

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

**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**

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 ("**Twinc**o") maintenance obligations and environmental liabilities related to the Twinc
- (b) compelling an accounting from Twinc
- (c) directing CF(L)Co to reimburse all Reimbursable Environmental/Maintenance Costs (such amount to be reimbursed by CFLCo, being the "**CFLCo Reimbursement**") to Twinc
- (d) directing the winding up and dissolution of Twinc 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 Twinc Cash (as such term is defined in the Dissolution Motion) net of all reasonable fees and expenses incurred by Twinc to implement and complete the wind up and dissolution being sought in the Dissolution Motion, and (ii) the CFLCo Reimbursement to Twinc's shareholders, including Wabush, on a *pro rata* basis; and
- (e) in the alternative to (d), directing Twinc and/or CF(L)Co to purchase the shares of Twinc 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 Twinc 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 Twinc 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**.
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.

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

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*

WITH COSTS.

MONTREAL, January 15, 2021



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SWORN STATEMENT

I, the undersigned, James Haynes, domiciled and residing at Conception Bay South, in the Province of Newfoundland and Labrador, solemnly declare the following:

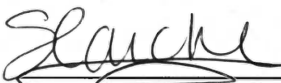
1. I am the Executive Vice President of Power Supply of Churchill Falls (Labrador) Corporation Limited;
2. All the facts alleged in the present Contestation are, to the best of my knowledge, true.

AND I HAVE SIGNED



James Haynes

SOLEMNLY DECLARED before me, in
Vaudreuil-Dorion, this 15th day of January
2021

 #167833

Commissioner for the taking of oaths for the
Province of Québec

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**LIST OF EXHIBITS IN SUPPORT OF 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***

- Exhibit C-1:** Originating Application for the Issuance of a Court-Supervised Liquidation and Dissolution Order
- 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 in the Newfoundland and Labrador Companies and Deeds Online database

MONTREAL, January 15, 2021



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Monitor

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File: 030192-1029

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

ORIGINAL

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