

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

COURT OF APPEAL

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

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

**APPLICATION FOR LEAVE TO APPEAL AND
TO SUSPEND THE PROVISIONAL EXECUTION**

**(Sections 13 and 14 of the *Companies' Creditors Arrangement Act* (the "CCA")
and Articles 357 and 661 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 July 14, 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 Judgment grants FTI Consulting Canada Inc. (the “**Monitor**”) broad and unprecedented investigative powers, to compel third parties to the CCAA proceedings (including the Applicant) to produce documentation and testimony under oath, in contravention of the clear teachings of the Supreme Court of Canada¹, which confirm that these kinds of coercive judicial powers, can only be granted if specifically delegated in a body of law. A copy of the Judgment is attached hereto as **Schedule 1**.
2. In rendering the Judgment, the CCAA Judge appears to have relied exclusively on the arguments and facts raised by the Respondents and Twin Falls Power Corporation (“**Twinco**”), leaving the impression, that the Applicant’s representations were, for the most part, not even considered. As a result, there are palpable and overriding factual and legal mistakes in the Judgment, which will have a significant impact not only on the case at hand, but the CCAA practice more generally. A copy of the Applicant’s plan of argument submitted in the context of the hearing before the CCAA Judge is attached hereto as **Schedule 2**.
3. Moreover, for the reasons exposed hereinafter, the Applicant submits that the provisional execution of the Judgment which was ordered by the CCAA Judge should be suspended considering, *inter alia*, that as soon as the Monitor proceeds with the exercise of his expanded investigative powers, the risk of serious and

¹ *P.G. du Qué. et Keable c. P.G. du Can. et autres*, 1978 CanLII 23 (CSC).

irreparable prejudice will have already been suffered, with the Applicant being forced to engage in a discovery process without the protections normally afforded in an ongoing litigation, which as described below, has already been instituted against the Applicant, by certain of the CCAA debtors.

4. A notice of appeal is attached hereto as **Schedule A.**

II. OVERVIEW OF THE RELEVANT FACTS

A) The CCAA Proceedings

5. 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.
6. On May 20, 2015, the CCAA Court issued an Initial Order extending the scope of the CCAA Proceedings to Wabush Iron Co. Limited (“**Wabush Iron**”) and Wabush Resources Inc. (“**Wabush Resources**”, together with Wabush Iron, “**Wabush**”) and the Mises-en-cause Wabush Mines, Wabush Lake Railway Company Limited, and Arnaud Railway Company.
7. 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.
8. Wabush holds a combined 17.062% equity interest in the Newfoundland corporation, 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

9. 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 3** hereto), on the basis that it was seeking to monetize its last assets (i.e. its shares in Twinco), which, according to Wabush, required that the following orders 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) 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**"). In this regard, and although completely disregarded in the Judgment, Wabush, as a shareholder with directors nominated to the board of directors of Twinco, has access to the financial statements of Twinco, which in any event, were provided for 2005-2020 and filed as confidential exhibits to CF(L)Co's Amended Contestation of the Dissolution Motion and Expansion Motion (as defined below), which is attached hereto as **Schedule 4**; and
 - c) 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.

10. The Applicant and Twinco are contesting the jurisdiction relating to the Dissolution Motion on the basis that 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 Court of Newfoundland and Labrador, and not the Quebec CCAA Court, since:
 - 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.
11. The defendants to the Dissolution Motion are Twinco and CF(L)Co, neither of whom have any place of business in the Province of Québec. In addition, the Dissolution Motion raises environmental issues that have arisen in connection with 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 by provincial law.
12. As a result, and in accordance with section 207 of the CBCA, CF(L)Co instituted liquidation proceedings pursuant to section 214(1) of the CBCA before the Newfoundland Court (the "**Liquidation Application**"), which application is suspended until the CCAA Court determines whether it does in fact have jurisdiction to hear the Dissolution Motion, which debate is scheduled for August 6, 2021. A copy of the Liquidation Application is attached as **Schedule 5**.

13. In an effort to circumvent the jurisdiction debate scheduled for August 6, 2021, Wabush 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, despite the pending jurisdiction debate. A copy of the Expansion Motion is attached hereto as **Schedule 6**.
14. More specifically, Wabush requested that the Court order that the Monitor be granted the powers to:
 - a) 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, CF(L)Co Indemnity and CF(L)Co Maintenance Obligations, including the Twinco Requested Information (the "Requested Information") in respect of the period from and after January 1, 2010; and
 - b) conduct investigations, including examinations under oath of any person reasonably thought to have knowledge relating to the Twinco Interest, CF(L)Co Indemnity and CF(L)Co Maintenance Obligations, including the Twinco Requested Information, in respect of the Disclosure Period.

C) The Judgment

15. Following an approximately 3 hour hearing on June 3, 2021, the CCAA Judge issued the Investigation Order on July 14, 2021, relying on sections 11 and 23(c) and (k) of the CCAA to conclude that a CCAA Court does in fact have the power to allow a Monitor to conduct investigations, under oath, of any person who may have knowledge relating to a third party in which a CCAA debtor is a minority shareholder, and in doing so:

- a) Discounted, or failed to even acknowledge, any of the territorial jurisdictional issues raised by each of CF(L)Co and Twinco;
- b) Ignored the fact that CF(L)Co had provided copies of Twinco's financial statements to the Monitor dating back to 2005, despite the contrary findings in the Judgment at paragraph 35, which suggests that only those statements from 2013-2019 were provided. Moreover, the Judgment ignores the fact that the financial statements very clearly outline each of the maintenance and environmental costs and obligations incurred by Twinco – i.e. the exact information requested by the Monitor.
- c) Held that Section 23(1)(c) of the CCAA, which 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 [...]*”, not only gives the Monitor the power to investigate the debtor's business and affairs, but can also be used to allow the Monitor to investigate solvent third parties who are strangers to the CCAA Proceedings (particularly if read with the discretionary powers granted under section 11 of the CCAA). In this regard, although the CCAA Court finds that Twinco is not a stranger to these proceedings, it chooses to not address this issue as regards to the Applicant, despite the uncontested facts before it that CF(L)Co is a corporation registered and operating in Newfoundland, with no business in Quebec, who up until the filing of the Dissolution Motion, was a complete stranger to these CCAA Proceedings.
- d) Held that the type of additional powers sought by Wabush have been previously granted in one previous CCAA decision, whereby Justice Kalichman, in *Arrangement relatif à 9227-1584 Québec inc.*², granted the

² *Arrangement relatif à 9227-1584 Québec inc.*, 2021 QCCS 1342 (CanLII).

Monitor with the power to conduct investigations into shareholders of the CCAA debtor company;

- e) Held that the decision by Ontario Court of Appeal in *Osztrovics Farms Ltd.*³, which explicitly relies on sections 163 and 164 of the BIA in deciding that a trustee's investigatory powers can relate to corporate documentation about another company when the bankruptcy has significantly invested in this company, can be extended to a monitor in CCAA proceedings, despite the CCAA not containing the same provisions;
- f) Failed to address the issue raised by the Applicant, that the power to compel witnesses to testify or produce documents can only be granted by law, as confirmed by the Supreme Court of Canada in *P.G. du Qué. et Keable c. P.G. du Can. et autres*⁴ and *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Association*⁵.

16. The Applicant submits that:

- a) the CCAA Judge made a palpable and overriding error of law by concluding that Sections 23(c) and (k) and 11 of the CCAA were sufficient for him to grant the CCAA Monitor with the coercive and judicial powers to compel testimony relating to a solvent third-party entity in which a CCAA debtor is a minority shareholder; and
- b) the CCAA Judge committed palpable and overriding errors of law and fact, by rendering a judgment that, for reasons unbeknownst to the Applicant, ignores most of the facts and arguments raised by it, including (i) the uncontested fact that CF(L)Co is a solvent entity that is a stranger to the CCAA proceedings, (ii) that financial statements outlining any environmental and maintenance obligations from 2005 onwards have been

³ *Osztrovics Estate v. Osztrovics Farms Ltd.*, 2015 ONCA 463 (CanLII).

⁴ *P.G. du Qué. et Keable c. P.G. du Can. et autres*, 1978 CanLII 23 (CSC).

⁵ *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Association*, 1993 CanLII 31 (SCC).

provided by CF(L)Co, and (iii) the Supreme Court of Canada has confirmed, in no uncertain terms, that the powers sought in the Investigation Order can only be granted pursuant to an express provision of law, which the Judgment itself appears to recognize, does not exist in the CCAA.

17. These issues are significant in that the granting of the Investigation Powers grants the Monitor and Wabush, the ability to conduct broad and coercive discovery processes, despite the ongoing litigation amongst the parties, thereby limiting the rules and protections normally afforded to a party to a civil litigation. In doing so, the Judgment opens up the floodgates, such that a Monitor in a CCAA process now has the power to obtain the judicial authority to compel third parties wherever they may reside, who are in not in any way implicated in a CCAA proceeding, to provide documentation and testify under oath in the hopes that this could bolster litigation against these same parties.
18. Moreover, considering the important implications of the Judgment, and the complete lack of urgency considering the ongoing litigation and eventual liquidation, the Applicant submits that the Investigation Order should not have been declared executory notwithstanding appeal.

III. GROUND FOR APPEAL

A) The Significance of the Issues in the Action

19. The issues are significant in that the granting of the Investigation Order allows the Monitor to compel representatives of CF(L)Co, who are otherwise strangers to these CCAA proceedings, to provide documentation and testify under oath, outside of the realms of the ongoing litigation with Wabush relating to its Dissolution Motion, in which it seeks, among things, to argue that CF(L)Co is liable for certain Reimbursable Environmental/Maintenance Costs.
20. The CCAA Judge concluded that it was appropriate to grant the investigation powers to the Monitor on the basis that it would further the purposes of the CCAA, despite the fact that the CCAA itself does not grant such powers on the Monitor,

and that the information requested has been provided, at least in large part, and any additional information will be disclosed in the context of the ongoing litigation amongst Wabush and CF(L)Co, which as mentioned above, was already instituted by Wabush before it advanced its claim.

21. The result of the Judgment is that the Monitor now has the unprecedented powers and rights, greater even than what Wabush would have, as a shareholder of Twinco and a party to the ongoing litigation, such that CF(L)Co's rights as a defendant and third party are necessarily adversely affected, forcing CF(L)Co to incur substantial costs relating to these document requests and out-of-court examinations, in addition to having to eventually engage in a similar discovery process in the context of the Dissolution Motion.

B) The Significance of the Issues to the Practice

22. While the scope of a CCAA monitor's powers has evolved and expanded in recent years⁶, the Judgment goes far beyond this expanded role, by allowing a CCAA Monitor to investigate and compel third parties to testify under oath, despite the fact that the CCAA does not explicitly delegate these coercive powers to court-appointed monitors.
23. As mentioned above, the Applicant argued before the CCAA Court, that the power to compel witnesses, which is what is being requested in the Investigation Order, is a coercive and judicial power, which can only be done by a court of justice, failing which all powers must be granted explicitly by law.⁷ This argument is not considered nor even addressed in the Judgment.
24. In fact, and as raised in the CF(L)Co's plan of argument at first instance (Schedule 2), in *P.G. du Qué. et Keable c. P.G. du Can. et autres*, the Supreme Court of

⁶ *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, 2020 QCCA 659; *Ernst & Young Inc v. Essar Global Fund Limited*, 2017 ONCA 1014.

⁷ Ouellette, Yves, *Les tribunaux administratifs au Canada, Procédure et preuve*, Les Éditions Thémis, 1997.

Canada confirms that the power to compel a witness to testify or to produce documents can only be granted by law. Similarly, in *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Association*, the Supreme Court of Canada also confirmed that the power to compel witnesses is normally reserved uniquely for courts of law, and that extending these powers to any other party is exceptional in nature and done by law or regulation, and accordingly, said powers must be interpreted restrictively and in accordance with the clear language of the law in question. Neither of these cases is considered nor even addressed in the Judgment.

25. Instead, and even though it is recognized that there is nothing in the CCAA, including sections 11 and 23, that explicitly grant the Monitor with the power to compel third party witnesses to testify and produce documents, the Court relies on these provisions to expand the Monitor's powers, such that he can conduct investigations and compel the production of testimony and documentation relating to a corporation registered in Newfoundland (Twinco) in which a CCAA debtor is a minority shareholder, as well as one of the other shareholders (CF(L)Co) of Twinco, both of whom are solvent third parties, outside the scope of these CCAA proceedings.
26. To the knowledge of the Applicant, there is no case law in Canada, even when considering *Arrangement relatif à 9227-1584 Québec inc.*, where a monitor has been granted such broad investigative powers with respect to third parties, and instead, the Judgment contravenes the clear teachings of the Supreme Court of Canada.
27. In this regard, there is a fundamental question of justice at play, since the Investigation Order will function to grant the Monitor with powers of coercion, despite the absence of this explicit power in the CCAA, and in circumstances where the plaintiffs (Wabush) would not themselves have these rights in the context of the ongoing litigation (both through the Oppression and Dissolution Motion and the Liquidation Application).

28. 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 and the increasingly extensive powers granted to CCAA monitors, the matter on appeal is of great significance to the practice of insolvency in Canada. The Applicant submits that clarity regarding the actual powers of the Monitor to act as a judicial body capable of compelling testimony and document production from entities that are strangers to a CCAA process is essential.

C) The Proposed Appeal is Prima Facie Meritorious

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

D) Progress of the Action

30. The Applicant respectfully submits that there is no basis on which to conclude that an expeditious appeal would unduly hinder the progress of the action. The CCAA Proceedings were instituted in 2015, and Wabush only recently instituted its action against the Applicant, in what itself describes are the final steps in a liquidation process. Moreover, the litigation will continue in its normal course, whether or not the Monitor is undertaking its own discovery process in parallel.

31. In light of the foregoing, the Applicant submits that provisional execution should be suspended considering (i) the apparent weakness in the Judgment based on the arguments stated above, (ii) the risk that CF(L)Co will suffer a serious prejudice if provisional execution is maintained considering the nature of the information which will have already been transmitted notwithstanding any success of the appeal, and (iii) the balance of inconveniences as such suspension will not jeopardize the CCAA proceedings, since the liquidation of this final asset is the last step in these proceedings.

IV. CONCLUSIONS SOUGHT

32. To the best of the Applicant's knowledge, the present case concerns the first time a Monitor has been granted such broad investigative powers to compel documentation and testimony under oath in connection with a third party solvent entity, who is in no way implicated in the CCAA proceedings. It is therefore manifestly in the interest of the practice for this court to consider the palpable and overriding errors identified herein and in the notice of appeal, and to confirm the basic principle, that the power to coerce, belongs solely with a court of law, unless explicitly provided for in specific rules.
33. The Applicant will ask the Court of Appeal to
- a) ALLOW the appeal;
 - b) REVERSE the judgment in first instance;
 - c) 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 and to Suspend the Provisional Execution*;

GRANT the applicant leave to appeal the judgment rendered on July 14, 2021 by the Honourable Michel A. Pinsonnault of the Superior Court of Québec in file number 500-11-048114-157 (the "**Judgment**");

SUSPEND the provisional execution of the Judgment;

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

MONTREAL, August 4, 2021

Stikeman Elliott

M^e Guy Martel

Direct : 514 397 3163

Email : gmartel@stikeman.com

M^e Nathalie Nouvet

Direct : 514 397 3128

Email : nnouvet@stikeman.com

M^e William Rodier-Dumais

Direct : 514 397 3298

Email : wrodierdumais@stikeman.com

STIKEMAN ELLIOTT LLP

1155 René-Lévesque Blvd. West

41st Floor

Montréal (Québec) Canada H3B 3V2

Attorneys for the Applicant

Churchill Falls (Labrador) Corporation Limited

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MISES-EN-CAUSE – Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

MONITOR

AFFIDAVIT OF NATHALIE NOUVET

(Dated August 4, 2021)

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:

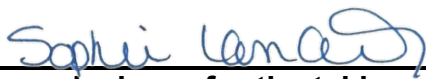
1. I am the one of the attorneys for the Applicant;
2. All of the facts alleged in the *Application for Leave to Appeal and to Suspend the Provisional Execution* are true.

AND I HAVE SIGNED



NATHALIE NOUVET

**Solemnly declared before me in
Montreal, on this 4th day of August 2021**



**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 and to Suspend the Provisional Execution* 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 2, 2021, at 9:30 a.m., in Courtroom RC-18.T**

DO GOVERN YOURSELF ACCORDINGLY.

MONTRÉAL, August 4, 2021

Stikeman Elliott

M^e Guy Martel

Direct : 514 397 3163

Email : gmartel@stikeman.com

M^e Nathalie Nouvet

Direct : 514 397 3128

Email : nnouvet@stikeman.com

M^e William Rodier-Dumais

Direct : 514 397 3298

Email : wrodierdumais@stikeman.com

STIKEMAN ELLIOTT LLP

1155 René-Lévesque Blvd. West

41st Floor

Montréal (Québec) Canada H3B 3V2

Attorneys for the Applicant

Churchill Falls (Labrador) Corporation Limited

**LIST OF SCHEDULES IN SUPPORT OF THE
APPLICATION FOR LEAVE TO APPEAL AND
TO SUSPEND PROVISIONAL EXECUTION**

- SCHEDULE A:** Notice of Appeal, dated August 4, 2021
- SCHEDULE 1:** 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
- SCHEDULE 2:** Copy of the Applicant's plan of argument submitted in the context of the hearing before the CCAA Judge
- SCHEDULE 3:** Copy of Wabush's *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* dated November 16, 2020
- SCHEDULE 4:** Copy of CF(L)Co's *Amended Contestation of the Dissolution Motion and Expansion Motion* 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

MONTRÉAL, August 4, 2021

Stikeman Elliott

M^e Guy Martel

Direct : 514 397 3163

Email : gmartel@stikeman.com

M^e Nathalie Nouvet

Direct : 514 397 3128

Email : nnouvet@stikeman.com

M^e William Rodier-Dumais

Direct : 514 397 3298

Email : wrodierdumais@stikeman.com

STIKEMAN ELLIOTT LLP

1155 René-Lévesque Blvd. West

41st Floor

Montréal (Québec) Canada H3B 3V2

Attorneys for the Applicant

Churchill Falls (Labrador) Corporation Limited

SCHEDULE A

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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 APPLICANT SUBMITS:

I. INTRODUCTION

1. Churchill Falls (Labrador) Corporation Limited (“**CF(L)Co**” or the “**Applicant**”), hereby gives notice of its intention to appeal the judgment and order rendered on July 14, 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 Judgment grants FTI Consulting Canada Inc. (the “**Monitor**”) broad and unprecedented investigative powers, to compel third parties to the CCAA proceedings (including the Applicant) to produce documentation and testimony under oath, in contravention of the clear teachings of the Supreme Court of Canada¹, which confirm that these kinds of coercive judicial powers, can only be granted if specifically delegated in a body of law. A copy of the Judgment is attached hereto as **Schedule 1**.
2. In rendering the Judgment, the CCAA Judge appears to have relied exclusively on the arguments and facts raised by the Respondents and Twin Falls Power Corporation (“**TwincO**”), leaving the impression, that the Applicant’s representations were, for the most part, not even considered. As a result, there are palpable and overriding factual and legal mistakes in the Judgment, which will have a significant impact not only on the case at hand, but the CCAA practice more generally. A copy of the Applicant’s plan of argument submitted in the context of the hearing before the CCAA Judge is attached hereto as **Schedule 2**.

¹ *P.G. du Qué. et Keable c. P.G. du Can. et autres*, 1978 CanLII 23 (CSC).

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 Iron Co. Limited ("**Wabush Iron**") and Wabush Resources Inc. ("**Wabush Resources**", together with Wabush Iron, "**Wabush**") and the Mises-en-cause Wabush Mines, Wabush Lake Railway Company Limited, and Arnaud Railway Company.
5. 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 the Newfoundland corporation, 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 3** hereto), on the basis that it was seeking to monetize its last assets (i.e. its shares in Twinco), which, according

to Wabush, required that the following orders 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) 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**"). In this regard, and although completely disregarded in the Judgment, Wabush, as a shareholder with directors nominated to the board of directors of Twinco, has access to the financial statements of Twinco, which in any event, were provided for 2005-2020 and filed as confidential exhibits to CF(L)Co's Amended Contestation of the Dissolution Motion and Expansion Motion (as defined below), which is attached hereto as **Schedule 4**; and
 - c) 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.
8. The Applicant and Twinco are contesting the jurisdiction relating to the Dissolution Motion on the basis that 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 Court of Newfoundland and Labrador, and not the Quebec CCAA Court, since:

- 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.
9. The defendants to the Dissolution Motion are Twinco and CF(L)Co, neither of whom have any place of business in the Province of Québec. In addition, the Dissolution Motion raises environmental issues that have arisen in connection with 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 by provincial law.
 10. As a result, and in accordance with section 207 of the CBCA, CF(L)Co instituted liquidation proceedings pursuant to section 214(1) of the CBCA before the Newfoundland Court (the "**Liquidation Application**"), which application is suspended until the CCAA Court determines whether it does in fact have jurisdiction to hear the Dissolution Motion, which debate is scheduled for August 6, 2021. A copy of the Liquidation Application is attached as **Schedule 5**.
 11. In an effort to circumvent the jurisdiction debate scheduled for August 6, 2021, Wabush 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, despite the pending jurisdiction debate. A copy of the Expansion Motion is attached hereto as **Schedule 6**.

12. More specifically, Wabush requested that the Court order that the Monitor be granted the powers to:
 - a) 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, CF(L)Co Indemnity and CF(L)Co Maintenance Obligations, including the Twinco Requested Information (the “Requested Information”) in respect of the period from and after January 1, 2010; and
 - b) conduct investigations, including examinations under oath of any person reasonably thought to have knowledge relating to the Twinco Interest, CF(L)Co Indemnity and CF(L)Co Maintenance Obligations, including the Twinco Requested Information, in respect of the Disclosure Period.

C) The Judgment

13. Following an approximately 3 hour hearing on June 3, 2021, the CCAA Judge issued the Investigation Order on July 14, 2021, relying on sections 11 and 23(c) and (k) of the CCAA to conclude that a CCAA Court does in fact have the power to allow a Monitor to conduct investigations, under oath, of any person who may have knowledge relating to a third party in which a CCAA debtor is a minority shareholder, and in doing so:
 - a) Discounted, or failed to even acknowledge, any of the territorial jurisdictional issues raised by each of CF(L)Co and Twinco;
 - b) Ignored the fact that CF(L)Co had provided copies of Twinco’s financial statements to the Monitor dating back to 2005, despite the contrary findings in the Judgment at paragraph 35, which suggests that only those statements from 2013-2019 were provided. Moreover, the Judgment ignores the fact that the financial statements very clearly outline each of the

maintenance and environmental costs and obligations incurred by Twinco – i.e. the exact information requested by the Monitor.

- c) Held that Section 23(1)(c) of the CCAA, which 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 [...]*”, not only gives the Monitor the power to investigate the debtor’s business and affairs, but can also be used to allow the Monitor to investigate solvent third parties who are strangers to the CCAA Proceedings (particularly if read with the discretionary powers granted under section 11 of the CCAA). In this regard, although the CCAA Court finds that Twinco is not a stranger to these proceedings, it chooses to not address this issue as regards to the Applicant, despite the uncontested facts before it that CF(L)Co is a corporation registered and operating in Newfoundland, with no business in Quebec, who up until the filing of the Dissolution Motion, was a complete stranger to these CCAA Proceedings.
- d) Held that the type of additional powers sought by Wabush have been previously granted in one previous CCAA decision, whereby Justice Kalichman, in *Arrangement relatif à 9227-1584 Québec inc.*², granted the Monitor with the power to conduct investigations into shareholders of the CCAA debtor company;
- e) Held that the decision by Ontario Court of Appeal in *Osztrovics Farms Ltd.*³, which explicitly relies on sections 163 and 164 of the BIA in deciding that a trustee’s investigatory powers can relate to corporate documentation about another company when the bankruptcy has significantly invested in this

² *Arrangement relatif à 9227-1584 Québec inc.*, 2021 QCCS 1342 (CanLII).

³ *Osztrovics Estate v. Osztrovics Farms Ltd.*, 2015 ONCA 463 (CanLII).

company, can be extended to a monitor in CCAA proceedings, despite the CCAA not containing the same provisions;

- f) Failed to address the issue raised by the Applicant, that the power to compel witnesses to testify or produce documents can only be granted by law, as confirmed by the Supreme Court of Canada in *P.G. du Qué. et Keable c. P.G. du Can. et autres*⁴ and *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Association*⁵.

14. The Applicant submits that:

- a) the CCAA Judge made a palpable and overriding error of law by concluding that Sections 23(c) and (k) and 11 of the CCAA were sufficient for him to grant the CCAA Monitor with the coercive and judicial powers to compel testimony relating to a solvent third-party entity in which a CCAA debtor is a minority shareholder; and
- b) the CCAA Judge committed palpable and overriding errors of law and fact, by rendering a judgment that, for reasons unbeknownst to the Applicant, ignores most of the facts and arguments raised by it, including (i) the uncontested fact that CF(L)Co is a solvent entity that is a stranger to the CCAA proceedings, (ii) that financial statements outlining any environmental and maintenance obligations from 2005 onwards have been provided by CF(L)Co, and (iii) the Supreme Court of Canada has confirmed, in no uncertain terms, that the powers sought in the Investigation Order can only be granted pursuant to an express provision of law, which the Judgment itself appears to recognize, does not exist in the CCAA.

15. These issues are significant in that the granting of the Investigation Powers grants the Monitor and Wabush, the ability to conduct broad and coercive discovery

⁴ *P.G. du Qué. et Keable c. P.G. du Can. et autres*, 1978 CanLII 23 (CSC).

⁵ *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Association*, 1993 CanLII 31 (SCC).

processes, despite the ongoing litigation amongst the parties, thereby limiting the rules and protections normally afforded to a party to a civil litigation. In doing so, the Judgment opens up the floodgates, such that a Monitor in a CCAA process now has the power to obtain the judicial authority to compel third parties wherever they may reside, who are in not in any way implicated in a CCAA proceeding, to provide documentation and testify under oath in the hopes that this could bolster litigation against these same parties.

16. Moreover, considering the important implications of the Judgment, and the complete lack of urgency considering the ongoing litigation and eventual liquidation, the Applicant submits that the Investigation Order should not have been declared executory notwithstanding appeal.

III. GROUND FOR APPEAL

17. The CCAA Judge has granted an Investigation Order which allows the Monitor to compel representatives of CF(L)Co, who are otherwise strangers to these CCAA proceedings, to provide documentation and testify under oath, outside of the realms of the ongoing litigation with Wabush relating to its Dissolution Motion, in which it seeks, among things, to argue that CF(L)Co is liable for certain Reimbursable Environmental/Maintenance Costs.
18. The CCAA Judge concluded that it was appropriate to grant such investigation powers to the Monitor on the basis that it would further the purposes of the CCAA, despite the fact that the CCAA itself does not grant such powers on the Monitor, and that the information requested has been provided, at least in large part, and any additional information will be disclosed in the context of the ongoing litigation amongst Wabush and CF(L)Co, which as mentioned above, was already instituted by Wabush before it advanced its claim.
19. The result of the Judgment is that the Monitor now has the unprecedented powers and rights, greater even than what Wabush would have, as a shareholder of Twinco and a party to the ongoing litigation, such that CF(L)Co's rights as a

defendant and third party are necessarily adversely affected, forcing CF(L)Co to incur substantial costs relating to these document requests and out-of-court examinations, in addition to having to eventually engage in a similar discovery process in the context of the Dissolution Motion.

20. While the scope of a CCAA monitor's powers has evolved and expanded in recent years⁶, the Judgment goes far beyond this expanded role, by allowing a CCAA Monitor to investigate and compel third parties to testify under oath, despite the fact that the CCAA does not explicitly delegate these coercive powers to court-appointed monitors.
21. As mentioned above, the Applicant argued before the CCAA Court, that the power to compel witnesses, which is what is being requested in the Investigation Order, is a coercive and judicial power, which can only be done by a court of justice, failing which all powers must be granted explicitly by law.⁷ This argument is not considered nor even addressed in the Judgment.
22. In fact, and as raised in the CF(L)Co's plan of argument at first instance (Schedule 2), in *P.G. du Qué. et Keable c. P.G. du Can. et autres*, the Supreme Court of Canada confirms that the power to compel a witness to testify or to produce documents can only be granted by law. Similarly, in *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Association*, the Supreme Court of Canada also confirmed that the power to compel witnesses is normally reserved uniquely for courts of law, and that extending these powers to any other party is exceptional in nature and done by law or regulation, and accordingly, said powers must be interpreted restrictively and in accordance with the clear language of the law in question. Neither of these cases is considered nor even addressed in the Judgment.

⁶ *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, 2020 QCCA 659; *Ernst & Young Inc v. Essar Global Fund Limited*, 2017 ONCA 1014.

⁷ Ouellette, Yves, *Les tribunaux administratifs au Canada, Procédure et preuve*, Les Éditions Thémis, 1997.

23. Instead, and even though it is recognized that there is nothing in the CCAA, including sections 11 and 23, that explicitly grant the Monitor with the power to compel third party witnesses to testify and produce documents, the Court relies on these provisions to expand the Monitor's powers, such that he can conduct investigations and compel the production of testimony and documentation relating to a corporation registered in Newfoundland (Twinco) in which a CCAA debtor is a minority shareholder, as well as one of the other shareholders (CF(L)Co) of Twinco, both of whom are solvent third parties, outside the scope of these CCAA proceedings.
24. To the knowledge of the Applicant, there is no case law in Canada, even when considering *Arrangement relatif à 9227-1584 Québec inc.*, where a monitor has been granted such broad investigative powers with respect to third parties, and instead, the Judgment contravenes the clear teachings of the Supreme Court of Canada.
25. In this regard, there is a fundamental question of justice at play, since the Investigation Order will function to grant the Monitor with powers of coercion, despite the absence of this explicit power in the CCAA, and in circumstances where the plaintiffs (Wabush) would not themselves have these rights in the context of the ongoing litigation (both through the Oppression and Dissolution Motion and the Liquidation Application).
26. 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 and the increasingly extensive powers granted to CCAA monitors, the matter on appeal is of great significance to the practice of insolvency in Canada. The Applicant submits that clarity regarding the actual powers of the Monitor to act as a judicial body capable of compelling testimony and document production from entities that are strangers to a CCAA process is essential.

27. The Applicant respectfully submits that there is no basis on which to conclude that an expeditious appeal would unduly hinder the progress of the action. The CCAA Proceedings were instituted in 2015, and Wabush only recently instituted its action against the Applicant, in what itself describes are the final steps in a liquidation process. Moreover, the litigation will continue in its normal course, whether or not the Monitor is undertaking its own discovery process in parallel.

IV. CONCLUSIONS SOUGHT

28. To the best of the Applicant's knowledge, the present case concerns the first time a Monitor has been granted such broad investigative powers to compel documentation and testimony under oath in connection with a third party solvent entity, who is in no way implicated in the CCAA proceedings. It is therefore manifestly in the interest of the practice for this court to consider the palpable and overriding errors identified herein and to confirm the basic principle, that the power to coerce, belongs solely with a court of law, unless explicitly provided for in specific rules.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

ALLOW the appeal;

SET ASIDE the judgment rendered on July 14, 2021 by the Honourable Michel A. Pinsonnault of the Superior Court of Québec in file number 500-11-048114-157 (the "**Judgment**");

CONDEMN the respondents to pay the appellant legal costs both in first instance and on appeal.

MONTRÉAL, August 4, 2021

Stikeman Elliott

M^e Guy Martel

Direct : 514 397 3163

Email : gmartel@stikeman.com

M^e Nathalie Nouvet

Direct : 514 397 3128

Email : nnouvet@stikeman.com

M^e William Rodier-Dumais

Direct : 514 397 3298

Email : wrodierdumais@stikeman.com

STIKEMAN ELLIOTT LLP

1155 René-Lévesque Blvd. West

41st Floor

Montréal (Québec) Canada H3B 3V2

Attorneys for the Applicant

Churchill Falls (Labrador) Corporation Limited

LIST OF APPELLANT'S SCHEDULES
IN SUPPORT OF THE NOTICE OF APPEAL*

(Dated August 4, 2021)

****NOTE : The Schedules in support of the Notice of Appeal were filed in support of the Application for Leave to Appeal and to Suspend Provisional Execution***

- SCHEDULE 1:** 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
- SCHEDULE 2:** Copy of the Applicant's plan of argument submitted in the context of the hearing before the CCAA Judge
- SCHEDULE 3:** Copy of Wabush's *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* dated November 16, 2020
- SCHEDULE 4:** Copy of CF(L)Co's *Amended Contestation of the Dissolution Motion and Expansion Motion* 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

MONTRÉAL, August 4, 2021

Stikeman Elliott

M^e Guy Martel

Direct : 514 397 3163

Email : gmartel@stikeman.com

M^e Nathalie Nouvet

Direct : 514 397 3128

Email : nnouvet@stikeman.com

M^e William Rodier-Dumais

Direct : 514 397 3298

Email : wrodierdumais@stikeman.com

STIKEMAN ELLIOTT LLP

1155 René-Lévesque Blvd. West

41st Floor

Montréal (Québec) Canada H3B 3V2

Attorneys for the Applicant

Churchill Falls (Labrador) Corporation Limited

SCHEDULE 1

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-048114-157

DATE: July 14, 2021

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

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

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

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 Parties¹ 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

¹ 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 Contestation² and the Twinco Dismissal Motion³ *sine die*, and on February 22, 2021, the Supreme Court of Newfoundland and Labrador (the "**Newfoundland Court**") adjourned the Twinco Liquidation Motion⁴, 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.

² As defined below.

³ As defined below.

⁴ 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 Wabush⁵;
- 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 liabilities⁶;
- The history of the Twinco Plant⁷ 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

⁵ 4.6% held by Wabush Iron Co. Limited and 12.5% by Wabush Resources Inc.

⁶ R-3.

⁷ 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**”)⁸;
- 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 Indemnity⁹;
- 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, 1980¹⁰, the shareholders are entitled to share rateably in the remaining property of Twinco upon dissolution;

⁸ As more particularly detailed in the CBCA Motion.

⁹ R-6 of the CBCA Motion.

¹⁰ R-4.

- Wabush's share of the Remaining Twinco Cash¹¹ 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)

¹¹ 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, 2021¹², 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, 2021¹³ (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**”)¹⁴.

[24] The Twinco Liquidation Motion was formally filed on January 21, 2021, to be heard in Newfoundland on February 23, 2021¹⁵.

[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

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

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

¹⁴ **C-1**.

¹⁵ **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 1st Letter**"), counsel for the CCAA Parties sought to confirm its understanding of the terms of the adjournment of the Adjourned Proceedings as among the parties¹⁶.

[28] In the February 1st 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 1st 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

¹⁶ R-8.

period from July 1974 to December 31, 2020, as described in more detail in the February 1st 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.¹⁷

[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”.¹⁸

[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 1st Letter, already expressly noted were excluded from the CCAA Parties’ request (as the CCAA Parties already had copies of these financial statements).¹⁹

[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

¹⁷ R-9.

¹⁸ R-10.

¹⁹ 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.²⁰

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:

²⁰ 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.²¹

²¹ 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 Process²² authorized by the Court, Twinco filed a proof of claim against Wabush for approximately \$780,000²³. Twinco’s claim was allowed by the Monitor in 2016²⁴.

[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.

²² 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**”).

²³ R-14.

²⁴ *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 Information²⁵ 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?

²⁵ 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?²⁶

[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.

²⁶ *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 CCAA²⁷.

[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*²⁸, 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.

²⁷ Section 11.7 (1) CCAA.

²⁸ 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.*²⁹, 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

²⁹ 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.*³⁰, 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

³⁰ *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*³¹, the Court believes that those principles apply equally to the CCAA proceedings³².

[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 circumstances³³.

[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.³⁴

[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

³¹ Sections 163 and 164 BIA.

³² *Confederation Treasury Services Ltd., Re*, 1995 CarswellOnt 2301, par. 18.

³³ *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]

³⁴ 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.*³⁵, 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

³⁵ 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*³⁶, 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."³⁷

[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 CCAA³⁸ and the expanded view of the role of the monitor, indeed the baptism of the "super monitor".³⁹ The Appellants concede, if only indirectly, that

³⁶ See Note 33.

³⁷ *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, 2020 QCCA 659 at para 73.

³⁸ *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, para. 42 [*Callidus*].

³⁹ 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.⁴⁰ Trustees exercise rights and recourses on behalf of creditors against other creditors and against third parties.⁴¹ 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.**⁴² 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

⁴⁰ *Giffen (Re)*, [1998 CanLII 844 \(SCC\)](#), [1998] 1 S.C.R. 91, para. 33.

⁴¹ *Lefebvre (Trustee of) ; Tremblay (Trustee of)*, [2004 SCC 63](#), [2004] 3 S.C.R. 326, paras. 32–40.

⁴² 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. (...).⁴³

[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]

⁴³ *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.

MICHEL A PINSONNAULT, J.S.C.

M^{re} Bernard Boucher
M^{re} Milly Chow
M^{re} Cristina Cataldo
Blake, Cassels & Graydon s.e.n.c.r.l.
Attorneys for the CCAA Parties.

M^{re} Sylvain Rigaud
Woods s.e.n.c.r.l.
Attorneys for the Monitor FTI Consulting Canada Inc.

M^{re} Douglas Mitchell
IMK s.e.n.c.r.l./IMK L.L.P.
Attorneys for the Mise-en-cause Twin Falls Power Corporation

M^{re} Guy P. Martel
M^{re} Nathalie Nouvet
Stikeman Elliott s.e.n.c.r.l.
Attorneys for the Mise-en-cause Churchill Falls (Labrador) Corporation Limited

M^{re} Gerry Apostolatos
Langlois avocats, s.e.n.c.r.l.
Attorneys for the Mises-en-cause Quebec North Shore & Labrador Railway Company and Iron Ore Company of Canada

M^{re} Nicolas Brochu
Fishman Flanz Meland Paquin s.e.n.c.r.l.
Attorneys for the Mise-en-cause for the Salaried/non-union employees and retirees

Hearing date: June 3, 2021

SCHEDULE 2

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

No.: 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
TWIN FALLS POWER CORPORATION
CHURCHILL FALLS (LABRADOR)
CORPORATION LIMITED

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

Monitor

PLAN OF ARGUMENT 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

I INTRODUCTION

1. Pursuant to the *Motion for the Expansion of the Monitor's Powers* (the "**Expansion Motion**"), Wabush is seeking orders (the "**Investigation Order**") from this Court granting the Monitor with unprecedented investigative powers to¹:
 - a) 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) 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.
2. The Investigation Order is intimately related to the *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* (the "**Dissolution Motion**"), which was filed by Wabush on November 16, 2020, which seeks, among other things:
 - a) an order confirming that Churchill Falls (Labrador) Corporation Limited ("**CF(L)Co**") is liable 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**"). In this regard, we note that Wabush, as a shareholder with directors nominated to the board of directors of Twinco, has access to the financial statements of Twinco, which in any event, have been recently provided and filed as exhibits to CFLCo's Amended Contestation; and
 - c) 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 pursuant to the relief requested in paragraph (d) below.

¹ A copy of the draft requested Order is communicated as Exhibit R-13 to the Expansion Motion (the "**Investigation Order**").

3. In essence, Wabush, as a minority shareholder of a Newfoundland corporation (i.e. Twinco), is seeking, through the CCAA process, to obtain a litigation advantage, by having a court-appointed Monitor be granted investigative powers into not only Twinco, but its other shareholders (i.e. CFLCo), in order to circumvent the rules of the CBCA and of civil procedure that would normally govern the litigation amongst the parties, either in Quebec with the Dissolution Motion, or in Newfoundland through the Liquidation Application.
4. CF(L)Co submits that this Court does not have the jurisdiction or competence to grant the Monitor with the powers provided for in the Investigation Order, and accordingly, the Expansion Motion should be dismissed for the following reasons:
 - a) CFLCo has provided Wabush and the Monitor with the audited financial statements of Twinco for the past 15 years, which in any event, Wabush should have had in its possession, considering that these statements were approved by it, as shareholder, as well as by its nominee directors who sat on the board of directors of Twinco up until June 14, 2017.² These financial statements clearly demonstrate that since 2005, an amount of about **\$150,000** was disbursed by Twinco in respect of environmental issues. The information provided will allow Wabush to proceed, if it deems necessary, with any examinations or further discovery in the context of the litigation on the Dissolution Motion (or the Liquidation Application), and in particular, will allow it to determine, very clearly, whether such disbursements were made in connection with obligations to be supported by CFLCo. As such, there is absolutely no need to grant the exceptional powers requested through the Investigation Order.
 - b) The Investigation Order is sought in the context of the Dissolution Motion, over which this Court has no jurisdiction. In particular, pursuant to section 207 of the CBCA, any liquidation or dissolution proceedings of Twinco **must** occur in the province of Newfoundland and Labrador, being the location of Twinco's registered office.
 - c) Pursuant to articles 3134 and 3148 of the *Civil Code of Quebec* ("**CCQ**"), this Court is not competent to hear an action that has been instituted against CFLCo, as a defendant to the Dissolution Motion, considering that (i) CFLCo is not domiciled or residing in Quebec, (ii) CFLCo does not have an establishment 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) CFLCo has not submitted to the jurisdiction of Quebec, particularly considering that each of the issues and agreements raised in the Dissolution Motion are specifically governed by the laws of Newfoundland and Labrador.
 - d) The powers sought in the Investigation Order can only be granted pursuant to an express provision of law, confirmed, notably, by the

² Dissolution Motion, para. 19.

Supreme Court of Canada, in *P.G. du Qué. et Keable c. P.G. du Can. et autres*, 1978 CanLII 23 (CSC), where the Court ruled as follows: “I do not find it necessary to review at great length the numerous authorities cited on the fourth constitutional question. Because, at common law, a commission of inquiry has no power to compel the attendance of witnesses and to require the production of documents, any jurisdiction for such purposes depends on statutory authority, and it seems clear that provincial legislation cannot be effective by itself to confer such jurisdiction as against the Crown in right of Canada.”

- e) Sections 23(c) and (k) of the CCAA limits the appraisal and investigation powers of the Monitor to the business and financial affairs of the CCAA debtors, and does not, in any way, extend to the business and affairs of solvent third parties, including CFLCo, who is a complete stranger to these CCAA proceedings.
- 5. In sum, the Investigation Order, if granted, will grant the Monitor with unprecedented powers and rights, greater even than what Wabush would have, as a shareholder of Twinco and a party in the context of the ongoing litigation. The CCAA does not justify the granting of said powers.
- 6. All capitalized terms not defined herein shall have the meaning ascribed to them in the *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* (the “**Amended Contestation**”).

II **LAW AND ARGUMENTS**

A) ***The Jurisdiction of the Court Under Sections 207 and 214 of the CBCA***

- 7. CFLCo 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, and accordingly, does not have the powers to grant investigative powers in connection with this same litigation.
- 8. 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.

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.

9. 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.

➤ 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, **TAB 1**:

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)

10. In this case, there is no doubt that the Court of Newfoundland and Labrador is the only court with the jurisdiction relating to the requested dissolution and liquidation, since:
 - 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.
11. As such, 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 (the "**Liquidation Application**"), 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.

B) *The Investigation is Related to a Litigation that Should Take Place in Newfoundland*

12. Pursuant to the Dissolution Motion, Wabush is asking that this Court issue remedies on the basis of alleged oppressive conduct by the directors of Twinco, basing this request on article 241 of the CBCA.
13. In order to proceed in this manner, Wabush is required to establish, pursuant to articles 3134 and 3148 of the CCQ, that the Quebec Court does in fact have jurisdiction, which as mentioned above, it does not. Articles 3134 and 3148 of the CCQ read as follows:

Art. 3134. En l'absence de disposition particulière, les autorités du Québec sont compétentes lorsque le défendeur a son domicile au Québec.

[...]

Art. 3148. Dans les actions personnelles à caractère patrimonial, les autorités québécoises sont compétentes dans les cas suivants :

1° Le défendeur a son domicile ou sa résidence au Québec;

2° Le défendeur est une personne morale qui n'est pas domiciliée au Québec mais y a un établissement et la contestation est relative à son activité au Québec;

3° *Une faute a été commise au Québec, un préjudice y a été subi, un fait dommageable s'y est produit ou l'une des obligations découlant d'un contrat devait y être exécutée;*

4° *Les parties, par convention, leur ont soumis les litiges nés ou à naître entre elles à l'occasion d'un rapport de droit déterminé;*

5° *Le défendeur a reconnu leur compétence.*

Cependant, les autorités québécoises ne sont pas compétentes lorsque les parties ont choisi, par convention, de soumettre les litiges nés ou à naître entre elles, à propos d'un rapport juridique déterminé, à une autorité étrangère ou à un arbitre, à moins que le défendeur n'ait reconnu la compétence des autorités québécoises.

➤ *Sychterz c. Bouchard, 2015 QCCS 1215 (CanLII), **TAB 2.***

14. The defendants in this action are Twinco and CFLCo.
15. As mentioned above, 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.³
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.⁴
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.⁵
19. Neither Wabush Iron nor Wabush Resources have their registered offices in the Province of Quebec.
20. 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 by provincial law.
21. Finally, the Potential Environmental Liabilities and the CLFCo Maintenance Obligations all relate to the Twinco Plant, and stem from the following documents, each of which was negotiated and executed in in the Province of

³ See Twinco's Federal Corporation Information Report (Exhibit R-4 to the Dissolution Motion).

⁴ See CF(L)Co's corporate profile with Corporations Canada, **Exhibit C-2** to the Amended Contestation.

⁵ See screen captures of their respective company profiles in the Newfoundland and Labrador Companies and Deeds Online database, **Exhibit C-3** to the Amended Contestation.

Newfoundland and Labrador and are governed by the laws of Newfoundland and Labrador:

- a) the Participation Agreement dated January 2, 1977 (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 (Exhibit R-5 to the Dissolution Motion); and
- c) the Operating Lease dated November 30, 1967 (Exhibit R-6 to the Dissolution Motion).

C) The Power to Compel Witnesses and Produce Documentation Must be Expressly Granted by Law

22. Wabush is requesting that this Court grant the Monitor with the power (i) to compel witnesses to testify under oath and (ii) to remit any documents relating to the ongoing litigation between Wabush and CFLCo, which powers can only be granted if they are expressly provided for or granted to an authority by law.

23. In this regard, the author Yves Ouellette explains that the power to compel witnesses, which is what is being requested in the Investigation Order, is a coercive and judicial power, which can only be done by a court of justice, failing which all powers must be granted explicitly by law.

- Ouellette, Yves, *Les tribunaux administratifs au Canada, Procédure et preuve*, Les Éditions Thémis, 1997, p. 51 (cited in *Provencher et Commission administrative des régimes de retraite et d'assurances*, 2012 CanLII 95059 (QC TA), at para.20) **TAB 3:**

« LA COMPÉTENCE POUR ASSIGNER ET CONTRAINDRE LES TÉMOINS

Le pouvoir de convoquer une personne à témoigner est de nature coercitive et judiciaire. C'est un attribut indispensable d'une cour de justice. En Common Law, un tribunal administratif (comme une commission d'enquête) n'a pas le pouvoir de contraindre une personne à témoigner : ce n'est pas une cour; il n'a pas de juridiction inhérente et sa situation à cet égard est la même qu'un simple administré. Toute compétence en cette matière doit lui être conférée par la loi.

...

Lorsque le tribunal administratif ou l'organisme utilise ce pouvoir légal d'assigner un témoin, il devient alors un tribunal au sens de la Loi sur la preuve et de l'article 846 du Code de procédure civile du Québec.

Il existe plusieurs techniques législatives pour conférer à un tribunal le pouvoir exceptionnel d'assigner un témoin. Une des plus courantes est

d'incorporer dans la loi constitutive du tribunal la législation sur les commissions d'enquête, car ces législations confèrent à leur tour aux commissaires, en ce qui concerne la procédure d'examen des témoins "tous les pouvoirs d'un juge de la Cour supérieure siégeant en terme."

Dans la province de Québec, le pouvoir d'un juge de la Cour supérieure en la matière inclut, aux termes du Code de procédure civile, notamment celui d'assigner des témoins, de requérir les services d'un interprète et de contraindre à témoigner une personne présente dans la salle d'audience.

Même si certains textes précisent que le tribunal administratif peut alors exiger la production de documents, l'attribution d'un pouvoir d'assigner de témoins inclut celui de les obliger à produire les documents indiqués au subpoena duces tecum.

Il arrive qu'un organisme ne soit pas habilité par la loi à assigner des témoins; si ces derniers ne sont pas disposés à témoigner volontairement, il est alors loisible à l'organisme de demander l'aide de la Cour supérieure qui, en vertu de sa juridiction inhérente, a alors compétence pour assigner le témoin devant le tribunal administratif.

Convoquer une personne par subpoena à témoigner contre son gré en public devant une cour ou un tribunal administratif est un acte coercitif qui ne doit pas être posé abusivement ni à la légère, car il peut constituer une atteinte à la vie privée, surtout si la convocation s'accompagne d'un ordre de produire des documents nominatifs ou d'ordre financier. »^[1] (Emphasis Added)

24. In fact, in *P.G. du Qué. et Keable c. P.G. du Can. et autres*, 1978 CanLII 23 (CSC), as cited above, the Supreme Court of Canada confirms that the power to compel a witness to testify or to produce documents can only be granted by law.

➤ *P.G. du Qué. et Keable c. P.G. du Can. et autres*, 1978 CanLII 23 (CSC), [1979] 1 RCS 218, **TAB 4** :

*« Il me paraît inutile de m'attarder longtemps à la jurisprudence abondante citée au sujet de la quatrième question constitutionnelle. Puisqu'en common law, une commission d'enquête n'a aucun pouvoir de contraindre un témoin à comparaître ou d'exiger la production de documents, **toute compétence à cet égard doit être conférée par une loi.** »*

*"I do not find it necessary to review at great length the numerous authorities cited on the fourth constitutional question. Because, at common law, a commission of inquiry has no power to compel the attendance of witnesses and to require the production of documents, **any jurisdiction for such purposes depends on statutory authority**, and it seems clear that provincial legislation cannot be effective by itself to confer such jurisdiction as against the Crown in right of Canada."*

25. In *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Association*, 1993 CanLII 31 (SCC), the Supreme Court of Canada also confirmed that the power to compel witnesses is normally reserved uniquely for courts of law, and that extending these powers to any other party is exceptional in nature and done by law or regulation, and accordingly, said powers must be interpreted restrictively and in accordance with the clear language of the law in question.

➤ *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Association*, 1993 CanLII 31 (SCC), [1993] 3 SCR 724, **TAB 5**:

*“This conclusion is also supported by the nature of the provision. The power granted by s. 118(a) is coercive. While the orders of the Board are not executory in themselves, they are enforceable by filing with the Registry of the Federal Court, as judgments of that court pursuant to s. 123 of the Code, with the penalties attached thereto including that of imprisonment. **The exercise of such powers is normally reserved uniquely for courts of law, and it is exceptional that they may be initiated by a body such as the Board. This is significant in two ways. First, because s. 118(a) is an exceptional provision which grants to a body a significant power, special attention must be given for this reason alone to any limits which are placed on the exercise of that power by the words of the provision granting it. The Board has no inherent jurisdiction, unlike superior courts whose powers of coercion find their origins in the inherent jurisdiction of those courts.***

*The extent of the power granted by s. 118(a) of the Code appears from the plain meaning of the words of the provision. The Board may exercise its power to compel the production of documents only in the context of a formal hearing. **This conclusion is supported also by the fact that the nature of the power is coercive, and that the limits on its exercise must be respected. The fact that the power is also judicial in character makes extension of its application to an administrative context, one which would require clear words to that effect.** The structure of the provision makes the power to compel the production of documents a part of a complete process which is limited to a formal hearing to which witnesses may be summoned and where they may give evidence on oath. The scope of s. 118(a) cannot be enlarged by means of reference to s. 118(f), which is permissive in nature. Similarly, the presence of broader provisions cannot here operate to allow the special limits imposed on powers such as this to be disregarded. As there is no basis for the conclusion that such a confinement of the power would be inconsistent with the purposes of the Board, when its administrative and judicial functions are considered, the power which is conferred on the Board by s. 118(a) is a power to require witnesses to attend a proceeding before the Board and there to give oral or written testimony and produce documents deemed requisite. In these circumstances, the powers conferred on the*

[Page 748]

Board by ss. 118(a) and 121 do not include a power to compel the production of documents outside the context of a formal hearing.”

26. Finally, in *G.L., Re*, 2005 CanLII 42149 (QC CQ), the Court of Quebec concluded that a Court should not delegate certain of its powers to counsel, particularly when the party being investigated is party to the litigation.

➤ *G.L., Re*, 2005 CanLII 42149 (QC CQ), paras. 17, 18, 29 to 32 **TAB 6** :

« [17] *Peut-on dans un tel contexte permettre à l'avocat, à l'exclusion de sa cliente, de jouer un rôle plus grand ou de lui attribuer plus de droits que cette dernière?*

[18] *En toute déférence pour l'opinion contraire, le tribunal ne peut souscrire à un tel argument. Le faire mettrait, de l'avis de la soussignée, les avocats dans une position intenable à l'endroit de leurs obligations envers leur client.*

[...]

[29] *On le constate, la situation doit être sérieuse, voire d'une gravité certaine pour permettre à la cour de passer outre à la règle de la confidentialité et cela est d'autant plus vrai d'une personne dont les droits impliqués dans un litige sont en jeu, ou si les droits d'un accusé ou d'un plaignant, qui par ailleurs sont parties au procès, sont menacés.*^[8]

[30] *Or, tel n'est pas le cas qui nous occupe ici, loin s'en faut.*

[31] *De plus dans tous ces cas, la cour a également prévu des règles strictes afin de limiter la diffusion de certaines informations.*

[32] *Le tribunal se doit d'être le gardien vigilant des règles de la confidentialité des dossiers jeunesse, essentielles au fonctionnement efficace de la [Loi sur la protection de la jeunesse](#). Permettre au procureur de la requérante d'agir comme demandé équivaut en quelque sorte à une délégation par la cour de son pouvoir de sauvegarde des droits de toutes les parties, ce qui ne saurait avoir lieu. »*

27. In light of the foregoing, and as will be explained below, there is nothing in the CCAA, including sections 11 and 23, that explicitly grant the Monitor with the power to compel third party witnesses to testify and produce documents, and accordingly, the Investigation Order, as currently drafted, should be dismissed.

D) Enhanced Powers of the Monitor

28. CFLCo submits that sections 11 and 23(1)(c) and (k) of the CCAA do not give the explicit authority required to allow the Monitor to conduct investigations and compel the production of testimony and documentation relating to a corporation (Twinco) and one of its shareholders (CFLCo), both of whom are solvent third parties, outside the scope of these CCAA proceedings.

29. While there is little doubt that the powers of court-appointed monitors have been expanded in recent years, CFLCo submits that the power to investigate and compel third parties to testify, is not one which appropriately belongs with the monitor.

Section 23(1)(c) CCAA

30. Section 23(1)(c) of the CCAA 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 [...]*”.
31. On its face, this section very clearly gives the Monitor the power to investigate the debtor’s business and affairs. It does not extend to solvent third parties.
32. Recently however, in *Arrangement relatif à 9227-1584 Québec inc.*, 2021 QCCS 1342 (**TAB 7**) Justice Kalichman granted the Monitor with the power to conduct investigations into third parties, although the facts differ from the case at hand, in that the investigation was into the shareholders of the third parties who were also shareholders of the CCAA debtor company.
33. Moreover, we submit that pursuant to the Supreme Court of Canada decisions cited above, absent clear authority in the text of the law, a CCAA Court does not actually have the power to grant a monitor with powers of coercion, including the power to compel testimony and documentation.
34. In this regard, there is a fundamental question of justice at play, since the Investigation Orders will function to grant the Monitor with powers of coercion, despite the absence of this explicit power in the CCAA, and in circumstances where the plaintiffs (Wabush) would not themselves have these rights in the context of the ongoing litigation (both through the Dissolution Motion and the Liquidation Application).

Section 23(1)(k) CCAA

35. Section 23(1)(k) provides that the Monitor may “*carry out any other functions in relation to the company that the court may direct.*” This has been interpreted by some Courts, including in *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014 (CanLII), to allow the Monitor to act as complainant in an action, although it should only do so in specific circumstances, including when no other stakeholder is better placed to act in this manner.

- *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014 (CanLII) [Essar], **TAB 8**:

*[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)*, 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. In my view, this is one such case.

[...]

[123] **It will be a rare occasion that a monitor will be authorized to be a complainant. Factors a CCAA supervising judge should consider when exercising discretion as to whether a monitor should be authorized to be a complainant include whether:**

(i) there is a *prima facie* case that merits an oppression action or application;

(ii) the proposed action or application itself has a restructuring purpose, that is to say, materially advances or removes an impediment to a restructuring; and

(iii) **any other stakeholder is better placed to be a complainant.**

These factors are not exhaustive, and none of them is necessarily dispositive; they are simply factors to consider.

(Our emphasis)

➤ See also *Urbancorp Cumberland 2 GP Inc., (Re)*, 2017 ONSC 7649, paras. 16 to 22 (**TAB 9**):

“[16] Trustees in bankruptcy can be recognized as complainants in oppression proceedings. *Olympia & York Developments Ltd (Trustee of) v Olympia & York Realty Corp.* (2001), 68 OR (3d) 544 (CA). The recognition is discretionary. At para. 45 of *Olympia & York*, Goudge JA explained:

...s. 245(c) confers on the court an unfettered discretion to determine whether an applicant is a proper person to commence oppression proceedings under s. 248. This provision is designed to provide the court with flexibility in determining who should be a complainant in any particular case that accompanies the court's flexibility in determining if there has been oppression and in fashioning an appropriate remedy. The overall flexibility provided is essential for the broad remedial purpose of these oppression provisions to be achieved. Given the clear language of s. 245(c) and its purpose, I think that where the bankrupt is a party to the allegedly [page 556] oppressive transaction, the trustee is neither automatically barred from being a complainant nor automatically entitled to that status. It is for the judge at first instance to determine in the exercise of his or her discretion whether in the circumstances of the particular case, the trustee is a proper person to be a complainant.

[17] In *Ernst & Young Inc. v Essar Global Fund Ltd.*, 2017 ONSC 1366, the CCAA court specifically empowered the Monitor to bring oppression proceedings against a party whom the Monitor alleged was impairing the company's ability to restructure by its oppressive conduct. See paras. 34 and 37.

[18] **In the case at bar, the Monitor has not been empowered to bring proceedings on behalf of the CCAA debtors.** Mr. Drake points to the Monitor's authority to seek advice and directions in its initial order. In my view, that power ought to have been used before the Monitor purported to act on behalf of the debtor corporations in claiming relief against a creditor. Until empowered to sue, the Monitor is a neutral with duties to all interested parties. See *Essar*, at para. 30.

[19] The Monitor is not truly seeking advice and directions in this motion. It has sued Cooltech for monetary relief under the banner of a motion for advice and directions. It seeks judgment holding Cooltech liable. It is not asking for the court's input or advice other than to adjudicate the complaint.

[20] Monitors can certainly be empowered to bring legal proceedings and to act on behalf of CCAA debtors in appropriate circumstances. **Under s. 23 (1)(k) of the CCAA the court has broad discretion to empower the Monitor to take steps to facilitate the restructuring or to advance the goals of the CCAA.** *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 (CanLII) at para. 70. Mr. Drake submits that when the court appointed a creditors' committee in this case, a sealed report from the Monitor made reference to the Monitor bringing proceedings in the interests of creditors. However, the order itself grants no such authority to the Monitor. A reference in a Monitor's report that is not adopted into an order is not approval for the Monitor to take steps. There are no steps delineated. There are no parameters for the exercise established.

[21] The **Monitor is not a trustee in bankruptcy.** The creditors know how to bankrupt a debtor if they believe doing so is appropriate. **In the interim, I do not see how, in this liquidating CCAA process, the Monitor bringing proceedings in place of the creditors who stand to gain from it can be said to facilitate the restructuring.** In *Essar* there was a particular roadblock to a fair and proper restructuring affecting all interested parties. Here, by contrast, the Monitor pits the current creditors against a group of creditors who were paid over one year before the proceedings commenced. Why is this a fight for the Monitor rather than the creditors who stand to benefit from the claim? There is no evidence before me concerning the existing creditor body. Perhaps there are tens of thousands of powerless or involuntary creditors who need representation as in the CCAA proceedings for Nortel Networks Limited. Or is there, perhaps, one legal representative of a body of similarly situated creditors who is well able to bring proceedings if he should wish to do so?

[22] I accept that if proceedings are available, they can be brought summarily within the procedural context of this case as was done in Essar and as approved expressly in Stelco Inc., Re, 2006 CanLII 16526 (ON CA). But, I am not convinced in the utility of empowering the Monitor to drop its cloak of neutrality to bring what are really inter-creditor proceedings or that doing so facilitates this restructuring process.

(Our emphasis)

36. In the case at hand, there is absolutely no need for the Monitor to act as complainant or investigator, since Wabush itself has already instituted an action against Twinco and CFLCo, and accordingly, any actions or investigations should and will take place in this context.

III CONCLUSION

37. 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 ongoing litigation on the same issues.

Montréal, June 2, 2021

(S. Stikeman Elliott LLP)

STIKEMAN ELLIOTT

Attorneys for Churchill Falls (Labrador)
Corporation Limited

1155 René-Lévesque Blvd. West, 41st Floor
Montréal, QC H3B 3V2

Me Guy Martel

Email: gmartel@stikeman.com
Telephone: (514) 397-3163

M^e Nathalie Nouvet

Email: nnouvet@stikeman.com
Telephone: (514) 397-3128

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
Commercial Division

N° : 500-11-048114-157

IN THE MATTER OF THE PLAN OF
ARRANGEMENT AND COMPROMISE 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

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Montréal, June 2, 2021

(S.) *Stikeman Elliott LLP*

STIKEMAN ELLIOTT

Attorneys for Churchill Falls (Labrador)
Corporation Limited

1155 René-Lévesque Blvd. West, 41st Floor
Montréal, QC H3B 3V2

Me Guy Martel

Email: gmartel@stikeman.com
Telephone: (514) 397-3163

M^e Nathalie Nouvet

Email: nnouvet@stikeman.com
Telephone: (514) 397-3128

SCHEDULE 3

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF **MONTREAL**

N^o: **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)

**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 WINDING UP AND DISSOLUTION, DISTRIBUTION OF ASSETS,
REIMBURSEMENT OF MONIES AND ADDITIONAL RELIEF¹**
(Section 11 of the *Companies' Creditors Arrangement Act* and Sections 214 and 241 of the
Canada Business Corporations Act)

¹ Except as otherwise provided for herein, all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Bloom Lake Initial Order (as defined herein) 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

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
17th 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
Todd Stanley
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
Guy P. Martel
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.

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^o: 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

LIST OF EXHIBITS

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

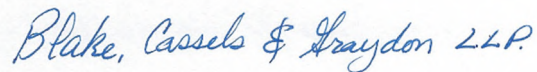
R-1

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.

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)**

**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

**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)

ORIGINAL

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

M^{re} Bernard Boucher

BB-8098

BLAKE, CASSELS & GRAYDON LLP

Barristers & Solicitors

1 Place Ville Marie, Suite 3000

Montréal, Québec H3B 4N8

Telephone: 514-982-4006 / Fax: 514-982-4099

Email: bernard.boucher@blakes.com

Our File: 11573-375

SCHEDULE 4

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-048114-157

SUPERIOR COURT
Commercial Division

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:

Relief requested by Wabush:	Allegations and/or requested relief are based on:	Governing Law
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	
13. (e): <i>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

M^e Guy Martel

Direct : 514 397 3163

Email : gmartel@stikeman.com

M^e Nathalie Nouvet

Direct : 514 397 3128

Email : nnouvet@stikeman.com

M^e Simon Ledsham

Direct : 514 397 3385

Email : sledsham@stikeman.com

STIKEMAN ELLIOTT LLP

1155 René-Lévesque Blvd. West

41st Floor

Montréal (Québec) Canada H3B 3V2

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

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-048114-157

SUPERIOR COURT
Commercial Division

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

M^e Guy Martel

Direct : 514 397 3163

Email : gmartel@stikeman.com

M^e Nathalie Nouvet

Direct : 514 397 3128

Email : nnouvet@stikeman.com

M^e Simon Ledsham

Direct : 514 397 3385

Email : sledsham@stikeman.com

STIKEMAN ELLIOTT LLP

1155 René-Lévesque Blvd. West

41st Floor

Montréal (Québec) Canada H3B 3V2

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

Stéphanie Larche

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

De : jsmith@scwlegal.com <jsmith@scwlegal.com>

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

À : inquiries@supreme.court.nl.ca; michellehillier@supreme.court.nl.ca

Cc : 'Bernard' <bernard.boucher@blakes.com>; 'Gerry' <Gerry.Apostolatos@langlois.ca>; Nathalie Nouvet <NNouvet@stikeman.com>; PDicks@bensoffett.com; 'Sean Pittman' <spittman@bensoffett.com>; 'Gina' <Gina.Carello@langlois.ca>; BethSheppard@nalcoreenergy.com; 'Doug Mitchell' <dmitchell@imk.ca>; 'Milly' <milly.chow@blakes.com>; Guy P. Martel <GMartel@stikeman.com>; tstanley@coxandpalmer.com; ToddNewhook@nalcoreenergy.com; Simon Ledsham <sledsham@stikeman.com>; 'Bernard Coffey' <berncoffey@gmail.com>

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.

Smith Law Offices

The Law Chambers

2nd Floor, 263 Duckworth Street

St. John's, NL A1C 1G9

Direct Line: (709) 753-1306

Facsimile: (709) 753-1344

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SUPERIOR COURT
Commercial Division

N° : 500-11-048114-157

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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

**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**

ORIGINAL

Mtre Guy P. Martel

(514) 397-3163
gmartel@stikeman.com

Mtre Nathalie Nouvet

(514) 397-3128
nnouvet@stikeman.com

STIKEMAN ELLIOTT
Stikeman Elliott LLP BARRISTERS & SOLICITORS
41st Floor
1155 René-Lévesque West
Montréal, Canada H3B 3V2

SCHEDULE 5

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
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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 parties¹, 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:

¹ 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 14th of January, 2021.

Solicitors for the Applicant



Smith Law Offices

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

Jamie M. Smith, Q.C.
709-753-1306
jsmith@scwlegal.com

and



Stikeman Elliott LLP

Whose address for service is:
1155 René-Lévesque Blvd. W.
41st Floor
Montréal, QC H3B 3V2

Guy Martel
1-514-397-3163
gmartel@stikeman.com

Nathalie Nouvet
1-514-397-3128
nnouvet@stikeman.com

Simon Ledsham
1-514-397-3385
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

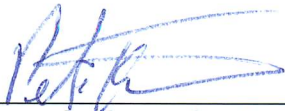
Affidavit

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.

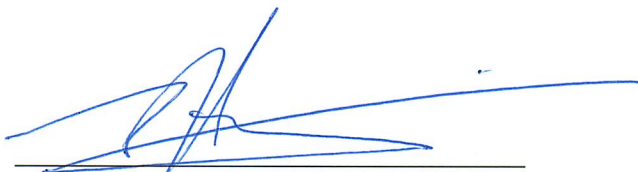
AFFIRMED

at St. John's, Newfoundland and
Labrador on the 14th 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

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF **MONTREAL**

N^o: **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)

**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 POWERS¹
(Sections 11 and 23 of the *Companies' Creditors Arrangement Act*)

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

BLAKE, CASSELS & GRAYDON LLP

Attorneys for the Petitioners and the Mises-en-cause

(Court Code: BB-8098)

1 Place Ville-Marie, Suite 3000

Montréal, Quebec H3B 4N8

M^{re} Bernard Boucher

bernard.boucher@blakes.com

Telephone: 514-982-4006

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 , VTC Conference ID: 1160455398

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, May 6, 2021

Blake, Cassels & Graydon L.L.P.

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^o: 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

LIST OF EXHIBITS

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

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.

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)**

**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

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

(Sections 11 and 23 of the CCAA)

ORIGINAL

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

M^{tre} Bernard Boucher

BB-8098

BLAKE, CASSELS & GRAYDON LLP

Barristers & Solicitors

1 Place Ville Marie, Suite 3000

Montréal, Québec H3B 4N8

Telephone: 514-982-4006 / Fax: 514-982-4099

Email: bernard.boucher@blakes.com

Our File: 11573-374

COURT OF APPEAL

Q.C.A. N^o.
Q.S.C. N^o. 500-11-048114-157

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

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

**APPLICATION FOR LEAVE TO APPEAL AND
TO SUSPEND THE PROVISIONAL EXECUTION**

*(Sections 13 and 14 of the Companies' Creditors Arrangement Act (the
"CCA") and Articles 357 and 661 of the Code of Civil Procedure)*

ORIGINAL

Me. Guy P. Martel (514)397-3163
gmartel@stikeman.com
Me. Nathalie Nouvet (514)397-3128
NNouvet@stikeman.com
Me William Rodier-Dumais (514)397-3298
wrodierdumais@stikeman.com

STIKEMAN ELLIOTT
Stikeman Elliott LLP Barristers & Solicitors
1155, René-Lévesque Blvd. West, 41th FLOOR, Montréal, Canada H3B 3V2