

Court File No. 2021 01G _____

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

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

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

BETWEEN:

CHURCHILL FALLS (LABRADOR)
CORPORATION LIMITED

APPLICANT

AND:

PRICEWATERHOUSECOOPERS INC.

PROPOSED LIQUIDATOR

AND:

THE DIRECTOR UNDER THE CBCA

FIRST RESPONDENT

AND:

TWIN FALLS POWER CORPORATION
LIMITED

SECOND RESPONDENT

AND:

WABUSH RESOURCES INC.

THIRD RESPONDENT

AND:

WABUSH IRON CO. LIMITED

FOURTH RESPONDENT

AND:

IRON ORE COMPANY OF CANADA

FIFTH RESPONDENT

Originating Application
(*Inter Partes*)

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

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

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

I. NATURE OF THE ORIGINATING APPLICATION

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

II. OVERVIEW OF TWINCO'S BUSINESS AND AFFAIRS

a. Corporate Structure

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

following entities:

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

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

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

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

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

b. Twinco's Business

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

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

The Sublease

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

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

The Operating Lease

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

c. Employees

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

III. TWINCO'S ASSETS AND LIABILITIES

a. Assets

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

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

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

b. Liabilities

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

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

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

c. Contingent Liabilities / Pending Litigation

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

IV. GROUNDS FOR THE COURT-ORDERED LIQUIDATION OF TWINCO

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

a. The Cessation of Twinco's Operations

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

b. The Shareholder Dispute

33. On November 16, 2020, Wabush filed a *Motion for the Winding up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* (the "**Dissolution Motion**"), in the context of proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") instituted in the Superior Court of Quebec on January 27, 2015, in respect of a number of 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:
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TO: The Director Appointed Under the
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C.D. Howe Building
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Twin Falls Power Corporation
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Wabush Resources Inc.
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Iron Ore Company of Canada
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TO: PricewaterhouseCoopers Inc.
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APPLICANT

AND:

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PROPOSED LIQUIDATOR

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THE DIRECTOR UNDER THE CBCA

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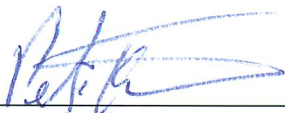
Affidavit

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.

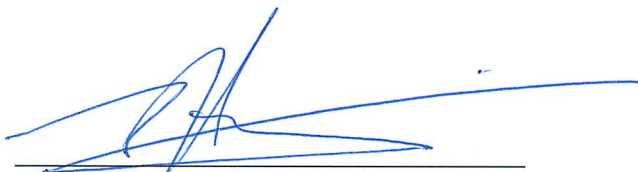
AFFIRMED

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

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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
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