. The CCAA Parties submit that this Court should grant the present Motion.

#### **4.1 Monitor's Support**

67. The CCAA Parties have consulted extensively with the Monitor as to the expansion of the Monitor's powers sought in this Motion and the Monitor has confirmed to the CCAA Parties that the Monitor supports this Motion and the relief being sought herein.

#### **5. PROCEDURAL MATTERS**

68. The Petitioners submit that the notices given of the presentation of the present Motion are proper and sufficient.
69. Pursuant to paragraph 54 of the Bloom Lake Initial Order and to paragraph 56 of the Wabush Initial Order, all motions in these CCAA Proceedings are to be brought on not less than ten (10) calendar days' notice to all Persons on the service list. Each motion must specify a date (the "**Initial Return Date**") and time for the hearing.
70. The service of the present Motion serves as notice pursuant to paragraph 54 of the Bloom Lake Initial Order and paragraphs 47 and 56 of the Wabush Initial Order.
71. Paragraph 55 of the Bloom Lake Initial Order and paragraph 57 of the Wabush Initial Order require that any Person wishing to object to the relief sought on a motion in the CCAA Proceedings must serve responding motion materials or a notice stating the objection to the motion and grounds for such objection (a "**Notice of Objection**") in writing to the moving party and the Monitor, with a copy to all persons on the service list, no later than 5 p.m. Montréal time on the date that is four (4) calendar days prior to the Initial Return Date (the "**Objection Deadline**"). Accordingly, any parties wishing to object to the relief sought on this Motion must serve responding motion materials or a Notice of Objection by no later than 5 p.m. Montréal time on May 17, 2021.
72. Paragraph 57 of the Bloom Lake Initial Order and paragraph 59 of the Wabush Initial Order provide that the Monitor shall communicate with the Judge and the service list with respect to the Hearing Details.

#### **6. CONCLUSIONS**

73. In light of the foregoing, the Petitioners hereby respectfully seek an order expanding the Monitor's powers substantially in the form of the Draft Order (**Exhibit R-13**).
74. The present Motion is well founded in fact and in law.

#### **FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present Motion;

**ISSUE** the order in the form of the Draft Order, Exhibit R-13, communicated in support hereof;

**WITHOUT COSTS**, save and except in case of contestation.

Montréal, May 6, 2021

*Blake, Cassels & Graydon L.L.P.*

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**BLAKE, CASSELS & GRAYDON LLP**

Attorneys for the Petitioners and the Mises-en-cause

(Court Code: BB-8098)

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Montréal, Quebec H3B 4N8

**M<sup>re</sup> Bernard Boucher**

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Fax: (514) 982-4099

Our reference: 11573-374



**AFFIDAVIT**

I, the undersigned, James Graham, the General Counsel & Secretary of Bloom Lake General Partner Limited, Cliffs Québec Iron Mining ULC, Quinto Mining Corporation, Wabush Resources Inc., Bloom Lake Railway Company Limited, Wabush Iron Co. Limited, and the Secretary of Arnaud Railway Company and Wabush Lake Railway Company Limited, having a place of business at 200 Public Square, Cleveland, Ohio, solemnly affirm that all the facts alleged in the present *Motion for the Expansion of the Monitor's Powers* are true.

AND I HAVE SIGNED:

  
James Graham

SOLEMNLY DECLARED before me at  
Cleveland, Ohio, on this  
6th day of May, 2021

  
Notary Public



**KELLY L. BERRY**  
**NOTARY PUBLIC**  
**STATE OF OHIO**  
Recorded in  
**Medina County**  
My Comm. Exp. 4/10/2023

## **NOTICE OF PRESENTATION**

**TO: Service List**

**TAKE NOTICE** that the present *Motion for the Expansion of the Monitor's Powers* will be presented virtually for adjudication before the Honourable Michel A. Pinsonnault, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on **May 21, 2021, at 9:30 am in virtual room #12.61.**

The coordinates to join the hearing are the following:

### **Join the hearing with Microsoft Teams**

[+1 581-319-2194](tel:+15813192194) Canada, Quebec (charges will apply)

[\(833\) 450-1741](tel:8334501741) Canada (toll-free)

Conference ID: 895 211 717#

Join by videoconference :

[teams@teams.justice.gouv.qc.ca](mailto:teams@teams.justice.gouv.qc.ca) , VTC Conference ID: 1160455398

**DO GOVERN YOURSELF ACCORDINGLY.**

Montréal, May 6, 2021

*Blake, Cassels & Graydon L.L.P.*

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**BLAKE, CASSELS & GRAYDON LLP**

Attorneys for the Petitioners and the Mises-en-cause

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF **MONTREAL**

**SUPERIOR COURT**

Commercial Division

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

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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

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**LIST OF EXHIBITS**

(In support of the *Motion for the Expansion of the Monitor's Powers*)

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**R-1**

Motion for the Winding up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief;

- R-2 Federal Corporation Information Report dated as of August 19, 2020;
- R-3 Twinco's 2019 Audited Financial Statements;
- R-4 Twinco's Articles of Continuance dated August 1, 1980;
- R-5 Motion by Twin Falls Power Corporation to Dismiss the Application for Lack of Jurisdiction and for Forum Non-Conveniens;
- R-6 Contestation to the CBCA Motion filed by CFLCo;
- R-7 Originating application for a Court supervised liquidation and dissolution of Twinco in the Newfoundland Court;
- R-8 February 1, 2021 letter from counsel for the CCAA Parties;
- R-9 February 4, 2021 letter from Twinco's counsel;
- R-10 February 5, 2021 letter from CFLCo's counsel;
- R-11 February 16, 2021 letter from Twinco's counsel;
- R-12 May 6, 2021 letter from counsel for the CCAA Parties;
- R-13 Draft Order.

Montréal, May 6, 2021

*Blake, Cassels & Graydon L.L.P.*

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**BLAKE, CASSELS & GRAYDON LLP**  
Attorneys for the Petitioners and the Mises-en-cause

N°: 500-11-048114-157

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**SUPERIOR COURT  
DISTRICT OF MONTREAL  
(Commercial Division)**

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**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

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**MOTION FOR THE EXPANSION OF THE MONITOR'S  
POWERS, AFFIDAVIT, NOTICE OF PRESENTATION AND  
LIST OF EXHIBITS**

(Sections 11 and 23 of the CCAA)

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**ORIGINAL**

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The logo for the law firm Blakes, featuring the word "Blakes" in a stylized, cursive script.

**M<sup>re</sup> Bernard Boucher**

**BB-8098**

**BLAKE, CASSELS & GRAYDON LLP**

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Our File: 11573-374

# **SCHEDULE 7**

# SUPERIOR COURT

(Commercial Division)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-11-048114-157

DATE: July 14, 2021

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**BY THE HONOURABLE MICHEL A. PINSONNAULT, J.S.C.**

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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**

Twinco Mises-en-cause

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**JUDGMENT ON MOTION FOR THE EXPANSION OF THE MONITOR'S POWERS**  
(Sections 11 and 23 of the *Companies' Creditors Arrangement Act*)

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**OVERVIEW**

[1] With their Motion, the Petitioners and the Mises en cause are seeking an order from this Court granting additional powers to the Monitor (the “**Motion**”) so that the latter may, directly or through its counsel, do the following:

a) compel the production, from time to time, from any Person having possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the Twinco Interest, CFLCo Indemnity and CFLCo Maintenance Obligations (each as defined hereafter), including the Twinco Requested Information (as defined below) (the “**Requested Information**”) in respect of the period from and after January 1, 2010, and such earlier periods as may be approved by further order of the Court (the “**Disclosure Period**”);

b) require any Requested Information to be delivered within thirty (30) days of the Monitor’s request or such a longer period as the Monitor may agree to in its discretion; and

c) conduct investigations from time to time, including examinations under oath of any Person reasonably thought to have knowledge relating to the Requested Information, in respect of the Disclosure Period.

[the “**Expanded Monitor Powers**”]

[2] Previously, on June 29, 2018, Mr. Justice Stephen W. Hamilton issued an order to sanction the Joint Plan of Compromise and Arrangement dated as of May 16, 2018 (the “**Plan**”) submitted jointly by the Petitioners and the Mises en cause (collectively the “**CCAA Parties**” for the purposes hereof).

[3] During the present CCAA proceedings initiated in January 2015 pursuant to the provisions of the *Companies’ Creditors Arrangement Act* (the “**CCAA**”), the CCAA Parties have sold all of their assets other than the combined 17.062% equity interest (the “**Twinco Interest**”) held in Twin Falls Power Corporation (“**Twinco**”) by Wabush Iron Co. Limited and Wabush Resources Inc. (collectively “**Wabush**”).

[4] Pursuant to the Plan, the net proceeds of sales and other recoveries are to be distributed to the creditors of the Participating CCAA Parties<sup>1</sup> in accordance with the terms and conditions of the Plan.

[5] Since the implementation of the Plan, the CCAA Parties, with the assistance of the Monitor, have been working to wind down the estates of the CCAA Parties so that the net

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<sup>1</sup> As defined in the Plan.



proceeds from such recoveries and realizations can finally be distributed to the creditors of the CCAA Parties as soon as possible.

[6] The initial interim distributions to the creditors with proven claims under the Plan took place in August and September 2018.

[7] A second interim distribution to such creditors with proven claims took place in mid-of May 2021.

[8] A final distribution will not occur until the realization or collection of all material assets of the CCAA Parties including the Twinco Interest.

[9] The CCAA Parties were informed by the Monitor that a significant majority of the creditors of Wabush are former employees of Wabush Mines, many of whom are elderly, and who are reasonably assumed to be anxious to receive their final distributions as soon as possible.

[10] Subject to the resolution and collection of certain outstanding tax refunds, the CCAA Parties have realized on all of their assets other than the Twinco Interest.

[11] On November 16, 2020, in furtherance of the CCAA Parties' efforts to monetize the Twinco Interest, the CCAA Parties filed a *Motion for the Winding up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* (the "**CBCA Motion**") on a *pro forma* basis, which was subsequently scheduled by the Court to be heard on January 29, 2021.

[12] On January 29, 2021, the Court adjourned the CBCA Motion, the CFLCo Contestation<sup>2</sup> and the Twinco Dismissal Motion<sup>3</sup> *sine die*, and on February 22, 2021, the Supreme Court of Newfoundland and Labrador (the "**Newfoundland Court**") adjourned the Twinco Liquidation Motion<sup>4</sup>, in order to allow the parties an opportunity to explore the possibility of a consensual resolution of the matters raised in those proceedings which essentially boils down to disposing of the Twinco Interest.

[13] As those negotiations did not proceed in any meaningful way, the CCAA Parties are seeking this *Motion for the Expansion of the Monitor's Powers* to facilitate the recovery of assets for the benefit of the CCAA Parties' creditors and the winding up of the CCAA Parties' estate and the termination of the CCAA Proceedings.

[14] As can be noted above, the Expanded Monitor Powers sought herein all relate to the Twinco Interest which is, to all intents and purposes, the last asset to monetize and realize in the context of the CCAA proceedings.

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<sup>2</sup> As defined below.

<sup>3</sup> As defined below.

<sup>4</sup> As defined below.

[15] Until now, Twinco and its shareholder CFLCo have been steadfastly blocking all attempts of the CCAA Parties and the Monitor to monetize the Twinco Interest in the furtherance of the Plan, which involves obtaining the relevant and necessary documentation required to determine with reasonable certainty the value of the Twinco Interest in the context of the present CCAA Proceedings.

[16] Twinco's and CFLCo's refusal to deal with the Twinco Interest has left little alternative but to seek the wind down and the dissolution of Twinco in the context of the present CCAA Proceedings to finally permit the CCAA Parties, with the assistance of the Monitor, to realize this asset of Wabush, complete the final distribution to the Plan creditors and terminate at last the CCAA Proceedings that have been ongoing since 2015.

## 1. THE PROCEDURAL CONTEXT INVOLVING TWINCO

### 1.1 The Twin Falls Power Corporation (Twinco)

[17] Based on the Motion, the Court retains the following relevant facts:

- Twinco is an incorporated joint venture formed under the *Canada Business Corporations Act* (the "**CBCA**") on February 18, 1960, among Churchill Falls (Labrador) Corporation Limited ("**CFLCo**"), Wabush Iron Co. Limited and Wabush Resources Inc. (collectively "**Wabush**") and the Iron Ore Company of Canada ("**IOC**"), among others;
- As at December 31, 2019, Twinco was owned 33.3% by CFLCo, 49.6% by IOC, and 17.062% interest held jointly by Wabush<sup>5</sup>;
- Pursuant to Twinco's fiscal year 2019 Audited Financial Statements, Twinco has approximately \$6.1M in cash and cash equivalent assets (the "**Twinco Cash**") and approximately \$46,000 of liabilities<sup>6</sup>;
- The history of the Twinco Plant<sup>7</sup> is long and complicated and is set out in significant detail in the CBCA Motion. However the highlights are set out hereafter;
- In 1961, CFLCo licensed to Twinco the rights to develop a 225-megawatt hydroelectric generating plant on the Unknown River in Labrador (the "**Twinco Plant**");
- In addition to the Twinco Plant, Twinco owned a number of other assets including (i) the physical building which houses the Twinco Plant (the "**Twinco Building**"); (ii) the transmission lines from the Twinco Plant to its consumers (the "**Twinco Transmission Lines**"); and (iii) the equipment which comprises the Twinco Plant

<sup>5</sup> 4.6% held by Wabush Iron Co. Limited and 12.5% by Wabush Resources Inc.

<sup>6</sup> R-3.

<sup>7</sup> As defined below.

and which was used in the production of hydroelectric power (the “**Twinco Machinery**”) (collectively, with the Twinco Building and Twinco Transmission Lines, and such other assets of Twinco the “**Twinco Assets**”);

- In 1974, CFLCo took over the Twinco Plant and undertook comprehensive maintenance obligations in respect of the Twinco Plant (the “**CFLCo Maintenance Obligations**”), and indemnified Twinco in respect of those obligations and environmental liabilities in connection with the Twinco Plant and Twinco Assets (the “**CFLCo Indemnity**”)<sup>8</sup>;
- The Twinco Plant was placed into an extended shutdown in 1974. Since that time until today, based on various environmental assessments commissioned by Twinco over the years as summarized in various Audited Financial Statements of Twinco, the CCAA Parties understand that potential environmental liabilities may have occurred in respect of the Twinco Plant and Twinco Assets (the “**Potential Environmental Liabilities**”);
- The CCAA Parties are of the view that the responsibility for any environmental liability lies squarely with CFLCo and not Twinco, pursuant to CFLCo’s Maintenance Obligations and CFLCo Indemnity<sup>9</sup>;
- It is not clear to the CCAA Parties and the Monitor whether, and to what extent, Twinco may have funded maintenance or environmental remediation that was CFLCo’s responsibility, and for which Twinco may have a claim against CFLCo for reimbursement;
- As stated in the CBCA Motion, for years, both prior to and after the commencement of the present 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 CFLCo did not support further distributions to the shareholders because it wants to ensure a cash pool from Twinco to pay for the Potential Environmental Liabilities notwithstanding the CFLCo Indemnity and CFLCo Maintenance Obligations;
- Pursuant to Twinco’s Articles of Continuance dated August 1, 1980<sup>10</sup>, the shareholders are entitled to share rateably in the remaining property of Twinco upon dissolution;

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<sup>8</sup> As more particularly detailed in the CBCA Motion.

<sup>9</sup> R-6 of the CBCA Motion.

<sup>10</sup> R-4.

- Wabush's share of the Remaining Twinco Cash<sup>11</sup> is approximately \$1,040,000, a material amount, together with their *pro rata* share of what other money may be subject to reimbursement claims against CFLCo;
- As the information to determine the amount of maintenance and other indemnifiable expenses that may be subject to reimbursement by CFLCo is within the knowledge of Twinco, an accounting was requested in the CBCA Motion;
- Without this information, it is impossible for the CCAA Parties or the Monitor to calculate what the approximate true value of the Twinco Interest may be to ensure that the CCAA Parties' creditors receive appropriate recovery from the Twinco Interest.

### 1.2 The CBCA Motion and the relief sought

[18] The history of the CCAA Parties' repeated attempts to engage in a constructive dialogue with Twinco and its majority shareholder CFLCo, is more fully set out in detail in the CBCA Motion, which has been continued *sine die* until now.

[19] While the CCAA Parties had been hopeful that a consensual resolution could be achieved, they concluded that based on the lack of desire of Twinco and CFLCo to engage in a constructive manner, a consensual resolution was not possible.

[20] Accordingly, on November 16, 2020, the CCAA Parties filed the CBCA Motion, seeking the issuance of Orders 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 (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)

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<sup>11</sup> As defined below.

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; and

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.

[the “**CBCA Motion Proposed Orders**”]

### 1.3 Twinco’s and CFLCo’s response to the CBCA Motion

[21] In response to the CBCA Motion, Twinco filed a proceeding entitled “*Motion by Twin Falls Power Corporation to Dismiss the Application for Lack of Jurisdiction and for Forum Non-Conveniens*” dated January 15, 2021<sup>12</sup>, seeking to dismiss the CBCA Motion for lack of jurisdiction of this Court to hear the CBCA Motion and alternatively, for *forum non-conveniens* (the “**Twinco Dismissal Motion**”). The latter motion is scheduled to be heard in August 2021.

[22] Concurrently, CFLCo filed a proceeding entitled “*Contestation to the CBCA Motion*” dated January 15, 2021<sup>13</sup> (the “**CFLCo Contestation**”), substantially to the same effect while announcing that it was also filing an *Originating Application for the Issuance of a Court-Supervised Liquidation and Dissolution Order* before the Newfoundland Court pursuant to sections 214 (1)(b)(ii), 215, and 217 of the CBCA, seeking, *inter alia*, the court-supervised liquidation of Twinco.

[23] Seemingly in reaction to the CBCA Motion, CFLCo advised the CCAA Parties in its CFLCo Contestation that despite years of resisting to do so, CFLCo was going to imminently commence in the Newfoundland Court an originating application for a court-supervised liquidation and dissolution of Twinco (the “**Twinco Liquidation Motion**”)<sup>14</sup>.

[24] The Twinco Liquidation Motion was formally filed on January 21, 2021, to be heard in Newfoundland on February 23, 2021<sup>15</sup>.

[25] At the time, subject to obtaining a court hearing date for the Twinco Dismissal Motion and CFLCo Contestation and the CBCA Motion, the parties agreed to seek an adjournment of the CBCA Motion, the Twinco Dismissal Motion, the CFLCo Contestation

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<sup>12</sup> **R-5**. The Twinco Dismissal Motion was modified on May 17, 2021.

<sup>13</sup> **R-6**. The CFLCo Contestation was amended on May 19, 2021, in response to the present Motion.

<sup>14</sup> **C-1**.

<sup>15</sup> **R-7**.

and the Twinco Liquidation Motion, in each case without prejudice to each party's right to seek a new hearing date for any of such proceedings on 14 days' prior written notice to the other parties.

[26] On January 27, 2021, this Court adjourned *sine die* the CBCA Motion, the Twinco Dismissal Motion, and the CFLCo Contestation and on February 22, 2021, CFLCo confirmed the adjournment *sine die* of the Twinco Liquidation Motion with the Newfoundland Court (all such adjourned proceedings, the "**Adjourned Proceedings**").

[27] By letter dated February 1, 2021 (the "**February 1<sup>st</sup> Letter**"), counsel for the CCAA Parties sought to confirm its understanding of the terms of the adjournment of the Adjourned Proceedings as among the parties<sup>16</sup>.

[28] In the February 1<sup>st</sup> Letter, CCAA Parties' counsel also set out the documents and information that was to be provided by Twinco and CFLCo in furtherance of the proposed efforts to reach a potential consensual resolution. The requested documents and information were to be provided within 30 days of the letter, or within a reasonably anticipated time that would be required to obtain any requested information that was not readily available for delivery to the CCAA Parties.

[29] The requested documents and information were intended to provide the CCAA Parties and the Monitor with a general understanding of the approximate range of Reimbursable Environmental/Maintenance Costs that could be at issue to better enable the CCAA Parties and Monitor to determine the approximate potential value of the Twinco Interest. Without this information, a potential consensual resolution would be extremely difficult, if not impossible, to reach.

[30] The requested documents and information in the February 1<sup>st</sup> Letter included, among other things, the following information:

- a) amount of cash and cash equivalents held by Twinco as at January 31, 2021, and a budget of expenses anticipated to be incurred by Twinco to the date of the wind-up and liquidation that are not currently anticipated to be subject to any reimbursement or sharing obligation;
- b) copies of audited financial statements for Twinco for the years ended December 31, 1974, to 2019 (excluding audited financial statements for the year-ended December 31, 2004, 2005, 2008, 2013-2019); and
- c) a summary of all expenses incurred by Twinco in respect to environmental and maintenance and other costs in respect to the Twinco Plant, Twinco Building and equipment located thereon for which Twinco has not received full reimbursement from CFLCo or any other party, for the

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<sup>16</sup> R-8.

period from July 1974 to December 31, 2020, as described in more detail in the February 1<sup>st</sup> Letter.

[the “**Twinco Requested Information**”]

[31] The CCAA Parties pointed out that as shareholders, Wabush Iron and Wabush Resources were already entitled to copies of all annual financial statements of Twinco pursuant to section 155 of the CBCA. The balance of the information requested was in the nature of information relating to expenses incurred by Twinco in connection with the maintenance and environmental liabilities and Twinco’s updated cash position as at January 31, 2021, and Twinco’s go forward budget to the anticipated date of its wind-up and dissolution.

[32] However, according to the CCAA Parties’ counsel, the respective counsels for Twinco and CFLCo both denied any undertaking to use in good faith efforts to provide any of the Twinco Requested Information to the CCAA Parties and Monitor and both resisted the production of any documentation to the CCAA Parties and Monitor.

[33] By letter dated February 4, 2021, counsel for Twinco stated that Twinco made no such undertakings, any request would be taken under consideration — “nothing more”— that they would not, without specific direction from the Twinco directors, offer to provide any documents, and that it would seek instructions from Twinco’s directors in respect to the Twinco Requested Information and whether it was reasonable to “even consider” undertaking to provide the Twinco Requested Information.<sup>17</sup>

[34] Likewise, by letter dated February 5, 2021, CFLCo’s counsel denied any good faith undertaking to provide any information requested by the CCAA Parties and stated that the “ultimate decision to provide the requested documentation lies with Twinco”.<sup>18</sup>

[35] On February 16, 2021, Twinco’s counsel sent a subsequent letter to the CCAA Parties’ counsel confirming that Twinco’s board of directors, a majority of whom are CFLCo’s nominees, decided that Twinco would not provide any of the Twinco Requested Information to the CCAA Parties, as there was no “use” in such undertaking. Instead, Twinco’s counsel informed the CCAA Parties that Twinco’s directors have decided only to provide the CCAA Parties with Twinco’s audited financial statements from 2013–2019, which financial statements, in the February 1<sup>st</sup> Letter, already expressly noted were excluded from the CCAA Parties’ request (as the CCAA Parties already had copies of these financial statements).<sup>19</sup>

[36] While counsels for Twinco and CFLCo expressed concern that the CCAA Parties’ requests went back to 1974, neither counsel proposed to narrow the scope of the

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<sup>17</sup> R-9.

<sup>18</sup> R-10.

<sup>19</sup> R-11.

information requested to a shorter time period but instead issued blanket refusals and denied any good faith undertaking to engage in the disclosure of such information.

[37] Based on the Expanded Monitor Powers being sought in this Motion, the CCAA Parties and the Monitor are initially proposing to go back to January 1, 2010, only, with the ability to request the Court to expand the time period to include earlier periods, if needed.

[38] The counsels for the CCAA Parties and the Monitor sought to engage Twinco's and CFLCo's counsels to try to find a resolution to the disclosure impasse and have been informed by Twinco's counsel that Twinco was not prepared to provide any additional documentation beyond the financial statements it provided which the CCAA Parties already had.

[39] By letter dated May 6, 2021, counsel for the CCAA Parties expressed their disappointment and frustration over the lack of good faith demonstrated by Twinco and CFLCo towards pursuing a consensual resolution and the resulting delay that ensued since January 27, 2021, when the Adjourned Proceedings were adjourned. In that letter, Twinco and CFLCo were advised that the CCAA Parties had no alternative but to seek the present Motion and to reactivate the CBCA Motion.<sup>20</sup>

#### **1.4 The relief sought by the CCAA Parties and the Monitor**

[40] The CCAA Parties are seeking the Expanded Monitor Powers, with the support of the Monitor, pursuant to sections 11 and 23 of the CCAA, specifically sections 23(1)(c) and (k), for the expansion of the powers of the Monitor in these CCAA Proceedings, so that the Monitor may, directly or through its counsel exercise the Expanded Monitor Powers more fully described above.

[41] The Expanded Monitor Powers are necessary to enable the Monitor to: (i) assist the CCAA Parties with the recovery of value for the CCAA Parties' creditors from the last remaining asset of the CCAA Parties' estate outside of tax refunds (ii) fulfill its statutory duties to investigate and properly value, the assets and the liabilities of the CCAA Parties, and (iii) facilitate the winding up and termination of these CCAA Proceedings.

[42] The true value of the Twinco Interest is unknown as both Twinco and CFLCo have continuously refused to provide the CCAA Parties or the Monitor with any information in respect of the nature and quantum of the Reimbursable Environmental/Maintenance Costs that would assist the CCAA Parties and Monitor to properly value the Twinco Interest.

[43] In the opinion of the CCAA Parties, the valuation of the Twinco Interest is of particular importance as, among other things:

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<sup>20</sup> R-12.



- a) the Twinco Interest is the last asset of the CCAA Parties that has not yet been monetized in these CCAA Proceedings, apart the collection of outstanding tax refunds;
- b) the Twinco Interest would increase the Plan creditors' recoveries;
- c) the monetization of the Twinco Interest is one of the last material steps to be taken in these CCAA Proceedings, apart from the collection of the outstanding tax refunds, before the CCAA Parties can complete their wind-up of these CCAA Proceedings and provide a final distribution to the Plan creditors;
- d) expanding the Monitor's powers would permit it to further the valid purpose of the CCAA engaged in the present circumstances of maximizing recovery for the CCAA Parties' creditors; and
- e) the monetization of the Twinco Interest would fulfill the purpose of the Plan which is to distribute the net proceeds of the Participating CCAA Parties' assets to the Plan creditors.

[44] The continuous refusal of Twinco and CFLCo to engage with the CCAA Parties and the Monitor has only served to perpetuate the status quo, resulting in further delays to the ability of the CCAA Parties' creditors to obtain a final distribution and complete the winding up and termination of these CCAA Proceedings.

[45] The CCAA Parties contend that:

- the requested relief is necessary and appropriate in the circumstances and is in the best interests of all the CCAA Parties' stakeholders as Twinco and CFLCo have continued to demonstrate that they will not cooperate in connection with the realization of the Twinco Interest and instead, will engage in actions that seek only to preserve the status quo by frustrating and delaying all realization efforts by the CCAA Parties; and
- the valuation of the Twinco Interest is of particular importance to these CCAA Proceedings and should be conducted by the Monitor for the benefit of the creditors irrespective of the proposed liquidation and wind down of Twinco.

[46] Given the inextricable conflict of CFLCo and its new strategic attempt to control the liquidation and wind down process of Twinco in Newfoundland and Labrador, which it had previously steadfastly opposed to frustrate the CCAA Parties, the latter contend that it would be appropriate for this Court to grant their Motion, expand the powers of the Monitor and allow it to proceed with the long-delayed valuation of the Twinco Interest without further obfuscation from CFLCo.

### 1.5 The position of Twinco and CFLCo

[47] The position of Twinco and of CFLCo is essentially the same and can be summarized as follows:

- No interpretation of section 11 of the CCAA, alone or read in conjunction with sections 23(1) c) and (k), permits the granting of the Expanded Monitor Powers in the present circumstances;
- The Expanded Monitor Powers aim at Twinco which is not a debtor company pursuant to the CCAA;
- This Court does not have the power to delegate such broad powers (*i.e.*, the power to examine under oath) to the Monitor, without an explicit statutory authorization;
- This Court does not have the power to compel a person outside of Québec to respond to such orders;
- The statutory discretion under section 11 of the CCAA does not extend to the Expanded Monitor Powers sought by the CCAA Parties in the Motion.

[48] In connection with the last argument put forward by both Twinco and CFLCo that there is a limit to the statutory discretion under section 11 of the CCAA, they added that the present CCAA Proceedings which aim at restructuring corporations as opposed to their liquidation, are not the appropriate vehicle for investigation of third parties to the CCAA Proceedings.

[49] In line with the forgoing, Twinco makes the astonishing if not misleading affirmation that it is a third party (a stranger) herein, with no link to the CCAA Proceedings:

17. Further, neither Twinco nor CFLCo is a party to the CCAA Proceedings, nor is either corporation a party governed by the original or any subsequent order issued in the CCAA Proceedings.

18. Rather, both Twinco and CFLCo are strangers to the CCAA Proceedings in which the Wabush Motion has been brought.

117. Here, Twinco is a third party, with no link with the CCAA Proceedings. [...] Twinco is neither the debtor, nor a creditor, an employee, a director, a shareholder, nor another party doing business with the insolvent company. It has no interest whatsoever in the recovery, and now, in the liquidation of the CCAA Parties.<sup>21</sup>

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<sup>21</sup> Paragraphs 17, 18 and 117 of the Twinco's Argument Plan.

[Emphasis added]

[50] Contrary to the foregoing assertions, Twinco is not a “stranger to the CCAA Proceedings”.

[51] Pursuant to the Claims Process<sup>22</sup> authorized by the Court, Twinco filed a proof of claim against Wabush for approximately \$780,000<sup>23</sup>. Twinco’s claim was allowed by the Monitor in 2016<sup>24</sup>.

[52] The Court understands that Twinco even received a partial distribution in respect of its claim under the Plan and is likely to participate in the final distribution.

### **ANALYSIS**

[53] With all due respect, the Court finds that it has jurisdiction to rule on the present Motion pursuant to the provisions of the CCAA.

[54] For the following reasons, the Court also finds that given the particular circumstances and the nature of the present issues confronting the CCAA Parties and the Monitor to bring the CCAA process to a conclusion within a reasonable delay, it is appropriate for this Court to exercise its judicial discretion and grant to the Monitor the Expanded Monitor Powers sought herein.

### **The Court has exclusive jurisdiction to determine the scope of the powers of the Monitor in furtherance of the purposes of the CCAA**

[55] At the outset, the Court is of the opinion that given the nature and the somewhat narrow scope of the Expanded Monitor Powers sought, the present Motion can be entertained regardless of the CBCA Motion, the Twinco Dismissal Motion and the CFLCo Contestation and their eventual outcome as the latter rest essentially on the right of the CCAA Parties to seek to wind down and the dissolution of Twinco via the CCAA Proceedings before the Commercial Division of the Superior Court of Québec rather than allow CFLCo to proceed with its Twinco Liquidation Motion before the Court of Newfoundland.

[56] Wabush Iron Co. Limited and Wabush Resources Inc. are undoubtedly shareholders of Twinco and as such, the Twinco Interest is one of their assets to be monetized and realized with the assistance of the Monitor pursuant to the Plan sanctioned by the Court in June 2018.

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<sup>22</sup> On November 5, 2015, the CCAA Court issued an 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**”).

<sup>23</sup> R-14.

<sup>24</sup> *Id.*

[57] Therefore, the valuation of the Twinco Interest is not only of particular importance to the present CCAA Proceedings, but it should be conducted by the Monitor for the benefit of the creditors irrespective of the dispute between the parties relating to the jurisdiction over the proposed liquidation and wind down of Twinco.

[58] In fact, the monetization and the realization of the Twinco Interest do not necessarily require the wind down and the dissolution of Twinco to occur given the apparent extent of the Twinco Interest in Twinco.

[59] The Court understands that the Twinco Requested Information is intended to provide the CCAA Parties and the Monitor with a general understanding of the approximate range of the Reimbursable Environmental/Maintenance Costs that could possibly be the subject of the CFLCo Reimbursement to better enable the CCAA Parties and Monitor to calculate the approximate value of the Twinco Interest.

[60] The Twinco Requested Information is purely factual in nature and excludes documents that the Wabush shareholders already have in their possession such as financial statements for December 31, 2004, 2005, 2008, 2013–2019.

[61] The Court also understands that it is the steadfast and the somewhat inexplicable refusal of Twinco and of its shareholder CFLCo to provide any of the Twinco Requested Information<sup>25</sup> to the CCAA Parties and to the Monitor that prevents the latter from determining with a minimum of accuracy what is the estimated value of the Twinco Interest.

[62] This determination expected to be performed by the Monitor relates directly to an asset of the CCAA Parties that is covered by the Plan sanctioned by this Court, and such a determination falls squarely on the tasks, duties and responsibilities of the Monitor within the present CCAA Proceedings regardless of the eventual dissolution or not of Twinco.

[63] Moreover, of obvious significance in the eyes of the Court, Twinco filed a proof of claim for \$780,000 that was accepted by the Monitor pursuant to the Claims Process approved by the Court.

[64] It is somewhat incomprehensible that Twinco would nevertheless affirm that it is a third party, a “stranger” with no link with the CCAA Proceedings and that it is neither the debtor, nor a creditor, an employee, a director, a shareholder, nor another party doing business with the CCAA Parties that include two of its shareholders (Wabush).

[65] How can Twinco seriously pretend that it has no interest whatsoever in the recovery, and presently, in the liquidation of the CCAA Parties when it filed a proof of claim for \$780,000?

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<sup>25</sup> Purposely limiting the same to documents that the Wabush shareholders already have.

[66] Twinco even stands to retrieve by way of the final distribution, a portion of the Twinco Interest once realized by the Monitor, as the case may be.

[67] Moreover, didn't Twinco attorn to the jurisdiction of the Québec Superior Court (Commercial Division) by deciding to file a proof of claim against the Wabush shareholders in the present CCAA Proceedings?<sup>26</sup>

[68] The evidence satisfies the Court that Twinco and its shareholder CFLCo have demonstrated that they have no intention of providing any information to the CCAA Parties in a timely fashion that would assist the CCAA Parties and Monitor to determine the true value of the Twinco Interest, which would then form the basis for a potential consensual resolution, leading to a final distribution to creditors and a wind-up and termination the CCAA Proceedings.

[69] The Court shares the CCAA Parties' counsel view that it is even possible that with the information on hand, the CCAA Parties and the Monitor may come to a determination that the amount of the CFLCo Reimbursement in dispute may not be sufficiently material on a cost-benefit analysis to continue to pursue recovery of such amount, significantly narrowing the issues in dispute in the CBCA Motion.

[70] Who knows? Should the Twinco Interest be disposed of on a consensual basis, Twinco and CFLCo could very well decide to forgo the wind down and the dissolution proceedings completely, a decision that would rest with them without any further involvement of the CCAA Parties (i.e., the Wabush shareholders).

[71] Be that as it may be, the CCAA Parties are only seeking to expand the Monitor's powers in the CCAA Proceedings to enable the Monitor to obtain the Requested Twinco Information necessary to value the Twinco Interest, which is now the most significant asset of the CCAA Parties remaining to be realized in the CCAA Proceedings apart from tax refunds.

[72] With all due respect, the proposed relief sought with the present Motion does not entail any compromise of the rights and recourses of Twinco and of its shareholder CFLCo vis-à-vis the Twinco Interest other than enabling the CCAA Parties and the Monitor to be aware of its potential estimated value without prejudice to the arguments that Twinco and/or CFLCo may want to put forward in connection therewith.

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<sup>26</sup> *Bouygues Building Canada inc. v. Iannitello et Associés inc.*, 2018 QCCA 504 :

[23] By submitting a proof of claim to the Trustee and appealing the disallowance, the Joint Venture attorned to the jurisdiction of the Quebec Superior Court sitting in bankruptcy matters. It could hardly blame the Trustee after the fact as it did for having decided on the validity of the claim as submitted, since the Trustee was obliged to do so. The Joint Venture did not seek permission to continue the Ontario proceedings with a view to qualifying its contingent claim prior to filing a proof of claim with the Trustee.  
[References omitted]

[73] The Court finds that the Expanded Monitor Powers sought in the present Motion are necessary and appropriate to enable the Monitor to, among other things:

(i) fulfill its statutory duties to investigate and properly value the assets and the liabilities of the CCAA Parties;

(ii) further the valid purpose of the CCAA to maximize the recovery of Plan creditors, by assisting the CCAA Parties with the recovery of value for the CCAA Parties' creditors from the last significant asset remaining of the CCAA Parties' estate other than tax refunds; and

(iii) facilitate the winding up and termination of these CCAA Proceedings.

[74] The Court bears in mind that the Monitor was appointed by this Court pursuant to the authority granted upon this Court under the CCAA<sup>27</sup>.

[75] Therefore, subject to the provisions of the CCAA, this Court has the exclusive jurisdiction to determine, *inter alia*, the scope of the powers of the Monitor in furtherance of the purposes of the CCAA especially if such powers relate directly to an asset or the property of the CCAA Parties that is part of the Plan previously sanctioned.

### **Section 23(1)(c) of the CCAA**

[76] In *Ernst & Young Inc. v. Essar Global Fund Limited*<sup>28</sup>, the Court of Appeal for Ontario reminded us that section 23 of the CCAA sets out a basic framework of the minimum mandatory duties and functions of the monitor under the CCAA which may be augmented through the exercise of discretion by the Court, and that, not surprisingly, the monitor's role has evolved since then over time:

[106] The 1997 amendments to the CCAA gave legislative recognition to the role of the monitor and made the appointment mandatory. The 2007 amendments to the CCAA expanded the description of the monitor's role and responsibilities. In essence, its minimum powers are set out in the Act and they may be augmented through the exercise of discretion by the court, typically the CCAA supervising judge. This framework is reflected in s. 23 of the CCAA, which enumerates certain duties and functions of a monitor. Paragraph 23(1)(k) directs that a monitor shall carry out "any other functions in relation to the company that the court may direct." Its express duties under s. 23(1)(c) include making, or causing to be made, any appraisal or investigation that the monitor "considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency". It is then to file a report on its findings.

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<sup>27</sup> Section 11.7 (1) CCAA.

<sup>28</sup> 2017 ONCA 1014.

[107] Not surprisingly, as with the CCAA itself, the role of the monitor has evolved over time. [...]

[Emphasis added]

[77] Section 23(1)(c) of the CCAA requires the Monitor to “*make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company’s business and financial affairs*”.

[78] In the present instance, the true value of the Twinco Interest is unknown as both Twinco and CFLCo have continuously refused to provide the CCAA Parties or the Monitor with any information in respect to the nature and quantum of the Reimbursable Environmental/Maintenance Costs that would assist the CCAA Parties and the Monitor to properly value the Twinco Interest.

[79] The information required to determine the amount of maintenance and other indemnifiable expenses that may be subject to reimbursement by CFLCo is solely within the knowledge of Twinco.

[80] Therefore, the Court is satisfied that without the Expanded Monitor Powers presently sought, it will be impossible for the Monitor to calculate what the true approximate value of the Twinco Interest may be in order for the Monitor to fulfill its statutory duties under the CCAA.

[81] In the present circumstances, it is only appropriate for this Court to grant the Expanded Monitor Powers requested.

[82] Moreover, the present circumstances are not necessarily unique, CCAA monitors have already been granted the type of additional powers sought by the CCAA Parties herein.

[83] Recently, in *Arrangement relatif à 9227-1584 Québec inc.*<sup>29</sup>, Justice Peter Kalichman then sitting in the Commercial Division of the Québec Superior Court reminded that under section 23(1)(c) of the CCAA, a monitor was required to make an assessment or proceed to investigate what the monitor considered necessary to determine the state of the debtor’s financial affairs.

[84] As the monitor was attempting to recover an asset, which was possibly of significant value to the debtors, Justice Kalichman also declared that being consistent with the purposes of the CCAA:

- The monitor was authorized and empowered to exercise powers of investigation in respect of the debtors to (i) conduct an examination under oath of any person thought to have knowledge relating to the debtors, their

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<sup>29</sup> 2021 QCCS 1342, par. 47 and 48.

business or their property; and (ii) to order any such person to be examined to produce any books, documents, correspondence or papers in that person's possession or power relating to the debtors, their business or their property;

- Certain persons could be compelled to provide the monitor with a copy of their complete accounting with respect to the sale of certain property, which according to Justice Kalichman, was linked to the debtors and their assets.

[85] In the aforementioned case, Justice Kalichman relied in part on the extended powers that had already been granted to the Monitor by the Court in the Amended and Restated Initial Order.

[86] The Court was taken aback at the suggestion made by Twincos's counsel that such powers granted to a monitor in an Initial Order or the like should be somewhat discounted as they usually form part of a draft Initial Order prepared and submitted by the debtor's lawyer, alas, implying that the Commercial Division Justices blindly rubber stamp such draft Initial Orders, which could not be further from the reality.

[87] With all due respect, the Court believes that the Monitor's powers to investigate, question and compel the communication of information and documents required to *determine with reasonable accuracy the state of the company's business and financial affairs* which includes the assessment of the value of assets or property of the debtor, should not be limited to the only corporate documents available to a shareholder pursuant to the provisions of the CBCA.

[88] In *Osztrovics Farms Ltd.*<sup>30</sup>, the Ontario Court of Appeal dismissed the suggestion that the trustee's power to obtain information "*relating in whole or in part to the bankrupt, his dealings or property*" only extended to corporate documentation that pertained solely to the business and affairs of the corporation, and not another company in which the bankrupt held a significant interest.

[89] The Ontario Court of Appeal also stated that applying a narrow interpretation of the trustee's investigatory powers only to the corporate documentation, that pertain solely to the business and affairs of the bankrupt, and not to information about another company in which the bankrupt has significantly invested, would frustrate the trustee's ability to discharge its duty to the bankrupt's creditors to value and realize upon the most significant asset in bankrupt's estate.

[90] In *Osztrovics*, the bankrupt was a shareholder in a corporation, owning 48% of the company. The trustee requested that the company provides certain information that the trustee required to value the bankrupt's shares in that corporation. The latter refused and the trustee sought and obtained an order pursuant to sections 163 and 164 of the BIA

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<sup>30</sup> *Osztrovics Estate v. Osztrovics Farms Ltd.*, 2015 ONCA 463, pars. 7, 14 and 15.



requiring: (i) that company to disclose to it certain documents; and (ii) certain parties to submit to oral examinations.

[91] While *Osztrovics* was decided in the context of bankruptcy proceedings under the *Bankruptcy and Insolvency Act*<sup>31</sup>, the Court believes that those principles apply equally to the CCAA proceedings<sup>32</sup>.

[92] The Court may add that the fact that we find ourselves in the context of CCAA proceedings involving the liquidation of the CCAA Parties as opposed to their restructuring does not matter.

[93] Liquidating CCAA proceedings have been accepted in practice and case law with an expanded view of the role of the monitor under such circumstances<sup>33</sup>.

[94] All in all, in liquidating CCAA proceedings, the responsibilities and the powers of the Monitor remain essentially the same subject to any additional powers that may be granted by the Court at its discretion.

### **Section 23(1)(k) of the CCAA**

[95] Section 23(1)(k) of the CCAA expressly allows this Court to expand the list of duties and functions of the Monitor by directing the latter to “*carry out any other functions in relation to the debtor company that the court may direct.*”

[96] In previous decisions, Justices sitting in the Commercial Division of the Québec Superior Court expanded the monitor’s powers to include the ability to compel any person reasonably thought to have knowledge relating to any of the debtors, their business or property to be examined under oath, and to disclose and produce to the monitor any books, documents, correspondence or papers in that person’s possession or power.<sup>34</sup>

[97] The counsel for the CCAA Parties pointed out, rightly so, to the Court that although CCAA courts have authorized relief similar to the Expanded Monitor Powers in respect to “any person” thought to have knowledge of the debtor, its business or property, the Expanded Monitor Powers here are narrower in that they are only directed at those persons reasonably thought to have knowledge relating to the Twinco Interest, the CFLCo

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<sup>31</sup> Sections 163 and 164 BIA.

<sup>32</sup> *Confederation Treasury Services Ltd., Re*, 1995 CarswellOnt 2301, par. 18.

<sup>33</sup> *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, 2020 QCCA 659 at para 68: [68] What is inescapable and particularly applicable here is the acceptance, in the practice and case law, of the liquidating CCAA and the expanded view of the role of the monitor, indeed the baptism of the “super monitor”. [...] [References omitted]

<sup>34</sup> Amended and Restated Initial Order dated August 24, 2018, in the matter of the Arrangement under the *Compagnies’ Creditor’s Arrangement Act*, of *The S.M. Group Inc.*, 500-11-055122-184 at para 50.1; See also Amended and Restated Initial Order dated December 2, 2019, in the matter of the Arrangement under the *Compagnies’ Creditor’s Arrangement Act*, of *9227-1584 Québec Inc. & 9336-9262 Québec Inc.*, 500-11-057549-194 at para 39 k).

Indemnity and the CFLCo Maintenance Obligations, including the Twinco Requested Information, and, subject to any further order of this Court, they are limited to a disclosure period of only 10 years, going back to 2010.

**The broad judicial discretion conferred under Section 11 of the CCAA**

[98] Section 11 of the CCAA stipulates:

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.

[Emphasis added]

[99] The Court is particularly mindful of the teachings of the Supreme Court of Canada in the recent case of *9354-9186 Québec inc. v. Callidus Capital Corp.*<sup>35</sup>, in which the broad discretion under section 11 of the CCAA, being the “engine” of the CCAA, was confirmed:

[47] One of the principal means through which the CCAA achieves its objectives is by carving out a unique supervisory role for judges (see Sarra, *Rescue! The Companies’ Creditors Arrangement Act*, at pp. 18–19). From beginning to end, each CCAA proceeding is overseen by a single supervising judge. The supervising judge acquires extensive knowledge and insight into the stakeholder dynamics and the business realities of the proceedings from their ongoing dealings with the parties.

[48] The CCAA capitalizes on this positional advantage by supplying supervising judges with broad discretion to make a variety of orders that respond to the circumstances of each case and “meet contemporary business and social needs” (*Century Services*, at para. 58) in “real-time” (para. 58, citing R. B. Jones, “*The Evolution of Canadian Restructuring: Challenges for the Rule of Law*”, in J. P. Sarra, ed., *Annual Review of Insolvency Law 2005* (2006), 481, at p. 484). The anchor of this discretionary authority is s. 11, which empowers a judge “to make any order that [the judge] considers appropriate in the circumstances”. This section has been described as “the engine” driving the statutory scheme (*Stelco Inc. (Re)* (2005), 253 D.L.R. (4th) 109 (Ont. C.A.), at para. 36).

[49] The discretionary authority conferred by the CCAA, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the CCAA, which we have explained above (see *Century Services*, at para. 59). Additionally, the court must keep in mind three “baseline considerations” (at para. 70), which the applicant bears the burden of

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<sup>35</sup> 2020 SCC 10.

demonstrating: (1) that the order sought is appropriate in the circumstances, and (2) that the applicant has been acting in good faith and (3) with due diligence (para. 69).

[Emphasis added]

[100] In the present instance, the Court is satisfied that the CCAA Parties have demonstrated that the Expanded Monitor Powers are appropriate in the circumstances and that they have been acting in good faith and with diligence in this matter.

[101] The Court is also satisfied that granting the Expanded Monitor Powers shall further the purposes of the CCAA.

[102] Under the present circumstances, the Court is also guided by the Plan dated May 16, 2018, that was sanctioned by the Court soon after and is satisfied that:

- (i) the Expanded Monitor Powers should enable the Monitor to assist the CCAA Parties to recover additional value for the CCAA Parties' creditors;
- (ii) the Twinco Interest is the last remaining asset of the CCAA Parties' estate (outside of tax refunds) that has not yet been monetized in these CCAA Proceedings;
- (iii) the successful monetization of the Twinco Interest would increase the Plan creditors' recoveries. Wabush Iron and Wabush Resources' share of the Twinco Cash is approximately \$1,040,000, together with their *pro rata* shares of any CFLCo Reimbursement;
- (iv) a significant majority of the creditors of Wabush are former employees of Wabush Mines, many of whom are elderly, and who are reasonably assumed to be anxious to receive their final distributions as soon as possible; and
- (v) the monetization of the Twinco Interest would fulfill the purpose of the Plan which is to distribute the net proceeds of the Participating CCAA Parties' assets and other recoveries for the creditors' benefit.

**The “person” that may be subjected to the Expanded Monitor Powers does not necessarily need to be a debtor company under the CCAA Proceedings**

[103] The Court shares the view of the counsel for the CCAA Parties that it is not a requirement under section 11 or section 23 of the CCAA that those who are subject to any order granted thereunder need to be debtor companies. As previously seen, there are various examples of CCAA courts granting orders under these sections that provide

for relief against third parties, including investigatory powers being granted to monitors to investigate third parties in respect of the debtor's property.

[104] Be that as it may, the Expanded Monitor Powers being sought here are in relation to the CCAA Parties' property, namely the Twinco Interest and therefore, the present Motion is clearly "*in respect of a debtor company*" without forgetting that Twinco having elected to file a proof of claim, has chosen to be a party to the CCAA Proceeding.

### **The Monitor's neutrality**

[105] Counsel for CFLCo questioned the neutrality of the Monitor if it is granted the Expanded Monitor Powers given the ongoing litigation in Québec and in Newfoundland.

[106] The Court has already stated that the present Motion and the Expanded Monitor Powers sought therein do not impact the rights and recourses of the parties in the CBCA Motion and the Twinco Liquidation Motion instituted subsequently by CFLCo in Newfoundland.

[107] It only relates to information to be provided to the Monitor without compromising any of the parties' rights and recourses in connection with the Twinco Interest with the added potential benefit of inducing a consensual settlement and possibly avoid protracted litigation.

[108] In *Aquadis International*<sup>36</sup>, the Québec Court of Appeal held that in expanding the monitor's powers under section 23 of the CCAA, the principle of the monitor's neutrality is "*far from absolute*" and there are exceptions. The Court stated that "[a]s long as the monitor is objective and not biased and takes positions based on reasoned criteria to further legitimate CCAA purposes, it now appears inescapable that the neutrality it must maintain is attenuated."<sup>37</sup>

[109] Moreover, in *Aquadis International*, Justice Schragger made the following comments regarding the involvement of a monitor in liquidating CCAA proceedings which the Court finds quite relevant in the case at hand given the arguments raised by Twinco and CFLCo in that respect:

**[68] What is inescapable and particularly applicable here is the acceptance, in the practice and case law, of the liquidating CCAA<sup>38</sup> and the expanded view of the role of the monitor, indeed the baptism of the "super monitor".<sup>39</sup>** The Appellants concede, if only indirectly, that

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<sup>36</sup> See Note 33.

<sup>37</sup> *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, 2020 QCCA 659 at para 73.

<sup>38</sup> *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, para. 42 [*Callidus*].

<sup>39</sup> Luc Morin and Arad Mojtahedi, "In Search of a Purpose: The Rise of Super Monitors & Creditor-Driven CCAAs" in Jill Corraini and Blair Nixon (eds.), *Annual Review of Insolvency Law*, Toronto, Thomson Reuters, 2019, p. 650.

the Monitor could be authorized to exercise rights of the Debtor against third parties as could a bankruptcy trustee. However, they object to the Monitor's power to sue one group of creditors (the Respondents) on behalf of another group of creditors (the consumers or their insurers).

[69] In my opinion, the Appellants objections are not well founded.

[70] Firstly, the bankruptcy trustee analogy is only a half truth. Trustees are the assignees of a bankrupt's property, and as such, exercise the patrimonial rights of the debtor but they also wear a second hat.<sup>40</sup> Trustees exercise rights and recourses on behalf of creditors against other creditors and against third parties.<sup>41</sup> Such rights and recourses arise from the *BIA* (for example, under s. 95 for preferences) as well as under the civil law generally (for example, the paulian action under arts. 1631 and following C.C.Q.). **Most significantly, the *BIA* recourses to attack preferences, transfers under value and dividends paid by insolvent corporations have been available to CCAA monitors since the amendments adopted in 2007.**<sup>42</sup> Thus, the mere fact that the judgment in appeal empowers the Monitor to sue to enforce rights of creditors is not conceptually foreign to the general framework of insolvency law.

[71] **Moreover, and without making too fine a point, the Appellants' are not creditors of the CCAA estate. They might have been, but they chose not to file claims. As such, they are third parties.** This eliminates another conceptual, if not legal, difficulty in that, they do not potentially share in the litigation pool after contributing to it.

[72] **The Appellants also object, saying that the power given to the Monitor to sue runs contrary to the principle of a monitor's neutrality. However, the case law and literature recognize that this neutrality is far from absolute:**

[110] Of necessity, the positions taken will favour certain stakeholders over others depending on the context. Again, as stated by Messrs. Kent and Rostom:

Quite fairly, monitors state that creditors and the Court currently expect them to express opinions and make recommendations. ... [T] he expanded role of the monitor forces the monitor more and more into the fray. Monitors have become less the detached observer and expert witness

<sup>40</sup> *Giffen (Re)*, [1998 CanLII 844 \(SCC\)](#), [1998] 1 S.C.R. 91, para. 33.

<sup>41</sup> *Lefebvre (Trustee of) ; Tremblay (Trustee of)*, [2004 SCC 63](#), [2004] 3 S.C.R. 326, paras. 32–40.

<sup>42</sup> S. 36.1 CCAA.

contemplated by the Court decisions, and more of an active participant or party in the proceedings.

(...)

[119] Generally speaking, the monitor plays a neutral role in a CCAA proceeding. To the extent it takes positions, typically those positions should be in support of a restructuring purpose. As stated by this court in *Ivaco Inc., Re* (2006), 2006 CanLII 34551 (ON CA), 83 O.R. (3d) 108 (C.A.), at paras. 49–53, a monitor is not necessarily a fiduciary; it only becomes one if the court specifically assigns it a responsibility to which fiduciary duties attach.

[120] However, in exceptional circumstances, it may be appropriate for a monitor to serve as a complainant. (...).<sup>43</sup>

[73] **As long as the monitor is objective and not biased and takes positions based on reasoned criteria to further legitimate CCAA purposes, it now appears inescapable that the neutrality it must maintain is attenuated.**

[Emphasis added]

[110] Ultimately, Justice Schragar rejected the Appellants' argument that the objectives of the CCAA were being thwarted by allowing the Monitor to pursue a remedy to which it was not entitled. In so deciding, Justice Schragar upheld the position of the CCAA Judge who, in the exercise of his judicial discretion, had favoured a *practical resolution of the case* by expanding the powers of the monitor:

[32] The judge rejected the Appellants' argument that the objectives of the CCAA are being thwarted by allowing the Monitor to pursue a remedy to which it is not entitled. He characterized this argument as technical and unconvincing because, in the absence of consensual settlements, recourse against the Retailers (and JYIC) is the only possible avenue leading to a global treatment of Aquadis' liabilities. Thus, the powers sought by the Monitor were deemed necessary in order to materially advance the restructuring process. The judge accepted this course of action as the only practical resolution of this case. As such, **he indicated that the solution chosen was a sensible use of judicial resources** since it avoids the multiplication of individual actions outside the framework of the Plan of Arrangement. [...]

[Emphasis added]

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<sup>43</sup> *Essar, supra*, note **Error! Bookmark not defined.**

[111] In the present instance, the circumstances warrant the expansion of the Monitor's powers as it is also the only practical and most reasonable solution to obtain the Requested Information without necessarily compromising the rights and recourses of the parties.

[112] At the very least, the CCAA Parties and the Monitor will, at long last, be in a better position to determine the steps actually needed to realize the Twinco Interest and to terminate the CCAA Proceedings without necessarily proceeding with its CBCA Motion in its present format.

**Is the Order granting the Expanded Monitor Powers enforceable throughout Canada?**

[113] It was argued that an Order of this Court granting the Expanded Monitor Powers could not be enforceable in Newfoundland and persons in that Province could not be compelled to testify at the behest of the Monitor in the exercise of his expanded powers.

[114] With all due respect, the Court disagrees with such a proposition given the fact that such an Order is made pursuant to the CCAA.

[115] Moreover, it is only appropriate to remind Twinco and CFLCo that the Initial Order as it was subsequently amended modified and restated (collectively the "**Initial Order**") already grants to the Monitor the authorization to apply to any other court in Canada *for orders which aid and complement this Order and any subsequent orders of this Court*:

66. **DECLARES** that the Monitor or an authorized representative of the CCAA Parties, and in the case of the Monitor, with the prior consent of the CCAA Parties, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the *U.S. Bankruptcy Code*, including an order for recognition of these CCAA proceedings as "Foreign Main Proceedings" in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, and for which the Monitor, or the authorized representative of the CCAA Parties, shall be the foreign representative of the CCAA Parties. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

[Emphasis added]

[116] Although the above-mentioned provision already contains a declaration that "*All courts*" are *requested to make such orders and to provide such assistance to the Monitor*

as may be deemed necessary or appropriate for that purpose, the following paragraph expands further on the Court's request for aid and assistance as follows:

67. **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America and any court or administrative body elsewhere, to give effect to this Order and to assist the CCAA Parties, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the CCAA Parties and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the CCAA Parties in any foreign proceeding, to assist the CCAA Parties and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.

[Emphasis added]

[117] For greater certainty, the Court shall restate the same requests in the present Order notwithstanding that the same nevertheless already apply without having to restate all the provisions of the Initial Order herein.

#### **The provisional execution of this Order notwithstanding any appeal**

[118] It is also appropriate to grant the request of the CCAA Parties to order the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security.

[119] All in all, based on all the circumstances mentioned above, the Court finds that without such an order, the CCAA Parties and the Plan creditors are bound to suffer greater prejudice should Twinco and/or CFLCo appeal the present Order, thus causing further delays in the implementation of the Plan given that the Twinco Interest is essentially the last tangible asset to monetize and to realize in order to permit the final distribution and the termination of the CCAA Proceedings initiated in 2015.

[120] Moreover, providing the Requested Information does not cause any prejudice to Twinco and CFLCo other than allowing the CCAA Parties and the Monitor to have at last a better idea of the value of the Twinco Interest without compromising the rights and recourses of the parties.

#### **FOR THOSE REASONS, THE COURT:**

[121] **GRANTS** the present *Motion for the Expansion of the Monitor's Powers* (the "**Motion**");



[122] **DECLARES** that the CCAA Parties have given sufficient prior notice of the presentation of this Motion to interested parties;

### **DEFINITIONS**

[123] **ORDERS** that capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Motion;

### **EXPANSION OF MONITOR'S POWERS**

[124] **ORDERS** that, in addition to any other powers in the Initial Orders or other Orders granted in these CCAA Proceedings, notwithstanding anything to the contrary and without limiting the generality of anything therein, the Monitor is hereby authorized and empowered to, directly or through its counsel:

- a) compel any Person (as defined in the Initial Orders) with possession, custody or control to disclose to the Monitor and produce and deliver any books, records, accounting, documents, correspondences or papers, electronically stored or otherwise, relating to the Twinco Interest, the CFLCo Indemnity and the CFLCo Maintenance Obligations, including the Twinco Requested Information (the "**Requested Information**") in respect of the period from and after January 1, 2010, and such earlier periods as may be approved by the Court from time to time (the "**Disclosure Period**"); and
- b) conduct investigations, including examinations under oath of any Person reasonably thought to have knowledge relating to the Twinco Interest, the CFLCo Indemnity and the CFLCo Maintenance Obligations, including the Twinco Requested Information, in respect of the Disclosure Period;

### **DISCLOSURE OF DOCUMENTS AND INFORMATION**

[125] **ORDERS** that requests made by the Monitor for the production of Requested Information pursuant to subparagraph 124 (a) of this Order shall be made in writing and delivered by electronic transmission, registered mail or courier, specifying the Requested Information to be delivered to the Monitor by such Person;

[126] **ORDERS** that any Requested Information to be delivered by any Person to the Monitor pursuant to subparagraph 124 (a) of this Order shall be delivered within thirty (30) days of the Monitor's request or such longer periods as the Monitor may agree to in its discretion;

### **POWERS OF EXAMINATION**

[127] **ORDERS** that the examinations held pursuant to subparagraph 124 (b) of this Order shall be conducted virtually due to the ongoing COVID-19 pandemic unless otherwise agreed between the Monitor and the Person being examined;

[128] **ORDERS** that the Monitor shall deliver by electronic transmission on the Person he wishes to examine pursuant to this Order, at least five (5) days prior to the scheduled date of the examination, a summons to appear specifying the time and the Requested Information that the Person must have in his or her possession during the examination;

[129] **ORDERS** that objections raised during examinations held pursuant to this Order shall not prevent the continuation of the examination, the witness being required to respond, unless they relate to the fact that the Person being examined cannot be compelled or to fundamental rights or to a matter of substantial legitimate interest, in which case the Person being examined may refrain from responding;

[130] For greater certainty, **RESTATES** and **DECLARES** that the Monitor or an authorized representative of the CCAA Parties, and in the case of the Monitor, with the prior consent of the CCAA Parties, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the *U.S. Bankruptcy Code*, including an order for recognition of these CCAA proceedings as "Foreign Main Proceedings" in the United States of America pursuant to Chapter 15 of the *U.S. Bankruptcy Code*, and for which the Monitor, or the authorized representative of the CCAA Parties, shall be the foreign representative of the CCAA Parties. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

[131] For greater certainty, **RESTATES** and **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America and any court or administrative body elsewhere, to give effect to this Order and to assist the CCAA Parties, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the CCAA Parties and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the CCAA Parties in any foreign proceeding, to assist the CCAA Parties and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.

[132] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security;

[133] **THE WHOLE** with judicial costs payable by Twin Falls Power Corporation and Churchill Falls (Labrador) Corporation Limited.

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**MICHEL A PINSONNAULT, J.S.C.**

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Hearing date: June 3, 2021

COURT OF APPEAL

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Q.C.A. N<sup>o</sup>.  
Q.S.C. N<sup>o</sup>. 500-11-048114-157

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CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

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

CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED  
APPLICANT – Mise-en-cause

V.

BLOOM LAKE GENERAL PARTNER LIMITED, QUINTO MINING  
CORPORATION, CLIFFS QUÉBEC IRON MINING ULC, WABUSH IRON CO.  
LIMITED, WABUSH RESOURCES INC.

RESPONDENTS – 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, TWIN FALLS  
POWER CORPORATION

MISES-EN-CAUSE – Mises-en-cause

FTI CONSULTING CANADA INC.

MONITOR

**BS0350**

**Our file: 030192-1029**

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APPLICATION FOR LEAVE TO APPEAL A JUDGMENT RENDERED IN THE  
COURSE OF PROCEEDINGS, AFFIDAVIT, NOTICE OF PRESENTATION, LIST OF  
SCHEDULES AND SCHEDULES A TO 7  
*(Sections 13 and 14 of the Companies' Creditors Arrangement Act (the CCAA")  
and Articles 31 and 357 of the Code of Civil Procedure)*

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“ ORIGINAL

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